Council Meeting: August 26, 2008

SUBJECT: Agreement with the California Public Employees Retirement System (CalPERS) to Pre-Fund Other Post Employment Benefits (OPEB) through the California Employers' Retiree Benefit Trust Fund

REPORT IN BRIEF

Council is requested to adopt a resolution that: 1) approves an agreement and election to pre-fund Other Post Employment Benefits (OPEB) through CalPERS for retiree medical benefits, 2) authorizes the City Manager to execute the agreement, and 3) authorizes the City Manager to take other actions required by CalPERS. $28.1 million has been budgeted to transfer to the California Employers' Retiree Benefit Trust Fund (CERBT), with additional amounts budgeted in future years to fully fund the City's OPEB liability.

BACKGROUND

OPEB refers to benefits provided to retirees other than pensions. For most governments, including the City of Sunnyvale, the most common and largest of these benefits is retiree medical costs. A new government accounting rule, Government Accounting Standards Board Statement 45 (GASB 45), requires government employers to report the costs and financial obligations that governments incur when they provide OPEB as part of the compensation for services rendered by their employees. Based on its size, the City of Sunnyvale is required to begin reporting the liability on the FY 2007/2008 financial statements. In order to meet this reporting requirement, government agencies must contract with an outside agency to have an actuarial analysis performed on their current OPEB liability. The City of Sunnyvale contracted with Bartel and Associates for this analysis in 2006, which determined the present value of the City's current OPEB liability to be approximately $80 million.

GASB 45 does not require that the OPEB liability be fully funded; it simply requires that it be reported as a liability on the City's financial statements. However, it will be prudent to show how the City plans to fund this liability as not having a funding plan will potentially have a negative impact on the City's credit rating. The City of Sunnyvale, like most public employers, currently funds retiree medical benefits on a "pay as you go" basis, which means that the City pays its retiree health insurance premiums annually. This annual expense is budgeted through the City's 20-Year Long Term Financial Plan. In addition, since FY 2006/2007, the City has set aside funds in the Employee

Benefits Fund for future OPEB obligations. In the adopted FY 2008/2009 Budget, $28.1 million has been set aside.

OPEB Trusts allow employers to pre-fund the future costs of their retiree health benefits. Once funds are deposited in these irrevocable trusts, they may not be withdrawn for any purpose other than funding the costs of the employer's retiree health benefits. These OPEB Trusts provide agencies with a fiscally sound option for ensuring they are able to meet their OPEB liability in the most cost-effective manner. There are two primary benefits to entering into a trust. First, the pre-funding plan allows employers to make periodic contributions to the trust, which are invested. In future years, employers will be able to use investment earnings to pay for retiree health benefits, similar to how the CalPERS pension plan operates. As a result, over the long term the City's retiree medical costs will be reduced. Second, GASB 45 rules require that until the funds are transferred to an irrevocable trust, an employer must disclose that its liability is unfunded because the funds are held directly under the employer's control. This means that the $28.1 million the City has set aside cannot be used to reduce the liability on the City's financial statements. Placing the funds in an OPEB Trust will allow the City to do so. After determining the actuarial liability in 2006, the City began setting aside funds since FY 2006/2007 while staff analyzed the GASB 45 requirement and researched various trust options. This allowed time for staff to fully understand the rules and options available as well as to take into account the experience of other cities.

EXISTING POLICY

From the Fiscal Sub-Element:
E.2.6. An Actuarial Retiree Medical Reserve will be maintained at a level that is deemed adequate to meet projected liabilities as determined by an actuarial evaluation. This Reserve should meet the GASB reporting requirements for these future costs.

DISCUSSION

Following the implementation of the new GASB 45 requirement, CalPERS created the California Employers' Retiree Benefit Trust Fund (CERBT), a new trust fund which permits agencies to pre-fund the future cost of their retiree health insurance benefits. A number of other financial institutions have created similar trusts in response to the GASB 45 requirement. After reviewing the available options, staff believes that CERBT provides the best overall benefit for the City for several reasons. First and foremost, CalPERS has a proven history of providing exceptional investment returns. The average annual return over the past five years has been nearly 16%, and its overall investment portfolio is now over $230 billion, nearly double what it was 10 years ago. Based on the strategic asset allocation for CERBT, which follows the same investment management and guidelines as the pension trust, CalPERS is projecting an expected return of 7.75%. There is a level of risk in the CalPERS portfolio in order to earn this level of return and in fact, CalPERS is estimating a negative return for FY 2007/2008. However, the proven track record of CalPERS investments provides staff with a high level of confidence that the expected return of 7.75% will be achieved over the long term. This is important because the historical returns of the CalPERS investment portfolio, according to CalPERS, provide a high enough return so that 75% of the money paid out in pension benefits comes from investment earnings, not employer or employee contributions.

In addition to its historical investment performance setting it apart from other options, there are other benefits to investing in this particular trust. Because CalPERS is also the provider of the City's medical insurance plan, there are opportunities for administrative efficiencies. While not set-up at this time, it is anticipated CalPERS will integrate the systems so that the health benefit payments can be directly drawn from CERBT. With the other trust options, the City must first make the payment and then request reimbursement. Additionally, because CalPERS is not adding staff to administer the trust, administrative and management fees are lower than private sector fees. Finally, the City has the option to pull its money out of the trust and transfer to another trust at any time after 36 months has lapsed from the effective date of the agreement.

FISCAL IMPACT

The City's OPEB liability at June 30, 2008 is $86.3 million. The City currently has $28.1 million budgeted for FY 2008/2009 in the Employee Benefits Fund for its initial investment into the trust. The 20-Year Long Term Financial Plan includes additional contributions to the trust through FY 2015/2016. Following this point, the OPEB liability will be funded and the City's costs for retiree medical are expected to slow to a rate that is less than the City's current "pay as you go" obligation. This is the result of the interest earnings from the initial contributions offsetting the total cost of retiree medical benefits, reducing the annual amount the City needs to contribute. As a result, pre-funding the City's future retiree health benefits costs via the trust will produce a significant savings over the current "pay as you go" financing in the long term. This can be seen in the Long Term Financial Plan for the Employee Benefits Fund/Insurances & Other Benefits Sub-Fund. By the twentieth year, the "pay as you go" cost for retiree medical is estimated to be $17.6 million but the actual contribution to be made will be $11.6 million, or $6 million less. In essence, interest earnings will fund 34% of the cost. These savings have been included in the adopted FY 2008/2009 Budget.

PUBLIC CONTACT

Public contact was made by posting the Council agenda on the City's official-notice bulletin board outside City Hall, in the Council Chambers lobby, in the Office of the City Clerk, at the Library, Senior Center, Community Center and Department of Public Safety; posting the agenda and report on the City's Web site; and making the report available at the Library and the Office of the City Clerk.

ALTERNATIVES

1. Adopt a resolution that: 1) approves an agreement and election to pre-fund Other Post Employment Benefits (OPEB) through CalPERS, 2) authorizes the City Manager to execute the agreement, and 3) authorizes the City Manager to take other actions required by CalPERS.

2. Do not adopt the resolution and do not enter into an OPEB Trust.

3. Other action per Council direction.

RECOMMENDATION

Staff recommends Alternative 1: Adopt a resolution that: 1) approves an agreement and election to pre-fund Other Post Employment Benefits (OPEB) through CalPERS, 2) authorizes the City Manager to execute the agreement, and 3) authorizes the City Manager to take other actions required by CalPERS.

Reviewed by:

Mary J. Bradley, Director, Department of Finance
Prepared by: Grace Leung, Finance Manager

Approved by:

Amy Chan
City Manager

Attachments

A. Resolution approving an agreement and election to pre-fund Other Post Employment Benefits (OPEB) through CalPERS; authorizing the City Manager to execute the agreement; and authorizing the City Manager to take other actions required by CalPERS
B. Agreement and Election with CalPERS to pre-fund Other Post Employment Benefits through CalPERS

RESOLUTION NO. ______

A RESOLUTION APPROVING AN AGREEMENT AND ELECTION TO PRE-FUND OTHER POST-EMPLOYMENT BENEFITS (OPEB) THROUGH CALPERS; AUTHORIZING THE CITY MANAGER TO EXECUTE THE AGREEMENT; AND AUTHORIZING THE CITY MANAGER TO TAKE OTHER ACTIONS REQUIRED BY CALPERS

WHEREAS, the City of Sunnyvale manages a retiree health benefit program (Program) that pays some or all of the health insurance premium for retired City employees who meet the eligibility requirements of the program; and

WHEREAS, it is in the City's interests to comply with Governmental Accounting Standards Board Statement 45 (GASB 45), which requires annual payments on unfunded portions of the actuarial costs of retiree benefits and disclosure in the City's Comprehensive Annual Financial Report of unfunded annual required contributions; and

WHEREAS, GASB 45 requires that reserve balances the City has dedicated to funding the accrued liability of the Program be placed in an irrevocable trust dedicated to paying the costs of the program and investing funds needed in future years; and

WHEREAS, the California Public Employees Retirement System (CalPERS) has created the California Employers' Retiree Benefit Trust Fund (Trust) to assist public agencies' compliance with GASB 45 and to manage investment of contracting agency reserves set aside to fund the costs of post-employment (retiree medical) benefits; and

WHEREAS, CalPERS requires the governing body of a public agency, by resolution, to approve an agreement with CalPERS to participate in the Trust and a delegation of authority to specific staff to request disbursement of funds needed for Program costs;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SUNNYVALE THAT:

1. The agreement with CalPERS to participate in the Trust is approved.

2. The City Manager is authorized to execute the agreement and any modifications as necessary in the future.

3. The City Manager is authorized to delegate authority to the Finance Director and other staff, as necessary, to request disbursements from the Trust as needed for expenses of the program.

4. City staff is authorized to transfer the available balance in the City's Employee Benefits Fund to the CalPERS Trust when necessary and prudent.

Adopted by the City Council at a regular meeting held on _________, 2008, by the following vote:

AYES:
NOES:
ABSTAIN:
ABSENT:

ATTEST: APPROVED:

_____________________________ _____________________________

City Clerk Mayor
(SEAL)

APPROVED AS TO FORM AND LEGALITY:

____

David Kahn, City Attorney

ATTACHMENT B

CALIFORNIA EMPLOYER'S RETIREE BENEFIT TRUST PROGRAM ("CERBT")

AGREEMENT AND ELECTION OF

____
(NAME OF EMPLOYER)

TO PREFUND OTHER POST EMPLOYMENT BENEFITS THROUGH CalPERS

WHEREAS (1) Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

WHEREAS (2) The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control and power over the administration and investment of the Prefunding Plan (sometimes also referred to as CERBT), the purposes of which include, but are not limited to (i) receiving contributions from participating employers and establishing separate Employer Prefunding Accounts in the Prefunding Plan for the performance of an essential governmental function (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the Prefunding Plan and to pay for health care costs or other post employment benefits in accordance with the terms of participating employers' plans; and

WHEREAS (3) ____
(NAME OF EMPLOYER)

(Employer) desires to participate in the Prefunding Plan upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the Prefunding Plan upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Other Post Employment Benefits (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The Prefunding Plan is a trust fund that is intended to perform an essential governmental function within the meaning of Section 115 of the Internal Revenue Code as an agent multiple-employer plan as defined in Governmental Accounting Standards Board (GASB) Statement No. 43 consisting of an aggregation of single-employer plans, with pooled administrative and investment functions;

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Representation and Warranty

Employer represents and warrants that it is a political subdivision of the State of California or an entity whose income is excluded from gross income under Section 115 (1) of the Internal Revenue Code.

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the Prefunding Plan by adopting this Agreement and filing with the CalPERS Board a true and correct original or certified copy of this Agreement as follows:

Filing by mail, send to:

CalPERS
Constituent Relations Office
CERBT (OPEB)
P.O. Box 942709
Sacramento, CA 94229-2709

Filing in person, deliver to:

CalPERS Mailroom
Attn: Employer Services Division
400 Q Street
Sacramento, CA 95814

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both CalPERS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the Prefunding Plan, to carry out the purposes of this Agreement, and to maintain the tax exempt status of the Prefunding Plan. Employer agrees to follow such procedures and processes.

C. Actuarial Valuation and Employer Contributions

(1) Employer shall provide to the Board an actuarial valuation report on the basis of the actuarial assumptions and methods prescribed by the Board. Such report shall be for the Board's use in financial reporting, shall be prepared at least as often as the minimum frequency required by GASB Statement No. 43, and shall be:

(a) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;

(b) prepared in accordance with generally accepted actuarial practice and GASB Statement Nos. 43 and 45; and,

(c) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.

(2) The Board may reject any actuarial valuation report submitted to it, but shall not unreasonably do so. In the event that the Board determines, in its sole discretion, that the actuarial valuation report is not suitable for use in the Board's financial statements or if Employer fails to provide a required actuarial valuation, the Board may obtain, at Employer's expense, an actuarial valuation that meets the Board's financial reporting needs. The Board may recover from Employer the cost of obtaining such actuarial valuation by billing and collecting from Employer or by deducting the amount from Employer's account in the Prefunding Plan.

(3) Employer shall notify the Board of the amount and time of contributions which contributions shall be made in the manner established by the Board.

(4) Employer contributions to the Prefunding Plan may be limited to the amount necessary to fully fund Employer's actuarial present value of total projected benefits, as supported by the actuarial valuation acceptable to the Board. As used throughout this document, the meaning of the term "actuarial present value of total projected benefits" is as defined in GASB Statement No. 45. If Employer's contribution causes its assets in the Prefunding Plan to exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board may refuse to accept the contribution.

(5) The minimum Employer contribution will be at least $5000 or be equal to Employer's Annual Required Contribution, whichever is less, as that term is defined in GASB Statement No. 45. Contributions can be made at any time following the seventh day after the effective date of the Agreement provided that Employer has first complied with the requirements of Paragraph C.

D. Administration of Accounts, Investments, Allocation of Income

(1) The Board has established the Prefunding Plan as an agent plan consisting of an aggregation of single-employer plans, with pooled administrative and investment functions, under the terms of which separate accounts will be maintained for each employer so that Employer's assets will provide benefits only under employer's plan.

(2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the Prefunding Plan (Employer's Prefunding Account).

(3) Employer's Prefunding Account assets may be aggregated with prefunding account assets of other employers and may be co-invested by the Board in any asset classes appropriate for a Section 115 Trust.

(4) The Board may deduct the costs of administration of the Prefunding Plan from the investment income or Employer's Prefunding Account in a manner determined by the Board.

(5) Investment income shall be allocated among employers and posted to Employer's Prefunding Account as determined by the Board but no less frequently than annually.

(6) If Employer's assets in the Prefunding Plan exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board, in compliance with applicable accounting and legal requirements, may return such excess to Employer.

E. Reports and Statements

(1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.

(2) The Board shall prepare and provide a statement of Employer's Prefunding Account at least annually reflecting the balance in Employer's Prefunding Account, contributions made during the period and income allocated during the period, and such other information as the Board determines.

F. Disbursements

(1) Employer may receive disbursements not to exceed the annual premium and other costs of post employment healthcare benefits and other post employment benefits as defined in GASB 43.

(2) Employer shall notify CalPERS in writing in the manner specified by CalPERS of the persons authorized to request disbursements from the Prefunding Plan on behalf of Employer.

(3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board. The Board may require that Employer certify or otherwise establish that the monies will be used for the purposes of the Prefunding Plan.

(4) Requests for disbursements that satisfy the requirements of paragraphs (2) and (3) that are received on or after the first of a month will be processed by the 15^{th} of the following month. (For example, a disbursement request received on or between March 1st and March 31st will be processed by April 15th; and a disbursement request received on or between April 1st and April 30th will be processed by May 15th.)

(5) CalPERS shall not be liable for amounts disbursed in error if it has acted upon the written instruction of an individual authorized by Employer to request disbursements. In the event of any other erroneous disbursement, the extent of CalPERS' liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.

(6) No disbursement shall be made from the Prefunding Plan which exceeds the balance in Employer's Prefunding Account.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the Prefunding Plan, as determined by the Board.

H. Termination of Employer Participation in Prefunding Plan

(1) The Board may terminate Employer's participation in the Prefunding Plan if:

(a) Employer gives written notice to the Board of its election to terminate;

(b) The Board finds that Employer fails to satisfy the terms and conditions of this Agreement or of the Board's rules or regulations.

(2) If Employer's participation in the Prefunding Plan terminates for any of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the Prefunding Plan, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D.

(3) After Employer's participation in the Prefunding Plan terminates, Employer may not make contributions to the Prefunding Plan.

(4) After Employer's participation in the Prefunding Plan terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After thirty-six (36) months have elapsed from the effective date of this Agreement:

(a) Employer may request a trustee to trustee transfer of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that the transfer will satisfy applicable requirements of the Internal Revenue Code and the Board's fiduciary duties, then the Board shall effect the transfer within one hundred twenty (120) days. The amount to be transferred shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the transfer by more than 120 days.

(b) Employer may request a disbursement of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that all of Employer's obligations for payment of post employment health care benefits and other post employment benefits and reasonable administrative costs of the Board have been satisfied, then the Board shall effect the disbursement within one hundred twenty (120) days. The amount to be disbursed shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement by more than 120 days.

(6) After Employer's participation in the Prefunding Plan terminates and at such time that no assets remain in Employer's Prefunding Account, this Agreement shall terminate.

(7) If, for any reason, the Board terminates the Prefunding Plan, the assets in Employer's Prefunding Account shall be paid to Employer after retention of (i) amounts sufficient to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants described by the employer's current substantive plan (as defined in GASB 43), and (ii) amounts sufficient to pay reasonable administrative costs of the Board.

(8) If Employer ceases to exist but Employer's Prefunding Plan continues to exist and if no provision has been made by Employer for ongoing payments to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, the Board is authorized to and shall appoint a third party administrator to carry out Employer's Prefunding Plan. Any and all costs associated

with such appointment shall be paid from the assets attributable to contributions by Employer.

(9) If Employer should breach the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the Prefunding Plan.

I. General Provisions

(1) Books and Records.

Employer shall keep accurate books and records connected with the performance of this Agreement. Employer shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Employer's office(s) and shall be available for inspection and copying by CalPERS and its representatives.

(2) Audit.

(a) During and for three years after the term of this Agreement, Employer shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Employer relating to its performance of this Agreement.

(b) Employer shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Employer shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

(3) Notice.

(a) Any notice, approval, or other communication required or permitted under this Agreement will be given in the English language and will be deemed received as follows:

1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.

2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three delivery days after deposit in a United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, Notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.

6. E-mail transmission. When sent by e-mail using software that provides unmodifiable proof (i) that the message was sent, (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent.

Addresses for the purpose of giving notice are as shown in Paragraph B.(1) of this Agreement.

(b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

(c) Any party may change its address, telex, fax number, or e-mail address by giving the other party notice of the change in any manner permitted by this Agreement.

(d) All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and unmodifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective on confirmed receipt by recipient or 3 business days after sending, whichever is sooner.

(4) Modification

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the party to be charged.

(5) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement shall survive the termination of this Agreement until such time as all amounts in Employer's Prefunding Account have been disbursed.

(6) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(7) Necessary Acts, Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

ATTACHMENT B

A majority vote of Employer's Governing Body at a public meeting held on the ______ day of the month of __________________ in the year _________, authorized entering into this Agreement.

Signature of the Presiding Officer: ____

Printed Name of the Presiding Officer: _____________________________________

Name of Governing Body: ____

Name of Employer: ____

Date: _______________________________

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY_____________________________________
KENNETH W. MARZION
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

To be completed by CalPERS
The effective date of this Agreement is: _________________________