



CITY OF MORRO BAY CITY COUNCIL AGENDA

The City of Morro Bay provides essential public services and infrastructure to maintain a safe, clean and healthy place for residents and visitors to live, work and play.

Regular Meeting Tuesday, September 27, 2022 – 5:30 P.M. Veterans Memorial Hall 209 Surf St., Morro Bay, CA

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation. Ways to watch this meeting and submit public comment are provided below.

Public Participation:

Public participation is allowed in the following ways:

- Community members may attend the meeting in person at the Morro Bay Veterans Hall.
- Alternatively, members of the public may watch the meeting and speak during general Public Comment or on a specific agenda item by logging in to the Zoom webinar using the information provided below. Please use the “raise hand” feature to indicate your desire to provide public comment.

Please click the link below to join the webinar:

- <https://us02web.zoom.us/j/82722747698?pwd=aWZpTzcwTHlRTk9xaTlmWVNWRFUQT09>

Password: 135692

- Or Telephone Attendee: 1 (408) 638-0968 or 1 (669) 900 6833 or 1 (346) 248 7799; Webinar ID: 827 2274 7698; Password: 135692; Press * 9 to “Raise Hand” for Public Comment

- Members of the public may watch the meeting either on cable Channel 20 or as streamed on the City [website](#).
- Community members are encouraged to submit agenda correspondence in advance of the meeting via email to the City Council at council@morrobayca.gov prior to the meeting. Agenda Correspondence received at council@morrobayca.gov by 10 a.m. on the meeting day will be posted on the City website.

ESTABLISH QUORUM AND CALL TO ORDER
MOMENT OF SILENCE
PLEDGE OF ALLEGIANCE
RECOGNITION
CLOSED SESSION REPORT
MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS
CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

PRESENTATION

- National Hispanic Heritage Month Proclamation
- Peace and Nonviolence Month Proclamation

PUBLIC COMMENT

Members of the audience wishing to address the Council on City business matters not on the agenda may do so at this time. For those desiring to speak on items on the agenda, but unable to stay for the item, may also address the Council at this time.

Public comment is an opportunity for members of the public to provide input to the governing body. To increase the effectiveness of the Public Comment Period, the City respectfully requests the following guidelines and expectations be followed:

- Those desiring to speak are asked to complete a speaker slip, which are located at the entrance, and submit it to the City Clerk. However, speaker slips are not required to provide public comment.
- When recognized by the Mayor, please come forward to the podium to speak. Though not required, it is helpful if you state your name, city of residence and whether you represent a business or group. Unless otherwise established by the Mayor, comments are to be limited to three minutes.
- All remarks should be addressed to Council, as a whole, and not to any individual member thereof.
- The Council respectfully requests that you refrain from making slanderous, profane or personal remarks against any elected official, commission and/or staff.
- Please refrain from public displays or outbursts such as unsolicited applause, comments or cheering.
- Any disruptive activities that substantially interfere with the ability of the City Council to carry out its meeting will not be permitted and offenders will be requested to leave the meeting.
- Your participation in City Council meetings is welcome and your courtesy will be appreciated.
- The Council in turn agrees to abide by its best practices of civility and civil discourse according to Resolution No. 07-19.

A. CONSENT AGENDA

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE AUGUST 9, 2022, CITY COUNCIL MEETING;
(CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE AUGUST 23, 2022, CITY COUNCIL MEETING;
(CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE SEPTEMBER 13, 2022, CITY COUNCIL SPECIAL
CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE SEPTEMBER 13, 2022, CITY COUNCIL MEETING;
(CITY CLERK)

RECOMMENDATION: Approve as submitted.

- A-5 APPROVAL OF THIRD AGREEMENT BETWEEN THE SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY (“IWMA”), THE CAYUCOS SANITARY DISTRICT (“CSD”) AND THE CITY OF MORRO BAY (“CITY”) FOR THE OPERATION OF A HOUSEHOLD HAZARDOUS WASTE COLLECTION FACILITY AT 170 ATASCADERO ROAD; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council approve and authorize the City Manager to execute the Third Agreement between the San Luis Obispo County Integrated Waste Management Authority (“IWMA”), the Cayucos Sanitary District (“CSD”) and the City of Morro Bay for the continued operation of a household hazardous waste collection facility at 170 Atascadero Road through February 23, 2023.

- A-6 PROCLAMATION RECOGNIZING SEPTEMBER 15 – OCTOBER 15, 2022 AS “NATIONAL HISPANIC HERITAGE MONTH”; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted

- A-7 PROCLAMATION DESIGNATING SEPTEMBER 21ST OF EACH YEAR TO BE THE DAY OF PEACE AND THE MONTH OF SEPTEMBER AS PEACE & NONVIOLENCE MONTH; (ADMINISTRATION)

RECOMMENDATION: Approved as submitted

- B. PUBLIC HEARING ITEMS - NONE

- C. BUSINESS ITEMS

- C-1 ESTABLISHMENT OF A PARS POST-EMPLOYMENT BENEFITS TRUST PROGRAM TO PRE-FUND PENSION AND RETIREE HEALTH CARE OBLIGATIONS; (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Staff recommends that the City Council adopt Resolution No. 85-22 authorizing participation in the PARS Post-Employment Benefits Trust Program to be administered by Public Agency Retirement Services (PARS) and U.S. Bank, appointing the City Manager as the City’s Plan Administrator, authorizing the City Manager to execute the documents to implement the Program subject to the City Attorney’s review and approval, authorizing the City Manager to take necessary actions to dissolve the current OPEB trust and move funds to the PARS OPEB trust, and directing the City Manager to select specified portfolios for initial investments and make changes if needed to continue to implement City fiscal goals.

- C-2 ADOPTION OF RESOLUTION NO. 86-22 DECLARING THE CITY’S INTENTION TO APPROVE CALIFORNIA PUBLIC EMPLOYEES’ RETIREMENT SYSTEM (CALPERS) CONTRACT AMENDMENT AND INTRODUCTION AND FIRST READING OF ORDINANCE NO. 653 AUTHORIZING AN AMENDMENT TO THE CALPERS CONTRACT TO IMPLEMENT 2% COST SHARING FOR LOCAL FIRE MEMBERS IN THE MORRO BAY FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725; (HUMAN RESOURCES)

RECOMMENDATION: Staff recommends the City Council take the following separate actions: 1) Adopt Resolution No. 86-22 giving notice of the City’s intention to approve an amendment to the contract between the City and the CalPERS Board of Administration; and 2) Introduce for first reading by title only, with further reading waived, Ordinance No. 653 Authorizing an Amendment to the Contract between the City of Morro Bay and the Board of Administration of the California Public Employees’ Retirement System Implementing Section 20516 (Employees Sharing Additional Cost) for local fire members in the Morro Bay Firefighters’ Association, IAFF Local 3725 (MBFFA).

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

E. ADJOURNMENT

The next Regular Meeting will be held on **Tuesday, October 11, 2022 at 5:30 p.m.**

THIS AGENDA IS SUBJECT TO AMENDMENT UP TO 72 HOURS PRIOR TO THE DATE AND TIME SET FOR THE MEETING. PLEASE REFER TO THE AGENDA POSTED AT CITY HALL FOR ANY REVISIONS OR CALL THE CLERK'S OFFICE AT 805-772-6205 FOR FURTHER INFORMATION.

MATERIALS RELATED TO AN ITEM ON THIS AGENDA SUBMITTED TO THE CITY COUNCIL AFTER DISTRIBUTION OF THE AGENDA PACKET ARE AVAILABLE FOR PUBLIC INSPECTION UPON REQUEST BY CALLING THE CITY CLERK'S OFFICE AT 805-772-6205.

IN COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT, IF YOU NEED SPECIAL ASSISTANCE TO PARTICIPATE IN A CITY MEETING, PLEASE CONTACT THE CITY CLERK'S OFFICE AT LEAST 24 HOURS PRIOR TO THE MEETING TO INSURE REASONABLE ARRANGEMENTS CAN BE MADE TO PROVIDE ACCESSIBILITY TO THE MEETING.

Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation.

PRESENT:	John Heading	Mayor
	Dawn Addis	Council Member (joined at 6:35 p.m.)
	Laurel Barton	Council Member
	Jennifer Ford	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Sarah Johnson-Rios	Assistant City Manager/Admin Services Dir.
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Daniel McCrain	Fire Chief
	Jody Cox	Police Chief

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Heading called the meeting to order at 5:30 p.m., with all but Council Member Addis present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

https://youtu.be/pc4_tgkqszi?t=178

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

https://youtu.be/pc4_tgkqszi?t=782

PRESENTATIONS

https://youtu.be/pc4_tgkqszi?t=840

- Friends of the Morro Bay Fire Department Scholarship Presentation to Firefighters Kevin Hames and Grant Frempter
- Morro Bay Chamber of Commerce Quarterly Update by Erica Crawford

PUBLIC COMMENT

https://youtu.be/pc4_tgkqszi?t=840

Linda Winters, Morro Bay, requested the City add review of the current mobile home rent control ordinance to the list of City goals.

Michael Lucas, Morro Bay resident and appointee to the Diablo Canyon Decommissioning Panel, announced the California Energy Commission (CEC) will host an online joint agency workshop Friday, August 12, from 4:00-7:00 p.m.

Garry Johnson, Morro Bay, expressed his appreciation for the Morro Bay Fire and Police Departments for their professional response to a recent medical call.

Betty DeRosa, Morro Bay, expressed safety concerns regarding the Highway 41/Main Street intersection.

Alexa Ford, Morro Bay, was proud of her mother's accomplishments and the changes she had and will continue to make.

Aislyn Ford, Morro Bay, thanked her mother for letting her be part of her election campaign.

Betty Winholtz, Morro Bay, requested the City provide residents the ability to display a flyer on screen during Council meetings and expressed frustration with search functionality on the City website.

Aaron Ochs, Morro Bay, commented the City had not engaged in a 2-way dialogue on various City issues.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
https://youtu.be/pc4_tkqszl?t=3704

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

A-1 APPROVAL OF MINUTES FOR THE JUNE 14, 2022, CITY COUNCIL SPECIAL CLOSED SESSION MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-2 APPROVAL OF MINUTES FOR THE JUNE 14, 2022, CITY COUNCIL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-3 APPROVAL OF MINUTES FOR THE JUNE 28, 2022, CITY COUNCIL SPECIAL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-4 APPROVAL OF MINUTES FOR THE JUNE 28, 2022, CITY COUNCIL MEETING; (CITY CLERK)

RECOMMENDATION: Approve as submitted.

A-5 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY

REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 72-22 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through September 8, 2022.

A-6 FOURTH QUARTER INVESTMENT REPORT FOR FISCAL YEAR (FY) 2021-22 (PERIOD ENDING JUNE 30, 2022); (ADMINISTRATIVE SERVICES DEPARTMENT)

RECOMMENDATION: Receive the attached Fourth Quarter Investment Report for FY 2021-22 (period ending June 30, 2022).

A-7 ADOPTION OF RESOLUTION NO. 73-22 UPDATING THE CITY'S CONFLICT OF INTEREST CODE; (CITY CLERK)

RECOMMENDATION: Staff recommends City Council update the City's Conflict of Interest Code by adopting the proposed Resolution No. 73-22.

A-8 ADOPTION OF RESOLUTION 74-22 APPROVING THE MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MORRO BAY AND MORRO BAY FIREFIGHTERS ASSOCIATION, IAFF LOCAL 3725, RESOLUTION 75-22 APPROVING THE AMENDED FISCAL YEAR 2022-23 COMBINED SALARY SCHEDULE, AND RESOLUTION NO. 76-22 DESIGNATING EMPLOYEES' CONTRIBUTIONS TOWARD EMPLOYER PENSION COSTS AS AN EMPLOYER PICK-UP PER SECTION 414(H)(2) OF THE INTERNAL REVENUE CODE; (CITY MANAGER/CITY CLERK/HUMAN RESOURCES MANAGER)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 74-22 approving the 2022-24 Memorandum of Understanding between the City of Morro Bay ("City") and the Morro Bay Firefighters Association, IAFF Local 3725 ("MBFFA"), Resolution No. 75-22 approving the amended Fiscal Year ("FY") 2022-23 Combined Salary Schedule, and Resolution No. 76-22 designating Employees' Contributions toward Employer Pension Costs as an Employer Pick-up per Section 414(h)(2) of the Internal Revenue Code.

A-9 REVIEW AND RATIFICATION OF RINCON CONSULTANTS EIR CONTRACT AND AMENDMENT #3 FOR THE VISTRA BATTERY ENERGY STORAGE SYSTEM (BESS) PROJECT AT 1290 EMBARCADERO; (COMMUNITY DEVELOPMENT DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council review the staff report and ratify the EIR contract amendment #3 for the Vistra Battery Energy Storage System (BESS) project at 1290 Embarcadero.

A-10 CONSIDERATION OF APPOINTMENT OF JOSEPH INGRAFFIA TO THE PUBLIC WORKS ADVISORY BOARD; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council consider the appointment of Joseph Ingraffia to the Public Works Advisory Board (PWAB) for the remainder of a term ending January 31, 2024.

Mayor Headding pulled Item A-5 for a separate vote.

- A-5 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; (CITY ATTORNEY)
https://youtu.be/pc4_tgkqszi?t=3684

Mayor Headding opened public for Item A-5; seeing none, the public comment period was closed.

MOTION: Council Member Ford moved approval of Item A-5. The motion was seconded by Council Member Barton and carried 4-0-1 by roll call vote with Council Member Addis absent.

Council Member Addis joined the meeting at 6:35 p.m.

Mayor Headding opened public comment for the Consent Agenda.

https://youtu.be/pc4_tgkqszi?t=3918

Betty Winholtz, Morro Bay, spoke to Item A-9, questioning the fiscal impact and expressing concern the City Manager signed the agreement prior to Council approval.

Homer Alexander, Morro Bay, recommended the Council pull Item A-6 to allow staff to speak to the City's improved cash position.

The public comment period was closed.

Mayor Headding pulled Items A-6 and A-9. Council Member Ford pulled Item A-10 for comment.

MOTION: Council Member Addis moved approval of Items A-1 through A-4, A-7, and A-8. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

- A-6 FOURTH QUARTER INVESTMENT REPORT FOR FISCAL YEAR (FY) 2021-22 (PERIOD ENDING JUNE 30, 2022); (ADMINISTRATIVE SERVICES DEPARTMENT)
https://youtu.be/pc4_tgkqszi?t=4166
Staff responded to questions raised during public comment.

- A-9 REVIEW AND RATIFICATION OF RINCON CONSULTANTS EIR CONTRACT AND AMENDMENT #3 FOR THE VISTRA BATTERY ENERGY STORAGE SYSTEM (BESS) PROJECT AT 1290 EMBARCADERO; (COMMUNITY DEVELOPMENT DEPARTMENT)
https://youtu.be/pc4_tgkqszi?t=4262
Staff responded to questions raised during public comment.

- A-10 CONSIDERATION OF APPOINTMENT OF JOSEPH INGRAFFIA TO THE PUBLIC WORKS ADVISORY BOARD; (CITY CLERK)
https://youtu.be/pc4_tgkqszi?t=4367
The Mayor & Council expressed appreciation for Mr. Ingraffia's willingness to serve on both the Planning Commission and Public Works Advisory Board.

MOTION: Council Member Heller moved approval of Items A-6, A-9 and A-10. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - NONE

C. BUSINESS ITEMS

C-1 RESOLUTION DECLARING RESULTS OF THE JUNE 7, 2022 SPECIAL MUNICIPAL ELECTION; (CITY CLERK)

https://youtu.be/pc4_tqkqszi?t=4638

City Clerk Swanson provided the report.

The public comment period for Item C-1 was opened; seeing none, the public comment period was closed.

MOTION: Mayor Heading moved to adopt Resolution No. 77-22 declaring the results of the June 7, 2022 Special Municipal Election and allow the City Clerk to administer the Oath of Office. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

The Clerk issued the Oath of Office to Council Member Jennifer Ford, who provided comments and thanked the community for its support.

C-2 CITY COUNCIL GOALS AND ACTION ITEMS UPDATE; (CITY MANAGER)

https://youtu.be/pc4_tqkqszi?t=5022

City Manager Collins provided the report and staff responded to Council inquiries.

The public comment period for Item C-2 was opened.

https://youtu.be/pc4_tqkqszi?t=7138

Betty Winholtz, Morro Bay, provided comments on the goals and action items.

The public comment period for Item C-2 was closed.

No formal action was taken by the City Council.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

https://youtu.be/pc4_tqkqszi?t=7348

Council Member Heller requested and received Council support to have staff meet with Linda Winters to discuss the existing mobile home rent control ordinance and report back to Council.

E. ADJOURNMENT

The meeting adjourned at 7:33 p.m.

Recorded by:

Dana Swanson
City Clerk

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Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation.

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Jennifer Ford	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Sarah Johnson-Rios	Assistant City Manager/Admin Services Dir.
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Daniel McCrain	Fire Chief
	Eric Endersby	Harbor Director
	Amy Watkins	Police Commander
	Eric Riddiough	City Engineer
	Nancy Hubbard	Contract Planner
	Paul Amico	WRF Program Manager

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all but Council Member Barton present. Council Member Barton joined the meeting at 5:33 p.m.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/LeW-lmAkK2k?t=167>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/LeW-lmAkK2k?t=671>

PRESENTATIONS

<https://youtu.be/LeW-lmAkK2k?t=865>

- Lighthouse Century Bicycling Event Presentation by Mary Ann Gustafson

PUBLIC COMMENT

<https://youtu.be/LeW-lmAkK2k?t=1226>

Paul Donnelly, Morro Bay, congratulated the City on its \$9.3 Million grant award and asked when the \$41 surcharge would end.

Rigmor, Morro Bay, commented on various topics.

Linda Winters, Morro Bay, spoke regarding the importance of a mobile home rent control ordinance.

Sarah Robinson, Morro Bay, announced her candidacy for City Council.

Susan Stewart, Member of Historical Society of Morro Bay, announced an upcoming meeting and discussion on historic preservation to be held Sunday, August 28th at 3:00p.m. at Calvary Lutheran Church.

Betty Winholtz, Morro Bay, asked what progress had been made to display flyers and information on the screen and when residents would have an opportunity to provide input regarding Coleman Park improvements.

Aaron Ochs, Morro Bay, commented on issues he's observed that are impeding public comment.

Allen Hoshtetler, Morro Bay, spoke against Item B-1.

Zara Landrum, Morro Bay, announced her candidacy for City Council.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA
<https://youtu.be/LeW-lmAKK2k?t=2547>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 78-22 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through September 22, 2022.

With approval of this motion and until such further notice, City Council and advisory bodies will continue to hold their meetings in public at the Veterans Hall, with the option for individual Councilmembers and advisory body members to teleconference.

A-2 APPROVAL OF SB1 FUNDING PROJECT LIST FOR FY 22/23 PAVEMENT MANAGEMENT PLAN PROJECT; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Adopt Resolution No. 79-22 approving the Fiscal Year 2022/23 project list for use of Senate Bill 1 (Road Repair and Accountability Act of 2017) Road Maintenance and Rehabilitation Account (RMRA) funds.

A-3 CONSIDERATION OF A FREE PUBLIC CONCERTS AT TIDELANDS PARK IN PARTNERSHIP WITH MORRO BAY SENIOR CENTER, INC.; (CITY MANAGER/RECREATION SERVICES)

RECOMMENDATION: Staff recommends City Council approve a proposed free public concert series in fall of 2022 at Tidelands Park and direct staff to move forward with the support and planning for such a series in partnership with Morro Bay Senior Center, Inc. (MBSCI) and return to City Council at fiscal Midyear with a budget amendment to cover City costs up to \$10,000.

A-4 DESIGNATION OF VOTING DELEGATE AND ALTERNATE(S) AT LEAGUE OF CALIFORNIA CITIES 2022 ANNUAL CONFERENCE BUSINESS MEETING; AND, AUTHORIZE THE VOTING DELEGATES TO APPROVE PROPOSED CAL CITIES BYLAWS AMENDMENTS; (CITY CLERK)

RECOMMENDATION: Staff recommends the City Council:

1) Select Mayor Headding, as the voting delegate, and Council Members Barton and Ford, as the alternate voting delegates, for the upcoming annual business meeting to be held at the League of California Cities Annual Conference; and 2) Authorize City Clerk to sign the League of California Cities' form affirming the selection of the voting delegate and the alternate voting delegates (page 4 of Attachment 1); and 3) Authorize the selected voting delegate (or selected alternates as needed) to approve the proposed Bylaws Amendments provided as Attachment 2.

Mayor Headding opened public comment for the Consent Agenda.

<https://youtu.be/LeW-lmAkK2k?t=2555>

Betty Winholtz, Morro Bay, commented on Items A-2 & A-3.

The public comment period was closed.

Mayor Headding pulled Item A-2 & A-3.

MOTION: Council Member Addis moved approval of Items A-1 and A-4. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

A-2 APPROVAL OF SB1 FUNDING PROJECT LIST FOR FY 22/23 PAVEMENT MANAGEMENT PLAN PROJECT; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/LeW-lmAkK2k?t=2735>

Staff responded to questions raised during public comment.

A-3 CONSIDERATION OF A FREE PUBLIC CONCERTS AT TIDELANDS PARK IN PARTNERSHIP WITH MORRO BAY SENIOR CENTER, INC.; (CITY MANAGER/RECREATION SERVICES)

<https://youtu.be/LeW-lmAkK2k?t=2897>

Staff responded to questions raised during public comment.

MOTION: Mayor Headding moved approval of Items A-2 and A-3. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS

B-1 AN APPEAL WAS FILED MAY 24, 2022, IN RESPONSE TO PLANNING COMMISSIONS DENIAL ON MAY 17, 2022, OF CONDITIONAL USE PERMIT (CUP19-20), COASTAL DEVELOPMENT PERMIT (CDP19-047) AND VARIANCE REQUEST (VAR20-001); FOR A SMALL NEW HOME ON A RESIDENTIALLY ZONED PARCEL. THE APPELLANT IS REQUESTING THE PROJECT BE RECONSIDERED BY CITY COUNCIL AND THE PLANNING COMMISSION DECISION OVERTURNED. THE PROJECT SITE IS IN THE R-1/PD WITH A PORTION IN THE WF/PD ZONING DISTRICT AND IS LOCATED WITHIN THE COASTAL COMMISSION APPEAL JURISDICTION; (COMMUNITY DEVELOPMENT DEPARTMENT)
<https://youtu.be/LeW-lmAkK2k?t=2989>

Contract Planner Hubbard provided the report and responded to Council inquiries.

Mayor Headding opened the Public Hearing.

Mayor Headding opened public comment.
<https://youtu.be/LeW-lmAkK2k?t=4623>

Sandy Bean, property owner/Applicant/Appellant requested to speak at the end of public comment.

Betty Winholtz, Morro Bay, spoke against the project and requested simulation pictures be displayed on screen.

Randolph Watkins spoke in support of the project.

Susan Stewart voted in favor of the project as the Planning Commission Chair and urged the Council to uphold the appeal and overturn Planning Commission's denial of the project.

Terry Simons, Morro Bay, urged the City Council to approve the project.

Bob Crizer, speaking on behalf of the applicant, addressed concerns raised by previous speakers and requested the Council approve the project.

Allen Hoshtetler, Morro Bay, expressed concerns regarding potential fire hazards.

Krista Jeffries, advocate for affordable housing in San Luis Obispo County, offered comments and stated denial of the project would be inconsistent with the City's housing goals.

Craig Shaffer, owner of Bayfront Marina, shared concerns but was supportive of a project that fit within the property lines.

Sandy Bean, Applicant/Appellant, responded to questions raised during public comment.

The public comment period and Public Hearing were closed.

Council Member Heller expressed safety concerns regarding traffic along that section of Main Street and parking constraints for the subject property and downslope property owners.

MOTION: Council Member Ford moved to uphold the appeal and overturn the Planning Commission denial of the CUP/CDP/VAR approving the project pursuant to the findings and conditions of approval included in Attachment 1. The motion was seconded by Council Member Addis and carried 4-1 by roll call vote with Council Member Heller opposed.

The Council took a brief recess at 7:40 p.m. The meeting reconvened at 7:47 p.m. with all members present.

C. BUSINESS ITEMS

C-1 LAND USE & ZONING MAP AUTHORIZATION; (COMMUNITY DEVELOPMENT DEPARTMENT) <https://youtu.be/LeW-lmAKK2k?t=8346>

Community Development Director Graham provided the report and responded to Council inquiries.

The public comment period for Item C-1 was opened.
<https://youtu.be/LeW-lmAKK2k?t=10963>

John Hinchey, Steiner Development, hoped to build 40-70 units on the Seashell Cove and, if the item was approved, would begin preparing site plans.

Dan Shepard looked forward to the opportunity to partner with the City to turn this difficult parcel into an asset for the city.

Mike Martz echoed Mr. Shepard's comments and was excited to partner with the City in this effort.

Paul Donnelly, Morro Bay, appreciated the Planning Commission's discussion on this subject and opposed the item, stating the terrain was not conducive to development.

Betty Winholtz, Morro Bay, voiced her opposition to the proposed change in zoning prior to a project being submitted.

Linda Donnelly, Morro Bay, opposed the change in zoning and restated the Planning Commission's recommendation a project be submitted prior to approval.

Jeff Eckles, Morro Bay, spoke regarding the need for workforce housing and urged the Council to adopt the zoning amendments.

The public comment period for Item C-1 was closed.

MOTION: Mayor Heading moved to direct staff to work on processing of a change to the General Plan/LCP Coastal Land Use Map and Zoning Map for the properties north of Hwy 1 and west of South Bay Blvd from Low Density Residential to Medium Density Residential; and direct staff to return with a Midyear Budget Amendment to authorize \$13,900 in General Fund

expenditures for this year, and recommend an ad hoc committee be formed, including members of the City Council, Planning Commission, City staff, and Chamber to meet with developers interested in developing on these parcels to discuss how to incorporate concerns raised by the Chamber and Planning Commission in their plans for development. The motion was seconded by Council Member Addis for discussion.

Following discussion, the motion carried 3-2 by roll call vote with Council Members Barton and Heller opposed.

C-2 APPROVE WRF CONTRACT AMENDMENTS AND REVIEW AND COMMENT ON FISCAL YEAR 21-22 Q4 WRF QUARTERLY REPORT; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/LeW-lmAkK2k?t=12849>

Public Works Director Kwolek and Water Reclamation Facility Program Manager Amico provided the report and responded to Council inquiries.

MOTION: Council Member Addis moved the meeting go past 9:30 p.m. to a time uncertain. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

The public comment period for Item C-2 was opened.
<https://youtu.be/LeW-lmAkK2k?t=14430>

Paul Donnelly, Morro Bay, raised several questions and asked if all special conditions of the Coastal Commission permit had been satisfied.

Betty Winholtz, Morro Bay, questioned whether other Public Works functions would be conducted onsite, stating those operations should not be paid from water and sewer fees.

Linda Donnelly, Morro Bay, raised several questions regarding the report and WRF Project.

The public comment period for Item C-2 was closed.

Staff responded to questions raised during public comment.

MOTION: Council Member Addis moved review and provide input on the Fiscal Year (FY) 21-22 4th Quarter (Q4) WRF Quarterly Report and authorize the City Manager to execute the following Water Reclamation Facility (WRF) contract amendments:

1. Amendment No. 4 to the agreement with Waterworks Engineers (Waterworks) for engineering services during construction of the WRF Lift Station and Offsite Pipelines for a total amount of \$108,706 and to extend the contract expiration date to December 31st, 2022, resulting in a total not to exceed amount of \$2,540,113.
2. Amendment No. 7 to the agreement with Carollo Engineers, Inc. (Carollo) for Program Management Services for the Water Reclamation Facility Program for a total of \$1,700,000 resulting in a total not to exceed amount of \$13,508,401.
3. Amendment No. 2 to the agreement with Kevin Merk Associates (KMA) for biological monitoring, reporting, and mitigation services the WRF Lift Stations and Offsite Pipelines construction for a total of \$15,000 resulting in a total not to exceed amount of \$86,310 for KMA.

4. Amendment No. 5 to the agreement with Anvil Builders, Inc. (Anvil) for the WRF Lift Stations and Offsite Pipelines construction for \$1,253,667, which results in a total not to exceed contract value for Anvil of \$34,196,581.
5. Revised Amendment No. 7 to the agreement with FBV Morro Bay Joint Venture (FBV) for the Water Reclamation Facility Construction project for \$359,885 (not including PCO's #103, 106 & 107), increasing the Guaranteed Maximum Price (GMP) to \$77,057,880.

The motion was seconded by Council Member Barton and carried 4-1 by roll call vote with Council Member Heller opposed.

- C-3 CONSIDERATION OF CALIFORNIA STATE REVOLVING FUND (SRF) LOW-INTEREST LOAN AMENDMENT TO INCREASE MAXIMUM CONSTRUCTION LOAN AMOUNT TO \$87,770,000 FOR THE WATER RECLAMATION FACILITY (WRF) AND REVIEW CHANGES IN WRF PROJECT COSTS; (CITY MANAGER/ADMIN SERVICES DEPARTMENT/PUBLIC WORKS DEPARTMENT)
<https://youtu.be/LeW-lmAkK2k?t=15241>

City Manager Collins, WRF Program Manager Amico and Assistant City Manager/Admin Services Director Johnson-Rios provided the report and responded to Council inquiries.

The public comment period for Item C-3 was opened.
<https://youtu.be/LeW-lmAkK2k?t=16544>

Paul Donnelly, Morro Bay, believed the standard of care was not followed and suggested an audit may be needed.

Linda Donnelly, Morro Bay, inquired about annual repayment obligations and when an audit of all WRF expenses would occur.

The public comment period for Item C-3 was closed.

MOTION: Mayor Headding moved to adopt Resolutions Nos. 80-22 and 81-22 to support an application for a State Revolving Fund construction loan amendment in the amount of \$21,172,000 to cover the full Water Reclamation Facility program cost and authorize a maximum SRF construction loan amount of \$87,770,000; and review changes in WRF project costs over the life of the project. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

- C-4 APPROVAL OF WATER RECLAMATION FACILITY INDIRECT POTABLE REUSE PROGRAM UPDATE AND AUTHORIZATION OF A CONTRACT AMENDMENT WITH CONFLUENCE ENGINEERING SOLUTIONS; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/LeW-lmAkK2k?t=17119>

Public Works Director Kwolek and Dan Heimel of Confluence Engineering Solutions provided the report and responded to Council inquiries.

The public comment period for Item C-4 was opened.
<https://youtu.be/LeW-lmAkK2k?t=18207>

Paul Donnelly, Morro Bay, raised questions regarding the report.

Linda Donnelly, Morro Bay, raised questions regarding the report and increased project costs.

The public comment period for Item C-4 was closed.

Staff responded to questions raised during public comment.

MOTION: Council Member Addis moved to approve Confluence Engineering Solutions' proposal to provide IPR Program Management, WRF and Engineering Support Services for Fiscal Year (FY) 2022/23 and authorize a contract amendment in the amount of \$582,619 for a not to exceed contract amount of \$627,619. The motion was seconded by Mayor Heading and carried 4-1 by roll call vote with Council Member Heller opposed.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

<https://youtu.be/LeW-lmAkK2k?t=19134>

Council Member Heller requested and received support for review of inclusionary housing requirements that establish the 10% requirement, and gradients of low and very low income.

Council Member Ford requested a status update on the Ironman event. Mr. Collins offered to provide an update via the City Manager Update.

E. ADJOURNMENT

The meeting adjourned at 10:51 p.m.

Recorded by:

Dana Swanson
City Clerk

MINUTES - MORRO BAY CITY COUNCIL
SPECIAL CLOSED SESSION MEETING –
SEPTEMBER 13, 2022 – 3:30 P.M.
TELECONFERENCE

AGENDA NO: A-3
MEETING DATE: September 27, 2022

City Council conducted this meeting in accordance with Assembly Bill 361 (2021-22) and Government Code section 54953 in response to the present State of Emergency in existence due to the threat of COVID-19. This meeting was held via teleconference for all participants.

PRESENT: John Headding Mayor
 Dawn Addis Council Member
 Laurel Barton Council Member
 Jennifer Ford Council Member
 Jeff Heller Council Member

ABSENT: None

STAFF: Scott Collins City Manager
 Chris Neumeyer City Attorney
 Joe Pannone Special Counsel

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 3:30 p.m. with all but Council Members Addis & Barton present. Council Member Addis joined the meeting at 3:32 p.m. and Council Member Barton joined the meeting at 3:40 p.m.

SUMMARY OF CLOSED SESSION ITEMS – The Mayor read a summary of Closed Session items.

CLOSED SESSION PUBLIC COMMENT – Mayor Headding opened public comment for items on the agenda; seeing none, the public comment period was closed.

The City Council moved to Closed Session and heard the following items:

CS-1 CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION

Significant exposure to litigation pursuant to Government Code subdivision 54956.9(d)(2): One Matter regarding the potential use of the easement over Toro Lane for a bike path connecting Cayucos and Morro Bay

RECONVENE IN OPEN SESSION – The City Council reconvened in Open Session. The Council did not take any reportable action in accordance with the Brown Act.

ADJOURNMENT - The meeting adjourned at 3:58 p.m.

Recorded by:

Dana Swanson
City Clerk

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Pursuant to Assembly Bill 361 (2021-22) and Government Code section 54953 this Meeting will be conducted in a hybrid format with both in-person and virtual public participation.

PRESENT:	John Headding	Mayor
	Dawn Addis	Council Member
	Laurel Barton	Council Member
	Jennifer Ford	Council Member
	Jeff Heller	Council Member
ABSENT:	None	
STAFF:	Scott Collins	City Manager
	Chris Neumeyer	City Attorney
	Dana Swanson	City Clerk
	Sarah Johnson-Rios	Assistant City Manager/Admin Services Dir.
	Greg Kwolek	Public Works Director
	Scot Graham	Community Development Director
	Eric Endersby	Harbor Director
	Travis Hasch	Fire Captain/Paramedic
	Nicole Taylor	Police Sergeant
	Eric Riddiough	City Engineer
	Janeen Burlingame	Management Analyst
	Dan Heimel	Contract Engineer, Confluence Engineering

ESTABLISH QUORUM AND CALL TO ORDER

Mayor Headding called the meeting to order at 5:30 p.m., with all members present.

MOMENT OF SILENCE

PLEDGE OF ALLEGIANCE

RECOGNITION – None

CLOSED SESSION REPORT – City Attorney Neumeyer stated no reportable action was taken by the City Council in accordance with the Brown Act.

MAYOR & COUNCILMEMBERS' REPORTS, ANNOUNCEMENTS & PRESENTATIONS

<https://youtu.be/DK mz N1 rpn-0?t=150>

CITY MANAGER REPORTS, ANNOUNCEMENTS AND PRESENTATIONS

<https://youtu.be/DK mz N1 rpn-0?t=909>

PRESENTATIONS

<https://youtu.be/DK mz N1 rpn-0?t=1005>

- Sea Otter Awareness Week Proclamation presented to Director of Sea Otter Savvy, Gena Bentall

PUBLIC COMMENT

<https://youtu.be/DK mz N1 rpn-0?t=1225>

Linda Winters, Morro Bay, saluted those who give their time to support sea otters and other programs.

Aaron Ochs, Morro Bay, clarified remarks made at the August 23rd Council Meeting and stated he intended to investigate resident allegations thoroughly.

Betty Winholtz, Morro Bay, offered information regarding the fiber optic lines being installed around town and commented on the Avocado and Margarita Festival.

Garry Johnson, Morro Bay, announced an upcoming event hosted by the Morro Bay Maritime Museum on October 8th.

Mayor Headding closed public comment.

The Council and staff responded to issues raised during public comment.

A. CONSENT AGENDA

<https://youtu.be/DKHzN1rpn-0?t=2411>

Unless an item is pulled for separate action by the City Council, the following actions are approved without discussion. The public will also be provided an opportunity to comment on consent agenda items.

- A-1 RESOLUTION MAKING FINDINGS RELATED TO THE CONTINUED EXISTENCE OF A STATE OF EMERGENCY DUE TO COVID-19 AND RE-AUTHORIZING FOR PUBLIC HEALTH AND SAFETY THE CONDUCT OF PUBLIC MEETINGS OF THE LEGISLATIVE BODIES OF THE CITY VIA REMOTE TELECONFERENCING (INCLUDING PARTIALLY REMOTE) FOR A 30-DAY PERIOD PURSUANT TO THE RALPH M. BROWN ACT AS AMENDED BY ASSEMBLY BILL NO. 361; (CITY ATTORNEY)

RECOMMENDATION: Staff recommends Council consider adoption of attached Resolution No. 83-22 reauthorizing for public health and safety the conduct of public meetings of the legislative bodies of the City via remote teleconferencing (including partially remote) for 30 days, thereby allowing the City Council and the City's advisory bodies to meet remotely (including partially remote) through October 13, 2022.

With approval of this motion and until such further notice, City Council and advisory bodies will continue to hold their meetings in public at the Veterans Hall, with the option for individual Councilmembers and advisory body members to teleconference.

- A-2 AWARD OF BID – PROJECT NO. MB2021-ST01, PAVEMENT MANAGEMENT PROJECT FY 21/22; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council adopt Resolution No. 84-22 approving an agreement with Papich Construction Company, Inc., for Project No. MB2021-ST01, Pavement Management Project FY 21/22 in an amount not to exceed \$1,339,710, and approve a total FY 2021-22 Pavement Management Project Budget of \$1,414,600, and direct staff to return with a Midyear Budget Amendment to transfer \$350,000 from the FY 2022-23 Pavement Management Project to the FY 2021-22 project budget. All agreements implementing such project work shall be processed and based on the review of the City Attorneys' Office to be in form and substance acceptable to City staff and legal counsel.

A-3 RATIFICATION OF STAFF DECISION TO ALLOW CHANGE IN SUBCONTRACTOR FOR WATER TANK REHABILITATION PROJECT; (PUBLIC WORKS DEPARTMENT)

RECOMMENDATION: Staff recommends the City Council ratify City staff's decision to allow for a change in subcontractor to the contract with Superior Tank Solutions (STS) for the Water Tank Rehabilitation Project.

A-4 PROCLAMATION DECLARING SEPTEMBER 18-24, 2022 AS THE 20TH ANNUAL SEA OTTER AWARENESS WEEK; (ADMINISTRATION)

RECOMMENDATION: Approve as submitted.

Mayor Heading opened public comment for the Consent Agenda.

<https://youtu.be/DKHzN1rpn-0?t=2427>

Betty Winholtz, Morro Bay, spoke regarding Item A-2, requesting the Council increase funding for street improvements to \$2.8 Million.

Barry Branin, Morro Bay, commented on poor paving conditions, particularly in north Morro Bay.

The public comment period was closed.

Mayor Heading pulled Item A-2.

MOTION: Council Member Addis moved approval of all items on Consent except Item A-2. The motion was seconded by Council Member Barton and carried 5-0 by roll call vote.

A-2 AWARD OF BID – PROJECT NO. MB2021-ST01, PAVEMENT MANAGEMENT PROJECT FY 21/22; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/DKHzN1rpn-0?t=2662>

Staff responded to questions raised during public comment.

MOTION: Mayor Heading moved approval of Item A-2. The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

B. PUBLIC HEARINGS - None

C. BUSINESS ITEMS

C-1 PAVEMENT MANAGEMENT UPDATE 2022; (PUBLIC WORKS DEPARTMENT)

<https://youtu.be/DKHzN1rpn-0?t=2917>

Public Works Director Kwolek introduced Joe Ririe of Pavement Engineering who, along with City Engineer Riddiough, provided the report and responded to Council inquires.

The public comment period for Item C-1 was opened.

<https://youtu.be/DKHzN1rpn-0?t=6845>

Barry Branin, Morro Bay, urged the Council to allocate reserve funds for street paving, particularly in north Morro Bay.

Betty Winholtz, Morro Bay, concurred with Mr. Branin.

Garry Johnson, Morro Bay, asked what impact construction trucks and tourists have on streets and suggested the City charge a fee for parking at the Rock.

James Costanzo, Morro Bay, urged the City to establish a plan and stick to it.

Casey Cordes, Morro Bay, recommended the City aggressively invest in the infrastructure in our city and work to improve external communication.

The public comment period for Item C-1 was closed.

The Council did not take any action on this item.

- C-2 APPROVAL OF RESTATED SOLID WASTE, RECYCLING, AND ORGANIC SERVICES FRANCHISE AGREEMENT WITH MORRO BAY GARBAGE SERVICE TO COMPLY WITH STATE ORGANICS RECYCLING LAW (SENATE BILL 1383) REQUIREMENTS; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/DK mz N1 rpn-0?t=7536>

Public Works Director Kwolek and Management Analyst Burlingame provided the report and responded to Council inquires.

The public comment period for Item C-2 was opened.
<https://youtu.be/DK mz N1 rpn-0?t=8557>

Betty Winholtz, Morro Bay, appreciated staff responding to questions submitted in public comment, suggested informational materials be distributed as a separate flyer and asked how spending of franchise fees are tracked.

The public comment period for Item C-2 was closed.

Jeff Clarin, Morro Bay Garbage Service, responded to Council questions.

MOTION: Council Member Heller moved to approve the Restated Solid Waste, Recycling, and Organic Services Franchise Agreement (the Agreement) with Morro Bay Garbage Service (MBGS), after City Attorney final review and any non-substantive revisions and authorize the City Manager to execute the Agreement. If following Council's approval of the Agreement at this meeting, should there be any substantive changes negotiated, such revisions will be re-presented to the Council for approval. The motion was seconded by Council Member Ford and carried 5-0 by roll call vote.

The Council took a brief recess at 8:06 p.m. The meeting reconvened at 8:18 p.m. with all members present.

- C-3 APPROVAL TO ENTER INTO A COST SHARING AGREEMENT WITH THE RANCHO COLINA MUTUAL WATER COMPANY TO APPLY FOR GRANT FUNDING TO EVALUATE WATER AND WASTEWATER UTILITY CONSOLIDATION OPPORTUNITIES; (PUBLIC WORKS DEPARTMENT)
<https://youtu.be/DK mz N1 rpn-0?t=10057>

Public Works Director Kwolek provided the report and responded to Council inquires.

The public comment period for Item C-3 was opened.
<https://youtu.be/DK mz N1 rpn-0?t=10888>

Betty Winholtz, Morro Bay, questioned whether State Water could be allocated to areas outside the City.

The public comment period for Item C-3 was closed.

MOTION: Mayor Headding moved to approve the City Manager to execute a Cost Share Agreement with Rancho Colina Mutual Water Company, a California Mutual Benefit Corporation, (Rancho Colina) to fund the preparation of Clean Water and Drinking Water State Revolving Fund Planning Grant applications. The motion was seconded by Council Member Barton for discussion.

Council Member Heller preferred to consider the issue after the recycled portion of the WRF program was complete to have a better understanding of the City's water supply.

The motion carried 4-1 by roll call vote with Council Member Heller opposed.

C-4 CONSIDERATION TO APPROVE A PROPOSAL FROM AND AUTHORIZE THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH VALBRIDGE PROPERTY ADVISORS FOR PREPARATION OF AN APPRAISAL OF THE JOINTLY OWNED MORRO BAY-CAYUCOS SANITARY DISTRICT WASTEWATER TREATMENT PLANT SITE AND RELATED FACILITIES (APNS: 066-031-032, 066-031-033, AND 066-031-034); (CITY MANAGER)

<https://youtu.be/DKmzN1rpn-0?t=11267>

City Manager Collins provided the report and responded to Council inquires.

The public comment period for Item C-4 was opened.

<https://youtu.be/DKmzN1rpn-0?t=11615>

Betty Winholtz, Morro Bay, appreciated raising the idea it's a required part of the Coastal Commission process and asked what role the JPA would have as there had not been any meetings in several years.

The public comment period for Item C-4 was closed.

Mayor Headding responded to questions raised during public comment.

MOTION: Council Member Barton moved to approve and authorize the City Manager to execute an agreement with Valbridge Property Advisors for Preparation of an Appraisal of the Jointly Owned Morro Bay-Cayucos Sanitary District Wastewater Treatment Plant Site and Related Facilities (APNs: 066-031-032, 066-031-033, and 066-031-034). The motion was seconded by Council Member Addis and carried 5-0 by roll call vote.

D. COUNCIL DECLARATION OF FUTURE AGENDA ITEMS

None

E. ADJOURNMENT

The meeting adjourned at 8:48 p.m.

Recorded by:

Dana Swanson

AGENDA NO: A-5

MEETING DATE: September 27, 2022



Staff Report

TO: Honorable Mayor and City Council **DATE:** September 20, 2022

FROM: Gregory Kwolek, Public Works Director
Janeen Burlingame, Management Analyst

SUBJECT: Approval of Third Agreement between the San Luis Obispo County Integrated Waste Management Authority (“IWMA”), the Cayucos Sanitary District (“CSD”) and the City of Morro Bay (“City”) for the operation of a household hazardous waste collection facility at 170 Atascadero Road

RECOMMENDATION

Staff recommends the City Council approve and authorize the City Manager to execute the Third Agreement between the San Luis Obispo County Integrated Waste Management Authority (“IWMA”), the Cayucos Sanitary District (“CSD”) and the City of Morro Bay for the continued operation of a household hazardous waste collection facility at 170 Atascadero Road through February 23, 2023.

ALTERNATIVE

The Council may choose not to approve the agreement and direct staff accordingly.

FISCAL IMPACT

Currently there are minimal staff and operational costs to support the hazardous waste collection work at 170 Atascadero Road.

BACKGROUND/DISCUSSION

On April 5, 2000, the IWMA, CSD and City entered into a 10-year agreement to construct and operate a household hazardous waste (HHW) collection facility located at 170 Atascadero Road (site of the current Wastewater Treatment Plant and City Corp yard). 170 Atascadero Road is co-owned by the City and CSD, and the spot on that property for the HHW is leased to IWMA. The agreement was extended to April 5, 2020, and again in April 2021 to August 4, 2022.

The parties have continued to operate under the terms of the original agreement, and now seek to reaffirm that operation, as well as extend the term of the agreement through February 23, 2023, with the ability to have two three-month extensions, while exploring the potential to relocate the HHW facility due to the City transitioning Utility staff to the new Water Reclamation Facility in late 2022.

At the HHW collection facility the IWMA provides to the public a modular storage unit and a roll-

Prepared By: <u>JB</u>	Dept Review: <u>GK</u>
City Manager Review: <u>__SC__</u>	City Attorney Review: <u>__CFN__</u>

off box used for providing waste collection and proper disposal of household hazardous waste that cannot be safely and properly disposed of in the trash or in the gutter. The Morro Bay HHW collection facility is open to the general public each Saturday from 11:00 a.m. - 3:00 p.m. and accepts household hazardous waste up to 15 gallons or 125 pounds or waste materials free of charge. The IWMA is responsible for obtaining all necessary permits; compliance with all federal, state, and local statutes; and ensures the storage, handling, transportation and disposal of the HHW collected at the site complies with applicable federal, state, and local statutes.

CONCLUSION

Staff recommends the Council approve and authorize the City Manager to execute the Third Agreement between the San Luis Obispo County Integrated Waste Management Authority (“IWMA”), the Cayucos Sanitary District (“CSD”) and the City of Morro Bay for the continued operation of a household hazardous waste collection facility at 170 Atascadero Road through February 23, 2023.

ATTACHMENT

1. Household Hazardous Waste Third Agreement

THIRD HOUSEHOLD HAZARDOUS WASTE AGREEMENT

This Third Agreement (“Agreement” or “Third Agreement”) is made and entered into between the **SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY (“IWMA”)**, a California joint powers authority, on the one hand, and **CAYUCOS SANITARY DISTRICT (“CSD”)**, a California special district, and the **CITY OF MORRO BAY (“City”)**, a California municipal corporation (together known as “Owner”), on the other hand (all three entities collectively referred to as the “Parties” and individually as Party”).

RECITALS

WHEREAS, the Parties executed an agreement on April 5, 2000 (“Original Agreement”), whereby Owner leased to IWMA a portion of land at the Owner's facility located at 170 Atascadero Road, Morro Bay, California 93442, described on “Exhibit 1”, which is attached and made a part of this Agreement, for the purposes of constructing a permanent household hazardous waste (HHW) collection facility; and

WHEREAS, the Parties subsequently extended the Original Agreement pursuant to its terms to an expiration date of April 5, 2020 (“First Amendment”) and then again to August 4, 2022 (“Second Agreement”); and

WHEREAS, the Parties have recently recognized that the Second Agreement will expire prior to a renewed agreement being approved; however, the Parties desire to ensure continued and uninterrupted use of the HHW facility and ratification of terms during any lapse between agreements, for the benefit of the Parties and the public generally; and

WHEREAS, the Parties recognize changing circumstances such as the anticipated closure of the existing HHW facility and the creation of a new HHW facility at a different location as yet to be determined; and

WHEREAS, the Parties desire to ensure continued operation of the existing HHW facility during any transitional period related to the current and/or future HHW facility location and accordingly desire to execute this Agreement to allow flexibility as to the Parties’ obligations.

NOW, THEREFORE, the Parties do mutually agree as follows:

A. TERM

The term of this Agreement shall be six (6) months, from August 5, 2022 to February 6, 2023 (“Term”). The IWMA, City and CSD are each granted two (2) options to extend the Term for an additional three (3) months each. Should it desire to do so, a party will exercise its right to extend the Term by providing written notice to the other parties prior to the expiration of the Term, or any extension thereof.

B. RESPONSIBILITIES OF THE IWMA

1. A modular storage unit has been placed by the IWMA at the current designated HHW collection facility location to be used by IWMA for the acceptance and storage of HHW, pursuant to the Original Agreement. IWMA affirms the storage unit meets or exceeds applicable fire and hazardous materials storage requirements. The Owner has provided a concrete pad (pursuant to design by IWMA under the Original Agreement) for placement at the HHW collection facility. IWMA shall provide a roll-off box (or equivalent equipment to meet IWMA responsibility for providing waste collection and disposal services for HHW operations) for trash from the facility.
2. The IWMA shall comply, and ensure the current HHW collection facility complies, with all federal, state and local statutes, regulations, ordinances, and other laws relating to the operation of a HHW collection facility. IWMA also shall ensure that the transportation and disposal of the HHW collected at the site complies with applicable federal, state, and local statutes, regulations, ordinances, and other laws.
3. The IWMA shall provide all storage and handling equipment necessary for the storage of HHW collected by the IWMA and adequate materials for packing the same. The IWMA, or its contracted, licensed hazardous waste service provider, shall be responsible for collecting HHW from the public and packing the drums for shipment. The IWMA will also label and manifest the drums.
4. The IWMA shall contract with a licensed hazardous waste hauler to remove and dispose of all HHW collected at the site on a regular basis, at least annually, and shall maintain and provide proof of general liability insurance of at least \$1 million to Owner.
5. The IWMA shall be responsible for obtaining all necessary permits for the operation of the HHW collection facility.
6. The IWMA, or its contracted, licensed hazardous waste service provider, shall train personnel as necessary due to changes in law or circumstances, but as least annually.
7. The IWMA shall provide the closure assurance required by State law.
8. IWMA shall keep and maintain the HHW collection facility and surrounding area in good, safe, and sanitary condition, including site cleanup if necessary.

C. RESPONSIBILITY OF OWNER

1. The Owner agrees to lease the designated current HHW collection location to the IWMA. The parties agree that the term of the lease shall be for a period commencing August 5, 2022, through February 6, 2023, and any extension of the Term as provided in Section A of this Agreement. The IWMA agrees to pay to Owner annual rent of One Dollar (\$1.00) for each year during the Term.

2. The Owner will allow members of the public to have reasonable access to the HHW collections facility for the purpose of disposal of HHW at the collections facility.
3. The Owner will allow the IWMA to have reasonable access to the HHW facility for the purpose of removing the HHW.
4. The Owner shall be responsible for ensuring the structure provided by the IWMA, and the surrounding property, is maintained in a secure, safe and appropriate manner.

D. INDEMNIFICATION

It is agreed that IWMA shall defend, save harmless, and indemnify the Owner, their officers and employees from any and all liabilities, penalties, and claims for injuries and damages to persons and/or property, which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of the IWMA, its officers, employees, and/or contractors.

It is further agreed that Owner shall defend, save harmless, and indemnify the IWMA, its officers, employees, and contractors from any and all claims for injuries and damages to persons and/or property which arise out of the terms and conditions of this Agreement and which result from the negligent acts or omissions of the Owner, their officers, and/or employees.

IWMA bears and assumes all risk of loss or damage to or destruction of the HHW collection facility, and any other associated fixtures, material, equipment and improvements on the property, from fire, theft or any other casualty as a result of HHW collection activities, whether or not insured; and IWMA shall hold Owner harmless with respect to any such loss, damage or destruction during the term of the Original Agreement and the Second Agreement, as well as name the Owner as an additional insured on the required general liability insurance in an amount of no less than \$1 million.

E. CLEANUP OF SITE

At the end of this Agreement, the IWMA shall remove any and all IWMA equipment, including the storage unit remaining at the facility. Upon expiration or earlier termination of this Agreement, the IWMA shall promptly remove the HHW collection facility (including, but not limited to, collection structure, office trailer, storage tanks and drums, and any hazardous waste remaining at the facility) and surrender and deliver the property to Owner in as good condition as it was in at the commencement of the Original Agreement. The only item remaining on-site will be the concrete pad, which will become the property of the Owner. If the property and/or the HHW collection facility are damaged in any way or destroyed, IWMA shall at IWMA's sole cost and expense repair, replace, rebuild or restore the property and improvements to substantially the same condition as they were in immediately prior to such destruction or damage.

F. TERMINATION

This Agreement is subject to the annual appropriation of funds to provide HHW services. If the IWMA fails to appropriate the funds necessary to conduct the program, the Agreement can be terminated with 30 days' notice. The Owner may terminate this Agreement before expiration of its term by giving 30 days advance written notice of termination to IWMA.

G. RATIFICATION

1. Each Party represents and warrants to the other Parties that the terms of the Second Agreement shall and do govern the rights and obligations of the Parties during and through any time prior to the Parties' approval of this Third Agreement and the expiration of the Second Agreement.
2. IWMA represents and warrants to Owner that, as of the below date of execution by IWMA of this Third Agreement, Owner is not in default of any material term of the Original Agreement, or subsequent amendments, and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Original Agreement, or subsequent amendments, by Owner.

H. COMPLETE AGREEMENT

This Third Agreement contains the complete agreement between the parties and can only be modified by written amendment.

I. COUNTERPARTS

This Third Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

[SIGNATURES FOLLOWING]

IN WITNESS WHEREOF, the parties have executed this Agreement as indicated below.

SAN LUIS OBISPO COUNTY INTEGRATED WASTE MANAGEMENT AUTHORITY

_____ Date: _____

Charles Bourbeau, President

Approved as to form:

By: _____ Date: _____

CITY OF MORRO BAY

_____ Date: _____

Scott Collins, City Manager

Approved as to form:

By: _____ Date: _____

CAYUCOS SANITARY DISTRICT

_____ Date: _____

Rick Koon, District Manager

Approved as to form:

By: _____ Date: _____

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AGENDA NO: A-6

MEETING DATE: September 27, 2022

**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY RECOGNIZING
SEPTEMBER 15 – OCTOBER 15, 2022
AS “NATIONAL HISPANIC HERITAGE MONTH”**

**CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the City of Morro Bay is welcoming, inclusive, and dedicated to improving the quality of life for those who live, work, and visit here; and

WHEREAS, what began in 1968 as Hispanic Heritage Week under President Johnson and was expanded by President Reagan in 1988 to cover a 30-day period starting on September 15, the United States observes Hispanic Heritage Month; and

WHEREAS, Hispanic Heritage Month celebrates the histories, cultures and contributions, of those whose ancestors came to America from Spain, Mexico, the Caribbean, and Central and South America; and

WHEREAS, the purpose of Hispanic Heritage Month is to create awareness of the contributions of people of Hispanic Heritage to the American culture. Many people of Hispanic Heritage serve as civil rights leaders and community organizers, politicians, teachers, journalists, first responders, artists, healthcare professionals, athletes, inventors, entertainers, and more; and

WHEREAS, Hispanic Heritage Month is tied to the celebration of the rich tapestry of our community and reflects an array of distinct cultures;

WHEREAS, Morro Bay is fortunate to count among its population a large number of residents of Spanish and Latin American descent, who grow businesses, offer innovative ideas, strengthen our economy, create jobs, and contribute to our daily lives.

NOW, THEREFORE, BE IT RESOLVED that Morro Bay City Council does hereby proclaim September 15 - October 15, 2022 as "National Hispanic Heritage Month" and invite the community to learn more of the Hispanic culture, people, traditions and values that have positively enriched our community.

IN WITNESS WHEREOF I have hereunto
set my hand and caused the seal of the City
of Morro Bay to be affixed this 27th day of
September 2022

JOHN HEADDING, Mayor
City of Morro Bay, California

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**A PROCLAMATION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY
DESIGNATING SEPTEMBER 21ST OF EACH YEAR TO BE THE
CITY OF MORRO BAY DAY OF PEACE AND THE MONTH OF SEPTEMBER
AS THE CITY OF MORRO BAY PEACE & NONVIOLENCE MONTH**

**CITY COUNCIL
City of Morro Bay, California**

WHEREAS, peace is not merely the absence of war and violence, but a condition where a society has achieved a balance of prosperity, security, justice, and hope, and peace is achieved through following the concepts and methodology of nonviolence, and

WHEREAS, for peace and nonviolence to prevail the City of Morro Bay will endeavor to foster a culture of peace through education and sustainable economic and social development as a necessity for peace to prevail, and

WHEREAS, the City of Morro Bay desires to promote and respect all human rights, advance understanding, tolerance, and solidarity, support participatory communication and the free flow of information and knowledge, and

WHEREAS, the City of Morro Bay is committed to establishing peace and nonviolence in the region to promote understanding, economic opportunity, and improve the quality of life of the people of our region, and this vision builds on the expertise of each person and involves all segments of our City in planning actions and making a difference, and

WHEREAS, the City of Morro Bay will work together to create and implement initiatives that not only foster peace and nonviolence but create a positive and lasting change in our community, seeking to become a model for other communities, and

WHEREAS, with these statements the City of Morro Bay rejects war, poverty, injustice, and environmental degradation, and

WHEREAS, each year the International Day of Peace is observed around the world on September 21, and the General Assembly of the United Nations has declared this as a day devoted to strengthening the ideals of peace, both within and among all nations and peoples.

NOW, THEREFORE, BE IT RESOLVED, that the City Council of the City of Morro Bay, designates September 21 of each year to be the City of Morro Bay Day of Peace and the month of September as the City of Morro Bay Peace & Nonviolence Month.

IN WITNESS WHEREOF I have hereunto
set my hand and caused the seal of the City
of Morro Bay to be affixed this 27th day of
September 2022

JOHN HEADDING, MAYOR
City of Morro Bay, California

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AGENDA NO: C-1

MEETING DATE: September 27, 2022

Staff Report

TO: Mayor and City Council

DATE: September 20, 2022

FROM: Sarah Johnson-Rios, Assistant City Manager/Admin Services Director

SUBJECT: Establishment of a PARS Post-Employment Benefits Trust Program to Pre-fund Pension and Retiree Health Care Obligations

RECOMMENDATION

Staff recommends that the City Council adopt Resolution No. 85-22 authorizing participation in the PARS Post-Employment Benefits Trust Program to be administered by Public Agency Retirement Services (PARS) and U.S. Bank, appointing the City Manager as the City’s Plan Administrator, authorizing the City Manager to execute the documents to implement the Program subject to the City Attorney’s review and approval, authorizing the City Manager to take necessary actions to dissolve the current OPEB trust and move funds to the PARS OPEB trust, and directing the City Manager to select specified portfolios for initial investments and make changes if needed to continue to implement City fiscal goals.

FISCAL IMPACTS

The proposed Trust contributions will put the City in a stronger fiscal position long-term by reducing the large unfunded CalPERS liability and the smaller Other Post-Employment Benefits (OPEB) liability. This is consistent with the City Council’s established goal of fiscal sustainability and related action item to address the pension liability. The FY 2022-23 Adopted Budget includes \$1.06 million for this year’s contribution to a pension trust, consistent with the City’s pension reserve policy. No additional budget allocation is required. Fees will be paid to PARS and US Bank for managing the funds, in accordance with the terms of the services agreement with PARS (Attachment 2) and the sample trustee forms with US Bank (Attachment 5). The fees would currently equate to approximately \$6,000 per year for every \$1 million managed on behalf of the City. As outlined in those documents, fees could be further reduced if the City’s Trust balance increases to specified thresholds over time.

ALTERNATIVES

1. Take no action and continue to make only minimum required payments to the pension liability, which would be inconsistent with Council goals and the newly established pension reserve policy.
2. Establish a Trust with a different provider.
3. Other direction as desired by Council.

BACKGROUND

City Post-Employment Benefit Liabilities

In 2012, the Government Accounting Standards Board (GASB) issued Statement No. 68, *Accounting and Financial Reporting for Pensions*. GASB 68 requires that governmental employers that sponsor Defined Benefit plans (i.e., CalPERS) must recognize a net pension liability (unfunded accrued

Prepared By: _____ SJR

Dept Review: SJR

City Manager Review: _SC__

City Attorney Review: LNL

liability) on their balance sheet. This is the difference between the City's total pension liability (actuarial accrued liability) and actual plan assets. GASB 68 became effective for fiscal years starting after June 15, 2014.

The City of Morro Bay's unfunded pension liability as reported in the Annual Comprehensive Financial Report (ACFR) for the fiscal year ending June 30, 2021 was approximately \$27.1 million, an increase of approximately \$1 million from the prior year, despite the City making required minimum payments against that liability every year.

In 2015, the Government Accounting Standards Board (GASB) issued Statement No. 75, Accounting and Financial Reporting for Postemployment Benefits Other Than Pensions. GASB 75 requires the City to report costs and obligations for post-employment healthcare and other post-employment benefits (called "OPEBs") much like the current accounting requirement to report pension obligations. Similar to GASB 68, the City must also report its net OPEB liability (difference between the total OPEB liability and assets accumulated in an irrevocable trust) on its Financial Statements. GASB 75 (which replaces the requirements of GASB 45) became effective for fiscal years beginning after June 15, 2017.

The City's OPEB liability as reported under GASB 68 was approximately \$3 million as of June 30, 2021. Roughly half of that amount is due to an accounting rule that requires cities to plan for an implied rate subsidy which is likely to significantly overstate true future year costs. As of June 30, 2022, the balance in the City's current OPEB trust was approximately \$1.9 million, indicating that the City's OPEB liabilities are largely fully funded without counting the impolite rate subsidy assumption.

Efforts going forward will be focused on maintaining existing OPEB funds in a protected trust for future use and building up a pension trust to begin to address that much larger liability for the City of Morro Bay.

Recent City Efforts to Address Post-Employment Benefit Liabilities

Currently and in several recent years, one of City Council's core goals is and has been fiscal sustainability, including maintaining reserve policies and robust reserves, and taking efforts to address the City's pension and other post-employment benefit liabilities. The City Council set five major goals and approximately 35 short-term action items at its most recent goal-setting meeting (November 2021). Council identified Fiscal Sustainability and Economic Vitality as one of its five top, overarching goals. As the first objective under this broad goal, Council identified that the City should: "(1) Create a plan to address the City's unfunded liabilities while striving to achieve competitive compensation."

Staff engaged NHA Advisors, a company that provides financial management services to local governments in California including in pension liability management, to lead both CFAC and the Council through an analysis of the City's unfunded pension liability and various policy options that could be used to address it. CFAC discussed the City's pension and OPEB liabilities at two meetings in late 2021 and early 2022. The City Council discussed various approaches to addressing the pension liability at its January 11, 2022 meeting, where Council directed staff to return with a proposed pension reserve policy that would guide and provide framework for the creation of a section 115 pension trust fund as the preferred policy option to address the pension liability currently.

On April 26, 2022, Council approved a pension reserve policy for the City and directed staff to implement the new policy in FY 2022-23 by setting aside one-third of the operating surplus from the

prior year as a pension trust contribution; this was incorporated and approved in the Adopted Budget.

Council directed staff to proceed with establishing a pension trust, utilizing a robust process that included guidance from NHA Advisors and input from two designated Councilmembers (Mayor Heading and Mayor Pro-Tem Barton) and one CFAC member designated by the Committee (Homer Alexander).

On June 28, 2022, Council approved the FY 2022-23 Adopted Budget, which included the following planned contributions to a pension reserve fund in accordance with the pension reserve policy they adopted in April.

Fund	Current Share of Pension Liability	FY 2022-23 Contribution to a Pension Trust
General Fund	78%	826,000
Sewer Fund	9%	96,000
Water Fund	7%	70,000
Harbor Fund	6%	68,000
	100%	1,060,000

DISCUSSION

Committee Recommendation

This committee met three times and evaluated pension trust providers. The committee also evaluated the possibility of moving the City's existing OPEB trust fund, held by MissionSquare Retirement, to be held by the selected pension trust provider for savings on fees, expanded investment options, and administrative simplicity.

After reviewing qualified trust providers and interviewing both CalPERS and PARS as the primary viable providers for small cities, the selection committee recommended that the City proceed with the PARS Post-Employment Benefits Trust Program. PARS is the only provider of an IRS-approved Trust that combines the ability to invest funds toward budget pension and OPEB liabilities (balances are maintained separately), resulting in potential fee savings by aggregating the pension and OPEB funds for purposes of investment fee structures. PARS also provides the only actively managed funds and offers a wider range of risk portfolio options. Finally, PARS offers high-quality customer service, more frequent reporting to staff, and a more hands-on management approach.

PARS has partnered with US Bank to serve as trustee and its sub-adviser HighMark Capital Management, Inc., to provide investment management services for the program. After reviewing HighMark's investment options and discussing the City's goals for these funds with the local HighMark Capital account manager, the selection committee recommended the initial risk portfolio investment allocations as follows: Capital Appreciation HighMark PLUS for the OPEB Trust and Balanced HighMark PLUS for the Pension Trust (outlined in Attachment 5). These allocations were recommended with the City's long-term investment goals for these trust in mind. The City does not anticipate needing to remove funds from the OPEB trust for several years or more. The same will hopefully be true of the pension trust, depending on CalPERS rates of returns in years to come, required minimum contributions, and broader City fiscal priorities.

Information Regarding the PARS Post-Employment Benefits Trust Program

In an effort to help public agencies address and manage their GASB 68 and 75 liabilities, PARS has sought and received approval from the IRS in the form of a Private Letter Ruling on its Post-Employment Benefits Trust Program. PARS has assembled leading professionals to provide the City with the necessary services required under one program to pre-fund both pension and retiree health care liabilities. This would provide the City with an alternative to CalPERS that will allow for greater local control over assets, investment by a professional fund management team selected and monitored by the City, with contributions and distributions from the trust determined at the discretion of the City.

The program has been established as a multiple employer trust so that public agencies regardless of size can join the program to receive the necessary economies of scale to keep administrative fees low and avoid any setup costs. To properly offset OPEB liabilities, funds must be set aside in an exclusive benefit, irrevocable trust that cannot be accessed by creditors in order to be accounted for as assets to reduce the liabilities on the City's financial statements. The trust permits the City, under federal and state law, to invest in a more diversified array of investments to maximize investment returns long term and reduce the City's liabilities. The City is currently prefunding its OPEB liabilities through a MissionSquare Retirement Health Savings Plan.

To date, more than 490 public agencies have adopted 115 Trust Programs through PARS to reduce their liabilities including City of Goleta, City of Camarillo, City of Port Hueneme, City of Thousand Oaks, and City of Carmel.

Expected benefits offered by the PARS Post-Employment Benefits Trust Program to the City include:

- Contributions placed in an exclusive benefit trust could address the City's unfunded liabilities
- Investment flexibility with Section 115 Trust compared to restrictions on general fund investments
- Increased risk diversification of plan assets through different asset management than CalPERS
- Investments can be tailored to the City's unique demographics
- Oversight and control of fund management selection, monitoring of performance and ability to replace fund management based on performance criteria
- Increased flexibility on use of trust assets (i.e., trust assets can be accessed at any time as long as the assets are used to fund the City's pension and OPEB obligations and defray reasonable expenses associated therewith)
- Lower investment management and administrative expenses compared to CalPERS Pension Program
- Potential for positive rating agency and investor consideration.

Next Steps

If Council approves the resolution as presented (Attachment 1), the next steps would include the City Manager executing the draft service agreement with PARS subject to changes with City Attorney approval (Attachment 2); executing an Adoption Agreement with US Bank (Attachment 4) adopting and forming a Public Agencies Post Employment Benefits Trust (Attachment 3) in the form approved by the IRS, completing the sample trustee forms (Attachment 5) with the investment allocations

specified in the resolution. Staff would transfer budgeted pension funds to PARS for investment, and would provide notice to MissionSquare Retirement of intent to dissolve that trust and move OPEB funds to PARS for investment.

After the trust is established, funds would be left in the trust until directed by Council at a future date, in a future budget cycle, to potentially utilize such funds only for eligible pension or OPEB costs. The intent currently is to leave funds in the trusts and continue adding to the pension trust as funds allow, in accordance with the City's Pension Reserve Policy.

Establishing a pension trust fund now does not preclude the City from pursuing other or additional policy options in the future as part of a potential multi-faceted approach to addressing the large liability.

ATTACHMENTS

1. Resolution No. 85-22 Authorizing PARS Trust and moving OPEB funds into it
2. Draft Services Agreement with PARS
3. Public Agencies Post-Employment Benefits Trust Agreement (between PARS and US Bank)
4. Sample Adoption Agreement for the Post-Employment Section 115 Trust (Morro Bay adopts)
5. Sample Trustee Forms – Investment Allocations and Trustee Fees
6. PARS slide presentation

RESOLUTION NO. 85-22

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
APPROVING THE ADOPTION OF THE
PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST
ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS)**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, PARS has made available the PARS Public Agencies Post-Employment Benefits Trust (the "Program") for the purpose of prefunding pension obligations and/or Other Post-Employment Benefit (OPEB) obligations; and

WHEREAS, the City convened a selection committee including members of City Council and a member of the Citizens Finance Advisory Committee to review available pension trusts and the committee recommended PARS as the preferred provider; and

WHEREAS, the City has an existing OPEB Trust managed by MissionSquare Retirement, and the selection committee recommends moving those funds to PARS for lower fees and ease of administration; and

WHEREAS, the City is eligible to participate in the PARS 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, the City'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, the City'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, the City reserves the right to make contributions, if any, to the Program.

NOW THEREFORE, BE IT RESOLVED THAT the City Council of the City of Morro Bay does hereby:

1. The City Council hereby adopts the PARS Public Agencies Post-Employment Benefits Trust, effective September 27, 2022; and
2. The City Council hereby appoints the City Manager, or his/her successor or his/her designee as the City's Plan Administrator for the Program; and
3. The City's Plan Administrator is hereby authorized to execute the PARS legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to maintain the City'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 the City's Program; and

4. The City Manager is hereby authorized to take actions necessary to dissolve the existing OPEB Trust with MissionSquare Retirement and to move funds to an OPEB Trust with PARS; and
5. The City Council hereby directs the City Manager to select the original allocations for the Trust investments as follows based on the selection committee's recommendation: Capital Appreciation HighMark PLUS for the OPEB Trust and Balanced HighMark PLUS for the Pension Trust; and authorized the City Manager as Plan Administrator to make changes in the future as needed to implement City fiscal goals.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of September 2022 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

AGREEMENT FOR ADMINISTRATIVE SERVICES

This AGREEMENT FOR ADMINISTRATIVE SERVICES (“Agreement”) is made this _____ day of _____, 2022, 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” or “Consultant”) and the City of Morro Bay (“Agency” or “City”).

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 A” (“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 B”.
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 C” (“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 A, 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 C, 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. All terms of indemnity contained herein shall survive the termination and/or expiration of this Agreement.
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. **Insurance.** PARS shall maintain prior to the beginning of and for the duration of this Agreement insurance coverage as specified in Exhibit D, attached to and part of this Agreement.
16. **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: City of Morro Bay; 595 Harbor Street, Morro Bay, CA 93442; Attention: [Plan Administrator Title]Notices shall be deemed given on the date received by the addressee.
17. **Term of Agreement.** This Agreement shall remain in effect for the period beginning September 28, 2022 and ending September 28, 2025 ("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.

18. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.
19. **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.
20. **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.
21. **Legal Responsibilities.** PARS shall keep itself informed of State and Federal laws and regulations which in any manner affect those employed by it or in any way affect the performance of its service pursuant to this Agreement. PARS shall at all times observe and comply with applicable legal requirements in effect at the time the drawings and specifications are prepared. Agency, and its officers and employees, shall not be liable at law or in equity occasioned by failure of PARS to comply with this Section.
22. **Undue Influence.** PARS declares and warrants that no undue influence or pressure is used against or in concert with any officer or employee of Agency in connection with the award, terms or implementation of this Agreement, including any method of coercion, confidential financial arrangement, or financial inducement. No officer or employee of Agency will receive compensation, directly or indirectly, from PARS, or from any officer, employee or agent of PARS, in connection with the award of this Agreement or any work to be conducted as a result of this Agreement. Violation of this Section shall be a material breach of this Agreement entitling Agency to any and all remedies at law or in equity.
23. **No Benefits to Arise to Local Employees.** No member, officer, or employee of Agency, or their designees or agents, and no public official who exercises authority over or responsibilities with respect to the Plan during his/her tenure or for one year thereafter, shall have any interest, direct or indirect, in any agreement or sub-agreement, or the proceeds thereof, for work to be performed in connection with the Services performed under this Agreement.
24. **Non-Liability of Agency Officers and Employees.** No officer or employee of the Agency shall be personally liable to PARS, or any successor in interest, in the event of any default or breach by the Agency or for any amount, which may become due to the PARS or to its successor, or for breach of any obligation of the terms of this Agreement.

25. Release of Information / Conflicts of Interest.

- (a) All information gained by PARS in performance of this Agreement shall be considered confidential and shall not be released by PARS without Agency's prior written

authorization. PARS, its officers, employees, agents, or subconsultants, shall not without written authorization from the City Manager or unless requested by the City Attorney, voluntarily provide declarations, letters of support, testimony at depositions, response to interrogatories, or other information concerning the work performed under this Agreement or relating to any project or property located within City. Response to a subpoena or court order shall not be considered “voluntary” provided PARS gives Agency notice of such court order or subpoena.

(b) PARS shall promptly notify Agency if PARS, or any of its officers, employees, agents, or subconsultants are served with any summons, complaint, subpoena, notice of deposition, request for documents, interrogatories, request for admissions, or other discovery request, court order, or subpoena from any person or party regarding this Agreement and the work performed thereunder or with respect to any project or property located within Agency. Agency retains the right, but has no obligation, to represent PARS or be present at any deposition, hearing, or similar proceeding. PARS agrees to cooperate with Agency by providing the opportunity to review any response to discovery requests provided by PARS. However, Agency’s right to review any such response does not imply or mean the right by Agency to control, direct, or rewrite said response.

26. **Governing Law.** Agency and PARS understand and agree that the laws of the State of California shall govern the rights, obligations, duties, and liabilities of the parties to this Agreement and also govern the interpretation of this Agreement. Legal actions concerning any dispute, claim or matter arising out of or in relation to this Agreement shall be instituted in the Superior Court of the County of San Luis Obispo, State of California. In the event of litigation in a U.S. District Court, venue shall lie exclusively in the Central District of California, in the County of San Luis Obispo, State of California.
27. **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.
28. **Severability.** In the event that part of this Agreement shall be declared invalid or unenforceable by a valid judgment or decree of a court of competent jurisdiction, such invalidity or unenforceability shall not affect any of the remaining portions of this Agreement which are hereby declared as severable and shall be interpreted to carry out the intent of the parties hereunder unless the invalid provision is so material that its invalidity deprives either party of the basic benefit of their bargain or renders this Agreement meaningless.
29. **Waiver.** No delay or omission in the exercise of any right or remedy by non-defaulting party on any default shall impair such right or remedy or be construed as a waiver. A party’s consent to or approval of any act by the other party requiring the party’s consent or approval shall not be deemed to waive or render unnecessary the other party’s consent to or approval of any subsequent act. Any waiver by either party of any default must be in writing and shall not be a waiver of any other default concerning the same or any other provision of this Agreement.

30. Headings / Interpretation. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions. The terms of this Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either party by reason of the authorship of this Agreement or any other rule of construction which might otherwise apply.

31. Authority of Signatories. The person or persons executing this Agreement on behalf of PARS warrants and represents he/she has the authority to execute this Agreement on behalf of PARS and has the authority to bind PARS to the performance of its obligations hereunder.

32. 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 A
SERVICES

PARS will provide the following services for the City of Morro Bay 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 B
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 C
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.

EXHIBIT D
INSURANCE REQUIREMENTS

Insurance Coverages. Prior to commencement of any services under this Agreement, and without limiting Consultant's indemnification obligation to City, Consultant shall procure and maintain, at its sole cost and expense, in a form and content satisfactory to City, for the duration of the Agreement, primary policies of insurance of the type and amounts below, issued by an insurance company currently authorized by the Insurance Commissioner to transact business of insurance or is on the List of Approved Surplus Line Insurers in the State of California, with an assigned policyholders' Rating of A- (or higher) and Financial Size Category Class VII (or larger) in accordance with the latest edition of Best's Key Rating Guide, unless otherwise approved by City, which shall cover all elected and appointed officers, and employees of City. City reserves the right at any time during the term of the Agreement to change the amounts and types of insurance required by giving Consultant ninety (90) days advance written notice of such change. If such change results in substantial additional cost to Consultant, City and Consultant may renegotiate Consultant's compensation.

(a) Commercial General Liability Insurance. A policy of commercial general liability insurance, with coverage at least as broad as Insurance Services Office ("ISO") form CG 00 01, written on a per occurrence basis for bodily injury, personal injury and property damage. Defense costs must be paid in addition to limits. Coverage for an additional insured shall not be limited to its vicarious liability. The policy must include limited contractual liability that has not been amended. Any endorsement restricting standard ISO "insured contract" language will not be accepted. Limits shall be no less than \$1,000,000 per occurrence for all covered losses and no less than \$2,000,000 general aggregate.

(b) Worker's Compensation Insurance. A policy of worker's compensation insurance in such amount as will fully comply with the laws of the State of California and which shall indemnify, insure and provide legal defense for Consultant against any loss, claim or damage arising from any injuries or occupational diseases occurring to any worker employed by or any persons retained by Consultant in the course of carrying out the work or services contemplated in this Agreement.

(c) Professional Liability. Professional liability insurance appropriate to Consultant's profession. This coverage may be written on a "claims made" basis and must include coverage limited for contractual liability. Any policy inception date, continuity date, or retroactive date must be before the effective date of this Agreement. The professional liability insurance required by this Agreement must be endorsed to be applicable to claims based upon, arising out of, or related to services performed under this Agreement. The insurance must be maintained for at least five (5) consecutive years following the completion of Consultant's services or the termination of this Agreement. During this additional 5-year period, Consultant shall annually and upon request of City submit written evidence of this continuous coverage. Limits shall be no less than \$1,000,000 per claim and no less than \$1,000,000 general aggregate.

General Insurance Requirements.

(a) Proof of Insurance, Enforcement and Notice. No work or services under this Agreement shall commence until both Consultant has provided City with insurance certificates, endorsement forms and appropriate insurance binders evidencing the above insurance coverages, as well as said documentation is approved by City. City reserves the right to inspect complete, certified copies of, and endorsements to, all required insurance policies, at any time. Any failure to comply with the reporting or other provisions of the policies including breaches or warranties shall not affect coverage provided to City. In the event any insurance policy required under this Agreement is cancelled or amended (and the insurance policy is not replaced pursuant to subsection (b) below then: 1) City has the right but not the duty to obtain insurance required herein and any premium paid by City will be promptly reimbursed by Consultant or City will withhold amounts sufficient to pay premium from Consultant payments; or, 2) City, notwithstanding any other provisions of this Agreement, may immediately terminate this Agreement. Consultant shall give City prompt and timely notice of claims made or suits instituted that arise out of or result from Consultant's performance under this Agreement, and that involve or may involve coverage under any of the required insurance policies.

(b) Cancellation/Amendment. All of herein required policies of insurance shall provide the insurance may not be amended or cancelled by insurer or any Party hereto without providing thirty (30) calendar days prior written notice (with exception of ten (10) calendar days prior written notice for nonpayment) to City. In the event any of said policies of insurance are amended or cancelled, Consultant shall, five (5) business days prior to the cancellation date, submit new evidence of insurance in conformance with this Agreement to City.

(c) Additional Insureds. The commercial general liability policy shall name City and its elected and appointed officers, and employees ("City Parties") as additional insureds and such coverage shall contain no special limitations on the scope of protection afforded to City and City Parties. A severability of interests provision must apply for all additional insureds ensuring that Consultant's insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability, and policies of insurance shall not contain any cross-liability exclusions.

(d) Primary, Subrogation, Contribution and Coverage. All of the above policies of insurance shall be primary insurance. The insurers for above policies, Consultant and any subcontractors are all deemed hereof to waive all rights of subrogation and contribution they may have against City or City Parties, and their respective insurers, and all insurance policies required herein shall be endorsed to waive such rights. Any insurance maintained by City or City Parties will apply in excess of, and not contribute with, Consultant's insurance. If Consultant maintains broader coverage and/or higher limits than the minimum amounts provided herein, City requires and shall be entitled to the broader coverage and/or higher limits maintained by Consultant. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to City and City Parties. None of the coverages required herein will be in compliance with this Agreement if they include any limiting endorsement of any kind that has not been first submitted to City and approved of in writing. Requirements of specific coverage features or limits

contained herein are not intended as a limitation on coverage, limits or other requirements, or a waiver of any coverage normally provided by any insurance. Specific reference to a given coverage feature is for purposes of clarification only as it pertains to a given issue and is not intended by any Party or insured to be all inclusive, or to the exclusion of other coverage, or a waiver of any type.

(e) Limitations, Self- Insured Retention and Deductibles. Consultant agrees that the insurance requirements shall not be construed as limiting in any way the extent to which Consultant may be held responsible for the payment of damages to any persons or property resulting from Consultant's activities or the activities of any person or persons for which Consultant is otherwise responsible nor shall it limit Consultant's indemnification liabilities. All insurance policies must specify that where the primary insured does not satisfy any self-insured retention, any additional insured may satisfy the self-insured retention. Any deductibles or self-insured retentions must be declared to and approved by City. At City's option, either the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects City and City Parties, or Consultant shall procure a bond guaranteeing payment of losses and related investigations, claim administration, attorney's fees, defense expenses and claims.

**PUBLIC AGENCIES
POST-EMPLOYMENT BENEFITS
TRUST AGREEMENT**

(Effective November 5, 2014)

ARTICLE I

DEFINITIONS

- 1.1 “**Adoption Agreement**” shall have the meaning given to such term in Section 2.3.
- 1.2 “**Agency Account**” shall have the meaning given to such term in Section 2.4.
- 1.3 “**Agreement for Administrative Services**” shall mean the agreement executed between the Employer and the Trust Administrator which authorizes the Trust Administrator to perform specific duties of administering the Agency Account of the Employer.
- 1.4 “**Assets**” shall have the meaning given to such term in Section 2.5.
- 1.5 “**Code**” shall mean the Internal Revenue Code of 1986 as amended from time to time.
- 1.6 “**Delegatee**” shall mean an individual or entity, appointed by the Plan Administrator or Employer to act in such matters as are specified in the appointment.
- 1.7 “**Effective Date**” shall mean the date first written above, the date the Trust was established, and with respect to each Employer, the Effective Date shall be the date on which the Employer executes the Adoption Agreement.
- 1.8 “**Eligible Beneficiary**” shall mean any person who, due to his or her relationship to an Eligible Employee, is entitled to post-employment benefits pursuant to the Employer’s Pension Plan or OPEB Plan, including but not limited to the Eligible Employee’s current or former spouse or domestic partner, child, dependent, or survivor.
- 1.9 “**Eligible Employee**” shall mean any employee of an Employer who is entitled to post-employment benefits pursuant to the Employer’s Pension Plan or OPEB Plan. Unless the context otherwise requires, the term “Eligible Employee” as used herein shall include any Eligible Beneficiaries.
- 1.10 “**Employer**” shall mean a public agency that executes the Adoption Agreement, thereby adopting the provisions of this Trust Agreement, provided that such agency is a state, a political subdivision of a state, or an entity the income of which is excludible from gross income under Section 115 of the Code.
- 1.11 “**GASB**” shall mean the Governmental Accounting Standards Board.
- 1.12 “**Omnibus Account**” shall mean an account, established for record keeping purposes only, to aggregate the balances of the Assets credited to the Agency Accounts. The Trust Administrator shall maintain and reconcile, at the Agency Account level (and subaccount level), the investments of the Agency Accounts

and will provide reports to the Plan Administrator with respect to such investments. The Trustee will maintain a record of the aggregate balance (principal and earnings) for all Agency Accounts. The Trust Administrator will in the ordinary course of business maintain a record of the name, address, taxpayer identification number, account number and amount of funds, including earnings, of each Employer. On periodic valuation dates (no less frequently than monthly) to be established by the Trust Administrator, the Trustee and Trust Administrator will reconcile the aggregate balance information maintained by the Trustee with the Agency Account level records maintained by the Trust Administrator pursuant to this Trust Agreement.

- 1.13 “**OPEB**” shall mean “other post-employment benefits,” such as medical, dental, vision, life insurance, long-term care and other similar benefits provided to retirees, other than pension benefits.
- 1.14 “**OPEB Obligation**” shall mean an Employer’s obligation to provide OPEB to its Eligible Employees in accordance with the Employer’s OPEB Plan.
- 1.15 “**OPEB Plan**” shall mean the Public Agencies Post-Employment Health Care Plan, as adopted by the Employer under the Adoption Agreement.
- 1.16 “**Pension Obligation**” shall mean an Employer’s obligation to contribute to the Pension Plan’s Qualified Trust and shall not, for example, mean an Employer’s Obligation to provide retirement benefits under the Pension Plan to the Employer’s Eligible Employees.
- 1.17 “**Pension Plan**” shall mean an Employer’s defined-benefit pension plan or plans, each of which is (i) qualified under Section 401(a) of the Code, (ii) sponsored by the Employer in order to provide retirement benefits to its Eligible Employees, and (iii) partly or wholly funded by the Employer’s contributions to a Qualified Trust.
- 1.18 “**Plan Administrator**” shall mean the individual designated by position of employment at the Employer to act on its behalf in all matters relating to the Employer's participation in the Trust.
- 1.19 “**Qualified Trust**” shall mean a trust which (i) is separate and apart from the Trust, (ii) constitutes a qualified trust under Code Section 401(a), and (iii) funds retirement benefits provided under an Employer’s Pension Plan to the Employer’s Eligible Employees.
- 1.20 “**Trust**” shall mean the Public Agencies Post-Employment Benefits trust arrangement.
- 1.21 “**Trust Administrator**” shall mean Public Agency Retirement Services or any successor trust administrator appointed by the Employers as provided herein. The Trust Administrator shall serve as trust administrator to the Trust established

pursuant to this Trust Agreement until such Trust Administrator resigns or is removed as provided in Article III.

- 1.22 **“Trust Agreement”** shall mean this Public Agencies Post-Employment Benefits trust document adopted by each Employer upon execution of an Adoption Agreement, as amended from time to time.
- 1.23 **“Trustee”** shall mean U.S. Bank National Association, or any successor trustee appointed by the Employers as provided herein. The Trustee shall serve as trustee of the Trust established pursuant to the provisions of this Trust Agreement until such Trustee resigns or is removed as provided in Article III.

ARTICLE II

THE TRUST

2.1 Multiple Employer Trust

The Trust is a multiple employer trust arrangement established to provide economies of scale and efficiency of administration to public agencies that adopt it to hold the assets used to fund the agency’s OPEB Obligation or Pension Obligation or both. The Trust is divided into Agency Accounts to hold the Assets of each Employer as described in Section 2.4.

2.2 Purpose

The Trust is established with the intention that it qualify as a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Code and any regulations issued thereunder and as a tax-exempt trust under the provisions of the relevant state’s statutory provisions of each Employer. This Trust Agreement shall be construed and the Trust shall be administered in a manner consistent with such intention. The fundamental purpose of the Trust is to fund the Employer’s OPEB Obligation or Pension Obligation or both. It is intended that adopting Employers retain an interest in the underlying securities held in the Trust on their behalf, rather than in the Trust itself.

The Employer hereby represents and warrants that the assets held hereunder (including the Assets) are not assets of any qualified plan under Code Section 401(a), regardless of the character of such assets once distributed. The Employer hereby acknowledges that the Trust does not constitute a qualified trust under Code Section 401(a).

2.3 Employers

Any public agency may, by action of its governing body in writing accepted by the Trustee, adopt the provisions of the Trust Agreement. Executing an adoption instrument for the Trust (**“Adoption Agreement”**), in the form attached hereto as Exhibit "A" (or such other form as may be approved by the Trustee), shall

constitute such adoption, unless the Trustee requires additional evidence of adoption. In order for such adoption to be effective, the public agency must also execute an Agreement for Administrative Services with Public Agency Retirement Services, the Trust Administrator, pursuant to Section 3.6 of this Trust Agreement. Such adopting Employer shall then become an Employer of the Trust.

Each such Employer shall, at a minimum, furnish the Trust Administrator with the following documents to support its adoption of the Trust:

- (a) a certified copy of the resolution(s) of the governing body of the Employer authorizing the adoption of the Trust Agreement and the appointment of the Plan Administrator for such Employer;
- (b) an original of the Adoption Agreement executed by the Plan Administrator or other duly authorized Employer employee;
- (c) an original of the Agreement for Administrative Services with Public Agency Retirement Services executed by the Plan Administrator or other duly authorized Employer employee and Public Agency Retirement Services;
- (d) an address notice; and
- (e) such other documents as the Trustee may reasonably request.
- (f) Any action taken by the Plan Administrator for an Employer shall be deemed to have been taken by such Employer. Any notice given to or delivered by the Plan Administrator for an Employer shall be deemed to have been given to or delivered by such Employer.

2.4 Agency Accounts

- (a) Upon an Employer's adopting the Trust Agreement, as provided in Section 2.3, a separate "**Agency Account**" shall be established under the Trust for that Employer, and all Assets of the Trust attributable to that Employer shall be held in that Employer's Agency Account.
- (b) An Employer's Agency Account comprises three subaccounts: a "**Pension Account**", an "**OPEB Account**", and a "**Suspense Account**". The Assets of the Trust that are held in the Employer's Pension Account will be available only to fund the Employer's Pension Obligation and defray the reasonable expenses associated with the same. The Assets of the Trust that are held in the Employer's OPEB Account will be available only to fund the Employer's OPEB Obligation and defray the reasonable expenses associated with the same.
- (c) The Assets of the Trust that are held in an Employer's Agency Account shall not be available to pay any obligations incurred by any other Employer as provided in Section 2.8.

(d) All contributions and transfers received by the Trust on behalf of the Employer will be held in the Employer's Agency Account and will be allocated to the subaccounts under the Agency Account as follows:

(1) If the Employer maintains a Pension Account or OPEB Account (and not both a Pension Account and an OPEB Account), all contributions and transfers received by the Trust on the Employer's behalf will be allocated to that subaccount.

(2) If the Employer maintains both a Pension Account and an OPEB Account, contributions and transfers received by the Trust on the Employer's behalf will be allocated to either the Pension Account or OPEB Account, as directed by the Plan Administrator. To the extent the Plan Administrator does not provide such direction, the Employer hereby directs the Trustee to allocate such contributions and transfers to the Suspense Account and to use the assets of the Suspense Account to purchase a position in the sweep vehicle identified on an **exhibit** hereto or, if none is identified, to hold such assets un-invested. The Plan Administrator may at any time direct the reallocation of cash from the Suspense Account to either the Pension Account or the OPEB Account.

(3) Once allocated to the Pension Account or the OPEB Account, amounts under the Trust may not subsequently be transferred to the other subaccount.

2.5 Assets of Agency Account

The assets held in an Agency Account shall consist of all contributions and transfers received by the Trust on behalf of the Employer, together with the income and earnings from such contributions and transfers, and any increments accruing to the Agency Account, net of any investment losses, benefits, expenses or other costs ("Assets"). All contributions or transfers shall be received by the Trustee in cash or in other property acceptable to the Trustee. The Trustee shall manage and administer the Assets held in Agency Accounts without distinction between principal and income. The Trustee and the Trust Administrator shall have no duty to compute any amount to be transferred or paid to the Agency Account by the Employer, and the Trustee and the Trust Administrator shall not be responsible for the collection of any contributions or transfers to the Agency Account.

2.6 Aggregate Balance for Investment and Administration

The balances of the Assets of more than one Agency Account may be aggregated by the Trustee in one or more Omnibus Accounts for investment and administrative purposes, to provide economies of scale and efficiency of administration to the Agency Accounts. The responsibility for Agency Account level accounting (including subaccount-level accounting within each Agency Account) within this Omnibus Account(s) shall be that of the Trust Administrator.

2.7 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the aggregate assets of the Trust. The responsibility for accounting and subaccounting for each Agency Account, based upon the Omnibus Account(s), shall be that of the Trust Administrator.

2.8 No Diversion of Assets

The Assets in each Employer's Agency Account shall be held in trust for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same. The Assets in each Agency Account shall not be used for or diverted to, any other purpose, including, but not limited to, the satisfaction of any other Employer's Pension Obligation or OPEB Obligation.

2.9 Type and Nature of Trust

Neither the full faith and credit nor the taxing power of each Employer is pledged to the distribution of amounts hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of any Employer, but are payable solely from the Assets held in such Employer's Agency Account, as more fully described herein. No employee of any Employer or beneficiary may compel the exercise of the taxing power by any Employer.

Distributions of Assets from any Agency Account are not debts of any Employer within the meaning of any constitutional or statutory limitation or restriction. Such distributions are not legal or equitable pledges, charges, liens or encumbrances, upon any of an Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of each Plan and the Trust set aside for distributions. Neither the members of the governing body of any Employer nor its officers, employees, agents or volunteers are liable hereunder.

2.10 Loss of Tax-Exempt Status as to Any Employer

If any Employer participating in the Trust receives notice from the Internal Revenue Service that the Trust as to such Employer fails to satisfy the requirements of Section 115 of the Code, or if any Employer consents to the Internal Revenue Service's determination that the Trust fails to meet such requirements, Assets having a value equal to the funds then held in such Employer's Agency Account shall be segregated and placed in a separate trust by the Trustee for the exclusive benefit of such Employer's Eligible Employees within a reasonable time after the Trust Administrator notifies the Trustee of the Internal Revenue Service's determination. Each Employer participating in the Trust agrees to immediately notify the Trust Administrator upon receiving such

notice or giving such consent. The separate trust provided for in this Section 2.10 shall thereafter be considered as a separate trust containing all of the provisions of this Trust Agreement until terminated as provided in this Trust Agreement.

ARTICLE III

ADMINISTRATIVE MATTERS

3.1 Appointment of Trustee

The Employers may, with the approval of two-thirds (2/3) or more of the Employers then participating in the Trust, act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by law, to serve as the trustee of this Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trustee of the Trust. If the Trustee is removed or resigns pursuant to Section 3.2, the Employers shall appoint a successor Trustee in accordance with the voting requirements set forth in this Section 3.1.

3.2 Resignation or Removal of Trustee

The Employers may act to remove the Trustee, provided that such action must satisfy the voting requirements set forth in Section 3.1 and notice of such action must be promptly delivered to the Trust Administrator, the Trustee and each Plan Administrator. The Trustee may also resign at any time by giving at least ninety (90) days prior written notice to the Trust Administrator and to the Plan Administrator of each Employer that has adopted the Trust Agreement and not terminated its participation in the Trust; provided, however, that the Trustee may resign immediately upon the earlier of the approval date or the effective date of any amendment of the Trust Agreement by the Employers that would change or modify the duties, powers or liabilities of the Trustee hereunder without the Trustee's consent. The Trustee shall, upon the appointment and acceptance of a successor trustee, transfer and deliver the Assets and all records relating to the Trust to the successor, after reserving such reasonable amount as it shall deem necessary to provide for its fees and expenses and any sums chargeable against the Trust for which it may be liable. The Trustee shall do all acts necessary to vest title of record in the successor trustee.

3.3 Withdrawal of Employer

An Employer may elect to withdraw from the Trust by giving at least thirty (30) days prior written notice to the Trustee and the Trust Administrator. If an Employer so elects to withdraw, Assets having a value equal to the funds held in such Employer's Agency Account shall be segregated by the Trustee and, as soon as practicable, shall be transferred to one or more trusts maintained by the Employer, provided that (i) for Assets transferred from the OPEB Account, any such trust shall satisfy the requirements of Section 115 of the Code, (ii) for Assets

transferred from the Pension Account, any such trust shall satisfy the requirements of either Section 115 or 401(a) of the Code, and (iii) all assets held by any such trust and previously held in the Employer's Pension Account or OPEB Account shall qualify as "plan assets" within the meaning of GASB Statement No. 68 (Accounting and Financial Reporting for Pensions—An Amendment of GASB Statement No. 27) or GASB Statement No. 45 (Accounting and Financial Reporting by Employers for Postemployment Benefits Other Than Pensions), respectively, in each case as reasonably determined by the Employer and certified in writing by the Employer to the Trust Administrator. The Employer shall appoint a trustee for such Employer's separate trust and, upon the trustee's acceptance of that appointment, the trustee will be vested with title to the transferred Assets.

3.4 The Plan Administrator

The governing body of each Employer shall have plenary authority for the administration and investment of such Employer's Agency Account pursuant to any applicable state laws and applicable federal laws and regulations. Each Employer shall by resolution designate a Plan Administrator. Unless otherwise specified in the instrument the Plan Administrator shall be deemed to have authority to act on behalf of the Employer in all matters pertaining to the Employer's participation in the Trust and in regard to the Agency Account of the Employer. Such appointment of a Plan Administrator shall be effective upon receipt and acknowledgment by the Trustee and the Trust Administrator and shall be effective until the Trustee and the Trust Administrator are furnished with a resolution of the Employer that the appointment has been modified or terminated.

3.5 Failure to Appoint Plan Administrator

If a Plan Administrator is not appointed, or such appointment lapses, the Employer shall be deemed to be the Plan Administrator. As used in this document the term "Plan Administrator" shall be deemed to mean "Employer" when a Plan Administrator has not been appointed for such Employer.

3.6 Delegatee

The Plan Administrator, acting on behalf of the Employer, may delegate certain authority, powers and duties to a Delegatee to act in those matters specified in the delegation. Any such delegation must be in a writing that names and identifies the Delegatee, states the effective date of the delegation, specifies the authority and duties delegated, is executed by the Plan Administrator, is acknowledged in writing by the Delegatee, and is certified as required in Section 3.7 to the Trust Administrator. Such delegation shall be effective until the Trustee and the Trust Administrator are directed in writing by the Plan Administrator that the delegation has been rescinded or modified.

3.7 Certification to Trustee

The governing body of each Employer, or other duly authorized official, shall certify in writing to the Trustee and the Trust Administrator the names and specimen signatures of the Plan Administrator and Delegatee, if any, and all others authorized to act on behalf of the Employer whose names and specimen signatures shall be kept accurate by the Employer acting through a duly authorized officer or governing body of the Employer. The Trustee and the Trust Administrator shall have no liability if they act upon the direction of a Plan Administrator or Delegatee that has been duly authorized, as provided in Section 3.6, if that Plan Administrator or Delegatee is no longer authorized to act, unless the Employer has informed the Trustee and the Trust Administrator of such change.

3.8 Directions to Trustee

All directions to the Trustee from the Plan Administrator or Delegatee must be in writing and must be signed by the Plan Administrator or Delegatee, as the case may be. For all purposes of this Trust Agreement, direction shall include any certification, notice, authorization, application or instruction of the Plan Administrator, Delegatee or Trustee appropriately communicated. The above notwithstanding, direction may be implied if the Plan Administrator or Delegatee has knowledge of the Trustee's intentions and fails to file written objection.

The Trustee shall have the power and duty to comply promptly with all proper directions of the Plan Administrator or Delegatee, appointed in accordance with the provisions of this Trust Agreement. In the case of any direction deemed by the Trustee to be unclear or ambiguous the Trustee may seek written instructions from the Plan Administrator, the Employer or the Delegatee on such matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the Delegatee should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust and/or the applicable Agency Account which may include not taking any action. The Trustee may request directions or clarification of directions received and may delay acting until clarification is received. In the absence of timely direction or clarification, or if the Trustee considers any direction to be a violation of the Trust Agreement or any applicable law, the Trustee shall in its sole discretion take appropriate action, or refuse to act upon a direction.

3.9 Appointment of Trust Administrator

The Employers may, with the approval of two-thirds (2/3) or more of the Employers then participating in the Trust, act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by law, to serve as Trust Administrator of the Trust. Such action must be in writing. Upon the written acceptance of such entity it shall become the Trust Administrator of

the Trust. If the Trust Administrator is removed or resigns pursuant to Section 3.13, the Employers shall appoint a successor Trust Administrator in accordance with the voting requirements set forth in this Section 3.9.

3.10 Trust Administrator

The Trust Administrator's duties involve the performance of the following services pursuant to the provisions of this Trust Agreement and the Agreement for Administrative Services:

- (a) Performing periodic accounting of each Agency Account (including subaccount-level accounting within each Agency Account) and reconciling such Agency Account balances with the Trust/Omnibus Account;
- (b) Directing the Trustee to make distributions from the appropriate subaccount under an Agency Account in accordance with Section 5.9.
- (c) Allocating contributions, earnings and expenses to each Agency Account and the underlying subaccounts;
- (d) Directing the Trustee to pay the fees of the Trust Administrator and to do such other acts as shall be appropriate to carry out the intent of the Trust;
- (e) Such other services as the Employer and the Trust Administrator may agree in the Agreement for Administrative Services pursuant to Section 2.3.

The Trust Administrator shall be entitled to rely on, and shall be under no duty to question, any direction and/or data received from the Plan Administrator, or other duly authorized entity, in order to perform its authorized duties under this Trust Agreement. The Trust Administrator shall not have any duty to compute contributions made to the Trust, determine or inquire whether contributions made to the Trust by the Plan Administrator or other duly authorized entity are adequate to meet an Employer's Pension Obligation or OPEB Obligation as may be determined under any applicable GASB pronouncement; or determine or inquire whether contributions made to the Trust are in compliance with the Employer's OPEB Plan or Pension Plan. The Trust Administrator shall not be liable for nonperformance of duties if such nonperformance is directly caused by erroneous, and/or late delivery of, directions or data from the Plan Administrator, or other duly authorized entity.

3.11 Additional Trust Administrator Services

The Plan Administrator may at any time retain the Trust Administrator as its agent to perform any act, keep any records or accounts and make any computations which are required of the Employer or the Plan Administrator by this Trust Agreement or by the Employer's policies and/or applicable collective bargaining agreements. The Trust Administrator shall be separately compensated

for such service and such services shall not be deemed to be contrary to the Trust Agreement.

3.12 Trust Administrator's Compensation

As may be agreed upon from time to time by the Employer and Trust Administrator, the Trust Administrator will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to such Employer's Agency Account and to the Trust.

3.13 Resignation or Removal of Trust Administrator

The Employers may act to remove the Trust Administrator, provided that such action must satisfy the voting requirements set forth in Section 3.9 and notice of such action must be promptly delivered to the Trust Administrator, the Trustee and each Plan Administrator. The Trust Administrator may also resign at any time by giving at least one hundred and twenty (120) days prior written notice to the Trustee and to the Plan Administrator of each Employer that has adopted the Trust Agreement and not terminated its participation in the Trust; provided, however, that the Trust Administrator may resign immediately upon the earlier of the approval date or the effective date of any amendment of the Trust Agreement by the Employers that would change or modify the duties, powers or liabilities of the Trust Administrator hereunder without the Trust Administrator's consent. The Trust Administrator shall, upon the appointment and acceptance of a successor trust administrator, transfer all records relating to the Trust to the successor.

ARTICLE IV

THE TRUSTEE

4.1 Powers and Duties of the Trustee

Except as otherwise provided in Article V and subject to Article VI, the Trustee shall have full power and authority with respect to property held in the Trust to do all such acts, take all proceedings, and exercise all such rights and privileges, whether specifically referred to or not in this document, as could be done, taken or exercised by the absolute owner, including, without limitation, the following:

- (a) To invest and reinvest the Assets or any part hereof in any one or more kind, type, class, item or parcel of property, real, personal or mixed, tangible or intangible; or in any one or more kind, type, class, item or issue of investment or security; or in any one or more kind, type, class or item of obligation, secured or unsecured; or in any combination of them (including those issued by the Trustee of any of its affiliates, to the extent permitted by applicable law), and to retain the property for the period of time that the Trustee deems appropriate;

(b) To acquire and sell options to buy securities ("call" options) and to acquire and sell options to sell securities ("put" options);

(c) To buy, sell, assign, transfer, acquire, loan, lease (for any purpose, including mineral leases), exchange and in any other manner to acquire, manage, deal with and dispose of all or any part of the Trust property, for cash or credit and upon any reasonable terms and conditions;

(d) To make deposits, with any bank or savings and loan institution, including any such facility of the Trustee or an affiliate thereof provided that the deposit bears a reasonable rate of interest;

(e) To invest and reinvest the Assets, or any part thereof in any one or more collective investment trust funds, including common and group trust funds that consist exclusively of assets of exempt pension and profit sharing trusts and individual retirement accounts qualified and tax exempt under the Code, that are maintained by the Trustee or an affiliate thereof. The declaration of trust or plan of operations for any such common or collective fund is hereby incorporated herein and adopted into this Trust Agreement by this reference. The combining of money and other assets of the Trust with money and other assets of other non-qualified trusts in such fund or funds is specifically authorized. Notwithstanding anything to the contrary in this Trust Agreement, the Trustee shall have full investment responsibility over Assets of the Trust invested in such commingled funds. If the plan and trust for any reason lose their tax exempt status, and the Assets have been commingled with assets of other tax exempt trusts in Trustee's collective investment funds, the Trustee shall within 30 days of notice of such loss of tax exempt status, liquidate the Trust's units of the collective investment fund(s) and invest the proceeds in a money market fund pending investment or other instructions from the Plan Administrator. The Trustee shall not be liable for any loss or gain or taxes, if any, resulting from said liquidation;

(f) To place uninvested cash and cash awaiting distribution in one or more mutual funds and/or commingled investment funds maintained by or made available by the Trustee or any of its affiliates, and to receive compensation from the sponsor of such fund(s) for services rendered, separate and apart from any Trustee's fees hereunder. The Trustee or its affiliate may also be compensated for providing investment advisory services to any mutual fund or commingled investment funds;

(g) To borrow money for the purposes of the Trust from any source with or without giving security; to pay interest; to issue promissory notes and to secure the repayment thereof by pledging all or any part of the Assets;

(h) To take all of the following actions: to vote proxies of any stocks, bonds or other securities; to give general or special proxies or powers of attorney with or

without power of substitution; to exercise any conversion privileges, subscription rights or other options, and to make any payments incidental thereto; to consent to or otherwise participate in corporate reorganizations or other changes affecting corporate securities and to delegate discretionary powers and to pay any assessments or charges in connection therewith; and generally to exercise any of the powers of an owner with respect to stocks, bonds, securities or other property held in the Trust;

(i) To make, execute, acknowledge and deliver any and all documents of transfer and conveyance and any and all other instruments that may be necessary or appropriate to carry out the powers herein granted;

(j) To raze or move existing buildings; to make ordinary or extraordinary repairs, alterations or additions in and to buildings; to construct buildings and other structures and to install fixtures and equipment therein;

(k) To pay or cause to be paid from the Trust any and all real or personal property taxes, income taxes or other taxes or assessments of any or all kinds levied or assessed upon or with respect to the Trust;

(l) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or state laws, as amended from time to time, it being intended that, except as herein otherwise provided, the powers conferred upon the Trustee herein shall not be construed as being in limitation of any authority conferred by law, but shall be construed as consistent or in addition thereto.

4.2 Additional Trustee Powers

In addition to the other powers enumerated above, the Trustee in any and all events is authorized and empowered:

(a) To invest funds pending required directions in any type of interest-bearing account, including, without limitation, time certificates of deposit or interest-bearing accounts issued by the Trustee, or any mutual fund or short term investment fund (“**Fund**”), whether sponsored or advised by the Trustee or any affiliate thereof); the Trustee or its affiliates may be compensated for providing such investment advice and providing other service to such Fund, in addition to any Trustee’s fees received pursuant to this Trust Agreement;

(b) To cause all or any part of the Trust to be held in the name of the Trustee (which in such instance need not disclose its fiduciary capacity) or, as permitted by law, in the name of any nominee, and to acquire for the Trust any investment in bearer form, but the books and records of the Trust shall at all times show that all such investments are a part of the Trust and the Trustee shall hold evidences of title to all such investments;

- (c) To serve as custodian with respect to the Trust Assets;
- (d) To employ such custodians, agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation from the Trust; to employ any broker-dealer or other agent, including any broker-dealer or other agent affiliated with the Trustee, and pay to such broker-dealer or other agent, at the expense of the Trust, its standard commissions or compensation; to settle, compromise or abandon all claims and demands in favor of or against the Trust; and to charge any premium on bonds purchased at par value to the principal of the Trust without amortization from the Trust, regardless of any law relating thereto;
- (e) In addition to the powers listed herein, to do all other acts necessary or desirable for the proper administration of the Trust, as though the absolute owner thereof;
- (f) To prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Trust; and to tender its defense to the Employer in any legal proceeding where the interests of the Trustee and the Employer are not adverse;
- (g) To exercise and perform any and all of the other powers and duties specified in this Trust Agreement or the Plan;
- (h) To permit such inspections of documents at the principal office of the Trustee as are required by law, subpoena or demand by a United States agency;
- (i) To comply with all requirements imposed by applicable provisions of law;
- (j) To seek written instructions from the Plan Administrator or other fiduciary on any matter and await their written instructions without incurring any liability. If at any time the Plan Administrator or the fiduciary should fail to give directions to the Trustee, the Trustee may act in the manner that in its discretion seems advisable under the circumstances for carrying out the purposes of the Trust;
- (k) To compensate such executive, consultant, actuarial, accounting, investment, appraisal, administrative, clerical, secretarial, medical, custodial, depository and legal firms, personnel and other employees or assistants as are engaged by the Plan Administrator in connection with funding the Employer's OPEB Obligation or Pension Obligation or both and to pay from the Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;

(l) To act upon proper written directions of the Plan Administrator or Delegatee, including directions given by photostatic transmissions using facsimile signature, and such other forms of directions as the parties shall agree;

(m) To pay from the Trust the expenses reasonably incurred in the administration of the Trust;

(n) To maintain insurance for such purposes, in such amounts and with such companies as the Plan Administrator shall elect, including insurance to cover liability or losses occurring by reason of the acts or omissions of fiduciaries but only if such insurance permits recourse by the insurer against the fiduciary in the case of a breach of a fiduciary obligation by such fiduciary.

ARTICLE V

INVESTMENTS

5.1 Discretionary Versus Directed Investment

For the Pension Account and the OPEB Account under the Agency Account, the Employer shall elect either a discretionary or directed investment approach. The Employer may elect the same or different investment approaches for those two subaccounts. The Employer hereby elects a directed approach for the Suspense Account. If the Employer elects a discretionary investment approach for a subaccount, the Employer shall further elect between the various investment strategies offered and the Trustee, in accordance with Article IV, shall have absolute discretion over the investment of the Assets held in such subaccount under the Employer's Agency Account. If the Employer elects a directed investment approach for a subaccount, the Trustee shall direct the investment of the Assets of such subaccount under the Employer's Agency Account in accordance with the direction provided by such Employer.

5.2 Trustee Fees

As may be agreed upon, in writing, between the Plan Administrator and Trustee, the Trustee will be paid reasonable compensation for services rendered or reimbursed for expenses properly and actually incurred in the performance of duties with respect to the applicable Agency Account or the Trust.

5.3 Contributions

Eligible Employees are not permitted to make contributions to the Trust. The Plan Administrator shall, on behalf of the Employer, make all contributions to the Trustee. Such contributions shall be in cash unless the Trustee agrees to accept a contribution that is not in cash. All contributions shall be paid to the Trustee for investment and reinvestment pursuant to the terms of this Trust Agreement. The Trustee shall not have any duty to determine or inquire whether any contributions

to the Trust made to the Trustee by any Plan Administrator are in compliance with the Employer's Pension Plan or OPEB Plan; nor shall the Trustee have any duty or authority to compute any amount to be paid to the Trustee by any Plan Administrator; nor shall the Trustee be responsible for the collection or adequacy of the contributions to meet an Employer's Pension Obligation or OPEB Obligation. The contributions received by the Trustee from each Employer shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.4 Records

(a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder at the Trust level. Such records shall be available at all reasonable times for inspection by the Trust Administrator. The Trustee shall, at the direction of the Trust Administrator, submit such valuations, reports or other information as the Trust Administrator may reasonably require.

(b) The Assets of the Trust shall be valued at their fair market value on the date of valuation, as determined by the Trustee based upon such sources of information as it may deem reliable; provided, however, that the Plan Administrator shall instruct the Trustee as to valuation of assets which are not readily determinable on an established market. The Trustee may rely conclusively on such valuations provided by the Plan Administrator and shall be indemnified and held harmless by the Employer with respect to such reliance. If the Plan Administrator fails to provide such values, the Trustee may take whatever action it deems reasonable, including employment of attorneys, appraisers or other professionals, the expense of which will be an expense of administration of the Trust. Transactions in the account involving such hard to value assets may be postponed until appropriate valuations have been received and Trustee shall have no liability therefore.

5.5 Statements

(a) Periodically as specified, and within sixty days after December 31, or the end of the Trust's fiscal year if different, Trustee shall render to the Trust Administrator as directed, a written account showing in reasonable summary the investments, receipts, disbursements and other transactions engaged in by the Trustee during the preceding fiscal year or period with respect to the Trust. Such account shall set forth the assets and liabilities of the Trust valued as of the end of the accounting period.

(b) The Trust Administrator may approve such statements either by written notice or by failure to express objections to such statements by written notice delivered to the Trustee within 90 days from the date the statement is delivered to the Trust Administrator. Upon approval, the Trustee shall be released and discharged as to all matters and items set forth in such statement as if such

account had been settled and allowed by a decree from a court of competent jurisdiction.

5.6 Wire Transfers

The Trustee shall follow the Plan Administrator's, Delegate's, or Trust Administrator's wire transfer instructions in compliance with the written security procedures provided by the party providing the wire transfers. The Trustee shall perform a telephonic verification to the Plan Administrator, Trust Administrator, or Delegate, or such other security procedure as selected by the party providing wire transfer directions, prior to wiring funds or following facsimile directions as Trustee may require. The Plan Administrator assumes the risk of delay of transfer if Trustee is unable to reach the Plan Administrator, or in the event of delay as a result of attempts to comply with any other security procedure selected by the directing party.

5.7 Exclusive Benefit

The Assets of an Employer's Agency Account shall be held in trust for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same and shall not be used for or diverted to any other purpose. No party shall have authority to use or divert the Assets of an Agency Account of an Employer for the satisfaction of any other Employer's Pension Obligation or OPEB Obligation or any other Employer's expenses.

5.8 Delegation of Duties

The Plan Administrator, Delegate, or Trust Administrator, may at any time retain the Trustee as its agent to perform any act, keep any records or accounts and make any computations that are required of the Plan Administrator, Delegate or Trust Administrator by this Trust Agreement or by the Plan. The Trustee may be compensated for such retention and such retention shall not be deemed to be contrary to this Trust Agreement.

5.9 Distributions

(a) The Trustee shall, from time to time, upon the written direction of the Plan Administrator or Delegate, make distributions from the Assets of the Trust under the OPEB Account to the insurers, third party administrators, service providers or other entities providing benefits or services under the OPEB Plan, or to Eligible Employees and Eligible Beneficiaries for reimbursement of OPEB Plan premiums (or other payments for OPEB Plan benefits) paid by the Eligible Employee or Eligible Beneficiary, or to the Employer for reimbursement of OPEB Plan benefits and expenses paid by the Employer, in such manner in such form(s), in such amounts and for such purposes as may be specified in such directions.

(b) In addition, the Trustee shall, from time to time, upon the written direction of the Plan Administrator or Delegatee, make distributions from the Assets of the Trust under the Pension Account directly to (i) the Qualified Trust as employer contributions, (ii) any insurers, third party administrators, service providers or other entities providing services in connection with determining the Employer's Pension Obligation, or (iii) the Employer as reimbursement for the Employer's payment of amounts described in this Section 5.9(b)(i) and (ii).

(c) In no event shall the Trustee have any responsibility respecting the application of distributions from the Assets of the Trust, or for determining or inquiring into whether such distributions are in accordance with the Employer's OPEB Plan, Pension Plan, policies, or applicable collective bargaining agreements.

ARTICLE VI

FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

Any one or more of the fiduciaries with respect to the Trust Agreement or the Trust may, to the extent required thereby or as directed by the Plan Administrator pursuant to this Trust Agreement, serve in more than one fiduciary capacity with respect to the Trust Agreement and the Trust.

6.2 Fiduciary Discharge of Duties

Except as otherwise provided by applicable law, each fiduciary shall discharge such fiduciary's duties with respect to the Trust Agreement and the Trust:

(a) solely in the interest of the Eligible Employees and for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same; and

(b) with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent man acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

6.3 Limitations on Fiduciary Responsibility

To the extent allowed by the laws of the state of each Employer:

No fiduciary shall be liable with respect to a breach of fiduciary duty by any other fiduciary if such breach was committed before such party became a fiduciary or after such party ceased to be a fiduciary.

No fiduciary shall be liable for a breach by another fiduciary except as provided by law.

No fiduciary shall be liable for carrying out a proper direction from another fiduciary, including refraining from taking an action in the absence of a proper direction from the other fiduciary possessing the authority and responsibility to make such a direction, which direction the fiduciary in good faith believes to be authorized and appropriate.

6.4 Indemnification of Trustee by Employer

The Trustee shall not be liable for, and Employer shall (to the extent allowed by the laws of the state of each Employer) indemnify, defend (as set out in Section 6.8 of this Trust Agreement), and hold the Trustee (including its officers, agents, employees and attorneys) and other Employers harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Employer's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

6.5 Indemnification of Employer by Trustee

The Employer shall not be liable for, and Trustee shall (to the extent allowed by the laws of the state of each Employer) indemnify, defend (as set out in Section 6.8 of this Trust Agreement), and hold the Employer (including its officers, agents, employees and attorneys) and other Employers harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trustee's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

6.6 Indemnification of Trustee by Trust Administrator

The Trustee shall not be liable for, and Trust Administrator shall (to the extent allowed by the laws of the state of each Employer) indemnify and hold the Trustee (including its officers, agents, employees and attorneys) harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trust Administrator's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

6.7 Indemnification of Trust Administrator by Trustee

The Trust Administrator shall not be liable for, and Trustee shall (to the extent allowed by the laws of the state of each Employer) indemnify and hold the Trust

Administrator (including its officers, agents, employees and attorneys) harmless from and against any claims, demands, loss, costs, expense or liability imposed on the indemnified party, including reasonable attorneys' fees and costs incurred by the indemnified party, arising as a result of Trustee's active or passive negligent act or omission or willful misconduct in the execution or performance of its duties under this Trust Agreement.

6.8 Indemnification Procedures

Promptly after receipt by an indemnified party of notice or receipt of a claim or the commencement of any action for which indemnification may be sought, the indemnified party will notify the indemnifying party in writing of the receipt or commencement thereof. When the indemnifying party has agreed to provide a defense as set out above that party shall assume the defense of such action (including the employment of counsel, who shall be counsel reasonably satisfactory to such indemnitee) and the payment of expenses, insofar as such action shall relate to any alleged liability in respect of which indemnity may be sought against the indemnifying party. Any indemnified party shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall not be at the expense of the indemnifying party unless (i) the employment of such counsel has been specifically authorized by the indemnifying party or (ii) the named parties to any such action (including any impleaded parties) include both the indemnifying party and the indemnified party and representation of both parties by the same counsel would be inappropriate due to actual or potential differing interest between them. The indemnifying party shall not be liable to indemnify any person for any settlement of any such action effected without the indemnifying party's consent. The indemnification procedures of this Trust Agreement shall survive the termination of the Trust, any Employer's participation in the Trust and/or this Trust Agreement.

6.9 No Joint and Several Liability

This document is not intended to and does not create any joint powers agreement or any joint and several liability. No Employer shall be responsible for any contributions, costs or distributions of any other Employer.

ARTICLE VII

AMENDMENT, TERMINATION AND MERGER

7.1 No Contractual Obligation

An Employer's participation in the Trust does not create, and is not intended to create, any contractual obligation to Eligible Employees. Therefore, no Employer is contractually obligated to Eligible Employees solely due to its participation in

the Trust to continue providing benefits under its Pension Plan or OPEB Plan or to make contributions to the Trust.

7.2 Amendment of Trust

(a) The Trust Agreement may be amended only by the approval of two-thirds (2/3) or more of the Employers then participating in the Trust. Any such amendment by the Employers shall be set forth in an instrument in writing and shall be delivered to the Trustee, the Trust Administrator and all Plan Administrators not less than one hundred and eighty (180) days before the effective date of such amendment; provided, however, that any party may waive in writing such 180-day requirement with respect to any amendment (and such waiver shall not constitute a waiver with respect to any other amendment); and provided, further, that a waiver in writing of such 180-day requirement by two-thirds (2/3) or more of the Plan Administrators of the Employers participating in the Trust as of the date the amendment is adopted shall constitute a waiver of such 180-day requirement by all of the Employers then participating in the Trust. In addition, the Trust Administrator or the Trustee shall have the right to amend this Trust Agreement from time to time (without the requirement of a vote of Employers) solely for the purpose of keeping the Trust Agreement in compliance with the Code and applicable state law. Any such amendment by the Trust Administrator or the Trustee shall be set forth in an instrument in writing and shall be delivered to the Trustee, the Trust Administrator and all Plan Administrators promptly as each is made.

(b) Any amendment of the Trust Agreement may be current, retroactive or prospective, provided, however, that no amendment shall:

- (1) Cause the Assets of any Agency Account to be used for or diverted to purposes other than for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same.
- (2) Permit the Assets of any Agency Account to be used for the benefit of any other Employer.

7.3 Termination of Employer's Obligation to Provide Pension Benefits or OPEB

A termination of the Employer's obligation to provide benefits under the Employer's Pension Plan or OPEB Plan for which the Employer's Agency Account was established shall not, in itself, effect a termination of the Agency Account. Upon a termination of the Employer's obligation to provide benefits under its Pension Plan or OPEB Plan, the Assets of the Employer's Pension Account or OPEB Account, as applicable, will be distributed by the Trustee when directed by the Plan Administrator in accordance with this Section 7.3. From and after the date of such termination and until final distribution of all Assets under the Employer's Agency Account, the Trustee shall continue to have all the powers

provided herein as are necessary or expedient for the orderly liquidation and distribution of such Assets, and the Agency Account shall continue until the Assets have been completely distributed. Any Assets remaining in the Pension Account or OPEB Account will be used first to satisfy any remaining Pension Obligation or OPEB Obligation, respectively, pursuant to the Employer's Pension Plan or OPEB Plan (to the extent that such distribution constitutes the exercise of an "essential governmental function" within the meaning of Section 115 of the Code) and to satisfy any of such Employer's obligations under this Trust Agreement. Any Assets remaining in the Employer's Pension Account or OPEB Account (as applicable) after giving effect to the preceding sentence will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

7.4 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided or in accordance with Section 7.3, the Assets of the Trust shall never inure to the benefit of the Employer. The Assets shall be held for the exclusive purpose of funding the Employer's OPEB Obligation or Pension Obligation or both and defraying the reasonable expenses associated with the same. However, in the case of a contribution which is made by an Employer because of a mistake of fact, that portion of the contribution relating to the mistake of fact (exclusive of any earnings or losses attributable thereto) may be returned to the Employer, provided such return occurs within two (2) years after discovery by the Employer of the mistake. If any repayment is payable to the Employer, then, as a condition to such repayment, and only if requested by Trustee, the Employer shall execute, acknowledge and deliver to the Trustee its written undertaking, in a form satisfactory to the Trustee, to indemnify, defend and hold the Trustee harmless from all claims, actions, demands or liabilities arising in connection with such repayment.

7.5 Termination of Trust

(a) The Trust and this Trust Agreement may be terminated by the unanimous agreement of all Employers, which action must be in writing and delivered to the Trustee and Trust Administrator. Upon termination of the Trust under this Section 7.5(a), the Assets of each Employer's Pension Account or OPEB Account, as applicable, will be distributed by the Trustee when directed by the Plan Administrator in accordance with this Section 7.5(a). From and after the date of such termination and until final distribution of all Assets under each Employer's Agency Account, the Trustee shall continue to have all the powers provided herein as are necessary or expedient for the orderly liquidation and distribution of such Assets, and the Agency Account shall continue until the Assets have been completely distributed. Any Assets remaining in the Pension Account or OPEB Account will be used first to satisfy any remaining Pension Obligation or OPEB Obligation, respectively, pursuant to the Employer's Pension Plan and OPEB Plan (to the extent that such distribution constitutes the exercise of an "essential governmental function" within the meaning of Section 115 of the Code) and to

satisfy any of such Employer's obligations under this Trust Agreement. Any Assets remaining in the Employer's Pension Account or OPEB Account (as applicable) after giving effect to the preceding sentence will be paid to the Employer to the extent permitted by law and consistent with the requirements of Section 115 of the Code.

(b) Contributions to the Trust are conditioned on initial qualification of the Trust under Section 115 of the Code. If the Trust receives an adverse determination with respect to its initial qualification, then the Trust and this Trust Agreement will automatically terminate without any action by any Employer or other parties. After such termination, the Assets of each Employer's Pension Account or OPEB Account, as applicable, will be returned by the Trustee to the Employer as directed by the Plan Administrator in accordance with this Section 7.5(b) to the extent permitted by law and consistent with the requirements of Section 115 of the Code. This Section 7.5(b) will cease to apply upon the Trust's receipt of a favorable determination with respect to its initial qualification.

(c) The Trust and this Trust Agreement may be terminated only as described in this Section 7.5. In no case will the assets of the Trust be distributed on termination to an entity that is not a state, a political subdivision of a state or an entity the income of which is excluded from gross income under Section 115 of the Code.

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Nonalienation

Eligible Employees do not have an interest in the Trust. Accordingly, the Trust shall not in any way be liable to attachment, garnishment, assignment or other process, or be seized, taken, appropriated or applied by any legal or equitable process, to pay any debt or liability of an Eligible Employee or any other party. Trust Assets shall not be subject to the claims of any Employer or the claims of its creditors.

8.2 Saving Clause

In the event any provision of this Trust Agreement is held illegal or invalid for any reason, said illegality or invalidity shall not affect the remaining parts of the Trust Agreement, but this instrument shall be construed and enforced as if said provision had never been included.

8.3 Applicable Law

This Trust Agreement and the Trust shall be construed, administered and governed under the Code and the law of the State of California. To the extent any

of the provisions of this Trust Agreement are inconsistent with the Code or applicable state law, the provisions of the Code or state law shall control. In the event, however, that any provision is susceptible to more than one interpretation, such interpretation shall be given thereto as is consistent with the Trust Agreement being a tax-exempt trust within the meaning of the Code.

8.4 Joinder of Parties

In any action or other judicial proceedings affecting this Trust Agreement, it shall be necessary to join as parties only the Trustee, the Plan Administrator or Delegatee. No participant or other persons having an interest in the Trust or any Agency Account shall be entitled to any notice or service of process unless otherwise required by law. Any judgment entered in such a proceeding or action shall be binding on all persons claiming under this Trust Agreement; provided, however, that nothing in this Trust Agreement shall be construed as to deprive a participant of such participant's right to seek adjudication of such participant's rights under applicable law.

8.5 Employment of Counsel

The Trustee may consult with legal counsel (who may be counsel for the Trustee, the Trust Administrator or any Employer) with respect to the interpretation of this Agreement or the Trustee's duties hereunder or with respect to any legal proceedings or any questions of law and shall be entitled to take action or not to take action in good faith reliance on the advice of such counsel and charge the Trust and, as applicable, one or more Agency Accounts.

8.6 Gender and Number

Words used in the masculine, feminine or neuter gender shall each be deemed to refer to the other whenever the context so requires; and words used in the singular or plural number shall each be deemed to refer to the other whenever the context so requires.

8.7 Headings

Headings used in this Trust Agreement are inserted for convenience of reference only and any conflict between such headings and the text shall be resolved in favor of the text.

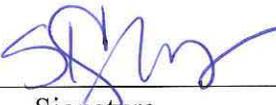
8.8 Counterparts

This Trust Agreement may be executed in an original and any number of counterparts by the Plan Administrator (executing an Adoption Agreement), the Trust Administrator and the Trustee, each of which shall be deemed to be an original of the one and the same instrument.

IN WITNESS WHEREOF, the Plan Administrator (by executing the Adoption Agreement), the Trustee and the Trust Administrator have executed this Trust Agreement by their duly authorized agents on the Effective Date.

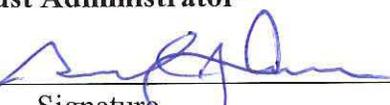
U.S. BANK NATIONAL ASSOCIATION

“Trustee”

By: 
Signature
Susan M. Hughes
Typed or printed name
Its: Vice President & Relationship Manager

**PUBLIC AGENCY
RETIREMENT SERVICES**

“Trust Administrator”

By: 
Signature
Daniel Johnson
Typed or printed name
Its: President

**ADOPTION AGREEMENT
for the
POST-EMPLOYMENT SECTION 115 TRUST**

A.1.1. Trust agreement with U.S. Bank National Association (the “Bank”) (the “Trust Agreement”):

Post-Employment Section 115 Trust. Public Agencies Post-Employment Benefits—Trust Agreement, effective November 5, 2014

A.1.2. OPEB Plan: Public Agencies Post-Employment Health Care Plan

The plan document for the OPEB Plan is the Public Agencies Post-Employment Health Care Plan—Master Plan Document, effective as of November 5, 2014 (the “Plan Document”).

A.1.3. Pension Plan: _____

A.1.4. Pension Plan’s effective date: _____

(Check if applicable) Additional Pension Plans (and their respective effective dates) are listed on an exhibit attached hereto.

A.2.1. Employer:

Name: _____

U.S. mail address: _____

Phone number: _____

EIN: _____

Fiscal year end: _____

A.2.2. Plan Administrator:

Position at Employer: _____

Incumbent: _____

U.S. mail address: _____

Phone number: _____

Email address: _____

A.3.1 **Adoption.** The Employer hereby:

A.3.1.1. Adopts the Trust Agreement as part of the (*Check one or both of the following boxes.*):

- OPEB Plan
- Pension Plan

(each such plan separately, the “Plan”) and agrees to be bound by the Trust Agreement’s terms, effective as of the Employer’s signature date below and subject to the investment approach selected below.

A.3.1.2. *The following provisions apply if and only if the **OPEB Plan** box above is checked:* (i) Adopts the Plan Document and agrees to be bound by the Plan Document’s terms, effective as of the Employer’s signature date below and (ii) acknowledges that the determination of Eligible Employees and Eligible Beneficiaries is finally and conclusively made by the Employer according to the Employer’s applicable policies and collective bargaining agreements and without reference to the Trust Agreement.

A.3.1.3. Ratifies, affirms, and approves Employer’s appointment of Phase II Systems as Trust Administrator and represents and warrants that attached hereto is a fully-executed original of Employer’s Agreement for Administrative Services with Phase II Systems, d/b/a Public Agency Retirement Services (PARS).

A.3.1.4. Agrees that capitalized terms used herein but not defined herein shall have the same meaning attributed to them as in the Trust Agreement or Plan Document, as the case may be.

A.4.1. The Employer hereby represents and warrants that:

A.4.1.1. **Authorizing Law.** Employer has reviewed with its legal counsel and has determined that Employer is authorized to establish and maintain the Plan and to establish a financial-institution trust (separate and apart from the state) for the Plan, including the authority to adopt the Trust Agreement.

A.4.1.2. **Authorizing Resolution.** Attached hereto is a certified copy of a resolution of the Employer’s governing body authorizing the adoption of the Trust Agreement as part of the Plan and authorizing the appointment of the Plan Administrator designated by position of employment at the Employer to act on the Employer’s behalf in all matters relating to the trust.

A.4.1.3. **Tax Status.** The Plan is a “governmental plan” as defined in Section 414(d) of the Internal Revenue Code of 1986, as amended; is a “Section 401(a)(24) governmental plan” as defined in Revenue Ruling 2011-1; and is not subject to Federal income taxation. The Plan’s governing document expressly provides that it is irrevocably impossible for any part of the corpus or income of the Plan to be used for, or diverted to, purposes other than for the exclusive benefit of the Plan participants and their beneficiaries. The Pension Plan is a qualified plan under Code Section 401(a). (In addition, the Employer hereby acknowledges that the Plan is prohibited from assigning any part of its equity or interest in the trust.)

A.4.2. **Investment Approach.**

A.4.2.1. *The following provisions apply if and only if the **OPEB Plan** box above is checked:*
OPEB Account. OPEB Account assets are invested in the discretion of (*check one and only one of the following boxes*):

Discretionary investment approach:

- The Bank, subject to **Exhibit A (Investment Strategy Selection and Disclosure Form)** hereto.

Directed investment approach:

- The Plan Administrator.
- The following registered investment adviser, bank (other than the Bank), or insurance company (a "Third-Party Manager):

_____. The Employer hereby represents and warrants that attached hereto is an executed copy of the agreement with the above appointed Third Party Manager.

A.4.2.2. *The following provisions apply if and only if the **Pension Plan** box above is checked:*
Pension Account. Pension Account assets are invested in the discretion of (*check one and only one of the following boxes*):

Discretionary investment approach:

- The Bank, subject to **Exhibit A (Investment Strategy Selection and Disclosure Form)** hereto.

Directed investment approach:

- The Plan Administrator.
- The following registered investment adviser, bank (other than the Bank), or insurance company (a "Third-Party Manager):

_____. The Employer hereby represents and warrants that attached hereto is an executed copy of the agreement with the above appointed Third Party Manager.

A.4.3. It is intended that any references to GASB pronouncements and/or statements in the Public Agencies Post-Employment Health Care Plan and Trust Agreement shall incorporate any applicable successor pronouncements and/or statements.

[signature page follows]

EMPLOYER

By: _____

Its: _____

Date: _____

Accepted by:

**PHASE II SYSTEMS, DBA PUBLIC AGENCY
RETIREMENT SERVICES (PARS)**

By: _____
Daniel Johnson

Its: President _____

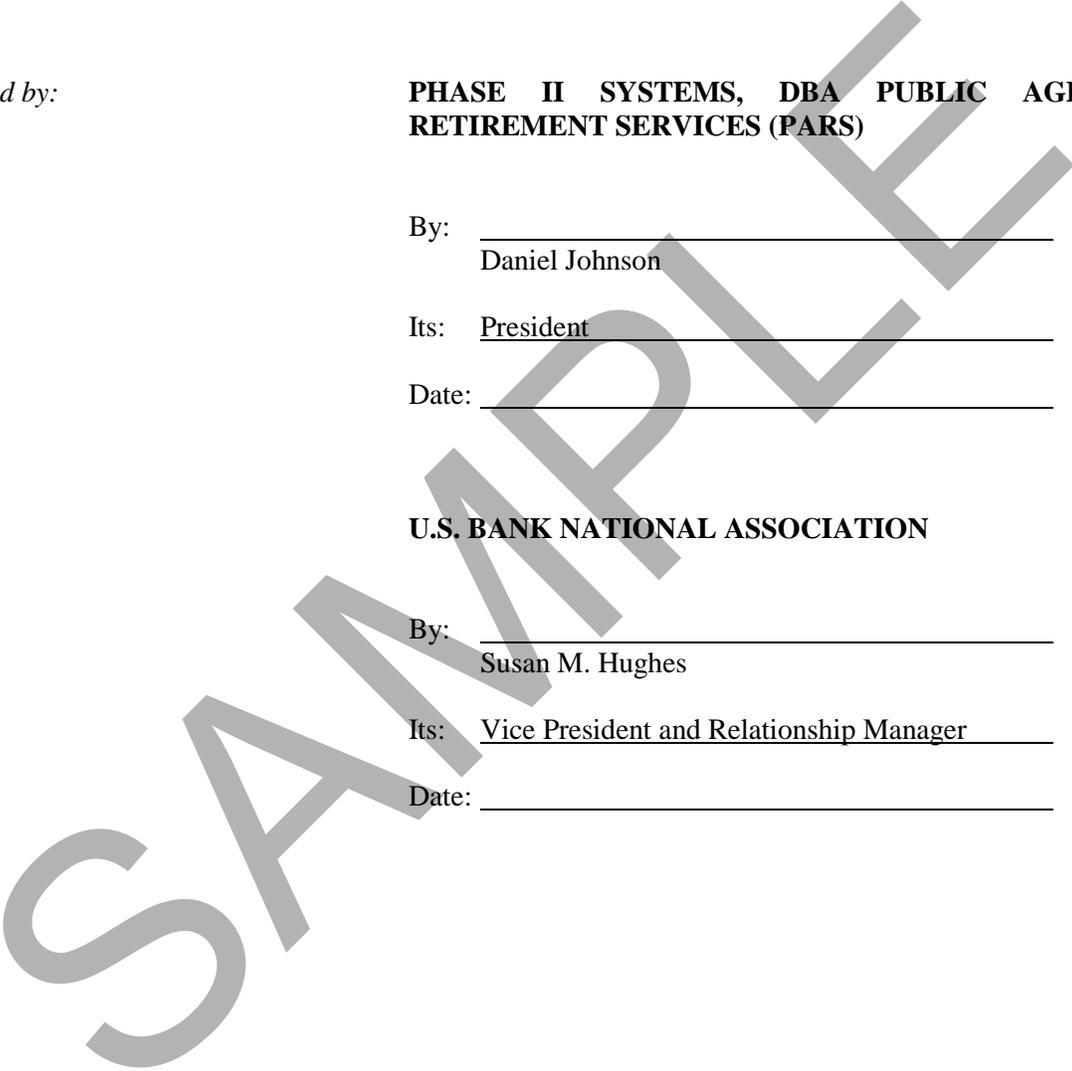
Date: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
Susan M. Hughes

Its: Vice President and Relationship Manager _____

Date: _____



Investment Strategy Selection and Disclosure Form

PARS Pension / OPEB Trust Program

■ This document is entered into by client and U.S. Bank National Association ("U.S. Bank"), as trustee.

■ Employer: _____

■ Plan/Trust Name: Public Agencies Post-Employment Benefits Trust

■ To: HighMark Capital Management, Inc. and U.S. Bank:

U.S. Bank has been or is hereby appointed Investment Manager of the above-referenced Plan/Trust. Please invest the assets of the above-referenced Plan/Trust for which you have been appointed Investment Manager in the **(select one of the strategies listed below for each Plan funded by the Trust)**:

<input type="checkbox"/>	OPEB Account	<input type="checkbox"/>	Pension Account	Primary Goal	Strategic Range
<input type="checkbox"/>	Liquidity Management (US Treasury)	<input type="checkbox"/>	Liquidity Management (US Treasury)	Provide current income with liquidity and stability of principal through investments in short-term U.S. Treasury obligations.	Money Market Fund
<input type="checkbox"/>	Liquidity Management (Prime Obligation)	<input type="checkbox"/>	Liquidity Management (Prime Obligation)	Generate current income with liquidity.	Money Market Fund
<input type="checkbox"/>	Conservative HighMark PLUS	<input type="checkbox"/>	Conservative HighMark PLUS	Provide a consistent level of inflation-protected income over the long-term.	Equity: 5-20%
<input type="checkbox"/>	Conservative Index PLUS	<input type="checkbox"/>	Conservative Index PLUS		Fixed Income: 60-95%
<input type="checkbox"/>	Moderately Conservative HighMark PLUS	<input type="checkbox"/>	Moderately Conservative HighMark PLUS	Provide current income with capital appreciation as a secondary objective.	Equity: 20-40%
<input type="checkbox"/>	Moderately Conservative Index PLUS	<input type="checkbox"/>	Moderately Conservative Index PLUS		Fixed Income: 50-80%
<input type="checkbox"/>	Moderate HighMark PLUS	<input type="checkbox"/>	Moderate HighMark PLUS	Provide current income and moderate capital appreciation.	Equity: 40-60%
<input type="checkbox"/>	Moderate Index PLUS	<input type="checkbox"/>	Moderate Index PLUS		Fixed Income: 40-60%
<input type="checkbox"/>	Balanced HighMark PLUS	<input type="checkbox"/>	Balanced HighMark PLUS	Provide growth of principal and income.	Equity: 50-70%
<input type="checkbox"/>	Balanced Index PLUS	<input type="checkbox"/>	Balanced Index PLUS		Fixed Income: 30-50%
<input type="checkbox"/>	Capital Appreciation HighMark PLUS	<input type="checkbox"/>	Capital Appreciation HighMark PLUS	Primary goal is growth of principal.	Equity: 65-85%
<input type="checkbox"/>	Capital Appreciation Index PLUS	<input type="checkbox"/>	Capital Appreciation Index PLUS		Fixed Income: 10-30%
<input type="checkbox"/>	Custom	<input type="checkbox"/>	Custom	Refer to Investment Guidelines Document.	

DIVERSIFIED PORTFOLIOS

Note: HighMark PLUS portfolios are diversified portfolios of actively managed mutual funds. Index PLUS portfolios are diversified portfolios of Index-based mutual funds or exchange-traded funds.

Acknowledged and Approved	
Signature of Authorized Signer _____	Title of Authorized Signer _____
Print Name of Authorized Signer _____	Date _____

Discretionary Trustee Fee Schedule

PARS Pension / OPEB Trust Program

City of Morro Bay

This document is entered into by client and U.S. Bank National Association (“U.S. Bank”), as trustee.

Discretionary Trustee Fees

Discretionary Trustee Fees are based on the Investment Strategy you select. Following is a list of the Discretionary Trustee Fees applicable to each Investment Strategy:

- **Liquidity – First American U.S. Treasury Money Market** – Fund level fees only (see prospectus)
- **Liquidity – First American Prime Obligation Fund Class Z** – Fund level fees only (see prospectus)
- **Diversified Portfolios (Conservative, Moderately Conservative, Moderate, Balanced, Capital Appreciation, Custom)**

Per Annum Charges*		
.35%	on the first	\$5,000,000
.25%	on the next	\$5,000,000
.15%	on the next	\$5,000,000
.10%	on the next	\$35,000,000
.05%	on all over	\$50,000,000

*Waived for plan assets invested in First American Funds.

Other Fees

First American Funds (see prospectus)

Payment of Fees

- Market values used for fee calculations on fee invoices may differ slightly from market values on client statements due to posting of accruals, late pricing of securities and/or other timing issues.
- The market values used for fee calculations are based on an aggregate total of all the accounts for the City of Morro Bay Public Agencies Post-Employment Benefits Trust.
- The fees are guaranteed for three (3) years.
- Fees are calculated and charged to the account monthly. If account cannot be charged after 30 days, fees not paid will be subject to a late charge of 1% per month on the unpaid balance.
- Changes to this Fee Schedule may be made at any time by U.S. Bank after three (3) years and upon a sixty (60) day notice.

Acknowledged and Approved

Name of Plan/Trust		Name of Employer	
Print Name of Authorized Signer for Employer		Title of Authorized Signer for Employer	
Signature of Authorized Signer for Employer		Date	

U.S. Bank and its representatives do not provide tax or legal advice. Each client's tax and financial situation is unique. Clients should consult their tax and/or legal advisor for advice and information concerning their particular situation.



Notices • Disclosures • Acknowledgment

Discretionary

U.S. Bank

Important Information

- To help the United States fight the funding of terrorism and money laundering activities, U.S. law requires U.S. Bancorp, like other financial institutions, to obtain, verify and record information that identifies each customer that opens an account.
 What this means for you: When you open an account with us, we will ask for your legal name, address, tax identification number, and other identifying information that will assist us. We may ask for copies of certified articles of incorporation, an unexpired government-issued business license, a partnership agreement, or other documents that indicate the existence and standing of the entity.
- Trustee may from time to time hold uninvested cash awaiting disbursement without paying interest thereon, and as a result may receive indirect compensation on such funds.

First American Funds and Other Mutual Funds Related Disclosures

- For a prospectus containing more complete information on First American Funds, including investment policies, risks, fees, and expenses, please contact your investment professional, call First American Funds Investor Services at (800) 677-FUND (3863), or visit firstamericanfunds.com. Please read the prospectus carefully before you invest or send money.
- U.S. Bank and other U.S. Bancorp affiliates receive compensation for services rendered to the First American Funds and may receive compensation from other Mutual Funds as disclosed in the funds' prospectuses. U.S. Bancorp Asset Management, Inc., a registered investment advisor and subsidiary of U.S. Bank, services as the investment advisor to the First American Funds

First American Funds and Other Mutual Funds Acknowledgment

- Employer: _____
- Plan/Trust Name: _____
- The undersigned (the "Customer") hereby acknowledges that:
 - The Customer is independent of U.S. Bank National Association ("USBNA"), U.S. Bancorp Asset Management, Inc. ("USBAM"), U.S. Bancorp Fund Services, LLC ("USBFS"), and all other affiliates of U.S. Bancorp (collectively, "U.S. Bank") and has authority to approve the fee schedule provided for the account named above (the "Account").
 - The Customer has read and understands the adoption agreement and trust agreement with USBNA with respect to the Account, including the Discretionary Trustee Fee Schedule (the "Account-level Fees"). Within the adoption agreement, the Customer elected a discretionary investment approach for Account assets. The customer approves the Account-level Fees.
 - USBAM is the investment advisor to the open-end investment companies registered under the Investment Company Act of 1940 (the "40 Act") in the First American Funds, Inc. family ("First American Funds"). U.S. Bank may enter into agreements with the First American Funds, other Mutual Funds, Mutual Fund Providers (including investment advisers, administrators, transfer agents, or distributors) whereby U.S. Bank provides services to Mutual Funds, including, as applicable, services provided by USBAM (investment advisory, shareholder services), by USBNA (custody, shareholder services, and securities-lending), by USBFS (accounting, administrator, transfer agency) and receives fees for these services. The fees received from Mutual Funds, are based on investment in a Mutual Fund, may vary by Mutual Fund and by class of shares issued by the Mutual Fund, are charged against the Mutual Fund's assets, and reduce the Mutual Fund's average daily balance and investment yields (collectively, the "Mutual Fund-level Fees").
 - The Customer has received, read, and understands the prospectus for the First American Funds. The customer approves the Mutual Fund-level Fees.
 - The Customer has received, read and understands U.S. Bank's Mutual Fund Compensation Disclosure regarding fees, expenses and compensation received from the First American Funds and, as applicable, other Mutual Fund(s) held in the Account.
 - From time to time, a Mutual Fund's service provider may voluntarily waive a portion of the fee it is entitled to receive for serving the Mutual Fund. If a waiver is in effect, then the Customer's approval of Mutual Fund-level Fees includes approval up to the Mutual Fund's total annual operating expenses before waivers; if the service provider terminates the waiver as provided in the Mutual Fund's prospectus, then the approval persists.
 - USBNA will not vote proxies with respect to First American Fund shares held in the Account but will instead forward such proxies to the Plan Administrator (as defined in the aforementioned trust agreement).
 - Shares of registered investment companies are not deposits or obligations of, or guaranteed by, any bank, including any bank affiliated with U.S. Bancorp. Nor does the Federal Deposit Insurance Corporation, the Federal Reserve Board, or any other governmental agency insure such products. An investment in such products involves investment risks, including the possible loss of principal, due to fluctuations in each product's net asset value.

Customer Acknowledgment

Print Name of Authorized Signer for Employer _____

Print Title of Authorized Signer for Employer _____

Signature of Authorized Signer for Employer _____

Date _____



Authorized Signature Form

U.S. Bank

Employer: _____

Plan/Trust Name: _____

Authorized Signers

In accordance with the provisions of the above referenced account, the following people are authorized on behalf of the Employer to direct U.S. Bank, N.A. to take action with regard to this account and hereby authorize and direct U.S. Bank, N.A. to act on directives signed by:

1. **Print Full Legal Name:** _____
First Name Middle Name Last Name

Print Title: _____

Signature: _____

2. **Print Full Legal Name:** _____
First Name Middle Name Last Name

Print Title: _____

Signature: _____

3. **Print Full Legal Name:** _____
First Name Middle Name Last Name

Print Title: _____

Signature: _____

4. **Print Full Legal Name:** _____
First Name Middle Name Last Name

Print Title: _____

Signature: _____

Authorized by:

I hereby acknowledge and represent that I am authorized on behalf of the Employer to provide this authorized signature form to U.S. Bank, N.A. This form shall remain in effect until it is changed or revoked in writing by the Employer. Any change or revocation of this form shall be effective upon U.S. Bank's receipt of such written notice.

Print Name of Authorized Signer for Employer _____

Title _____

Signature of Authorized Signer for Employer _____

Date Signed _____

PUBLIC
AGENCY
RETIREMENT
SERVICES

PARS

TRUSTED SOLUTIONS. LASTING RESULTS.



CITY OF MORRO BAY

PARS 115 Trust – Pension Rate Stabilization Program (PRSP) & OPEB Prefunding Program
September 27, 2022- Council Presentation

CONTACTS



Rachael Sanders, CEBS
Senior Manager, Consulting
(800) 540-6369 x121
rsanders@pars.org

Tory Milazzo, CFA
Senior Portfolio Manager
(805) 564-6219
savatore.milazzo@highmarkcapital.com

PARS 115 TRUST TEAM

Trust Administrator & Consultant



- Serves as record-keeper, consultant, and central point of contact
- Sub-trust accounting
- Coordinates all agency services
- Monitors plan compliance (IRS/GASB/State Government Code)
- Processes contributions/disbursements
- Hands-on, dedicated support teams

38 Years of Experience (1984-2022)	2,000+ Plans under Administration	1,000+ Public Agency Clients	490+ 115 Trust Clients	500K+ Plan Participants	\$6.2B Assets under Administration
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Trustee



- 5th largest commercial bank and one of the nation's largest trustees for Section 115 trusts
- Safeguard plan assets
- Oversight protection as plan fiduciary
- Custodian of assets

159 Years of Experience (1863-2022)	\$9.0T Assets under Administration
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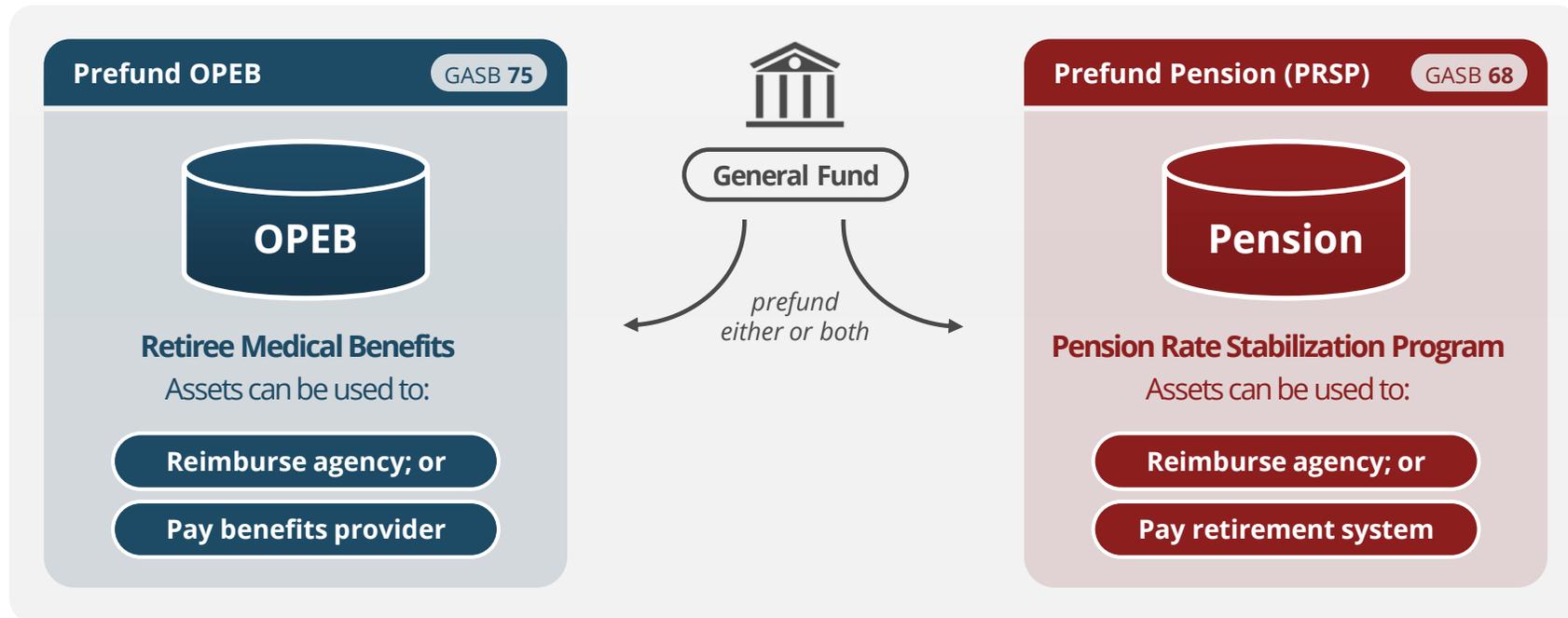
Investment Manager



- Investment sub-advisor to trustee U.S. Bank
- Investment policy assistance
- Uses open architecture
- Active and passive platform options
- Customized portfolios (with minimum asset level)

103 Years of Experience (1919-2022)	\$19.0B Assets under Management & Advisement
--	--

PARS IRS-APPROVED SECTION 115 TRUST



Subaccounts
 OPEB and Pension assets are individually sub-accounted, and can be divided by dept., bargaining group, or cost center

Financial Stability
 Assets in the PARS Section 115 Combination Trust can be used to address unfunded liabilities.

Flexible Investing
 Allows separate investment strategies for OPEB and Pension subaccounts.

Anytime Access
 Trust funds are available anytime; OPEB for OPEB and Pension for Pension.

Economies-of-Scale
 OPEB and Pension assets aggregate and reach lower fees on tiered schedule sooner – saving money!

No Set Up Cost or Minimums
 No set-up costs, no minimum annual contribution amounts, and no fees until assets are added.

BACKGROUND – PENSION

- Since 2015, GASB 68 has required disclosing Net Pension Liability on financial statements as a line item on the balance sheet
- Before the concept of pension prefunding, the only way to reduce retirement system unfunded liabilities was to send additional contributions in excess of annual required employer contributions
- Pension trust prefunding assets can be transferred to the retirement system at the Agency's direction, which can help offset future rate increases (i.e., pension rate stabilization).

CalPERS Changes

CalPERS has announced changes directly affecting unfunded liability amounts and employer contributions:

Lowering of Discount Rate ¹

7.0%
▼
6.8%

CalPERS lowered the discount rate from 7.0% to 6.8%. The impact is reflected in the June 30, 2021 valuation reports.

¹ Contributions from policy changes beginning FY 23-24.

Shortened Amortization Period ²

30 years
▼
20 years

New actuarial liabilities are amortized over 20 years instead of 30, increasing required annual employer contribution amounts*

² 5-year ramp up in payments beginning FY 15-16 with full impact in FY 19/20.



PENSION FUNDING STATUS

As of June 30, 2021, City of Morro Bay’s CalPERS pension plan is funded as follows:

Combined Miscellaneous & Safety Groups *	Valuation as of June 30, 2020	Valuation as of June 30, 2021	Change
Actuarial Liability	\$94.9 M	\$99.5 M	4.8% ↑
Assets	\$65.7 M	\$77.7 M	18.3% ↑
Unfunded Liability	\$29.2 M	\$21.7 M	25.6% ↓
Funded Ratio	69.2%	78.2%	12.9% ↑
Employer Contribution Amount	\$3.2 M (FY 21-22)	\$3.5 M (FY 22-23)	7.9% ↑
Employer Contribution Amount – Projected *	---	\$3.5 M (FY 28-29)	0.3% ↑

* Data through 2028-29 from Agency’s latest CalPERS actuarial valuation.

WHY PREFUND PENSION OBLIGATIONS?

1. Complete Local Control over Assets

Agency has complete control over assets, including contributions, disbursements and the timing, amount, and risk tolerance level of investments

2. Pension Rate Stabilization

Assets can be transferred to the retirement system at the Agency's direction, potentially reducing/eliminating large fluctuations in employer contribution amounts

3. Rainy Day Fund

Emergency source of funds when employer revenues are strained in difficult budgetary or economic times

4. Diversification

Allows for investment flexibility and offers the potential for assets to earn greater returns than the general fund; spread the risk vs. sending additional money to CalPERS

HIGHMARK CAPITAL MANAGEMENT

As of June 30, 2022

ACTIVE PORTFOLIO RETURNS

Strategy	Equity (%)	1 Year	3 Years	5 Years	10 Years
Capital Appreciation	65-85%	-14.04%	5.30%	6.42%	8.03%
Balanced	50-70%	-13.63%	4.28%	5.51%	6.90%
Moderate	40-60%	-12.97%	3.51%	4.77%	6.01%
Moderately Conservative	20-40%	-11.85%	1.82%	3.24%	4.32%
Conservative	5-20%	-10.88%	0.60%	2.15%	3.05%

* Past performance does not guarantee future results.

PROGRAM FEES

As of June 30, 2022

Trust Administration/Consulting Fees*



Plan Set-Up Fee:

None

Ongoing Fees:

0.25%	for assets \$0-10 million
0.20%	for assets \$10-15 million
0.15%	for assets \$15-50 million
0.10%	for assets over \$50 million

Discretionary Trustee/Investment Management Fees**



Plan Set-Up Fee:

None

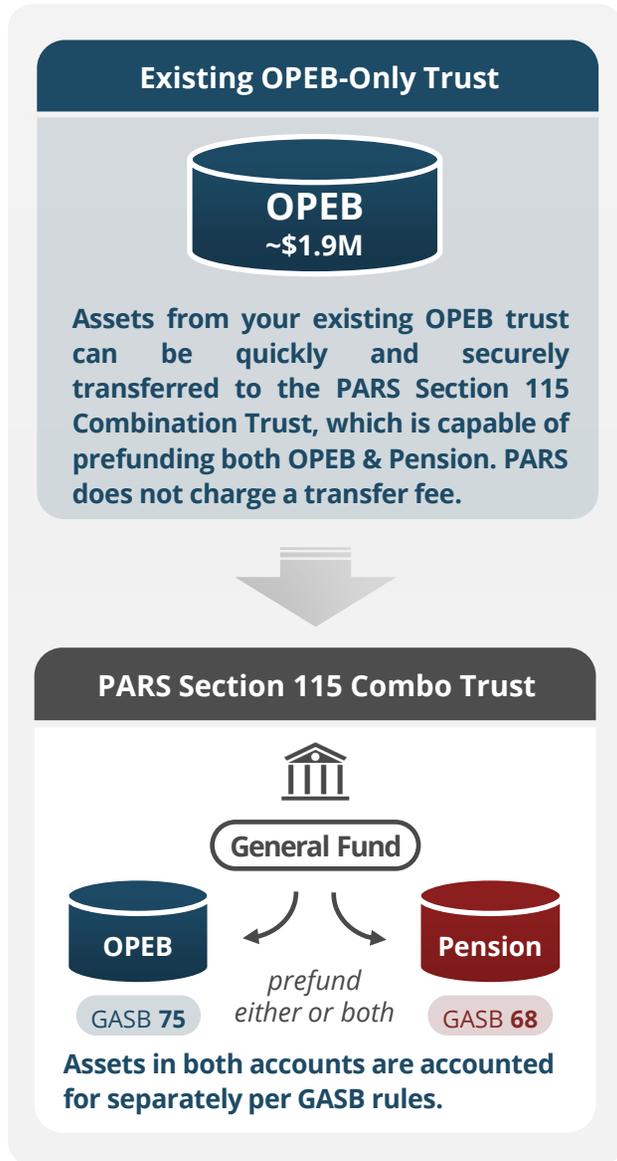
Ongoing Fees:

0.35%	for assets under \$5 million
0.25%	for assets \$5-10 million
0.20%	for assets \$10-15 million
0.15%	for assets \$15-50 million
0.10%	for assets over \$50 million

* PARS does not receive any compensation from the investments or any commissions, back-end loads, or any other forms of compensation.

** Subject to change due to rebalancing, as fees are waived for plan assets in First American Funds (money market)

BENEFITS OF PARS SECTION 115 COMBO TRUST



Economies-of-Scale

OPEB and Pension assets aggregate and reach lower fees on tiered schedule sooner – saving money!



Increased Efficiencies

The City will:

- Receive **one** statement for both accounts
- Have **one** team servicing and monitoring both accounts



Flexible & Diversified Investing

Allows separate investment strategies for OPEB and Pension subaccounts.



Experienced, Knowledgeable Provider

PARS is **the** retirement healthcare (OPEB) trust pioneer & has spent over 20 years working to fine-tune our trust approach to ensure we offer the best possible program available.



Peace of Mind

PARS obtained a Private Letter Ruling for the Combo Trust in 2015, covering **both** OPEB and pension assets.

STEPS TO IMPLEMENTATION

- 1 City Council adopts resolution authorizing City to join PARS Combo Trust and appoints Plan Administrator (PA)
- 2 City sends signed copy of resolution to PARS
- 3 PARS sends set of signature-ready documents to City
- 4 City signs documents and returns to PARS
- 5 PARS works with Trustee/U.S. Bank to establish account
- 6 PARS notifies City account is ready and includes Contribution Instructions
- 7 City will send Directive to transfer OPEB assets to OPEB account within Combo Trust
- 8 City makes Contribution using Transmittal Form
- 9 PARS and Highmark conduct annual reviews (unless more frequently desired)



AGENDA NO: C-2

MEETING DATE: September 27, 2022

Staff Report

TO: Honorable Mayor and City Council

DATE: September 14, 2022

FROM: Dana Swanson, City Clerk / Human Resources Manager

SUBJECT: Adoption of Resolution No. 86-22 Declaring the City’s Intention to Approve California Public Employees’ Retirement System (CalPERS) Contract Amendment and Introduction and First Reading of Ordinance No. 653 Authorizing an Amendment to the CalPERS Contract to Implement 2% Cost Sharing for Local Fire Members in the Morro Bay Firefighters Association, IAFF Local 3725

RECOMMENDATION

Staff recommends the City Council take the following separate actions:

- 1) Adopt Resolution No. 86-22 giving notice of the City’s intention to approve an amendment to the contract between the City and the CalPERS Board of Administration; and
- 2) Introduce for first reading by title only, with further reading waived, Ordinance No. 653 Authorizing an Amendment to the Contract between the City of Morro Bay and the Board of Administration of the California Public Employees’ Retirement System Implementing Section 20516 (Employees Sharing Additional Cost) for local fire members in the Morro Bay Firefighters’ Association, IAFF Local 3725 (MBFFA).

ALTERNATIVES

No alternatives are being recommended.

FISCAL IMPACT

There is no fiscal impact associated with this report. Salaries and benefits for MBFFA members were approved with the FY 2022/23 Operating Budget. The adoption of this agreement enacts a portion of the Memorandum of Understanding on which approved personnel costs were based.

BACKGROUND

The City’s current contract with CalPERS provides that all employees pay the full employee share toward their retirement benefit. That contribution percentage differs based on whether they are classic unit members (Tier 1 and Tier 2) or PEPRA unit members (Tier 3). During the most recent contract negotiations between the City and the MBFFA, an agreement was reached whereby its members would contribute 2% of salary toward the City’s (employer) share of their retirement benefits. That agreement was approved by the Council at its August 9, 2022, meeting by the adoption of Resolution No. 74-22 approving a Successor Memorandum of Understanding (MOU) with the MBFFA for the period July 1, 2022 – June 30, 2024 (MBFFA 2022-24 MOU). (See Attachment 1).

The cost of living increases (COLAs) and terms agreed to with MBFFA, which are reflected in the

Prepared By: DS

Dept Review:

City Manager Review: SC

City Attorney Review: MH

successor MOU, included an 8% COLA for all Association members in FY 2022-23, retroactive to the pay period including July 1, 2022, with all members contributing 2% to the employer's contribution to CalPERS. This CalPERS "cost sharing" agreement, which did not require a CalPERS contract amendment, was implemented effective the pay period including July 1, 2022, in accordance with Government Code section 20516(f).

Following Council's approval of MBFFA 2022-24 MOU, staff began working with CalPERS to amend the City's contract to implement this change and received approval and the necessary information to move forward with formalizing the current cost sharing arrangement on August 31, 2022.

DISCUSSION

The CalPERS contract amendment is straightforward; the only change is that it will provide for employee cost sharing of 2% for local fire members in the MBFFA. The additional amounts paid by the employee toward the City's contribution will be credited to each member's PERS account as normal contributions and will allow the City to process the full contribution as tax deferred compensation in accordance with IRC414(h)(2).

An amendment to the contract that changes the employees' rate of contribution requires a secret ballot election among the employees affected. Following Council approval of the Resolution of Intention to amend the City's contract with CalPERS, the MBFFA will conduct a secret ballot election in compliance with Government Code section 20474 and a majority of the members must vote in favor of the proposed plan to move forward with the contract amendment. If approved by MBFFA, staff will bring Ordinance No. 653 back for final adoption at the October 25, 2022 meeting. Once adopted, the contract amendment would take effect November 26, 2022.

CONCLUSION

Staff recommends the Council adopt Resolution No. 86-22 and introduce by title only, with further reading waived, Ordinance No. 653 Authorizing an Amendment to the contract between the City and the Board of Administration of the California Public Employees' Retirement System (CalPERS) for local fire members in the Morro Bay Firefighters' Association, IAFF Local 3725 (MBFFA)

ATTACHMENTS

1. [Link](#) to Resolution No. 74-22 approving MBFFA 2022-24 MOU
2. Resolution No. 86-22 including attached "Exhibit"
3. Ordinance No. 653 including attached "Exhibit"

RESOLUTION NO. 86-22

**RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
DECLARING THE CITY'S INTENTION TO APPROVE AN AMENDMENT
TO CONTRACT BETWEEN THE BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE CITY OF MORRO BAY**

**THE CITY COUNCIL
City of Morro Bay, California**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies and their employees in the Public Employees' Retirement System by the execution of a contract, and sets forth the procedure by which said public agencies may elect to subject themselves and their employees to amendments to said Law; and

WHEREAS, one of the steps in the procedures to amend this contract is the adoption by the governing body of the public agency of a resolution giving notice of its intention to approve an amendment to said contract, which resolution shall contain a summary of the change proposed in said contract; and

WHEREAS, the following is a statement of the proposed change:

To provide Section 20516 (Employees Sharing Additional Cost) of 2% for local fire members in the Morro Bay Fire Fighters Association, IAFF Local 3725.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Morro Bay, California does hereby give notice of intention to approve an amendment to the contract between said public agency and the Board of Administration of the Public Employees' Retirement System, a copy of said amendment being attached hereto, as an "Exhibit" and by this reference made a part hereof.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of September 2022 by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

**Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morro Bay**

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1965, and witnessed June 1, 1965, and as amended effective August 15, 1981, November 19, 1983, January 7, 1989, June 24, 1989, June 22, 1991, June 10, 1994, June 9, 1998, October 17, 1998, April 13, 2000, June 22, 2002, September 13, 2002, June 21, 2003, September 27, 2003, July 1, 2006, June 2, 2007, May 31, 2008, March 19, 2011, September 17, 2011, December 10, 2011, June 15, 2019, and October 19, 2019, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 19 are hereby stricken from said contract as executed effective October 19, 2019, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members entering membership in the miscellaneous classification on or prior December 10, 2011, age 60 for classic local miscellaneous members entering membership in the miscellaneous classification after December 10, 2011, age 62 for new local miscellaneous members, age 50 for classic local fire members entering membership in the fire classification on or prior to March 19, 2011, and for those classic local police members entering membership in the police classification on or prior to September 17, 2011, age 55 for classic local fire members entering membership for the first time in the fire classification after March 19, 2011, and for those classic local police members entering membership for the first time in police classification after September 17, 2011, and age 57 for new local safety members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1965, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.

- (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
- 4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
- 5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ELECTED OFFICIALS;**
 - b. **APPOINTIVE COMMISSIONS; AND**
 - c. **PERSONS COMPENSATED ON AN HOURLY BASIS.**
- 6. This contract shall be a continuation of the benefits of the contract of the Morro Bay Fire District, hereinafter referred to as "Former Agency", pursuant to Section 20508 of the Government Code, Former Agency having ceased to exist and succeeded by Public Agency on July 1, 1965. Public Agency, by this contract, assumes the accumulated contributions and assets derived therefrom and liability for prior and current service under Former Agency's contract with respect to the Former Agency's employees. Legislation repealed Section 20508, Statutes of 1949, effective January 1, 1988.
- 7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after September 27, 2003, shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after September 27, 2003, and not entering membership for the first time in the miscellaneous classification after December 10, 2011, shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time in the miscellaneous classification after December 10, 2011, shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member entering membership in the fire classification on or prior to March 19, 2011, and for those classic local police members entering membership in the police classification on or prior to September 17, 2011, shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
12. The percentage of final compensation to be provided for each year of credited current service as a classic local fire member entering membership for the first time in the fire classification after March 19, 2011, and for those classic local police members entering membership for the first time in the police classification after September 17, 2011, shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20965 (Credit for Unused Sick Leave).

- b. Section 20042 (One-Year Final Compensation) for those classic local fire members entering membership on or prior to March 19, 2011, those classic local police members entering membership on or prior to September 17, 2011, and those classic local miscellaneous members entering membership on or prior to December 10, 2011.
- c. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members only.
- d. Section 21574 (Fourth Level of 1959 Survivor Benefits).
- e. Section 20423 ("Local Safety Member" shall include Harbor or Port Police Officers as described in Government Code Section 20423).
- f. Section 21027 (Military Service Credit for Retired Persons) for local police members only.
- g. Section 20475 (Different Level of Benefits): Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local fire members entering membership for the first time with this agency in the fire classification after March 19, 2011.

Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local police members entering membership for the first time with this agency in the police classification after September 17, 2011.

Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 10, 2011.

- h. Section 20516 (Employees Sharing Additional Cost):

From and after June 15, 2019, and until October 10, 2019, 1% for local police members in the Morro Bay Peace Officers' Association.

From and after October 10, 2019, 2% for local police members in the Morro Bay Peace Officers' Association.

From and after the effective date of this amendment to contract, 2% for local fire members in the Morro Bay Firefighters Association, IAFF Local 3725.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 15, 1981. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
17. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

- 18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
- 19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORRO BAY

BY _____
MELODY BENAVIDES, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

ORDINANCE NO. 653

**AN ORDINANCE OF THE CITY COUNCIL
OF THE CITY OF MORRO BAY, CALIFORNIA
AUTHORIZING AN AMENDMENT TO THE CONTRACT BETWEEN THE
CITY OF MORRO BAY AND THE BOARD OF ADMINISTRATION OF THE
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
IMPLEMENTING SECTION 20516 (EMPLOYEES SHARING ADDITIONAL COST) FOR
LOCAL FIRE MEMBERS IN THE MORRO BAY FIREFIGHTERS ASSOCIATION,
IAFF LOCAL 3725**

**THE CITY COUNCIL
City of Morro Bay, California**

**THE CITY COUNCIL OF THE CITY OF MORRO BAY, CALIFORNIA DOES HEREBY
FIND AND ORDAIN AS FOLLOWS:**

SECTION 1. CONTRACT AMENDMENT. That an amendment to the contract between the City Council of the City of Morro Bay and the Board of Administration, California Public Employees' Retirement System is hereby authorized, a copy of said amendment being attached hereto, marked Exhibit, and by such reference made a part hereof as though herein set out in full.

SECTION 2. EXECUTION. The Mayor of the City Council is hereby authorized, empowered, and directed to execute said amendment for and on behalf of said Agency, with the effective date of the amendment being November 26, 2022.

SECTION 3. EFFECTIVE DATE. This Ordinance shall be in full force and take effect 30 days after the date of its adoption, and prior to the expiration of 10 days from the passage thereof shall be published at least once in the New Times SLO, a newspaper of general circulation, published and circulated in San Luis Obispo County and thenceforth and thereafter the same shall be in full force and effect.

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SECTION 4. CERTIFICATION. The City Clerk shall certify to the adoption of this ordinance, and shall cause the same to be posted and codified in the manner required by law.

INTRODUCED at a regular meeting of the City Council held on the 27th day of September 2022, by motion of Council Member _____ and seconded by Council Member _____.

PASSED AND ADOPTED on the _____ day of October 2022, by the following vote:

AYES:
NOES:
ABSENT:

JOHN HEADDING, Mayor

ATTEST:

DANA SWANSON, City Clerk

APPROVED AS TO FORM:

CHRIS F. NEUMEYER, City Attorney

STATE OF CALIFORNIA)
COUNTY OF SAN LUIS OBISPO)
CITY OF MORRO BAY)

I, Dana Swanson, CITY CLERK OF THE CITY OF MORRO BAY, DO HEREBY CERTIFY that the foregoing Ordinance Number 653 was duly adopted by the City Council of the City of Morro Bay at a regular meeting of said Council on the _____ day of October 2022 and that it was so adopted by the following vote:

AYES:
NOES:
ABSENT:

City Clerk, Dana Swanson



EXHIBIT

California
Public Employees' Retirement System

AMENDMENT TO CONTRACT

**Between the
Board of Administration
California Public Employees' Retirement System
and the
City Council
City of Morro Bay**

The Board of Administration, California Public Employees' Retirement System, hereinafter referred to as Board, and the governing body of the above public agency, hereinafter referred to as Public Agency, having entered into a contract effective July 1, 1965, and witnessed June 1, 1965, and as amended effective August 15, 1981, November 19, 1983, January 7, 1989, June 24, 1989, June 22, 1991, June 10, 1994, June 9, 1998, October 17, 1998, April 13, 2000, June 22, 2002, September 13, 2002, June 21, 2003, September 27, 2003, July 1, 2006, June 2, 2007, May 31, 2008, March 19, 2011, September 17, 2011, December 10, 2011, June 15, 2019, and October 19, 2019, which provides for participation of Public Agency in said System, Board and Public Agency hereby agree as follows:

- A. Paragraphs 1 through 19 are hereby stricken from said contract as executed effective October 19, 2019, and hereby replaced by the following paragraphs numbered 1 through 19 inclusive:

1. All words and terms used herein which are defined in the Public Employees' Retirement Law shall have the meaning as defined therein unless otherwise specifically provided. "Normal retirement age" shall mean age 55 for classic local miscellaneous members entering membership in the miscellaneous classification on or prior December 10, 2011, age 60 for classic local miscellaneous members entering membership in the miscellaneous classification after December 10, 2011, age 62 for new local miscellaneous members, age 50 for classic local fire members entering membership in the fire classification on or prior to March 19, 2011, and for those classic local police members entering membership in the police classification on or prior to September 17, 2011, age 55 for classic local fire members entering membership for the first time in the fire classification after March 19, 2011, and for those classic local police members entering membership for the first time in police classification after September 17, 2011, and age 57 for new local safety members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after July 1, 1965, making its employees as hereinafter provided, members of said System subject to all provisions of the Public Employees' Retirement Law except such as apply only on election of a contracting agency and are not provided for herein and to all amendments to said Law hereafter enacted except those, which by express provisions thereof, apply only on the election of a contracting agency.
3. Public Agency agrees to indemnify, defend and hold harmless the California Public Employees' Retirement System (CalPERS) and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, including but not limited to interest, penalties and attorney fees that may arise as a result of any of the following:
 - (a) Public Agency's election to provide retirement benefits, provisions or formulas under this Contract that are different than the retirement benefits, provisions or formulas provided under the Public Agency's prior non-CalPERS retirement program.
 - (b) Any dispute, disagreement, claim, or proceeding (including without limitation arbitration, administrative hearing, or litigation) between Public Agency and its employees (or their representatives) which relates to Public Agency's election to amend this Contract to provide retirement benefits, provisions or formulas that are different than such employees' existing retirement benefits, provisions or formulas.

- (c) Public Agency's agreement with a third party other than CalPERS to provide retirement benefits, provisions, or formulas that are different than the retirement benefits, provisions or formulas provided under this Contract and provided for under the California Public Employees' Retirement Law.
- 4. Employees of Public Agency in the following classes shall become members of said Retirement System except such in each such class as are excluded by law or this agreement:
 - a. Local Fire Fighters (herein referred to as local safety members);
 - b. Local Police Officers (herein referred to as local safety members);
 - c. Employees other than local safety members (herein referred to as local miscellaneous members).
- 5. In addition to the classes of employees excluded from membership by said Retirement Law, the following classes of employees shall not become members of said Retirement System:
 - a. **ELECTED OFFICIALS;**
 - b. **APPOINTIVE COMMISSIONS; AND**
 - c. **PERSONS COMPENSATED ON AN HOURLY BASIS.**
- 6. This contract shall be a continuation of the benefits of the contract of the Morro Bay Fire District, hereinafter referred to as "Former Agency", pursuant to Section 20508 of the Government Code, Former Agency having ceased to exist and succeeded by Public Agency on July 1, 1965. Public Agency, by this contract, assumes the accumulated contributions and assets derived therefrom and liability for prior and current service under Former Agency's contract with respect to the Former Agency's employees. Legislation repealed Section 20508, Statutes of 1949, effective January 1, 1988.
- 7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment before and not on or after September 27, 2003, shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).

8. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member in employment on or after September 27, 2003, and not entering membership for the first time in the miscellaneous classification after December 10, 2011, shall be determined in accordance with Section 21354.5 of said Retirement Law (2.7% at age 55 Full).
9. The percentage of final compensation to be provided for each year of credited current service as a classic local miscellaneous member entering membership for the first time in the miscellaneous classification after December 10, 2011, shall be determined in accordance with Section 21353 of said Retirement Law (2% at age 60 Full).
10. The percentage of final compensation to be provided for each year of credited prior and current service as a new local miscellaneous member shall be determined in accordance with Section 7522.20 of said Retirement Law (2% at age 62 Full).
11. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local fire member entering membership in the fire classification on or prior to March 19, 2011, and for those classic local police members entering membership in the police classification on or prior to September 17, 2011, shall be determined in accordance with Section 21362.2 of said Retirement Law (3% at age 50 Full).
12. The percentage of final compensation to be provided for each year of credited current service as a classic local fire member entering membership for the first time in the fire classification after March 19, 2011, and for those classic local police members entering membership for the first time in the police classification after September 17, 2011, shall be determined in accordance with Section 21363.1 of said Retirement Law (3% at age 55 Full).
13. The percentage of final compensation to be provided for each year of credited prior and current service as a new local safety member shall be determined in accordance with Section 7522.25(d) of said Retirement Law (2.7% at age 57 Full).
14. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20965 (Credit for Unused Sick Leave).

- b. Section 20042 (One-Year Final Compensation) for those classic local fire members entering membership on or prior to March 19, 2011, those classic local police members entering membership on or prior to September 17, 2011, and those classic local miscellaneous members entering membership on or prior to December 10, 2011.
- c. Section 21024 (Military Service Credit as Public Service) for local miscellaneous members and local police members only.
- d. Section 21574 (Fourth Level of 1959 Survivor Benefits).
- e. Section 20423 ("Local Safety Member" shall include Harbor or Port Police Officers as described in Government Code Section 20423).
- f. Section 21027 (Military Service Credit for Retired Persons) for local police members only.
- g. Section 20475 (Different Level of Benefits): Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local fire members entering membership for the first time with this agency in the fire classification after March 19, 2011.

Section 21363.1 (3% @ 55 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local police members entering membership for the first time with this agency in the police classification after September 17, 2011.

Section 21353 (2% @ 60 Full formula) and Section 20037 (Three-Year Final Compensation) are applicable to classic local miscellaneous members entering membership for the first time with this agency in the miscellaneous classification after December 10, 2011.

- h. Section 20516 (Employees Sharing Additional Cost):

From and after June 15, 2019, and until October 10, 2019, 1% for local police members in the Morro Bay Peace Officers' Association.

From and after October 10, 2019, 2% for local police members in the Morro Bay Peace Officers' Association.

From and after the effective date of this amendment to contract, 2% for local fire members in the Morro Bay Firefighters Association, IAFF Local 3725.

The portion of the employer's contribution that the member agrees to contribute from his or her compensation, over and above the member's normal contribution ("Cost Sharing Percentage"), shall not exceed the Employer Normal Cost Rate, as that rate is defined in the CalPERS Actuarial Valuation for the relevant fiscal year. If the Cost Sharing Percentage will exceed the relevant Employer Normal Cost Rate, the Cost Sharing Percentage shall automatically be reduced to an amount equal to, and not to exceed, the Employer Normal Cost Rate for the relevant fiscal year.

15. Public Agency, in accordance with Government Code Section 20790, ceased to be an "employer" for purposes of Section 20834 effective on August 15, 1981. Accumulated contributions of Public Agency shall be fixed and determined as provided in Government Code Section 20834, and accumulated contributions thereafter shall be held by the Board as provided in Government Code Section 20834.
16. Public Agency shall contribute to said Retirement System the contributions determined by actuarial valuations of prior and future service liability with respect to local miscellaneous members and local safety members of said Retirement System.
17. Public Agency shall also contribute to said Retirement System as follows:
 - a. Contributions required per covered member on account of the 1959 Survivor Benefits provided under Section 21574 of said Retirement Law. (Subject to annual change.) In addition, all assets and liabilities of Public Agency and its employees shall be pooled in a single account, based on term insurance rates, for survivors of all local miscellaneous members and local safety members.
 - b. A reasonable amount, as fixed by the Board, payable in one installment within 60 days of date of contract to cover the costs of administering said System as it affects the employees of Public Agency, not including the costs of special valuations or of the periodic investigation and valuations required by law.
 - c. A reasonable amount, as fixed by the Board, payable in one installment as the occasions arise, to cover the costs of special valuations on account of employees of Public Agency, and costs of the periodic investigation and valuations required by law.

- 18. Contributions required of Public Agency and its employees shall be subject to adjustment by Board on account of amendments to the Public Employees' Retirement Law, and on account of the experience under the Retirement System as determined by the periodic investigation and valuation required by said Retirement Law.
- 19. Contributions required of Public Agency and its employees shall be paid by Public Agency to the Retirement System within fifteen days after the end of the period to which said contributions refer or as may be prescribed by Board regulation. If more or less than the correct amount of contributions is paid for any period, proper adjustment shall be made in connection with subsequent remittances. Adjustments on account of errors in contributions required of any employee may be made by direct payments between the employee and the Board.

B. This amendment shall be effective on the _____ day of _____, _____.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

CITY COUNCIL
CITY OF MORRO BAY

BY _____
MELODY BENAVIDES, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk