# SWEETWATER SPRINGS WATER DISTRICT

**TO:** Board of Directors **AGENDA NO. V-C**

**FROM:** Steve Mack, General Manager

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**Meeting Date: September 7, 2017**

**SUBJECT: Resolution 17-15, Approving the Adoption of the Public Agencies Post-Employment Benefits Trust Administered by Public Agency Retirement Services (PARS)**

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**RECOMMENDED ACTION:** Approve Resolution 17-15.

**FISCAL IMPACT:** Move $200,000 of District Policy Reserves from low-risk investment at the County of Sonoma to higher-risk investment with PARS with the idea of getting higher long-term returns on investment.

**DISCUSSION:**

The District (and Board) have been considering participation in the PARS Rate Stabilization program for the last few months. The District became aware of the program as part of the discussion of ways to become more active in addressing CalPERS retirement unfunded actuarial liability (UAL).

In May 2017 we made an accelerated one-time payment on our UAL directly to CalPERS in the sum of $60,000 and plan to continue making extra payments for the foreseeable future. An additional approach to addressing UAL is to try to offset CalPERS costs with higher investment returns -- and therefore riskier ones -- on remaining District funds. This is a very similar approach to our participation in CERBT to offset UAL in our retiree health costs. The PARS program and CERBT both offer a solution to the District's limited investment choices.

At the June 2017 meeting, we received a presentation from Rick Icasio of PARS on the various programs provided by PARS, its setup and examples of how it can be used. As a reminder, the PARS "Pension Rate Stabilization Program" provides a vehicle for higher returns by way of a IRC Section 115 Trust. Elements of the program, or any Section 115 Trust, are:

- Can be used by local governments to fund essential governmental functions (i.e., retiree healthcare, pension)
- Trust is irrevocable and designed to pre-fund retirement plan obligations

- Once contributions are placed into trust, assets from the trust can only be used for retirement plan purposes:
    - Reimburse District for CalPERS contributions
    - Assets can be transferred to CalPERS at anytime for pension
    - Up to 2 years of pension costs can be withdrawn for other expenses.

The staff vision of using PARS is fund it using a portion of District Reserves, with the goal of earning better returns on principal funds the District has no intention of using absent a dire emergency. PARS has investment portfolios with different risk scenarios that, on average, should get rate of returns similar to what CalPERS aims for (4-8 percent) and much higher than the County funds get (currently in the 1% vicinity). Staff's recommendation of investing $200,000 -- approximately two years of retirement costs -- with PARS was met with approval by the Board at the August meeting.

The first step towards formalizing our participation in the PARS Rate Stabilization Program is approval of Resolution 17-15, adopting a Post-Employment Benefits Trust administered by PARS which names the General Manager the Plan Administrator. Upon receipt of an adopted Resolution, PARS would forward a final Agreement to be executed. A draft copy of that Agreement is attached for your review.

It should be noted the Resolution references a Trust for the purpose of prefunding "pension obligations **and/or OPEB obligations**..." (emphasis added). The District currently utilizes CERBT to prefund District OPEB obligations. I have been assured by PARS that adoption of Resolution 17-15 will not require us to move our CERBT funds to PARS.

At the October Board meeting, staff anticipates requesting a check to fund our PARS account as well as making a decision regarding the PARS investment choices available for District funds.

RESOLUTION NO. 17-15

RESOLUTION OF THE GOVERNING BOARD OF DIRECTORS
OF THE SWEETWATER SPRINGS WATER DISTRICT
APPROVING THE ADOPTION OF THE
PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST
ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS)

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

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

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

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Governing Board hereby adopts the PARS Public Agencies Post-Employment Benefits Trust, effective September 7, 2017; and

2. The Governing Board hereby appoints the GENERAL MANAGER, or his/her successor or his/her designee as the District's Plan Administrator for the Program; and

3. The District's Plan Administrator is hereby authorized to execute the PARS legal and administrative documents on behalf of the District and to take whatever additional actions are necessary to maintain the District'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 District's Program.

AYES: NOES: ABSENT: ABSTAIN:

_____
Sukey Robb-Wilder
President of the Board of Directors

STATE OF CALIFORNIA
COUNTY OF SONOMA

Christine Hanley, the Acting Clerk of the Governing Board of Directors of the Sweetwater Springs Water District, State of California, hereby certifies that the above foregoing resolution was duly and regularly adopted by said District at a regular meeting thereof held on the 7th day of September, 2017, and passed by a _____ vote of said Board.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 7th day of September, 2017.

_____
Christine Hanley, Acting Clerk of the Board

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this _____ day of _____, 2017, 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 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's 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 non performance of Services to the extent such non performance 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, employees, agents and attorneys, 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 it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.

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]; [Address]; [City, State, Zip]; Attention: [Plan Administrator]

    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 _____, 2017 and ending _____, 2020 ("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: _____

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 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 GASB 45/75, 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:

| **For Plan Assets from:** | | | **Annual Rate:** |
|---|---|---|---|
| $0 | 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.