

INTER OFFICE MEMO

To: Board of Directors

Date: 2/7/2023

From: Amber Johnson, Chief Financial Officer

Reviewed by: WC.

SUBJECT: Adoption of a Revised Pension Funding Framework

Background:

The Authority contracts with the California Public Employees' Retirement System (CalPERS) for its employee defined-benefit pension plans. As such, the Authority is subject to the fluctuations of CalPERS funding policies, investment projections, investment performance, and actuarial assumptions – each of which impacts the level of funding commitment that is required on an annual basis and the level of unfunded liability that is carried by the Authority.

The Authority has long recognized the importance of controlling pension costs. Prior to the 2008 recession, CalPERS was over-funded for a period of time. Many public agencies saw this as an opportunity to contract with CalPERS for more enhanced benefits, either increasing the percentage of pay in retirement, and/or decreasing the age at which retirees can collect benefits. However, the Authority sensibly resisted these changes and did not enhance retiree benefits, keeping the original "2% at 60" formula. This prudent decision has been key in helping the Authority control pension costs as compared to its peers. However, the Authority is not immune from economic conditions that contribute to rising pension costs.

Over the past few months, the Administration and Finance (A&F) Committee and staff have been discussing the Authority's pension funding policy and options for enhancing the pension funding framework to help mitigate future impacts of rising pensions costs. As a result of these discussions, the A&F Committee and staff are recommending the establishment of a 115 trust for pre-funding the Authority's pension obligations, and revisions to the existing pension funding policy.

Current Pension Funding Policy:

Required Contributions:

The Authority is required to make certain contributions to CalPERS as part of its contract: normal cost and Unfunded Accrued Liability ("UAL") payments. In the current fiscal year (FY 2023), the required contributions to CalPERS are as follows:

Employer Normal Cost Rate:	9% of covered earnings
Unfunded Accrued Liability Payment:	\$890,950

Employees are also required to contribute to the plan by means of a payroll deduction, using a predetermined percentage of their covered earnings. This rate can vary depending on when the employee entered the CalPERS system and the employee's classification at the Authority.

Discretionary Contributions:

In 2019, the Board authorized reducing County Connection's pension liability by making smaller direct payments to CalPERS to achieve interest savings over time. The following was the framework of how those additional payments could be made:

1. If the estimates for pension related costs are under budget as of the May budget presentation, and would not require a draw on the contingency, nor additional TDA allocations; the General Manager is allowed to authorize additional payments to CalPERS up to \$100,000.
2. Additional payment amounts over \$100,000 could be recommended by staff and approved by the A&F and Board as part of the May budget review.
3. Any additional payments made by the Authority to CalPERS would be adjusted for in the Wage Increase determination performed by the auditors each year. In the auditors' Agreed Upon Procedure report, that additional payment amount will be reduced from total pension expense for that fiscal year. This amount shall not be included as part of the increase of additional pension costs of \$1,000,000 for that fiscal year which might cause a reduction of wage increases.

No additional payments towards the pension liability have been made since this framework was adopted.

Proposed Pension Funding Framework:

Creation of a 115 Trust for Pre-funding Pension Obligations

Since June 2010, the Authority has participated in an Internal Revenue Code Section 115 trust for pre-funding its Other Post-Employment Benefits (OPEB) obligations, established by Public Agency Retirement Services (PARS), to set aside funds to pay for future OPEB benefits that will be collected by current employees (the "OPEB 115 Trust"). As of December 2022, there was approximately \$4.7 million in the Authority's OPEB 115 Trust account. Since inception, the OPEB 115 Trust account has earned approximately 4% return on investment utilizing the PARS "moderately conservative" investment strategy, managed by Highmark Capital. No funds have been withdrawn from the trust to pay benefits to date.

PARS also offers a Pension Rate Stabilization Program (PRSP) 115 trust specifically designed to address pension liabilities and stabilize future costs. Furthermore, PARS has created an IRS-approved, tax-exempt combination Section 115 trust that can be used by local agencies to set aside funds for both future OPEB and pension expenses.

The A&F Committee recommends the establishment of a new combination irrevocable Trust with PARS as the trust administrator and Highmark Capital as the investment manager. If established, this combination trust will replace the existing OPEB 115 Trust with one that will have two accounts (the "Combination 115 Trust"). One account will be for the existing OPEB assets (the "OPEB 115 Account"), to which all amounts currently held in the Authority's existing OPEB Trust account with PARS will be transferred, and the other account will be for prefunding pension liabilities through the PRSP (the "Pension 115 Account"). In the

Combination 115 Trust, funds contributed for pre-funding OPEB and pension liabilities are separately accounted for, although combined under one trust for investment purposes, resulting in administrative and cost efficiencies. It is recommended to continue to utilize the moderately conservative investment strategy for both accounts.

The IRS Private Letter Ruling that verifies the tax-exempt status of the PARS Combination 115 Trust program is included as Attachment 1. A draft Administrative Services agreement with PARS is included as Attachment 2, and a resolution to formally adopt the structure is included as Attachment 3.

Source of Pension Funds:

Due to the restrictive nature of most of the Authority’s external funding sources, passenger fares are the Authority’s logical source of funding the Pension 115 Account. In the year just ended (FY 2022), the Authority collected \$2.2 million in passenger fares. As post-pandemic ridership continues to recover, this amount is projected to grow in future years.

Initial Funding Proposal:

When creating the current year (FY 2023) budget and accompanying financial *forecast* for pension costs, staff relied on the 2021 CalPERS valuation report to model the expenses. At the time of this report, the required annual UAL payment for FY 2024 was projected to be \$1 million. While not the focus of the FY 2023 budget, staff did plan to expend \$1 million on the required UAL payment in FY 2024 in the 10-year financial forecast model.

However, the following year, the required UAL payment for FY 2024 was reduced to zero, due to the unusually high return on investment (ROI) that year. Using the CalPERS pension outlook tool, staff estimates that the required UAL will return in FY 2025. This one-year reprieve from sending a UAL payment to CalPERS in FY 2024 presents a unique opportunity for one-time forecasted savings to be redirected to the Pension 115 Account.

The following table illustrates how the annual UAL payment requirement has changed with recent valuation reports and estimates.

Year	Required UAL Payment		
	2021 Valuation FY20 ROI 4.7%	2022 Valuation FY21 ROI 21.3%	2023 Estimates FY22 ROI <6.1%>
FY 2023	\$ 890,950	N/A	N/A
FY 2024	\$ 1,000,000	\$ -	N/A
FY 2025	\$ 1,149,000	\$ -	\$ 330,000
FY 2026	\$ 1,246,000	\$ -	\$ 660,000
FY 2027	\$ 1,331,000	\$ -	\$ 990,000

The A&F Committee recommends seeding the Pension 115 Account with an initial investment of \$1 million in FY 2024, using budgetary savings realized by the one-year reprieve from CalPERS UAL payments. This initial contribution will be invested by Highmark Capital using dollar cost averaging over a period of 3-4 months, to minimize market risk fluctuations.

Future Discretionary Contributions:

The current pension funding policy for discretionary payments compares actual pension costs to budgeted pension costs and permits staff to contribute any budgetary savings up to \$100,000 in a given year as an additional payment directly to CalPERS. Additionally, payments greater than \$100,000 can be approved during the budget approval process. Any discretionary payments are not included in the calculation of the wage increase determination procedures performed at year-end by the financial auditors.

The A&F Committee recommends ending this policy. Instead, staff will bring recommendations for discretionary contributions (if any) each year during the budget process, requiring Board approval by default. As these payments are discretionary in nature, they will continue to be excluded from the wage increase determination procedure performed at year-end.

Use of Funds:

Funds that are set aside in the Pension 115 Account will be restricted for use solely on pension costs. The PARS Combination 115 Trust structure would allow the Authority to reimburse itself for prior and current year pension payments to CalPERS – both normal cost and unfunded accrued liability payments. This gives the Authority maximum flexibility in case of future budgetary constraints that would necessitate withdrawing funds from the trust. However, it is the recommendation of the A&F Committee that the Authority take a “long view” on this account and refrain from withdrawing from the account unless absolutely necessary and only with Board authorization. This authorization could take place during the budgetary approval cycle, or, on an emergency basis if circumstances warrant an emergency withdrawal.

Summary of Proposed Framework:

In summary, the A&F Committee and staff recommend the following pension funding framework to be considered by the Board:

Framework Element:	Staff Recommendation:
Pension Funding Vehicle	Pension 115 Account under a Combination 115 Trust
Investment Strategy	Moderately Conservative (20-40% equities)
Source of Pension Funds	Fare Revenues
Initial Funding	\$1,000,000 from FY 2024 budgetary savings
Ongoing Funding	As adopted annually with the budget document
Use of Funds	Must be authorized by the Board either through the budget approval process or on an emergency basis

Financial Implications:

The Authority is presently in a strong position to implement this set of pension-related policies. While the long-term impact is impossible to quantify, it is fair to conclude that reserving funds for pension costs now and into the future will bring significant budgetary benefits over time.

Recommendation:

The A&F Committee and staff recommend the Board approve the proposed revised pension funding framework as outlined in this report.

Action Requested:

The A&F Committee and staff request that the Board authorize the General Manager to enter into a revised Agreement for Administrative Services with PARS and adopt Resolution 2023-027 approving the establishment of a new combination Public Agencies Post-Employment Benefits Trust with PARS, including establishment of a separate Pension 115 Account thereunder, and the transfer of all amounts held in the Authority's existing OPEB Trust account with PARS to the OPEB 115 Account under the combination Trust.

Attachments:

Attachment 1: IRS Letter Ruling

Attachment 2: Draft Agreement for Administrative Services with PARS

Attachment 3: Resolution 2023-027 Approving the Adoption of a Combination 115 Trust Administered by PARS

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 115.00-00

Third Party Communication: None
Date of Communication: Not Applicable

U.S. Bank National Association
c/o Susan Hughes, Vice President
3121 Michelson Drive (Suite 300)
Irvine, CA 92612

Person To Contact:
Robin J. Ehrenberg, ID No. 1000219292
Telephone Number:
(202) 317-5800
Refer Reply To:
CC:TEGE:EOEG:EO3
PLR-146796-14
Date: June 5, 2015

Legend

Trust = Public Agencies Post-Employment Benefits Trust
Trust Agreement = Public Agencies Post-Employment Benefits Trust Agreement
Trustee = U.S. Bank National Association

Dear Ms. Hughes:

This letter responds to a letter from your authorized representative dated December 22, 2014, requesting rulings that (1) the Trust's income is excludable from gross income under section 115 of the Internal Revenue Code (IRC) and (2) the Trust is not required to file annual federal income tax returns under IRC section 6012(a)(4). The Trust represents the facts as follows:

FACTS

The Trust is a multiple employer trust established to enable public-agency employers to fund post-retirement employee benefits. Each participating employer must be a public agency that is a state, political subdivision of a state, or an entity the income of which is excludable from gross income under IRC section 115. The employer's governing body must authorize in writing the adoption of the Trust and the employer must execute the adoption agreement, which approves the Trust's administrator and provides that the agency adopts and agrees to be bound by the Trust Agreement. In the adoption agreement, the employer elects to fund obligations to provide benefits under a post-employment health care plan and contribute to a defined-benefit pension plan maintained by the employer that is qualified under IRC section 401(a). The employer may elect to fund either or both obligations.

The Trust Agreement provides that assets are held by the Trust for the exclusive purpose of funding participating employers' benefit obligations and defraying the reasonable expenses of the Trust. The Trust's assets may not be used for any other purpose. Each employer's contributions to the Trust, together with any allocable investment earnings and losses, are held in a separate account for that employer. Assets allocated to satisfy an employer's health and welfare benefit obligation or the employer's pension obligation may only be used for purposes of satisfying that particular obligation. The assets held in an employer's account are not available to pay any obligations incurred by any other employer.

The employers appoint the Trustee and the Trust's administrator and may remove the Trustee or the administrator by a two-thirds vote of all employers. The employers may amend the Trust Agreement with the approval of two-thirds of all employers then participating in the Trust. The employers may terminate the Trust by unanimous agreement of all employers.

Upon termination of the Trust, any assets remaining in an employer's account, after satisfaction of benefit and the Trust's obligations are returned to the employer to the extent permitted by law and consistent with the requirements of IRC section 115.

LAW AND ANALYSIS

Issue 1 - IRC section 115(1)

IRC section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC section 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC section 115(1), because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Through the Trust, participating public agency employers fund health and welfare and pension obligations for retired employees. Each of the Trust's participating employers is required to be a state, political subdivision of a state or an entity the income of which is excludable from gross income under IRC section 115. Providing health, welfare and pension benefits to current and former employees constitutes the performance of an essential government function within the meaning of IRC section 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The Trust's income accrues to its participating employers, all of which are political subdivisions of a state or entities the income of which is excludable from gross income under IRC section 115. No private interests will participate in, or benefit from, the operation of Trust, other than as providers of goods or services. The benefit to employees is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will the Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or entity the income of which is excludable from its gross income by application of IRC section 115(1).

Issue 2- IRC section 6012(a)(4)

Section 301.7701-1(b) of the Procedure and Administration Regulations (Regulations) provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4, unless a provision of the IRC provides for special treatment of that organization.

Section 301.7701-4(a) of the Regulations provides that, in general, an arrangement will be treated as if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

The Trust enables public-agency employers to set aside funds to be used to satisfy each employer's separate pension and health and welfare benefit obligations. The

Trustee is charged with the responsibility of the protection and conservation of the Trust property for the benefit of the beneficiaries of the Trust. The beneficiaries of the Trust cannot share in the discharge of the Trustee's responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit. IRC section 6012(a)(4) provides that every trust having for the taxable year any taxable income or having gross income of \$600 or more, regardless of the amount of taxable income, shall make returns with respect to income taxes under Subtitle A.

Based solely on the facts and representations submitted by the Trust, we conclude that:

1. Because the income of the Trust derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, the Trust's income is excludable from gross income under IRC section 115(1).
2. The Trust is classified as a trust within the meaning of IRC section 7701(a) and section 301.7701-4(a) of the Regulations. Because Trust's income is excludable from gross income under IRC section 115, the Trust is not required by IRC section 6012(a)(4) to file an annual income tax return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon by any taxpayer, including the Trust, employers participating in the Trust, and any recipients of benefits paid under the terms of the Trust, as to any matter relating to the taxation of accident or health contributions or benefits.

This ruling is directed only to the taxpayer who requested it. IRC section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Griffin', with a stylized flourish at the end.

Kenneth M. Griffin
Branch Chief, Exempt Organizations Branch 3
(Tax Exempt and Government Entities)

cc: Marcus Wu
Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, CA 92130-4088

Paul Marmolejo
Director, Office of Federal, State and Local Governments
SE:T:GE:FSL

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement (“Agreement”) is made this ____ day of _____, 2023, between Phase II Systems, a corporation organized and existing under the laws of the State of California, doing business as Public Agency Retirement Services and PARS (hereinafter “PARS”) and the [Agency Name] (“Agency”).

WHEREAS, the Agency has adopted the PARS Public Agencies Post-Employment Benefits Trust for the purpose of pre-funding pension obligations and/or Other Post-Employment Benefits (“OPEB”) obligations (“Plan”) and is desirous of retaining PARS as Trust Administrator to the Trust, to provide administrative services.

NOW THEREFORE, the parties agree:

1. **Services.** PARS will provide the services pertaining to the Plan as described in the exhibit attached hereto as “Exhibit 1A” (“Services”) in a timely manner, subject to the further provisions of this Agreement.
2. **Fees for Services.** PARS will be compensated for performance of the Services as described in the exhibit attached hereto as “Exhibit 1B”.
3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets unless the Agency chooses to make payment directly to PARS. In the event that the Agency chooses to make payment directly to PARS, it shall be the responsibility of the Agency to remit payment directly to PARS based upon an invoice prepared by PARS and delivered to the Agency. If payment is not received by PARS within thirty (30) days of the invoice delivery date, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Agency within sixty (60) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless PARS has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS’ standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with a detailed description of the services, terms, and applicable rates for such services. Such services, terms, and applicable rates shall be agreed upon in writing and executed by both parties.
5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency providing PARS the information specified in the exhibit attached hereto as “Exhibit 1C” (“Data”). It shall be the responsibility of the Agency to certify the accuracy, content, and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the

Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for nonperformance of Services to the extent such nonperformance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, PARS shall provide duly authorized representatives of Agency access to all records and material relating to calculation of PARS' fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.
7. **Confidentiality.** Without the Agency's consent, PARS shall not disclose any information relating to the Plan except to duly authorized officials of the Agency, subject to applicable law, and to parties retained by PARS to perform specific services within this Agreement. The Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of PARS, except as such disclosures may be required by applicable law.
8. **Independent Contractor.** PARS is and at all times hereunder shall be an independent contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of PARS, its officers, employees, or agents, except as specifically set forth and provided for herein. PARS shall pay all wages, salaries, and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation, and similar matters.
9. **Indemnification.** PARS and Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, and employees, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of, to the extent, PARS' or Agency's, as the case may be, negligent acts, errors or omissions with respect to the performance of their respective duties hereunder.
10. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, state, and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. PARS shall observe and comply with federal, state, and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction.
12. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that its performance is prevented by such cause. Such cause shall include, but not be limited to: any incidence of fire, flood, acts of God or unanticipated communicable disease, acts of terrorism or war commandeering of material, products, plants or facilities by the federal, state or local government, a material act or omission by the other party or any law, ordinance, rule, guidance or recommendation by the federal, state or local government, or any agency thereof, which becomes effective after the date of this Agreement that delays or renders impractical either party's performance under the Agreement.
13. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
14. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.
15. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President
 - (B) To Agency: [Agency]; [Agency Address]; Attention: [Plan Administrator Title]Notices shall be deemed given on the date received by the addressee.
16. **Term of Agreement.** This Agreement shall remain in effect for the period beginning _____, 2023 and ending _____, 2026 ("Term"). This Agreement may be terminated at any time by giving thirty (30) days written notice to the other party of the intent to terminate. Absent a thirty (30) day written notice to the other party of the intent to terminate, this Agreement will continue unchanged for successive twelve-month periods following the Term.
17. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.

18. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions, and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.
19. **Attorneys Fees.** In the event any action is taken by a party hereto to enforce the terms of this Agreement the prevailing party herein shall be entitled to receive its reasonable attorney's fees.
20. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.
21. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
22. **Effective Date.** This Agreement shall be effective on the date first above written, and also shall be the date the Agreement is executed.

AGENCY:

BY: _____
Plan Administrator Name

TITLE: _____

DATE: _____

PARS:

BY: _____
Tod Hammeras

TITLE: Chief Financial Officer

DATE: _____

EXHIBIT 1A
SERVICES

PARS will provide the following services for the [Agency Name] Public Agencies Post-Employment Benefits Trust:

1. Plan Installation Services:

- (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, actuarial valuation process, funding strategies, benefit communication strategies, data reporting, and submission requirements for contributions/reimbursements/distributions;
- (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
- (C) Providing the documentation needed to establish the Plan to be reviewed and approved by Agency legal counsel. Resulting final Plan documentation must be approved by the Agency prior to the commencement of PARS Plan Administration Services outlined in Exhibit 1A, paragraph 2 below.

2. Plan Administration Services:

- (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Public Agencies Post-Employment Benefits Trust (“Trustee”), based upon information received from the Agency and the Trustee;
- (B) Performing periodic accounting of Plan assets, reimbursements/distributions, and investment activity, based upon information received from the Agency and/or Trustee;
- (C) Coordinating the processing of distribution payments pursuant to authorized direction by the Agency, and the provisions of the Plan, and, to the extent possible, based upon Agency-provided Data;
- (D) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope of this Agreement;
- (E) Preparing and submitting a monthly report of Plan activity to the Agency, unless directed by the Agency otherwise;
- (F) Preparing and submitting an annual report of Plan activity to the Agency;
- (G) Facilitating actuarial valuation updates and funding modifications for compliance with the applicable GASB pronouncements and/or statements, if prefunding OPEB obligations;
- (H) Coordinating periodic audits of the Trust;
- (I) Monitoring Plan and Trust compliance with federal and state laws.

3. PARS is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice.

EXHIBIT 1B
FEES FOR SERVICES

PARS will be compensated for performance of Services, as described in Exhibit 1A based upon the following schedule:

An annual asset fee shall be paid from Plan assets based on the following schedule:

<u>For Plan Assets from:</u>			<u>Annual Rate:</u>
\$1	to	\$10,000,000	0.25%
\$10,000,001	to	\$15,000,000	0.20%
\$15,000,001	to	\$50,000,000	0.15%
\$50,000,001	and	above	0.10%

Annual rates are prorated and paid monthly. The annual asset fee shall be calculated by the following formula [Annual rate divided by 12 (months of the year) multiplied by the Plan asset balance at the end of the month]. Trustee and Investment Management Fees are not included.

EXHIBIT 1C
DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information. Agency is solely responsible for ensuring that all information and documentation provided to PARS is true, correct, and authorized:

1. Executed Legal Documents:
 - (A) Certified Resolution
 - (B) Adoption Agreement to the Public Agencies Post-Employment Benefits Trust
 - (C) Trustee Investment Forms

2. Contribution – completed Contribution Transmittal Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Contribution amount
 - (C) Contribution date
 - (D) Contribution method (Check, ACH, Wire)

3. Distribution – completed Payment Reimbursement/Distribution Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Payment reimbursement/distribution amount
 - (C) Applicable statement date
 - (D) Copy of applicable premium, claim, statement, warrant, and/or administrative expense evidencing payment
 - (E) Signed certification of reimbursement/distribution from the Plan Administrator (or authorized Designee)

4. Other information pertinent to the Services as reasonably requested by PARS and Actuarial Provider.

RESOLUTION NO. 2023-027

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE CENTRAL CONTRA COSTA TRANSIT AUTHORITY
APPROVING THE ADOPTION OF THE
PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST
ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS)

WHEREAS, the Central Contra Costa Transit Authority (“CCCTA”) is currently participating in the Public Agencies Post-Retirement Health Care Plan Trust administered by the Public Agency Retirement Services (PARS) for the prefunding of its retiree health benefits and other post-employment benefits other than pension benefits (“OPEB”); and

WHEREAS, CCCTA desires to set aside funds for the purpose of pre-funding its CalPERS pension obligation that will be held in trust under the PARS Pension Rate Stabilization Program (PRSP) for the exclusive purpose of making future contributions of CCCTA’s required pension contributions and any employer contributions in excess of such required contributions at the discretion of CCCTA; and

WHEREAS, PARS has made available the Public Agencies Post-Employment Benefits Trust (the “Program”) for the purpose of combining assets used to pre-fund both pension obligations and/or OPEB obligations as specified in CCCTA’s plans, policies and/or applicable collective bargaining agreements; and

WHEREAS, CCCTA is eligible to participate in the Program, a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued there under, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS, CCCTA can manage the pre-funding of its pension obligations through the PRSP and its OPEB obligations in a single trust under this Program, thereby gaining administrative and cost efficiencies; and

WHEREAS, CCCTA’s adoption and operation of the Program has no effect on any current or former employee’s entitlement to post-employment benefits; and

WHEREAS, the terms and conditions of post-employment benefit entitlement, if any, are governed by contracts separate from and independent of the Program; and

WHEREAS, CCCTA’s funding of the Program does not, and is not intended to, create any new vested right to any benefit nor strengthen any existing vested right; and

WHEREAS, CCCTA reserves the right to make contributions, if any, to the Program.

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Board of CCCTA hereby adopts the Public Agencies Post-Employment Benefits Trust, effective March 1, 2023; and
2. The Board of CCCTA hereby appoints the General Manager, or his/her successor or his/her designee as CCCTA’s Plan Administrator for the Program; and
3. CCCTA’s Plan Administrator is hereby authorized to execute the PARS Program legal and administrative documents on behalf of CCCTA and to take whatever additional actions are necessary to maintain CCCTA’s participation in the Program and to maintain compliance of any relevant regulation issued or as may be issued; therefore, authorizing him/her to take whatever additional actions are required to administer CCCTA’s Program; and

4. The Board, in accordance with Section 3.3 of the Public Agencies Post-Retirement Health Care Plan Trust adopted effective March 18, 2010, hereby authorizes the complete withdrawal from said trust of all amounts held therein and directs the transfer of all assets held in said trust to the OPEB 115 Trust Account established in the name of CCCTA under the Public Agencies Post-Employment Benefits Trust, adopted herewith.

AYES:

NOES:

ABSENT:

ABSTAIN:

STATE OF CALIFORNIA
COUNTY OF CONTRA COSTA

_____, the Clerk of the Board of the Central Contra Costa Transit Authority, hereby certifies that the above foregoing resolution was duly and regularly adopted by CCCTA at a regular meeting thereof held on the _____ and passed by a _____ vote of said Board.

IN WITNESS WHEREOF I have hereunto set my hand and seal this _____, 2023.

Amy Worth, Chair, Board of Directors

Lathina Hill, Clerk of the Board