



DATE: July 10, 2017

TO: Transportation Authority of Marin Board of Commissioners

FROM: Office of the County Counsel (General Counsel to TAM)
Chief Deputy County Counsel Renee Giacomini Brewer
Deputy County Counsel Brian Charles Case

SUBJECT: First-Steps Toward Becoming CalPERS Employer (Action) - Agenda Item No.10

RECOMMENDATION:

As your Board’s legal counsel, we have been asked by your Board Chair Moulton-Peters to assess TAM’s rights and responsibilities in the wake of the April 28, 2017 CalPERS determination that Local Government Services (“LGS”) (who currently provides 9 staff members to TAM) is not, and never has been, an eligible CalPERS employer. At this juncture, we recommend that your Board take the following first-steps toward a potential solution whereby TAM would become a CalPERS employer and LGS’ assets and liabilities for past service would be reallocated over to TAM:

- 10a: Adopt the Resolution of Intention for TAM to enter into a contract with CalPERS for retirement benefits, as described below. (Action)
- 10b: Authorize Board President to Execute Reallocation Agreement and Instruct the Office of the County Counsel to present the Signed CalPERS Reallocation Agreement to LGS’ Executive Director Richard Averett and to set a 14-day (July 24, 2017) deadline for response. (Action)
- 10c: Authorize the Office of the County Counsel to hire outside human resources consultant for retirement issues (contract not to exceed maximum cost of \$25,000). (Action)
- 10d: Direct the Office of the County Counsel to seek to renegotiate contractual relationship with LGS and RGS to provide for changes as CalPERS contracting advances (any final agreement will be presented to your Board for final approval). (Action)

BACKGROUND:

In July 2005, TAM entered into an agreement with LGS to provide staff services for its Executive Director position and additional positions were added to the agreement with the growth of the agency. Services provided by LGS include administering employee benefits (CalPERS retirement benefits, medical and dental benefits, etc.), providing human resources support (recruitment process, required HR training, etc.) and payroll services. In December 2007, after review by an outside human resources consultant, TAM entered into an agreement with LGS to provide the staffing, human resources, and payroll services on an ongoing basis.

Now, twelve years since the initial 2005 contract between TAM and LGS, CalPERS issued a final audit report in April 2017 concluding that LGS is not eligible, and never has been eligible, to enroll its employees in CalPERS. Specifically, the CalPERS Office of Audit Services determined that all employees hired by LGS and assigned to its client agencies are not common-law employees of LGS. Rather, they concluded that the individuals are the employees of LGS' client agencies. Therefore, the employees should not have been enrolled into CalPERS under LGS. On June 23, 2017, affected individuals (those 9 individuals who have worked at TAM through LGS) received a letter from CalPERS stating their service credits were at risk and they also received a copy of a letter from CalPERS to LGS stating that:

“CalPERS, along with LGS’ anticipated cooperation and that of CalPERS’ contracting agencies, can correct the reporting status of most of these individuals to preserve their accrued service credit. We can collectively accomplish this by entering into a reallocation agreement (a sample of which is enclosed) under which the service credit and associated assets and liabilities for individuals who are the common-law employees of a CalPERS’ contracting agency will be reallocated in CalPERS from LGS’s account to that agency’s account. These individuals will maintain all of their previously accrued service credit.”

DISCUSSION/ANALYSIS:

The above recommendations from the Office of the County Counsel are designed to put TAM in the best position to proactively address a complex situation involving a number of parties, governed by a complex set of contractual and legal relationships: TAM, Local Government Services (“LGS”), Regional Government Services (“RGS”); CalPERS; and the 9 individuals who staff TAM through LGS who face an imminent loss of service credit.

The above-recommended actions work toward the goal of resolving this matter as expeditiously as possible.

Also, the Office of the County Counsel must stress that it is in TAM’s best interest to avoid even so much as the appearance of a conflict of interest at any stage in resolving these retirement benefit issues. Accordingly, we are recommending that your Board authorize the Office of the County Counsel to hire a human resources consultant to assist your Board in handling the matters described in the Board letter.

The proposed resolution is the first step in the CalPERS contract adoption process. This resolution, which is mandated by Government Code Section 20469, is intended to provide the public notice of TAM’s intention to adopt a CalPERS Retirement Plan and the costs associated with said plan.

The Resolution of Intention and its attached Contract Exhibit contemplates retirement benefits identical to those currently provided by LGS.

On May 30, 2017, TAM received the final actuarial valuation from CalPERS. The valuation report was prepared under the assumption that all current 9 LGS employees with classic status will be transferred from LGS to TAM’s CalPERS contract, and, therefore be able to preserve all their service credit, and the 2 RGS employees will join TAM’s CalPERS contact as new PEPRAs members. The report also considered the fact that there is one former LGS employee, who worked at TAM, who is now retired.

As explained in CalPERS' New Agency Actuarial Valuation: "At the time of joining a risk pool, an unfunded liability will be created to account for whether the assets that were brought into the pool were more or less than what was required to maintain the funded ratio of the pool." In this case, CalPERS has calculated that \$584,603 of unfunded liability must be transferred over to the prospective TAM/CalPERS contract in connection with the potential reallocation from LGS to TAM.

Also, based on the numbers in the New Agency Actuarial Valuation, the estimated FY2017-18 annual cost for the CalPERS retirement benefits for the 11 individuals who would become direct TAM employees will be \$214,192 (a figure that includes \$127,047 towards the normal cost of retirement and \$87,145 towards a 9 year pay-down plan for the unfunded liability).

FISCAL CONSIDERATION:

The recommended actions are all preliminary and do not involve fiscal considerations other than those future costs of contracting, discussed above.

ATTACHMENTS:

- Attachment 1: Anticipated Schedule of Agency Actions
- Attachment 2: Resolution of Intention
- Attachment 3: Draft CalPERS/TAM Contract
- Attachment 4: Certification of Governing Body's Action
- Attachment 5: Certification of Compliance with Government Code Section 7507
- Attachment 6: Reallocation Agreement

THIS PAGE LEFT BLANK INTENTIONALLY



ANTICIPATED SCHEDULE OF AGENCY ACTIONS

The CalPERS hereby requests the documents necessary to provide the benefits as described below for participation in the California Public Employees' Retirement System.

Provide dates for each of the actions below, sign and return this form to the CalPERS Pension Contracts Unit.

- 1 6/30/2017 **Resolution of Intention Delivery Deadline**
 The date your agency requires delivery of the completed resolution of intention for to include in agency's board agenda. This date must be at least four weeks from the date this form is received in the Pension Contract Services office.

- 2 7/10/2017 **Adopt Resolution of Intention**
 The date your agency will adopt a resolution of intention declaring intent to enter into a contract with CalPERS.

- 3 8/11/2017 **Employee Election**
 The date your agency will conduct the employee election by secret ballot after your agency adopts the Resolution of Intention (date #2).

- 4 8/24/2017 **Adoption of Final Resolution**
 The date your agency will adopt its Final Resolution to participate in CalPERS. This date cannot be earlier than 20 days after your agency adopts the Resolution of Intention (date #2).

- 5 10/1/2017 **Effective Date of CalPERS Contract**
 The date your CalPERS Retirement contract takes effect. This date cannot be earlier than the first day of a payroll period following the effective date of the Resolution.

NOTE: This office will prepare all documents necessary to complete your contract. If your agency attempts to expedite the contract process by proceeding without the documents provided by this office, legal review may be required which could delay the anticipated effective date of the contract.

**RESOLUTION OF INTENTION
TO APPROVE A CONTRACT
BETWEEN THE
BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM
AND THE
BOARD OF COMMISSIONERS
TRANSPORTATION AUTHORITY OF MARIN**

WHEREAS, the Public Employees' Retirement Law permits the participation of public agencies in the Public Employees' Retirement System, making their employees members of said System, and sets forth the procedure by which participation may be accomplished; and

WHEREAS, one of the steps required in the procedure is the adoption by the governing body of the public agency of a resolution giving notice of intention to approve a contract for such participation of said agency in the Public Employees' Retirement System, which resolution shall contain a summary of the major provisions of the proposed retirement plan; and

WHEREAS, attached is a summary of the major provisions of the proposed plan;

NOW, THEREFORE, BE IT RESOLVED, that the governing body of the above agency gives, and it does hereby give notice of intention to approve a contract between said governing body and the Board of Administration of the Public Employees' Retirement System, providing for participation of said agency in said retirement system, a copy of said contract and a copy of the summary of the major provisions of the proposed plan being attached hereto, as an "Exhibit", and by this reference made a part hereof.

By: _____
Presiding Officer

Title

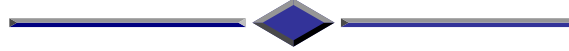
Date adopted and approved

(New Agency)
CON-301 (Rev. 3/9/2016 rc)



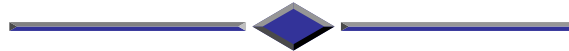
EXHIBIT

California
Public Employees' Retirement System



CONTRACT

Between the
Board of Administration
California Public Employees' Retirement System
and the
Board of Commissioners
Transportation Authority of Marin



In consideration of the covenants and agreement hereafter contained and on the part of both parties to be kept and performed, the governing body of above public agency, hereafter referred to as "Public Agency", and the Board of Administration, Public Employees' Retirement System, hereafter referred to as "Board", hereby agree as follows:

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 62 for new local miscellaneous members and age 55 for classic local miscellaneous members.
2. Public Agency shall participate in the Public Employees' Retirement System from and after _____ 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. Employees other than local safety members (herein referred to as local miscellaneous members).
5. Any exclusion(s) shall remain in effect until such time as the Public Employees' Retirement System determines that continuing said exclusion(s) would risk a finding of non-compliance with any federal tax laws or regulations. If such a determination is contemplated, the Public Employees' Retirement System will meet with the Public Agency to discuss the matter and coordinate any required changes or amendments to the contract.

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. SAFETY EMPLOYEES

6. 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).
7. The percentage of final compensation to be provided for each year of credited prior and current service as a classic local miscellaneous member shall be determined in accordance with Section 21354 of said Retirement Law (2% at age 55 Full).
8. Public Agency elected and elects to be subject to the following optional provisions:
 - a. Section 20042 (One-Year Final Compensation) for classic local miscellaneous members.
 - b. Section 21574 (Fourth Level of 1959 Survivor Benefits).
9. 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 of said Retirement System.
10. 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.
11. 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.

12. 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.

BOARD OF ADMINISTRATION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BOARD OF COMMISSIONERS
TRANSPORTATION AUTHORITY OF
MARIN

BY _____
ARNITA PAIGE, CHIEF
PENSION CONTRACTS AND PREFUNDING
PROGRAMS DIVISION
PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY _____
PRESIDING OFFICER

Witness Date

Attest:

Clerk

NEW AGENCY CalPERS ID #6796876396
PERS-CON-702N



California Public Employees' Retirement System
Financial Office | Pension Contract Management Services &
Prefunding Programs
P.O. Box 942703
Sacramento, CA 94229-2703
(888) CalPERS (225-7377) FAX: (916) 795-4673

CERTIFICATION OF GOVERNING BODY'S ACTION

I hereby certify that the foregoing is a true and correct copy of a Resolution adopted by the Board of Commissioners of the Transportation Authority of Marin on _____.
(date)

Clerk/Secretary

Title



California Public Employees' Retirement System
Financial Office | Pension Contract Management Services &
Prefunding Programs
P.O. Box 942703
Sacramento, CA 94229-2703
(888) CalPERS (225-7377) FAX: (916) 795-4673

**CERTIFICATION OF COMPLIANCE WITH
GOVERNMENT CODE SECTION 7507**

I hereby certify that in accordance with Section 7507 of the Government Code the future annual costs as determined by the System Actuary for the increase/change in retirement Benefit(s) have been made public at a public meeting of the Board of Commissioners of the Transportation Authority of Marin on July 10, 2017, which is at least two weeks prior to the adoption of the Resolution. Adoption of the retirement benefit increase/change will not be placed on the consent calendar.

Printed Name/Title

Date

Signature

REALLOCATION AGREEMENT

THIS REALLOCATION AGREEMENT (this "Agreement") is made as of _____, 2017 (the "Agreement Date") by and between _____ (the "Employer A"), _____ (the "Employer B"), and the California Public Employees' Retirement System ("CalPERS") (collectively, the "Parties").

WHEREAS, Employer A currently contracts with CalPERS for retirement benefits;

WHEREAS, each of Employer A and Employer B hereby represent and warrant to CalPERS that it is an "agency or instrumentality of the state or political subdivision of a State" that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Internal Revenue Code of 1986, as amended (the "Code");

WHEREAS, concurrently with the execution of this Agreement, Employer B is entering into a contract for retirement benefits with CalPERS (the "Contract") in substantially the same form as the contract between CalPERS and Employer A;

WHEREAS, Employer A and Employer B have represented to CalPERS that certain CalPERS members listed on **Exhibit A** to this Agreement (the "Members") have historically been incorrectly reported by Employer A to CalPERS as employees of Employer A, when in fact they should have been reported as employees of Employer B;

WHEREAS, Employer A and Employer B have directed CalPERS to retroactively treat such Members as employees of Employer B, and to reallocate all of the assets and liabilities associated with such Members from Employer A's contract to Employer B's contract as though such assets and liabilities had always accrued under Employer B's contract (the "Reallocation"); and

WHEREAS, this Agreement shall not become effective until and unless the Contract is made effective.

NOW, THEREFORE, in consideration of the mutual agreements contained in this Agreement, and for good and valuable consideration, it is hereby agreed:

1. The Parties agree that the aforementioned recitals ("Recitals") are incorporated into and are a part of this Agreement.

2. Subject to the terms and conditions of this Agreement and contingent upon the Contract becoming effective, Employer A and Employer B hereby consent to the Reallocation. Employer A, on behalf of itself and any third party beneficiaries, expressly disclaims any ongoing right or benefit to the assets associated with the Members, and Employer B expressly assumes all obligations, liabilities and duties associated with the Members, as a result of their CalPERS membership.

3. That the participation of the Members of Employer A and Employer B in CalPERS shall be subject to the determination of the status of Employer A and/or Employer B, as applicable, as an "agency or instrumentality of the state or political subdivision of a State" that is eligible to participate in a governmental plan within the meaning of Section 414(d) of the Code, upon publication of final Treasury Regulations pursuant to such Section (the "Final Regulations"). If it is determined that either Employer A or Employer B, or both, would not qualify as an agency or instrumentality of the state or political subdivision of a State under such Final Regulations, CalPERS will be obligated to comply with the Final Regulations and terminate Employer A's and/or Employer B's

participation in CalPERS, as applicable, including cancellation of all benefits for the Members of Employer A and Employer B (the "Termination"). The Termination will comply with any remedial corrections required under the Final Regulations.

4. Notwithstanding, and in addition to, any existing or future obligation that Employer A and Employer B may have to indemnify the CalPERS Parties (as defined below), Employer A and Employer B hereby agree to jointly and severally indemnify and hold CalPERS and its trustees, agents and employees, the CalPERS Board of Administration, and the California Public Employees' Retirement Fund (together, the "CalPERS Parties") harmless from any claims, demands, actions, losses, liabilities, damages, judgments, expenses and costs, imposed on, sustained or incurred by the CalPERS Parties, to the extent they arise out of or relate to the Reallocation, compliance with the Final Regulations, or the Termination, including, without limitation, attorneys', accountants' and other investigatory fees and out-of-pocket expenses incurred by the CalPERS Parties.

5. Upon request from CalPERS from time to time, Employer A and Employer B shall execute and deliver all documents and do all other acts that may be reasonably necessary to carry out and effectuate the intent and purpose of this Agreement.

6. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to its principles of conflicts of law.

7. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

8. If any provision of this Agreement is held invalid or unenforceable, such decision shall not affect the validity or enforceability of any other provision of this Agreement, all of which other provisions shall remain in full force and effect, provided that doing so does not materially alter the intent of the parties as contemplated hereby.

9. This Agreement may not be modified or amended in any respect except in a writing signed by all Parties. No waiver shall be deemed to have been granted or created by any course of conduct or acquiescence, and no waiver shall be enforceable against any party hereto unless in writing and signed by the party against which such waiver is claimed.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered as of the date first above written.

[INSERT NAME OF EXISTING CONTRACTING AGENCY]:

By: _____
Name: _____
Title: _____

[INSERT NAME OF NEW CONTRACTING AGENCY]:

By: _____
Name: _____
Title: _____

CALIFORNIA PUBLIC EMPLOYEES'
RETIREMENT SYSTEM:

By: _____
Name: _____
Title: _____

EXHIBIT A
EMPLOYEES