




AGENDA ITEM NO.17

CITY OF HAWTHORNE CITY COUNCIL AGENDA BILL

For the meeting of *January 11, 2022*

Originating Department: Finance

City Manager: Vontray Norris
Vontray Norris

Dir. of Finance: 
Felice Lopez

SUBJECT:

Adopt the Resolution 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, and authorizing the City Manager to execute the documents to implement the Program.

RECOMMENDED MOTION:

Staff recommends that the City Council:

1. Adopt the Resolution approving participation in the PARS Post-Employment Benefits Trust Program (Attachment 1).
2. City Council authorize the City Manager, or his designee, subject to the review and approval of the City Attorney, to sign all necessary documents.

DISCUSSION:

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"). 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. As reported on the City's latest OPEB Actuarial Valuation (measurement date June 30, 2020), the City has an unfunded OPEB liability of approximately \$139.7 million.

In an effort to help public agencies address and manage their GASB 75 liabilities, PARS has sought and received approval from the IRS in the form of a Private Letter Ruling on its Post-Employment

Employment Benefits Trust Program. PARS has assembled leading professionals to provide the City with the necessary services required under one program to pre-fund retiree health care liabilities.

This would provide the City with 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 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.

To date, more than 235 California public agencies have adopted programs through PARS to reduce their OPEB liabilities including local agencies such as the City of Commerce, City of Lakewood, City of Norwalk, City of Beverly Hills, and City of Pasadena.

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

- Contributions placed in an exclusive benefit trust can offset unfunded liabilities, which will lower the City's Net OPEB Liability
- Investment flexibility with Section 115 Trust compared to restrictions on general fund investments
- Increased risk diversification of plan assets through different asset management
- 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 anytime as long as the assets are used to fund the City's OPEB obligations and defray reasonable expenses associated with the program)
- Ability to also use trust to also pre-fund CalPERS pension obligations
- Potential for positive rating agency and investor consideration

PARS has partnered with US Bank to serve as trustee and plan fiduciary for safeguarding member assets and provides for mutual indemnification in their member agreement; and its sub-adviser HighMark Capital Management, Inc., to provide investment management services for the program.

PARS provides full services to administer the City's Section 115 Trust Program with a dedicated Senior Consultant to ensure superior client satisfaction; a Client Services Coordinator to monitor contributions, process disbursements and coordinate annual reviews; and an Investment Management Team to assist with developing an Investment Policy Statement and

conduct periodic onsite review of investment performance and market conditions. PARS offers a successful track record of investment experience serving public agencies, flexible investment options with five investment strategies, and the ability to diversify and customize investments in a prudent fashion.

Next Steps

If City Council supports the staff recommendation of adoption and approval of Section 115 Trust services with PARS, the next steps include staff and PARS developing a specific investment policy statement, procedures and a funding strategy for future contributions for the Trust that will serve as the underlying investment guide to the City's accounts.

FISCAL IMPACT:

There are no fiscal impacts except staff time in approving the resolution and authorizing the City Manager to enter into agreements. There are no startup fees, no minimum contributions and no minimum fees to establish and administer the Trust beyond staff time.

NOTICING PROCEDURES:

72 hours posted notice pursuant to the Ralph M. Brown Act.

ATTACHMENT(S):

1. Resolution #8331
2. Agreement for Administrative Services

RESOLUTION NO. 8331

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, APPROVING THE ADOPTION OF THE PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS) AND U.S. BANK

WHEREAS, the Government Accounting Standards Board issued a Statement requiring public agencies to report costs and obligations for post-employment healthcare and other post-employment benefits (OPEB); and

WHEREAS, Public Agency Retirement Services (PARS) received an approval from IRS for its Post-Employment Benefits Trust Program (Program) to assist public agencies with the pre-funding pension obligations and/or OPEB obligations; and

WHEREAS, the City of Hawthorne (City) is eligible to participate in the Program, a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued thereunder and 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 entitlements to post-employment benefits; and

WHEREAS, the terms and conditions of post-employment benefit entitlement, if any, are governed by contracts separate from 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, THE CITY COUNCIL OF THE CITY OF HAWTHORNE, CALIFORNIA, hereby resolves as follows:

SECTION 1. The foregoing recitals in this Resolution are true and correct.

SECTION 2. The City Council hereby adopts the PARS Public Agencies Post-Employment Benefit Trust, effective January 12, 2022 and authorizes the City Manager to act as the City of Hawthorne's Plan Administrator for the Program.

SECTION 3. The City Manager is authorized to execute the PARS legal and administrative documents on behalf of the City of Hawthorne and take any additional actions necessary to maintain the City's participation in the Program and to maintain compliance of any relevant regulations.

SECTION 4. That the City Clerk shall certify to the adoption of this Resolution and shall cause this Resolution and this certification to be entered in the Book of Resolutions of the Council of the City.

PASSED, APPROVED and ADOPTED this 11th day of January 2022.

Alex Vargas, Mayor
City of Hawthorne, California

ATTEST:

Dr. Paul Jimenez, City Clerk
City of Hawthorne, California



ROBERT M. KIM,
City Attorney
City of Hawthorne, California

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("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") and the [Agency Name] ("Agency").

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

NOW THEREFORE, the parties agree:

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

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

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

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction.
12. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that its performance is prevented by such cause. Such cause shall include, but not be limited to: any incidence of fire, flood, acts of God or unanticipated communicable disease, acts of terrorism or war commandeering of material, products, plants or facilities by the federal, state or local government, a material act or omission by the other party or any law, ordinance, rule, guidance or recommendation by the federal, state or local government, or any agency thereof, which becomes effective after the date of this Agreement that delays or renders impractical either party's performance under the Agreement.
13. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
14. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.
15. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
- (A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President
- (B) To Agency: [Agency]; [Agency Address]; Attention: [Plan Administrator Title]
- Notices shall be deemed given on the date received by the addressee.
16. **Term of Agreement.** This Agreement shall remain in effect for the period beginning _____, 2022 and ending _____, 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.
17. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.

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

AGENCY:

BY: _____
Plan Administrator Name

TITLE: _____

DATE: _____

PARS:

BY: _____
Tod Hammeras

TITLE: Chief Financial Officer

DATE: _____

EXHIBIT 1A
SERVICES

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

1. Plan Installation Services:

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

2. Plan Administration Services:

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

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

EXHIBIT 1B
FEES FOR SERVICES

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

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

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

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

EXHIBIT 1C
DATA REQUIREMENTS

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

1. Executed Legal Documents:
 - (A) Certified Resolution
 - (B) Adoption Agreement to the Public Agencies Post-Employment Benefits Trust
 - (C) Trustee Investment Forms
2. Contribution – completed Contribution Transmittal Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Contribution amount
 - (C) Contribution date
 - (D) Contribution method (Check, ACH, Wire)
3. Distribution – completed Payment Reimbursement/Distribution Form signed by the Plan Administrator (or authorized Designee) which contains the following information:
 - (A) Agency name
 - (B) Payment reimbursement/distribution amount
 - (C) Applicable statement date
 - (D) Copy of applicable premium, claim, statement, warrant, and/or administrative expense evidencing payment
 - (E) Signed certification of reimbursement/distribution from the Plan Administrator (or authorized Designee)
4. Other information pertinent to the Services as reasonably requested by PARS and Actuarial Provider.