



City of Fort Bragg

416 N Franklin Street
Fort Bragg, CA 95437
Phone: (707) 961-2823
Fax: (707) 961-2802

Meeting Agenda Finance and Administration Committee

Wednesday, June 8, 2022

4:00 PM

Via Video Conference

MEETING CALLED TO ORDER

ROLL CALL

PLEASE TAKE NOTICE

Due to state and county health orders and to minimize the spread of COVID-19, Committee Members and staff will be participating in this meeting via video conference. The Governor's executive Orders N-25-20, N-29-20, and N-15-21 suspend certain requirements of the Brown Act and allow the meeting to be held virtually.

The meeting will be live-streamed on the City's website at <https://city.fortbragg.com/> and on Channel 3. Public Comment regarding matters on the agenda may be made by joining the Zoom video conference and using the Raise Hand feature when the Chair calls for public comment. Any written public comments received after agenda publication will be forwarded to the Committee Members as soon as possible after receipt and will be available for inspection at City Hall, 416 N. Franklin Street, Fort Bragg, California, during normal business hours. All comments will become a permanent part of the agenda packet on the day after the meeting or as soon thereafter as possible, except those written comments that are in an unrecognized file type or too large to be uploaded to the City's agenda software application. Public comments may be submitted to Diana Sanchez, dsanchez@fortbragg.com.

ZOOM WEBINAR INVITATION

*You are invited to a Zoom webinar.
When: Jun 8, 2022 04:00 PM Pacific Time (US and Canada)
Topic: Finance and Administration Committee*

*Please click the link below to join the webinar:
<https://us06web.zoom.us/j/89705553960>
Or Telephone: +1-253-215-8782 or +1-346-248-7799 (*6 mute/unmute; *9 raise hand)
Webinar ID: 897 0555 3960*

TO SPEAK DURING PUBLIC COMMENT PORTIONS OF THE AGENDA VIA ZOOM, PLEASE JOIN THE MEETING AND USE THE RAISE HAND FEATURE WHEN THE CHAIR OR ACTING CHAIR CALLS FOR PUBLIC COMMENT ON THE ITEM YOU WISH TO ADDRESS.

1. APPROVAL OF MINUTES

1A. [22-269](#) Approve Minutes of April 13, 2022

Attachments: [FAC 04132022](#)

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

3. CONDUCT OF BUSINESS

- 3A. [22-267](#) Receive Report and Make Recommendation to the City Council on the Establishment of a Section 115 Trust with Public Agency Retirement Services (PARS) for the Purpose of Pre-Funding the City's Future Unfunded Liability with California Public Employees' Retirement System (CALPERS)

Attachments: [Staff Report- Section 115](#)
[Pension Funding Policy](#)
[PARS Proposal](#)

- 3B. [22-277](#) Receive Report Regarding Childcare for City Councilmembers

Attachments: [Staff Report - Childcare FinAdminCmttee](#)
[Council Expenditures-Reimbursements](#)
[9-2011-Annual-Brian-Libow-City-Council-Salary-and-Benefits](#)
[Legal Considerations for Childcare Benefit for Council 6.3.22](#)

- 3C. [22-274](#) Receive Oral Update from Staff on Departmental Activities

4. MATTERS FROM COMMITTEE / STAFF

ADJOURNMENT

STATE OF CALIFORNIA)
)ss.
 COUNTY OF MENDOCINO)

I declare, under penalty of perjury, that I am employed by the City of Fort Bragg and that I caused this agenda to be posted in the City Hall notice case on June 3, 2022.

Juli Mortensen, Administrative Analyst
 Administrative Services Department

NOTICE TO THE PUBLIC

DISTRIBUTION OF ADDITIONAL INFORMATION FOLLOWING AGENDA PACKET DISTRIBUTION:

- *Materials related to an item on this Agenda submitted to the Council/District/Agency after distribution of the agenda packet are available for public inspection in the lobby of City Hall at 416 N. Franklin Street during normal business hours.*
- *Such documents are also available on the City of Fort Bragg's website at <http://city.fortbragg.com> subject to staff's ability to post the documents before the meeting*

ADA NOTICE AND HEARING IMPAIRED PROVISIONS:

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If you need assistance to ensure your full participation, please contact the City Clerk at (707) 961-2823. Notification 48 hours in advance of any need for assistance will enable the City to make reasonable arrangements to ensure accessibility.

This notice is in compliance with the Americans with Disabilities Act (28 CFR, 35.102-35.104 ADA Title II).



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Text File

File Number: 22-269

Agenda Date: 6/8/2022

Version: 1

Status: Business

In Control: Finance and Administration Committee

File Type: Committee Minutes

Agenda Number: 1A.

Approve Minutes of April 13, 2022



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Meeting Minutes Finance and Administration Committee

Wednesday, April 13, 2022

4:00 PM

Via Video Conference

MEETING CALLED TO ORDER

Chair Albin-Smith called the meeting to order at 4:00 PM

ROLL CALL

Staff Present: Assistant Finance Director-Isaac Whippy, Interim City Manager-David Spaur, Government Accountant I-Laura Bianchi Limbird, Administrative Assistant-Diana Sanchez.

Present: 2 - Tess Albin-Smith and Marcia Rafanan

1. APPROVAL OF MINUTES

1A. [22-172](#) Approve Minutes of February 9, 2022

The minutes were approved by the Committee as presented and will be forwarded for Council review.

2. PUBLIC COMMENTS ON NON-AGENDA ITEMS

Jacob Patterson.

3. CONDUCT OF BUSINESS

3A. [22-174](#) Receive Reportable Items Report: Includes Treasury Report, Approved Intradepartmental Budget Transfers, Contracts Under \$25k Approved by the City Manager, Contract Change Orders Not Exceeding 10% of Contract, and Disbursements Listing

The Committee reviewed the reports prepared by the Finance Department staff for this item. The reports were presented by Assistant Finance Director, Whippy.

Public Comment: Jacob Patterson

Discussion: The Committee and staff discussed various items including the CDBG Grant for the Water Meter Project. The Interest Income Budget was also discussed and the possibility of different investments for the future. A summary of contracts under \$25K and Disbursement Listing was also discussed.

3B. [22-179](#) Receive Oral Update from Staff on Departmental Activities

Department Update:

Assistant Finance Director, Whippy and Government Accountant I, Limbird gave an update on the following:

*Update on Waiver for CBD new business water connection fee.

*Staff Report for the finance department which is now fully staffed and new staff is being cross-trained.

*Update on business license renewals.

*Update on Leak Letters.

A motion was made that these Staff Report be recommended for approval. The motion carried by the following vote:

Aye: 2 - Commissioner Albin-Smith and Commissioner Rafanan

4. MATTERS FROM COMMITTEE / STAFF

None.

ADJOURNMENT

Chair Albin-Smith adjourned the meeting at 5:04 PM



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Text File

File Number: 22-267

Agenda Date: 6/8/2022

Version: 1

Status: Business

In Control: Finance and Administration Committee

File Type: Staff Report

Agenda Number: 3A.

Receive Report and Make Recommendation to the City Council on the Establishment of a Section 115 Trust with Public Agency Retirement Services (PARS) for the Purpose of Pre-Funding the City's Future Unfunded Liability with California Public Employees' Retirement System (CALPERS)



AGENCY: Finance & Admin
MEETING DATE: June 8, 2022
DEPARTMENT: Finance
PRESENTED BY: Isaac Whippy
EMAIL ADDRESS: iwhippy@fortbragg.com

AGENDA ITEM SUMMARY

TITLE:

RECEIVE REPORT AND MAKE RECOMMENDATION TO THE CITY COUNCIL ON THE ESTABLISHMENT OF A SECTION 115 TRUST WITH PUBLIC AGENCY RETIREMENT SERVICES (PARS) FOR THE PURPOSE OF PRE-FUNDING THE CITY'S FUTURE UNFUNDED LIABILITY WITH CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM (CALPERS)

ISSUE:

The Finance & Admin Committee is being asked to approve and make a recommendation for establishing a third-party irrevocable trust to pre-fund a portion of the City's long-term financial pension obligation. Approval of a Trust implements one of the strategies included in the Council Adopted Pension Funding Policy and is a recognized best practice that will help the City achieve greater financial sustainability.

ANALYSIS:

The City of Fort Bragg has two defined benefit pension plans with the California Public Employees' Retirement System (CalPERS) - one Miscellaneous Plan and one Safety Plan (Police and Fire).

All qualified permanent and probationary employees are eligible to participate in the pension plan for which they are eligible members based on their employment position with the City. Like most California public agencies, the City of Fort Bragg is facing the financial challenges associated with rising pension costs.

For several years the City has been exploring ways to reduce the City's Unfunded Accrued Liability (UAL) or pension liability. Here are some of the steps that the City has taken in the last 3 years.

- (i) During the FY 2019/20 Budget preparation, the City Council established a policy that fifty percent (50%) of any General Fund operating surplus realized at year-end would be used to pay down the City's UAL. As of the June 30, 2020, CalPERS actuarial valuation, the City's unfunded pension liability was \$11.5 million, an increase of 7.2% from 2019. The City's required annual contribution to CalPERS has also increased to \$1.4 million and is projected to be \$1.6 million in 2028. This is a conservative estimate with the likelihood that the increase will be significantly higher due to changes in CalPERS funding policies and poor investment returns.

AGENDA ITEM NO.

- (ii) In October 2021, the City Council approved a Pension Funding Policy to deploy various strategies to achieve the following objectives: reduce projected pension contributions to maintain services and increase the funding ratio for the City's Safety and Miscellaneous CalPERS plans.
- (iii) The City restructured its UAL Debt by issuing \$11.4 million in taxable Lease Revenue Bonds in November 2021, of which \$7.5 million were used to reduce the City's unfunded pension liability bringing the City's funding ratios up to over 95% from 66% for its pension plans. The restructuring would also yield savings of \$3.5 million over the next ten years and provide better fiscal stability with smoother annual payments for budgeting purposes. Additionally, CalPERS recognized a record 21.3% investment return for the fiscal year ended June 30, 2021, reducing the City's UAL further. Unfortunately, as of April 2022, CalPERS is at a -5% return on investment and is estimated to end the fiscal year with a negative rate return, which will result in a new significant UAL next year.

Looking ahead, to absorb future UAL when CALPERS has a bad investment year, there are a few options. One option would be to continue to fund pension costs on a "pay-as-you-go" basis, with the City making the minimum required contribution each year. As costs continue to increase, a more significant burden would be placed on the City's operating budget. A second option would be to make additional payments to CalPERS above the minimum required amount. The risk of this option is that the additional funds placed with CalPERS would be subject to the same investment volatility as other CalPERS funds. A third option, which many California municipalities have implemented, would be the establishment of a pension trust authorized under Section 115 of the Internal Revenue Code to accumulate funds to offset the unfunded liability and to smooth the impact of future cost increases.

The advantage of this option over depositing additional funds with CalPERS is that the City would retain control over managing the funds invested in the Trust. The funds would also be available to reduce the impact of future cost increases in those years when the City might be experiencing budget shortfalls.

Section: 115 Request For Proposal:

A Request for Proposals (RFP) for Section 115 Pension Trust Services was issued in April 2022. Two proposals were received from Public Agency Retirement Services (PARS) and CalPERS California Employers' Pension Prefunding Trust (CEPPT). The proposals were evaluated based on the firms' experience providing Section 115 pension trust services to other California municipalities and the managed funds' performance history and costs. Based on that analysis, PARS is being recommended as the preferred plan administrator.

PARS, which was established in 1984, has been designing and administering retirement plans and trust solutions exclusively for public agencies for the past 38 years. They currently administer over 2,000 programs for more than 1,000 public agencies, including 490+ Section 115 clients with 261 in California worth \$5.1 billion. PARS offers five

investment strategies and asset management fees for 25 basis points (0.25%) and 35 basis points (0.35%) for US Bank as trustee/custodian for the PARS program with HighMark Capital Management providing investment management services. Contributions to the trust fund are strictly voluntary by the City and can be accessed at any time. Fees are only charged when assets are added to the Trust.

In contrast, CEPPT administers and manages \$70 million in assets on behalf of 67 plans. Asset management fees are 25 basis points (0.25%) which is 35 basis points lower than PARS.

Funds are set aside in an exclusive benefit irrevocable Trust that cannot be accessed by creditors or used by the City for non-pension-related purposes. The Trust offers an opportunity for the City to invest in a more diversified array of investments to maximize investment returns long term and reduce the City's pension liability. PARS offers five investment program options based on risk tolerance levels. (Conservative, Moderately Conservative, Moderate, Balanced, Capital Appreciation)

Over the past ten years, the average rate of return for the five programs is 10.6% from 1-10 years, as depicted below. This rate of return is considerably higher than the rate which the City has realized on its investment portfolio and is another reason why many public agencies choose to participate in the PARS 115 Trust program.

NET PERFORMANCE FEE ANALYSIS

As of December 31, 2021

Over 1 Year		Over 3 Years		Over 5 Years		Over 10 Years	
PARS/HIGHMARK		PARS/HIGHMARK		PARS/HIGHMARK		PARS/HIGHMARK	
Capital Appreciation (25% Fixed Income/Cash)	14.96%	Capital Appreciation (25% Fixed Income/Cash)	17.30%	Capital Appreciation (25% Fixed Income/Cash)	12.15%	Capital Appreciation (25% Fixed Income/Cash)	10.83%
minus weighted PARS administration fee	(-) 0.25%	minus weighted PARS administration fee	(-) 0.25%	minus weighted PARS administration fee	(-) 0.25%	minus weighted PARS administration fee	(-) 0.25%
minus weighted HighMark investment management fee	(-) 0.35%	minus weighted HighMark investment management fee	(-) 0.35%	minus weighted HighMark investment management fee	(-) 0.35%	minus weighted HighMark investment management fee	(-) 0.35%
1-Year Net Return	14.36%	3-Year Net Return	16.70%	5-Year Net Return	11.55%	10-Year Net Return	10.23%
CALPERS CERBT		CALPERS CERBT		CALPERS CERBT		CALPERS CERBT	
Strategy 1 (30% Fixed Income/Cash)	13.72%	Strategy 1 (30% Fixed Income/Cash)	16.22%	Strategy 1 (30% Fixed Income/Cash)	11.26%	Strategy 1 (30% Fixed Income/Cash)	9.54%
minus fees	(-) 0.10%						
1-Year Net Return	13.63%	3-Year Net Return	16.12%	5-Year Net Return	11.17%	10-Year Net Return	9.43%

* Subject to change due to rebalancing; fees are based on assets under \$5 million.
Past performance does not guarantee future results.

While both vendors provide excellent pension trust options for the City and CEPPT fees are lower than PARS, Staff recommends that the City engages PARS to provide these services. The Primary drivers for this recommendation are an established track record and the size of the client base and assets under management with PARS.

Expected benefits offered by the PARS Trust Program to the City include:

- Over the past ten years, the average rate of return for the five investment programs has been 10.2%. This rate of return is considerably higher than the rate the City has realized on its investment portfolio and is another reason why many public agencies choose to participate in the PARS 115 Trust program
- Allows reimbursement to the City for up to 2 years of CALPERS employer contributions (current year + prior year) which can be helpful in an emergency or during a tough budget year
- Investment flexibility with Section 115 Trust compared to restrictions on general fund investments. PARS offers a choice of five active or five passive portfolios and customized options for asset balances over \$5 million.
- Oversight and control of fund management selection, monitoring of performance, and ability to replace fund management based on performance criteria
- Increased flexibility on the use of trust assets (i.e., trust assets can be accessed at any time as long as the assets are used to fund the City's pension obligations and defray reasonable expenses associated therewith)
- PARS does not charge minimum annual trading/transaction or disbursement fees. etc. All fees are asset-based.
- Potential for positive rating agency and investor consideration.

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 adequately offset liabilities, funds must be set aside in an exclusive benefit, irrevocable Trust that creditors cannot access 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 long-term investment returns and reduce the City's liabilities.

More than 430 public agencies have adopted Section 115 trust programs through PARS to reduce their liabilities, including local agencies such as the County of Humbolt, Lake County, City of Rohnert Park, and the City of Healdsburg, to name a few.

RECOMMENDED ACTION:

Approve and recommend to the City Council the establishment of an IRS Section 115 Pension Trust with Public Agency Retirement Services (PARS) for the purpose of Pre-Funding a Portion of the City's contributions to the California Public Employees' Retirement System (CalPERS) and Authorizing the City Manager to Execute all Documents to Fund and Maintain Participation in the Trust

ALTERNATIVE ACTION(S):

The Finance & Admin Committee could choose not to approve the establishment of a pension trust or direct Staff to investigate other trust providers in more detail. This is not recommended as Staff has performed an RFP process, and establishing a pension trust is a recognized best practice that will help the City achieve greater financial sustainability, as depicted in the City's Pension Policy.

FISCAL IMPACT:

The City currently has \$750,000 set aside in the unassigned Reserves (Surplus from FY 2020/21) and \$350,000 budgeted in the FY 2021/22 Adopted Budget. A total transfer of \$1.1 million would be made to the newly established Trust. Fees resulting from managing the Trust are embedded within the investment returns. There are no other costs associated with this action.

GREENHOUSE GAS EMISSIONS IMPACT:

There is no direct impact on greenhouse gas emissions.

CONSISTENCY:

The Pension Funding Policy incorporates the City Council policy of paying 50% of any year's General Fund surplus towards the City's UAL and furthers the City Council budget priority No. 6: Provide for additional contributions to CalPERS to pay the unfunded liability off earlier than 30 years.

ATTACHMENTS:

1. PARS Proposal
2. City's Pension Policy

NOTIFICATION:

N/A



City of Fort Bragg CA Pension Funding Policy

PURPOSE:

The purpose of this policy is to define how the City's pension funding obligations will be met. As part of its overall compensation plan, the City provides a defined benefit pension to its employees. This benefit is administered by the California Public Employees Retirement System (CalPERS) and funded through contributions from the City and its employees and from investment earnings on those contributions. The CalPERS Board of Administration, under the California Public Employees' Retirement Law (PERL), is responsible for the administration and investment of the funds it receives and determines the amounts contributed by each of the governmental entities that participate in CalPERS. The PERL sets employee contribution rates.

POLICY:

It is the policy of the City to fulfill its obligation to its residents and employees to maintain fiscally responsible management practices and to its employees to ensure that promised retirement benefits are funded. To that end, the City will meet its pension funding obligations as follows:

1. **Actuarially Determined Contributions:** Each fiscal year, the City will contribute to CalPERS the amount determined by CalPERS actuaries to be the minimum required employer contribution for that year. The minimum contribution consists of two components, normal cost and unfunded accrued liability (UAL). The normal cost is expressed as a rate that is applied to pensionable payroll costs and reflects the cost of pension benefits earned by employees in the current fiscal year. The UAL payment is a flat dollar amount that represents a portion of the cost of past benefits earned by employees, but for which, because of deviations in actual experience and changes in assumptions about investment performance, the normal cost rates established for those prior years has been determined to be insufficient to provide the promised retirement benefit. The CalPERS actuaries recalculate the total UAL each year and an updated multi-year amortization schedule is provided to show the projected annual minimum payments.
2. **Annual UAL Prepayment:** CalPERS offers the option to make monthly payments on the UAL or prepay the entire annual amount at a discounted level by the end of July. The City will prepay its annual obligation each year to achieve budgetary savings.
3. **Section 115 Pension Trust:** The City will establish and maintain a pension stabilization fund in the form of a Section 115 Pension Trust. The targeted funding level for this fund is the City Council policy that fifty percent (50%) of any surplus in the General Fund at

year-end will be used to reduce the current UAL. Assets in the Section 115 Pension Trust may be used only for pension related costs and at the direction of the City Council. Once the targeted funding level is reached, the earnings on the assets in the Trust may be applied to offset a portion of the City's annual pension contributions to CalPERS or make additional discretionary payments to CalPERS.

4. **Targeted Funding Level:** The City's goal is to achieve and maintain a funded status for each of its plans of between 90% and 100%. A funded status of 100% signifies that the City's pension assets with CalPERS match its accrued liabilities.
5. **Additional Discretionary Payments:** CalPERS allows member agencies to make additional discretionary payments at any time and in any amount, which would serve to reduce the UAL and future required contributions. The City will consider this option in the context of its annual evaluation of reserve levels and budgetary requirements.
6. **Transparency and Reporting:** Funding of the City's pension plans should be transparent to vested parties including plan participants, annuitants, the City Council and Fort Bragg residents. In order to achieve this transparency, the following information shall be available:
 - a. Copies of the annual actuarial valuations for the City's CalPERS plans.
 - b. The City's Comprehensive Annual Financial Report shall be published on the City's website. This report includes information on the City's annual contributions to the pension system and their funded status.
 - c. The City's annual operating budget shall include the City's contributions to CalPERS.
7. **Pension Obligation Bonds (POBs):** POBs or a similar debt issuance such as Lease Revenue Bonds (LRBs) used to make payments towards the City's UAL are tools that can be used to provide an additional discretionary payment to CalPERS upon the determination that the cost to borrow the funds for the payment is less than continuing to make the projected prescribed UAL payments at the current discount rate. If the City issues POBs or LRBs, the following guidelines will apply:
 - a. Expert advice and analysis by actuaries and municipal advisors will be utilized to stress test the risk of a market crash and threshold at which the City would be worse off issuing POBs or LRBs versus not.
 - b. The interest rate on the POBs or LRBs shall be at least 2.5% less than the current CalPERS discount rate.
 - c. The final maturity date on the POBs or LRBs will be no more than the current term of the UAL.
 - d. The POBs or LRBs structure will contain an early call provision.
8. **Review of Funding Policy:** Funding a defined pension plan requires a long-term horizon. As such, the City will review this policy at least every five years to determine if changes to this policy are needed to ensure adequate resources are being funding the UAL.

PUBLIC
AGENCY
RETIREMENT
SERVICES

PARS

TRUSTED SOLUTIONS. LASTING RESULTS.



CITY OF FORT BRAGG

IRS Code Section 115 Retirement Trust Services

Date Due: April 29, 2022

Proposer: PARS (Public Agency Retirement Services)

April 28, 2022

City of Fort Bragg
Attention: June Lemos, MMC, City Clerk
416 North Franklin Street
Fort Bragg, CA 95437

RE: IRS Code Section 115 Retirement Trust Services

Ms. Lemos,

PARS (Public Agency Retirement Services) is proud to submit the enclosed proposal to provide Section 115 Trust services for pension prefunding and ongoing fiduciary investment advice for the City of Fort Bragg. Our IRS-approved "combination trust" will provide the City with "turn-key" comprehensive implementation, administration, trustee, co-fiduciary investment advisory, investment management, trust documents, state/federal compliance monitoring, and reporting services to help prefund the City's pension liability in accordance with the requested timeframe.

PARS, the pioneer of pension prefunding trusts, serves as the program's consultant and trust administrator with U.S. Bank as trustee and HighMark Capital Management (HighMark) as investment advisor/manager. Together, our firms are the best and top qualified providers to perform the requested services due to the following key features:

- **Experienced, Industry Leading Trust Administrator** – PARS is the most knowledgeable provider, with over 38 years of working with public agencies, 16 years administering Section 115 Trust services and over 490 Section 115 Trust accounts under administration, including 142 cities in California. PARS is both the pioneer and #1 provider of Section 115 pension prefunding and Section 115 "combination" trust (for pension and/or OPEB) administration in California and nationally.
- **Strong, Secure Trustee** – The City's assets will be safeguarded by U.S. Bank, the 5th largest bank in the nation. U.S. Bank holds over \$10 billion in Section 115 Trust assets, making them one of the largest trustees for these type of assets in the country.
- **Successful, Highly-Respected Investment Advisor/Manager** – As a sub-advisor to U.S. Bank, HighMark will provide hands-on investment management/advisory services for the City. The firm, which has 100 years of experience and over \$19 billion in assets (including \$3.5+ billion in Section 115 Trust assets) under management and advisement, provides the highest levels of investment fiduciary protection and offers flexible investment options to fit the City's current and changing needs.
- **Innovative Trust Design** – The PARS program is structured as a unique, industry-leading "combination" trust approach which allows both pension and/or OPEB to be prefunded within one single trust. This structure helps to bring economies of scale and cost efficiencies to the City, while still allowing for local control and customization.

4350 Von Karman Ave., Ste. 100
Newport Beach, CA 92660-2043
800.540.6369
fax 800.660.8057
www.pars.org

TRUSTED SOLUTIONS. LASTING RESULTS.

- **Dedicated Customer Service** – The PARS team handles all levels of service needs for the City. The team will provide guidance and support, development and management of documents, resources and analysis, cell phone access, in-person reviews, same day phone or virtual meeting for immediate needs, and ad hoc reports for the City's needs.

PARS is committed to meeting the needs of your City and will provide a full team of highly experienced personnel to manage your account. This team will be led by:

Ryan Nicasio, Vice President

4350 Von Karman Ave, Suite 100

Newport Beach, CA 92660

Phone: (800) 540-6369 Ext. 134

Email: rnicasio@pars.org

As Chief Financial Officer of PARS, I have the authority to represent PARS, submit a bid, and sign a contract with the City of Fort Bragg.

Thank you for your thoughtful consideration of our proposal.

Sincere regards,



Tod Hammeras

Chief Financial Officer, PARS

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EXECUTIVE SUMMARY

PARS (Public Agency Retirement Services), in collaboration with U.S. Bank and HighMark Capital Management (HighMark), proposes to the City of Fort Bragg our comprehensive solution to the City's Internal Revenue Code (IRC) Section 115 Trust for pension prefunding and ongoing fiduciary investment advice. Using PARS' pioneering, industry-leading Pension Rate Stabilization Program (PRSP), the City can prefund its pension and also its retiree healthcare liabilities in one IRS-approved combination Section 115 Trust. Our unique *combined* trust provides economies of scale for investment, administrative, and trustee services in a way not possible with two separate trusts to minimize staff burdens and administrative costs.

The Pioneer of Pension Rate Stabilization Trusts

PARS has 38 years of experience and serves **over 490 Section 115 Trust clients** nationally, including 142 California cities. Our unparalleled experience includes many firsts:

- **First Section 115 Trust program** for pension prefunding **approved by the IRS in 2015** on a multiple employer basis
- **First combination trust** that allows for **pension and OPEB prefunding** in one trust in the state
- **Fastest growing and largest** Section 115 post-employment benefits trust provider in the nation

Key Program Advantages

As the post-employment benefits trust pioneer and leader, PARS has continually fine-tuned its program to meet the needs of California public agencies. Today, we bring to the City the following key advantages:

- **Section 115 trusts are PARS' #1 core competency**, not a sideline business — giving us unparalleled experience over other providers
- **Pioneer and market leading provider** with over 490 Section 115 trust clients, over 266 pension trust clients
- **IRS-approved** trust with first favorable Private Letter Ruling (PLR) that led the way for others to follow. Our PLR provides immediate and guaranteed tax-exempt status on investment earnings to the City and we are one of only two providers in the nation to have received one
- **Flexible, discretionary investment options** designed by HighMark specifically for prefunding pension liabilities in a trust that is not limited by a few narrow investment options
 - The City can select from 5 model portfolios, all of which can be actively or passively managed (pension and OPEB investment strategies can be different)
 - At \$5 million asset level, the City additionally has the ability to customize investments within each individual pension and OPEB trust account
- **Dedicated Portfolio Manager** that will be available to the City in-person and remotely for questions, meetings, and ad-hoc reports at any time
- **Investment policy development, asset allocation assistance, and ongoing portfolio analysis** to meet the City's objectives

- **Strong, historical Global Investment Performance Standards (GIPS) compliant investment returns for both pension and OPEB** versus providers that have not provided pension trusts and investment options for extended periods of time and may resort to showing *hypothetical* return history
- **Local control**, which provides the City with greater diversification and autonomy over investments and providers
- **Hands-on, individualized attention** from highly experienced PARS/HighMark service team that has a long, successful track record working with California cities like the City of Fort Bragg
- **Fiduciary protection** from U.S. Bank, the 5th largest bank and the most dominant Section 115 trustee in the nation. U.S. Bank currently serves 626 Section 115 Trust clients nationally
- **No startup costs, minimum contribution requirements, transaction/trading fees, or ongoing compliance costs** — there is no red tape or fees to enter or leave the trust
- **Ready-to-use, simply organized** irrevocable Section 115 pension trust and investment program compliant with California and federal law, as well as GASB rules

The Turn-key Solution Provider

PARS has developed a unique, comprehensive program that combines the following services:

- Trust administration, recordkeeping, consulting, analysis, and advisory services
- In-person, individualized services no matter size of assets or agency and education, presentations and/or training to City staff and City Council members
- Trustee and custodial services
- Fiduciary investment advisory and management services with development of investment policy statement (IPS) and asset allocation guidelines
- Comprehensive reporting and performance monitoring including annual audits and GASB 67/68 reporting assistance
- Signature-ready trust documents and state and federal compliance monitoring
- Assistance in developing funding policy, conducting educational workshops, and creating presentations as needed.

EXPERIENCE

Describe your firm’s experience serving California local government clients in establishing IRS Section 115 Trusts and related investment services. Comment on the key program advantages which make your firm different from your competitors. Please disclose the total volume of all Section 115 trusts under management with your firm.

The PARS Section 115 Trust Program operates as a collaboration of 3 industry leaders; PARS serves as trust administrator, U.S. Bank as trustee, and HighMark as discretionary investment manager.

Experience of PARS (Trust Administrator)

PARS is a pioneer in the design and administration of governmental retirement trusts for public agencies with over four decades of experience in the business. Throughout this time, our company has experienced continual corporate growth and has built a long track record of service which includes the following key accomplishments:

- Market leading Section 115 pension prefunding trust provider with **over 266** clients nationwide, including **261 in California**
- Administration of over **2,000** plans for more than **1,000** public entities
- Development of the first multiple-employer Section 115 Trust Program for pension prefunding in the nation (2015)
- Vast experience providing integrated retirement trust and plan solutions to agencies – **over 285** of our clients have multiple trusts or plans with us
- Largest Section 115 Trust provider for pension and OPEB liabilities nationwide
- Only provider using a “combination” trust for pension and OPEB nationally
- Development and administration of multiple employer Section 115 Trust programs for numerous associations and group entities including the Community College League of California, California School Boards Association, Rhode Island Interlocal Trust, 4 County Massachusetts Trust, and Arizona Public Safety Personnel Retirement System

Key PARS Milestones

1984	PARS begins to design and administer niche retirement plans for public agencies.
1990	PARS creates the Public Agency Retirement System Trust, an IRC Section 401(a) multiple employer retirement trust program. PARS has since developed several other multiple employer trusts for public agencies based on this initial model.
1996	PARS developed its first trust (VEBA) for prefunding retiree medical benefits in California.
2001	PARS begins consulting with public agencies on projects related to retiree health care liabilities.

2003	PARS begins developing an innovative Section 115 irrevocable trust based on its already established multiple employer trust model.
2004	California School Board Association hires PARS to develop and implement a Section 115 multiple employer trust to prefund retiree health care.
2006	PARS receives the first ever IRS PLR given on a multiple employer Section 115 Trust for post-retirement health care funding. The IRS requests publication of the trust’s details as an example for other OPEB multiple employer trusts.
2015	PARS establishes a new Section 115 “combination” trust that allows prefunding of both pension and/or OPEB costs. This trust subsequently receives a favorable IRS PLR, the first of its kind in the nation.
2016	PARS has record year adding over 60 clients to its pension prefunding trust, making the firm the clear market leader and program expert not only in California but in the nation.
2020	In the last 3 years, another 150+ agencies join the program to prefund pension obligations and PARS now administers over \$5.1 billion in Section 115 trust assets.
2021	PARS launches a statewide pension prefunding trust program for Arizona, partnering with the state retirement system.
2022	More than 490 agencies utilize PARS to prefund pension and OPEB liabilities using the PARS Section 115 Trust which has over \$5.1 billion in assets under administration.

Why Select PARS?

1. Unlike other providers, Section 115 Trust services for prefunding pension is PARS’ core business and specialty.
2. We are the market pioneer and leader of pension prefunding trusts with 261 client agencies in California.
3. The City receives added protection from the trust’s IRS Private Letter Ruling (PLR) that allows for both prefunding of pension and OPEB liabilities (if the City wants to use for that purpose in the future). Other providers applied to the IRS but failed to receive a PLR.
4. We offer mutual indemnification clause in agreements while other providers require a one-sided agreement placing the customer at a severe disadvantage.
5. No start-up costs, no minimums, and no fees are charged until assets are put into the trust.
6. We allow reimbursements to the City for up to 2 years of CalPERS employer contributions (current year + prior year) which can be helpful in an emergency or during a tough budget year.
7. The City will be assigned a dedicated Senior Portfolio Manager/Team from the outset which provides fiduciary responsibility, investment policy assistance, annual onsite reviews, and cell phone access.

8. The City has investment flexibility with the choice of 5 active or 5 passive portfolios, as well as a customized option (for asset balances over \$5 million). Other providers limit the number of available investment options, not allowing equity exposure greater than 40%.
9. HighMark shows true, historical investment return information over 1-, 3-, 5- and 10- years, not hypotheticals like many of our competitors.
10. Historically, clients have experienced greater net investment performance when both returns and fees are taken into consideration, the ultimate measure of value to the City.

KEY PROGRAM ADVANTAGES

<p>Market Leader of Pension Prefunding Trusts</p>	<ul style="list-style-type: none"> • PARS developed the concept of pension prefunding trusts and is currently the only provider with significant clients (currently at 266) and experience for pension prefunding trusts in California • Section 115 trust services for prefunding pension is our core business. This is not the case for other providers (PARS serves 266 while our competitors serve only around 60). • The PARS program is a combination multiple employer solution that allows pension and OPEB within one trust while other providers require the City either to create its own or two separate trusts.
<p>Experienced, Knowledgeable Section 115 Trust Provider</p>	<ul style="list-style-type: none"> • Unlike other providers, our main business is niche retirement trust administration for public agencies. We have spent the last 18 years fine-tuning our Section 115 Trust program to ensure we offer the best program available. • PARS' dedication and knowledge of clients' needs is the reason why we were the first in the nation to develop a multiple-employer trust for combined pension prefunding and why we are the only large-scale provider of pension trusts.
<p>Local Control and Less Red Tape</p>	<ul style="list-style-type: none"> • PARS offers local control, meaning there is no central authority placing mandates on the trust. Other providers require the City to join external Boards that make collective investment decisions for the City more difficult and decreases flexibility. • The trust operates completely separate and apart from CalPERS which provides maximum autonomy and diversification of providers for local control. • PARS does not charge minimum annual fees, trading/transaction fees, disbursement fees, etc. unlike many other providers. All fees with PARS are asset-based.

	<ul style="list-style-type: none"> • There are no hidden fees with PARS. We disclose all fees and are fully transparent. Other providers claim low costs but do not disclose the underlying expense ratios in their investment funds which drive up their costs. • We only require a 30-day termination notice, but competitors may take up to 150 days to transfer funds and may require their board's approval, slowing down the process. • PARS includes a mutual indemnification clause in agreements, providing an additional layer of legal protection to the City and is in the City's best interests, while other providers do not include such a clause. • Our program allows for two plan year reimbursements, unlike one year for other providers, which is helpful in an emergency or difficult budget year.
<p>Diversified Investment Focus</p>	<ul style="list-style-type: none"> • HighMark specializes in pension and OPEB trust investing, rather than fixed income general fund investing, which is common with providers that mainly manage cash and fixed income, rather than long-term liabilities. • We are not limited to the same investment managers and approaches of CalPERS, and we provide further diversification and greater local autonomy.
<p>Transparent Investments</p>	<ul style="list-style-type: none"> • We are not proposing hypotheticals and composites based on portfolios that still need to be developed, which can make it difficult to evaluate performance history and even underlying investment expenses.
<p>Most Flexible Investment Approach</p>	<ul style="list-style-type: none"> • We offer five pre-established investment portfolios as well as a customized allocation and both active and passive strategies, enabling the City to choose an investment structure that most effectively meets its needs. • PARS provides the most investment flexibility of all competitors. • Senior Portfolio Managers, Andrew Brown and Randall Yurchak, will provide hands-on investment policy development, asset allocation recommendations, ongoing investment support, and direct cell phone access. They will be supported by a full team of investment professionals and analysts at HighMark's headquarters who review client portfolios on an ongoing basis. • This flexibility and trust structure means that the City is not tied to using one investment firm/option, unlike other pension prefunding trust providers. • We have the option of 5 investment portfolios, with active and passive platforms, and custom accounts with actual, true 1-, 3-, 5-, and 10-year historical performance. Other providers use "what-if" scenario style portfolios that are not based on actual clients' historical rate of returns.

	<p>The true, historical performance for each strategy can be viewed in the Appendix under “Historical Returns.”</p>
<p>Most Comprehensive Administration</p>	<ul style="list-style-type: none"> No other provider offers the same level of comprehensive administrative services that reduce workload and costs for the City. PARS will provide all consulting, plan design, state and federal compliance monitoring, document preparation/management, trust administration, plan-level recordkeeping, employer statements, reporting, plan communications materials, audit and actuarial support, consulting and analysis, and ongoing client reviews and services. As program administrator, PARS will also serve as liaison between the City, U.S. Bank, and HighMark.
<p>User-Friendly Trust Approach</p>	<ul style="list-style-type: none"> We provide fully vetted, California and IRS compliant, signature-ready trust documents that enable the City’s trust account to be set up quickly and easily. Once the program is adopted, the City’s only role would be to make contributions, request disbursements, and monitor reports on account and investment activity. We do the rest.
<p>Personalized Service</p>	<ul style="list-style-type: none"> PARS understands that a hands-on, individualized approach is the most effective method for administration and will take great pride in working closely with City of Fort Bragg, if chosen. The City’s assigned services team will always be directly available to staff, and we guarantee regular in-person client reviews.

PROGRAM TEAM AND RELATIONSHIP SERVICES

Provide the person's resume (executive assigned to the City's Trust account) who will be the key contact point to coordinate services to the City. Please identify your firm's service team members, including their tenure with the firm, their background, and their role in managing the City's proposed Trust account.

PARS places a heavy emphasis on strong customer services and will dedicate a team of individuals to the ongoing administration and management of the City's trust account. The following individuals will serve as the primary service team members to the City (led by Ryan Nicasio). This service team will also be supported by a larger group working behind the scenes at PARS, HighMark, and U.S. Bank corporate offices and headquarters.

Ryan Nicasio, CEBS, Senior Vice President, PARS



Role

Ryan will serve as the Lead Consultant and primary point of contact to facilitate services to the City – from program initiation to ongoing administration. He will provide a full scope of consulting services and will also take responsibility for coordinating services between PARS, U.S. Bank, and HighMark. The City will have direct access to Ryan on all matters and he will be available to meet in-person, virtually, and by phone as often as requested.

Experience

Ryan joined PARS in 1998 as an Administrator in the Plan Accounting Department. For nine years, he managed this department and the firm's accounting databases to ensure that contributions, earnings, and expenses were properly allocated to more than 300,000 plan participants and agency accounts. In 2007, Ryan transitioned to become Vice President of PARS Consulting Department. He is experienced in the nuances of pension prefunding trusts, defined benefit and contribution plan design, and early retirement incentives.

Education

Ryan holds a bachelor's degree in Economics with a minor in Mathematics from the University of California, San Diego. He also earned a Certified Employee Benefits Specialist (CEBS) designation from the International Foundation of Employee Benefits at the Wharton School of Business.

Andrew Brown, CFA, Director & Senior Portfolio Manager, HighMark



Role

As a Senior Portfolio Manager, Andrew is responsible for managing investment portfolios on behalf of Section 115 trust clients, retirement plans, foundations, not-for-profit organizations, and high net worth investors. Upon trust inception, he will work alongside Randall Yurchak to discuss the City's investment needs and construct an IPS that will serve as the underlying investment guide to your account. The City will have direct access to Andrew at all times, and he will be available to provide ongoing investment advice.

Experience

Andrew joined HighMark in November 1997 and he has been working with PARS clients since 2003. Prior to joining HighMark, Andrew's work experience includes three years as a Japanese Equity Specialist at Wako Securities (America). His duties there included designing and implementing a marketing program to sell Japanese stocks to institutional investors. He also performed securities analysis for Japanese equities and made buy/sell recommendations on Nikkei 225 and OTC equities. Andrew has more than 25 years' experience in the investment industry.

Education/Qualifications

Andrew holds a bachelor's degree in International Relations, concentrating in Asia-Politics/Economy (1984-1989), and a master's degree in Business Administration with an emphasis in Finance/Marketing (1993-1997), both from the University of Southern California. In addition, Andrew is a Chartered Financial Analyst (CFA) charter-holder.

Randall Yurchak, CFA, Vice President & Senior Portfolio Manager, HighMark



Role

As a Senior Portfolio Manager, Randall works alongside Andrew Brown as part of HighMark's Northern California team to manage investment portfolios on behalf of Section 115 trust clients, as well as other retirement plans, foundations and individual investors. He will meet with staff on an ongoing basis to discuss the City's investment needs, and will work with Andrew to develop the IPS and asset allocation portfolio. Randall will be available to City staff to provide ongoing investment support at all times.

Experience

Randall joined HighMark in 2017 but has been working in the investment industry since 2002. Prior to joining HighMark, he was a Managing Director and Senior Portfolio Manager at Insight Capital where he managed equity portfolio strategies, contributed to business development, and oversaw operations.

Education/Qualifications

Randall holds a bachelor's degree in Biochemistry from University of Washington and a master's degree in Business Administration from Arizona State University. He is also a Chartered Financial Analyst (CFA) charterholder.

William (Will) Rogers, Client Services Coordinator, PARS



Role

Will will be responsible for ongoing client services to the City in support of Ryan. He will develop the administrator's handbook guide, coordinate with the trustee/investment manager for the City's client service and investment review meetings. Additionally, he will manage any administrative issues that arise and provide ongoing technical support regarding reporting, contributions, distributions, and other trust account activities.

Experience

Will has 6 years of experience in various client relations positions including 4 years working with various cities and other public entities in PARS' Client Services Department. He currently serves as the primary client service contact to numerous PARS Section 115 trust clients in California.

Education/Qualifications

Will holds a bachelor's degree in Economics and Business Administration from Colorado State University and received his Retirement Plans Associate (RPA) designation from the International Foundation of Employee Benefits and the Wharton School of Business.

Ryan Maxey, Vice President, Relationship Manager, U.S. Bank



Role

Ryan serves as a relationship manager for a select group of Institutional Trust and Custody Division clients, including PARS. Ryan is responsible for overseeing complex relationships to ensure each PARS client's unique needs are met. He works with various client types, including government entities, corporations, foundations, endowments, and insurance companies.

Experience

Ryan brings more than 20 years of industry experience to his clients. He joined U.S. Bank in 2012 after working for a number of years at Union Bank.

Education/Qualifications

Ryan holds a bachelor's degree in Business Administration from Eastern Oregon University.

Phillip Muschetto, Vice President, Plan Accounting, PARS

Role

Phillip is responsible for performing periodic accounting and reporting for the City's Section 115 Trust accounts and oversees the annual trust wide audit performed on the PARS Section 115 Trust.

Experience

Phillip joined PARS 18 years ago and has since advanced his way through the Accounting Department. Phillip is currently responsible for updating and allocating monthly transactions within the PARS database to more than 1,000 plans and oversees the reconciliation of all contributions, distributions, earnings, and expenses.

Education/Qualifications

Phillip holds a bachelor's degree in Finance from California State University, Long Beach, and a master's degree in Business Administration with an emphasis in Accounting from National University.

PROPOSALS SHOULD ALSO:

Describe the entity or entities proposed to serve as the trustee/custodian of the Section 115 Trust and as a trust administrator, including a description of their background and experience with these types of trusts.

PARS serves as the trust administrator; a detailed description of our background and experience can be found in the previous section on page 3.

Experience of U.S. Bank (Trustee)

Established in 1863, U.S. Bank is the fifth largest bank and highest rated in the country. U.S. Bank has offices throughout the nation, including many in California, and manages over \$450 billion in assets. U.S. Bank is consistently recognized for its fiscal conservativeness and sound business model which has enabled investments in core business lines such as Institutional Trust and Custody. This division, which provides advisory, trustee, and investment management services to PARS clients, prides itself on the following qualifications:

- Fifth largest commercial bank (6th largest custodian) in the United States with more than **5,300** IT&C clients in **27** locations
- Serves **626** Section 115 Trust clients nationally
- Provides trust and investment services to over **1,800** government clients
- **100 years** in institutional trust and custody business
- Provided investment management and advisory services since **1914**
- One of the largest trustees of Section 115 Retirement Trust assets in the country with a market value of **over \$10 billion**
- Trustee for **1,300+** PARS clients including all Section 115 Trust clients and has been serving as trustee/custodian for PARS Section 115 Trusts since 2004
- Manages over **\$460 billion** in institutional client assets

Describe the entity or entities proposed to serve as the investment manager of the Section 115 Trust and as a trust administrator, including a description of their background and experience with these types of trusts. Specify the number of years your organization or subcontractor has been providing investment advisory services.

PARS serves as the trust administrator; a detailed description of our background and experience can be found in the previous section on page 3.

Experience of HighMark Capital Management (Investment Manager)

Established as Union Bank in 1919, HighMark manages approximately \$19 billion in U.S. equity and fixed income strategies for a variety of individual and institutional clients including public agencies, corporate retirement plans,

corporate cash portfolios, Taft-Hartley plans, hospital funds, insurance companies, and foundations and endowments.

Since the firm's founding over 100 years ago, HighMark has provided innovative financial solutions to its clients and remains committed to outstanding research, disciplined investment processes, and comprehensive risk management. This three-pronged approach enables HighMark to deliver insightful investment guidance and superior service while at the same time striving to exceed client expectations and deliver value at every level of the investment relationship.

HighMark has provided fiduciary investment advisory and management services to PARS' clients, including those in our retirement trust programs for over 25 years. Today, HighMark serves over 300 of PARS' Section 115 Trust clients, including city, county, and special district clients in California, with \$9.3 billion in assets under management and \$9.5 billion in assets under advisement.¹ PARS has worked with HighMark since 1992.

Note: HighMark is a subsidiary of MFUG Union Bank, N.A. On September 21, 2021, Mitsubishi UFJ Financial Group, Inc. (MUFG) and MUFG Bank, Ltd., a core banking subsidiary of MUFG, announced that they have agreed with U.S. Bancorp (USB) to the sale of all shares in MUFG Union Bank, N.A. The completion of the sale is subject to certain conditions and regulatory approval and is expected to be effective in the first half of 2022. Upon completion of the transaction, USB will not only be the fifth largest bank in the U.S. by total assets but will go from tenth to fifth in deposit market share within California.²

¹ Assets under management ("AUM") include assets for which HighMark provides continuous and regular supervisory and management services. Assets under advisement ("AUA") include assets for which HighMark provides certain investment advisory services (including, but not limited to, investment research and strategies) for client assets of its parent company, MUFG Union Bank, N.A.

²FDIC deposit market share data as of June 30, 2021, adjusted for in-scope deposits acquired.

Disclose if your firm's proposal includes use of any subcontractors for the servicing of the Trust plan and if so, please describe the nature of these services.

PARS handles all day-to-day administration of the program in-house as it has done since we first began administering Section 115 Trusts. PARS does not contract out administrative tasks to other companies, with the following exceptions of legal and audit work:

- PARS' legal counsel for its PRSP trust is Pillsbury Winthrop Shaw Pittman LLP, one of the largest law firms in the nation. The firm provides ongoing legal and compliance support related to federal law and was involved both with the development of our trust agreements/documents, as well as with coordination of obtaining the IRS PLR.
- The PARS Trust auditor is CliftonLarsonAllen LLP (CLA). CLA is built upon over 60 years of knowledge and expertise in business practices, economic trends, and the ever-changing tax scene. They also have a strong base of clients among governmental agencies, in both the auditing and consulting arenas.

Provide the City with sample copies of contract documents you would expect to require the City to sign and approve to enter into an agreement.

PARS has developed a streamlined implementation process with signature-ready documents which will minimize the workload of City staff from the beginning. To implement the PARS Section 115 Trust, a Council resolution would need to be adopted and the following documents signed:

- Sample Trust Agreement
- Sample Adoption Agreement
- Sample Administrative Services Agreement
- Sample Resolution

Sample implementation documents can be viewed in the *Appendix* under "*Trust Documents*."

Explain if your firm or subcontractor is a registered investment advisor under the Investment Advisor's Act of 1940. Please attach Part 2A of your most current Form ADV as an appendix.

The investment manager for the PARS Section 115 Trust, HighMark Capital Management, is a registered investment advisor under the Investment Advisor's Act of 1940.

Part 2A of the most current Form ADV can be viewed in the *Appendix* under "*Form ADV*."

Describe any SEC, FINRA, or regulatory censure or litigation involving your firm, subcontractor, or its employees within the past three years.

PARS (Public Agency Retirement Services) (Trust Administrator)

There are no pending SEC, FINRA, or regulatory censure or litigation involving PARS or its employees.

HighMark Capital Management (Investment Manager/Advisor)

There are no pending SEC, FINRA, or any other regulatory censure or litigation to which HighMark is currently a party that would: a) materially impair its ability to perform investment advisory services; or b) materially affect the financial condition of the firm if decided in an adverse manner. Detailed information may be reviewed by accessing HighMark's ADV Part I filing on the SEC's IARD website.

HighMark is a wholly owned subsidiary of MUFG Union Bank, N.A. As a large financial institution, MUFG Union Bank from time to time is a party to various pending or threatened legal actions that arise in the normal course of its business. The Bank maintains reserves for losses from legal actions that are considered probable and estimable. Details can be found in the MUFG Americas Holdings Corporation quarterly and annual filings with the SEC on the SEC's website.

U.S. Bank (Trustee/Custodian)

There are no pending SEC, FINRA, or any other regulatory censure or litigation to which U.S. Bank is a party that would: a) materially impair its ability to perform investment advisory services; or b) materially affect the financial condition of the firm if decided in an adverse manner.

As a large financial institution, U.S. Bank from time to time is a party to various pending or threatened legal actions that arise in the normal course of its business. U.S. Bank maintains reserves for losses from legal actions that are considered probable and estimable. Details can be found in the U.S. Bancorp quarterly and annual filings with the SEC and the latest 10-Q report filing can be provided upon request.

While at any given time, U.S. Bank is involved in disputes and litigation which normally occur in banking operations and which often involve claims for money damages, these pending cases are generally not considered unusual in number or amount and based on past experiences in similar litigation, should not have a material adverse effect on the financial position of U.S. Bank, nor impact the delivery of services to our clients.

PRIVATE LETTER RULING

Explain the legal basis for your Section 115 Trust and how your program meets the requirements for compliance with federal and state law and any applicable requirements related to pronouncements issued by the Governmental Accounting Standards Board (GASB).

PARS Section 115 trust program is structured with the following characteristics to ensure compliance with state and federal law, and GASB rules:

- **Favorable Private Letter Ruling**

In 2015, the trust received the first of its kind PLR which ensures that it meets federal IRS laws and guidelines. This is important from a fiduciary standpoint as it legitimizes the tax qualified status of the trust. The IRS is the federal regulatory entity governing public sector plans and benefits, so its favorable ruling is crucial.

- **Investment Management Services**

As a well-respected and highly successful registered investment advisor with the SEC, HighMark ensures the City's fiduciary obligations are met by investing assets according to the parameters established under California and federal law. The firm is highly audited, and its processes are regularly reviewed to ensure that it meets all rules and regulations set forth.

- **Compliance with GASB**

To assist with GASB reporting and compliance, PARS will provide the City with the following:

- An annual individual trust statement of the City's plan assets that shows a reconciliation of assets held at the beginning of the fiscal year through the end of the fiscal year
- Year-end audited financial statements of the trust, including Schedule of Changes in Fiduciary Net Position by Employer
- Supporting SOC 1-Type 2 report on the controls over the calculation and allocation of additions and deductions to employer accounts within the trust
- Investment allocation data and information on investment policies

- **State Constitutional Law**

The PARS trust was developed in compliance with the California Government Code and state constitutional law related to trustee and investment services in Section 115 retirement trusts. It meets the four fiduciary standards that are required to comply with California Code Sections 53620 through 53622 whereby:

- Fiduciaries must act solely in the interests of plan participants and their beneficiaries with the exclusive purpose of providing benefits to them
- Fiduciaries must carry out their duties prudently
- Plan investments must be diversified
- Plan expenses must be reasonable

- **Trust Documents**

The legal documentation and structure of the PARS trust was developed by PARS' attorney Pillsbury Winthrop Shaw Pittman LLP and has been reviewed by multiple attorney firms across California and the country. This high level of scrutiny helps to ensure that the trust program operates in conjunction with the proper state, federal and regulatory requirements.

- **Annual Audits**

PARS has a trust-wide audit and SOC-1 audit completed by independent firms on an annual basis to review both the PARS Section 115 Trust and the firm's internal operations. These audits ensure that we are operating in accordance with proper standards of care and can be provided to the City when requested.

- **Secure, Regulated Trustee**

As a federally chartered bank, U.S. Bank, the program's trustee, is required to meet some of the highest regulatory standards, including ongoing stringent audits and examinations by the Office of the Comptroller of Currency, external auditors, and the bank's own internal audit department. This type of continual audit coverage and oversight reassures the City that its plan is operating according to the terms of trust, with prudent procedures as determined by independent opinions as well as meeting federal and state regulations. This provides the City assurances beyond what a smaller, state-chartered trust company can provide.

- **In-House Implementation/Compliance Monitoring Department**

PARS has an in-house implementation/document oversight department that works alongside our attorneys, auditors and lobbyists on an ongoing basis to ensure that all trust program documents are up to date and in compliance with rules, laws and regulations. This department is directly available to City staff and will make required revisions to the program documents and the services agreement when necessary.

- **Check and Balance System**

As trust administrator, PARS serves as an experienced liaison between the City, trustee and investment manager. This ensures the program works as a check and balance system - one in which all service providers operate independently from each other.

- **Separate Liabilities**

Employer contributions provide benefits for employees of that employer only. This means there is **no cross-sharing or joint liability** among participating public agencies.

- **Combination Trust**

PARS trust approach, as approved by the IRS, allows both **pension and/or OPEB obligations** to be funded in one single trust. To comply with IRS and GASB rules, assets are held in separate sub-accounts but **aggregated for fee reduction purposes**.

Disclose if your pension Section 115 Trust program has received approval from the IRS in the form of a Private Letter Ruling.

PARS received a “first of its kind” PLR from the IRS in June 2015 for its innovative trust vehicle which allows local governments to set aside funds to prefund pension. This PLR confirms the favorable tax-exempt treatment of PARS’ Section 115 Trust for each participating agency.

The PLR is a major advantage since its one of the few issued for a trust covering the funding of all post-employment benefits (both pension and OPEB), and the IRS is no longer issuing these rulings. Therefore, if the City were to create its own Section 115 Trust or join a multiple employer trust through a company who has not received a private letter ruling, it would not benefit from the added layer of protection that an IRS PLR provides.

A copy of PARS’ IRS Private Letter Ruling can be viewed in the Appendix under “IRS Private Letter Ruling (PLR).”

Describe safeguards built into your Section 115 Trust program to limit the liability exposure to the City.

The PARS Section 115 Trust was designed to minimize the City’s fiduciary liability exposure in the following ways:

- **Fiduciary Support**

U.S. Bank will serve as a fiduciary to the trust acting as discretionary trustee. U.S. Bank takes its fiduciary responsibilities with the utmost seriousness and is dedicated to fulfilling its fiduciary responsibilities in line with the following core principles:

- Act in the sole interest of participants and beneficiaries
- Act prudently and manage risk
- Follow the terms of plan and trust documents
- Avoid conflicts of interest
- Avoid engaging in transactions that benefit interested parties as a conflict of interest
- Treat beneficiaries with impartiality

As the bank’s investment sub-advisor, HighMark is also considered a fiduciary to the trust. HighMark ensures the City’s fiduciary obligations are met by maintaining investment of assets according to the parameters established in California and federal law. Ultimately, the combined delivery of discretionary trustee and investment management services means that the City has significant fiduciary protection.

- **Federal Laws and Regulations**

U.S. Bank, the program trustee, is a federally chartered bank that acts as an independent trustee for qualified ERISA and governmental retirement plans. As such, the bank is required to meet some of the highest regulatory standards, including ongoing stringent audits and examinations by the Office of the Comptroller of the Currency (OCC), external auditors, and the bank’s own internal audit department. This continual audit coverage and oversight assures the City that its plan is operating according to the terms of trust and is in line with federal and state regulations.

- **Investment Management Services**

Investment services for the City's account will be provided by HighMark Capital Management, which is regulated by the Securities and Exchange Commission (SEC) and must adhere to Investment Advisor Act of 1940, ERISA, and other applicable state and federal law. In its role as investment manager, HighMark will provide investment expertise to ensure that the City's governing body and its designated officers are acting prudently in the investment of plan assets, as required under Section 17 of Article XV1 of the California Constitution, and Government Code Section 53620, both taken from ERISA law, as supported by numerous case law.

- **IRS Approvals**

Obtained in 2015, the program's Private Letter Ruling ensures that the trust meets federal IRS laws and guidelines which is important from a fiduciary standpoint as it legitimizes the tax-exempt status of the trust. The IRS is the federal regulatory entity governing public sector plans and benefits, so its approval of a retirement trust is crucial.

- **Discretionary Trustee Arrangement**

The program makes a discretionary trustee arrangement available to the City, thus permitting the City to delegate investment authority to the trustee to mitigate the fiduciary risk to City staff and its City Council. PARS has over 900 public agency clients using discretionary trustee arrangements for their retirement plans and trusts since 1991. Public agencies like this arrangement because it provides them with a high level of fiduciary protections.

- **Legal Documentation**

The legal documentation and trust structure have been reviewed by outside counsel from various public agencies around California, including many major attorney firms. In each case, there has been unanimous approval of the program. Several attorneys have commented on how pleased they were with the clear delineation of fiduciary roles. They have indicated that the caliber of the underlying providers was superior to any other program evaluated.

TRUSTEE AND TRUST ADMINISTRATION SERVICES

Please provide a comprehensive list of trustee services and Section 115 trust administration services you will provide.

PARS has a detailed understanding of the technical and management requirements of our trust. PARS' Section 115, IRS approved irrevocable trust approach was designed as a comprehensive program to meet the needs of the City of Fort Bragg. Below is a list of trust administration, trustee and investment management services that are provided as part of the PARS Section 115 Trust. Please note there are no additional costs for any of these services.

Trust Administration (PARS)

PARS will provide the City with a full-service, collaborative approach to help address your long-term pension liabilities, through the trust. We will work in close conjunction with your staff to implement a program that meets the City's unique needs. PARS takes pride in our hands-on approach that has proven successful for almost four decades.

As the largest and longest serving trust administrator for pension trusts in California and the nation, we will bring our unmatched expertise to the City. As our core business is focused on retirement trusts for local governments, the City will receive hands-on support from a services team that understands your long-term goals and needs.

Our full-service program is designed for ease of administration and to limit the workload of staff, with the following services being provided:

- Signature-ready implementation documents which enable implementation to be completed within 3-4 business days of executed plan documents being received by PARS
- Maintenance of detailed accounting records, including any sub-accounting, which includes individual recordkeeping of the City's contributions, earnings, and assets
- Reconciliation of contributions to the trust account
- Coordination of distributions from the City's trust account, which includes receiving distribution documentation and directing the trustee to make distributions
- Monthly, quarterly, and annual reporting to the City as well as any customized reports as requested
- All necessary forms, handbooks, training, and technical support
- Administrative training meeting at implementation as well as ongoing training as necessary
- Onsite client service reviews to ensure the City's ongoing satisfaction with the program
- Participation at meetings and assistance in education/presentation preparation for City's leadership, staff, or employee groups, if requested
- Coordination of annual trust-wide audit
- Periodic publications and resources on legislative regulatory developments related to pension prefunding
- Ongoing consulting/analytical services as needed such as development of pension trust funding policy

Consulting

PARS will work closely with City staff from the outset to analyze and implement a trust program that will help the City address its rising pension liabilities. Lead Consultant, Ryan Nicasio will oversee implementation and administration of the City's trust account and can provide the following consulting services from the initial program development phase onwards:

- Discussion of plan and trust design options
 - Example, if the City finds value in subaccounting for different employee groups, cost centers, etc.
- Analysis and review of various funding options
 - PARS has a database of “funding policy” examples from hundreds of member agencies and will walk the City through a variety of strategies for consideration
- Assistance with developing and/or modifying funding policies
 - After review of funding strategies, PARS can share detailed staff reports that align with the City's objectives, so that the City may build upon other agencies' policies
 - PARS also has examples of Council presentations detailing funding/withdrawal plans
- Analysis and discussion of actuarial issues and valuations
 - Annual updates of projected City's CalPERS future employer contribution rates and funding status to help aid discussion of timing of contributions/withdrawals
 - Will similarly discuss any changes to GASB, or other reporting changes
- Monitoring of legislation, laws, and regulations impacting pension pre-funding
 - PARS has an in-house department dedicated to monitoring major changes to state law, (such as PEPPRA) and how it impacts out clients/plan design features
- Development of materials and presentations to assist the City and its Council on funding options and policy
- On-site reviews to discuss funding modifications and investment strategies based on changing program, and/or budgetary circumstances

Ongoing Staff Support & Resources

The PARS Section 115 Trust was designed as a comprehensive, full-service approach to minimize the burden and workload of the City staff. Specifically, we will provide the following resources for the City and its staff:

- Direct contact information (phone and email) for all members of the client service team
- In-person trust activity and investment reviews
- Attendance at City Council meetings when requested
- Preparation of education materials and presentations for City's Council and staff
- Ongoing consulting support and technical guidance to ensure the City continually meets its goals and objectives
- Ongoing compliance monitoring and assistance with the GASB 67/68 reporting requirements
- Hands-on investment support including IPS development, asset allocation recommendations and ongoing portfolio management
- Monthly, quarterly, annually, and ad hoc reporting
- Guaranteed response to questions/issues within one business day
 - In a situation where there is a highly unusual request that requires more extensive research, we will be in regular contact with staff to keep you informed on when we expect an answer/resolution.

Reporting

PARS understands that regular, detailed, and fully transparent reporting is key for our clients. Therefore, the following reports will be provided to the City from trust account inception onwards:

- **Monthly account statements** - Produced by PARS, these will be mailed directly to the City, can be sent electronically upon request, and can be accessed at any time through our online portal. The statements summarize the City's opening balance, contributions, distributions, earnings, fees, closing balance, and provide monthly return information.
- **Online portal** - Easy access to downloadable account information including monthly statements, transaction history, investment performance, etc.
- **Quarterly investment reports** - Quarterly reports will be provided to the City by the dedicated Client Services Team. These provide an analysis of the City's selected portfolio by including information such as asset allocation ranges, investment returns, portfolio holdings, and capital market outlook.
- **Annual statements** - PARS will provide the City with an annual statement at the plan's year-end. These reports, which can be mailed and sent electronically, provide a full overview of account activity and performance comparisons for the previous year.
- **Client reviews** - PARS and HighMark will meet with the City annually (or more often if requested) to conduct onsite client service reviews. These meetings will provide a full breakdown of the City's trust and investment activity and are intended to ensure staff's full satisfaction with the program.
- **Ad hoc reports** - If the City requires additional or customized reports, PARS can work with staff to produce these at no additional cost.
- **Audit** - A trust-wide audit of the PARS Section 115 Trust is performed annually and will be provided to the City. Our current auditor is CliftonLarsonAllen (CLA).

Trustee Services (U.S. Bank)

U.S. Bank will provide fiduciary protections for the City as its trustee and custodian of assets in compliance with the trust agreement and federal and state laws:

- Safeguarding of assets for the exclusive benefit of City employees, retirees, and beneficiaries
- Receipt and investment of the City's contributions according to selected investment strategy
- Electronic interface and reporting to the trust administrator
- Reimbursements for pension related costs or transfer of assets to CalPERS (pension)
- Maintains a fiduciary oversight role with respect to plan assets and investments

Fiduciary Protection

U.S. Bank will serve as a fiduciary to the trust acting as discretionary trustee. U.S. Bank takes its fiduciary responsibilities with the utmost seriousness and is dedicated to fulfilling its fiduciary responsibilities in line with the following core principles:

- Act in the sole interest of participants and beneficiaries
- Act prudently and manage risk
- Follow the terms of plan documents
- Avoid conflicts of interest
- Avoid engaging in transactions that benefit interested parties as a conflict of interest
- Treat beneficiaries with impartiality

As the program's investment sub-advisor, HighMark is also considered a fiduciary to the trust. HighMark will ensure that the City's fiduciary obligations are met by maintaining investment of assets according to the parameters established in California and federal law. Ultimately, the combined delivery of discretionary trustee and investment management services means that the City benefits from significant fiduciary protection. HighMark will provide direct advice to the City in selecting its investment strategy to mitigate fiduciary risk on the City and its Council.

Please note if there are any additional costs for any of the above-mentioned services.

There are no additional costs for any of the services listed above.

Describe how City contributions to and distributions from the Section 115 Trust are now handled.

Following trust adoption, PARS will provide the City with an Administrator's Handbook to instruct and assist staff with ongoing administration of the plan. The document includes information on contribution and distribution procedures, as well as form completion, reporting requirements, and timelines.

Contributions - With the PARS Section 115 Trust Program, the City has full discretion as to the amounts, timing, and frequency of contributions it makes into the trust. Funds can be sent either electronically or by check, and should be accompanied by a signed Contribution Form. Once the funds are received they are invested in accordance with the selected investment portfolio and will be denoted on the City's subsequent monthly statement.

Disbursements - Like contributions, the City will have full control over the withdrawal of its funds, providing the legal restrictions imposed by the trust and plan are adhered to. For instance, pension assets can only be used to pay for pension plan or administrative expenses (e.g. CalPERS plan costs or actuarial valuation services). As long as these basic requirements are met however, there are no restrictions on the timing or frequency of disbursements. Our program also allows for expenses to be reimbursed for the last two years of CalPERS employer contributions (current and prior plan year).

The City will make reimbursement requests using a form provided by PARS that indicates costs for a particular period. To keep the process secure, every form submitted must be signed by the designated Plan Administrator or his/her designee. The City can request that reimbursements be made: (a) directly to the City, or (b) to pension plan provider (e.g. CalPERS) directly.

Define any termination restrictions for the Section 115 Trust.

There are minimal termination restrictions associated with our Section 115 Trust. PARS simply requires 30 days' notice in order for us to liquidate your assets and transfer them to another Section 115 trust provider. The 30-day process allows us to administratively close out the trust account, provide guidance and support for the City's decision, work with City staff to establish a timeline and data requirements for the process, liquidate the assets, and receive instructions for the transfer. There are no costs associated with program termination and we will work directly with your new provider to ensure a seamless transition process. The IRS requires that any remaining assets that are disbursed to the retirement system or reimbursed by transferred to a *like* Section 115 Trust.

INVESTMENT REQUIREMENTS AND INVESTMENT PERFORMANCE

Is there an initial minimum balance requirement for the 115 Trust? Please describe the investment services your firm offers with respect to the 115 Trust, including:

There is no initial minimum balance requirement for the PARS Section 115 Trust. With our program, contributions of any amount can be made at any time, and no fees will be charged until there are assets in the City's trust account.

Investment Services

As part of the PARS Section 115 Trust, HighMark provides the following investment services:

- Dedicated Senior Portfolio Manager directly available to the City at all times, including direct cell phone access
- Flexible investment options that include both pre-established and customized portfolio options
- Ongoing fiduciary role overseeing plan investments
- Development of Investment Policy Statement (with asset allocation guidelines) in conjunction with City staff
- Assistance with asset allocation and investment portfolio development/selection based on City's investment objectives, risk tolerance and discount rate
- Ongoing account monitoring and investment policy assistance
- Ongoing asset rebalancing
- Quarterly investment reports, comparative analyses, and periodic onsite client reviews
- Open architecture investment program

Does your firm offer assistance with investment strategy selection and investment policy development? Does this service typically include specific asset allocations recommendations? If so, please explain.

Yes. As the program's investment manager, HighMark will assist the City with the investment of its assets by providing **investment strategy selection and IPS development assistance** along with **asset allocation recommendations** prior to inception.

The City's designated Senior Portfolio Managers (SPM), Andrew and Randall, will gain an in-depth understanding of the City's circumstances before providing assistance with asset allocation recommendations. During the initial "investment selection"/funding policy conversation, the SPM will hone in on the City's funding status with CalPERS and its future anticipated costs. From there, the SPM will ask the City pointed questions to better understand their objectives for pension-prefunding into a Section 115 Trust to help determine how investments will interplay with funding policy. Based on the City's feedback regarding funding/withdrawal policies, the SPM will focus on determining a diversified, multi-asset portfolio structure that represents an optimal asset mix based on the City's time horizon, risk tolerance level, and liquidity needs.

Furthermore, they will develop an IPS unique to the City, which will serve as the foundation for all investment decisions moving forward. Once the IPS has been completed, it can be reviewed and approved by the designated Plan Administrator.

If the City's funding/withdrawal policies change over time, HighMark will similarly participate in discussions regarding how to posture investments to best meet the City's needs.

HighMark's core beliefs serve as the foundation of all investment decision making. These include:

- Actively manage every possible investment decision
- Investment philosophy influences top-down and bottom-up processes
- Team-oriented portfolio management leverages multiple disciplines
- Proprietary differentiation in asset allocation—strategic and tactical
- Rigorous manager/mutual fund due diligence optimizes investment selection decision
- Enabling culture rewards creative initiative through incentives

Discretionary Investment Approach - The City is able to mitigate fiduciary risk by designating a professional investment advisor to make strategic and tactical investment decisions. As a result, the City's only responsibilities are to: (a) agree to investment goals and objectives formulated in the IPS developed by HighMark and (b) monitor and evaluate the reports, statements, and quarterly reviews to confirm that HighMark's portfolio is compliant with the IPS. Ultimately, this approach leaves investment decisions in the hands of professionals, and typically results in stronger returns in the long run.

Investment Policy Statement Development & Asset Allocation Assistance - As the program's investment manager, HighMark will assist the City with the investment of its assets by providing asset allocation recommendations prior to program inception. However, prior to making any recommendations, the designated SPM will gain an in-depth understanding of the City's circumstances. They will focus on determining a diversified, multi-asset portfolio structure that represents an optimal asset mix based on the City's time horizon, risk tolerance level, and liquidity needs. Primary consideration for asset allocation is given to the following:

- **Investable Cash Flow** – How does the City plan to prefund its pension liabilities?
- **Return Expectations** – What are the target rate of return assumptions?
- **Risk Tolerance** – What is the comfort level with investments and varying risk?
- **Income and Liquidity Needs** – What are the income needs required to pay current liabilities?
- **Investment Restrictions** – What type of investments would not be permitted by the City?

Please note that if the City decides to prefund OPEB along with pension in the future using the PARS combination trust, different investment strategies can be developed/selected for each account.

Please provide the firm's recommended comparative yield benchmarks for trust assets held in this type of Trust. Please provide annual, five-year, ten-year, fifteen-year, and twenty-year return history and expense ratios for each fund/portfolio option available. Would the firm be able to benchmark against yields obtained from similar 115 Trusts such as the California Employee Retirement Benefit Trust? If so, please provide this data.

Recommended Comparative Yield Benchmarks

The construction of HighMark's portfolio benchmarks varies depending on each client's needs. However, the following are the most commonly recommended and used benchmarks for our PARS Section 115 Trust portfolios:

Benchmark Name	Asset Class	Asset Class Expected Return
The S&P 500 Index	Large Cap Core	6.80
The MSCI EAFE Index	International	7.30
The MSCI Emerging Markets Index	Emerging Markets	7.30
The Russell Midcap Index	Mid Cap Core	7.10
The Russell 2000 Index	Small Cap Core	7.90
The ICE BofA US High Yield Master II Index	High Yield	6.10
The Wilshire REIT Index	Real Estate	6.60
The Bloomberg Barclays U.S. Aggregate Bond Index	Intermediate Term Bond	3.90
The ICE BofA 1-3 Year U.S. Corporate & Government Index	Short Term Bond	3.30
The FTSE 1-Month Treasury Bill Index	Cash	2.40

Return History & Expense Ratios

Below is return history and expense ratios for HighMark's pre-established portfolios. HighMark currently does not have the 15-year and 20-year return history for all strategies as this exceeds the life of the portfolios; we have include also the inception to date (ITD) figures for the City's consideration.

ACTIVELY MANAGED PORTFOLIOS (AS OF 3/31/2022)

Strategy	1 Year	3 Year	5 Year	10 Year	15 Year	20 Year	ITD	Expense Ratio
Capital Appreciation	4.22%	11.34%	9.99%	9.19%	--	--	10.28% (Jan. 2009)	0.43%
Balanced	2.49%	9.69%	8.73%	7.94%	6.27%	--	6.37% (Oct. 2006)	0.43%
Moderate	1.50%	8.42%	7.64%	6.99%	5.85%	--	6.35% (Oct. 2004)	0.43%
Mod. Conservative	-0.56%	5.80%	5.48%	5.16%	4.98%	--	5.48% (Aug. 2004)	0.43%
Conservative	-2.02%	3.88%	3.92%	3.79%	4.14%	--	4.46% (Jul.2004)	0.43%

PASSIVELY MANAGED (INDEX) PORTFOLIOS (AS OF 3/31/2022)

Strategy	1 Year	3 Year	5 Year	10 Year	15 Year	20 Year	ITD	Expense Ratio
Balanced	3.19%	9.36%	8.22%	7.72%	--	--	5.94% (Oct. 2007)	0.11%
Moderate	1.94%	8.01%	7.20%	6.80%	5.78%	--	5.93% (May 2006)	0.10%
Mod. Conservative	-0.55%	5.43%	5.12%	4.89%	4.55%	--	4.99% (May 2005)	0.09%
Conservative	-2.34%	3.50%	3.54%	3.41%	3.72%	--	4.03% (Jul. 2004)	0.07%

A full breakdown of the weighted fund fees within the pre-established portfolios can be viewed in the Appendix under "HighMark Weighted Expense Ratios."

Benchmark Comparisons

HighMark has the ability to create custom benchmarks, depending on the City's investment objectives and preferences. HighMark is also able to benchmark against yields for similar Section 115 trusts (including the California Employee Retirement Benefit Trust – CERBT and the California Employee Pension Prefunding Trust – CEPPT) to the extent that the information is available. As the data can only be obtained from CalPERS directly, our ability to provide a comparison depends on their regular communication of returns. Also some of the other competitors are smaller and newer in comparison with the PARS trust program, the first in California.

California Employee Pension Prefunding Trust (CEPPT) Comparison

Unfortunately, the CEPPT is very new in comparison with the PARS Section 115 Trust and there is no longevity of investment performance (only since late 2019).

California Employee Retirement Benefit Trust (CERBT) Comparison

Below is HighMark’s Capital Appreciation Strategy benchmark against CalPERS CERBT’s Strategy 1 yields as of March 31, 2023. From a fixed income asset allocation standpoint, HighMark’s Capital Appreciation strategy is most closely resembles CERBT’s Strategy 1.

	Over 1 Year	Over 3 Years	Over 5 Years	Over 10 Years
	PARS/HIGHMARK	PARS/HIGHMARK	PARS/HIGHMARK	PARS/HIGHMARK
Capital Appreciation (25% Fixed Income/Cash)	4.22%	11.34%	9.99%	9.19%
minus weighted PARS administration fee	(-) 0.25%	(-) 0.25%	(-) 0.25%	(-) 0.25%
minus weighted HighMark investment management fee	(-) 0.35%	(-) 0.35%	(-) 0.35%	(-) 0.35%
1-Year Net Return	3.62%	3-Year Net Return 10.74%	5-Year Net Return 9.39%	10-Year Net Return 8.59%

	CALPERS CERBT	CALPERS CERBT	CALPERS CERBT	CALPERS CERBT
Strategy 1 (30% Fixed Income/Cash)	6.11%	10.74%	9.25%	8.08%
minus fees	(-) 0.10%	(-) 0.10%	(-) 0.10%	(-) 0.10%
1-Year Net Return	6.01%	3-Year Net Return 10.64%	5-Year Net Return 9.15%	10-Year Net Return 7.98%

* Subject to change due to rebalancing; fees are based on assets under \$5 million.
 Past performance does not guarantee future results.

Describe the investment and risk options available for the 115 Trust.

The PARS Section 115 Trust was designed to provide the City with maximum investment flexibility utilizing HighMark as the discretionary investment advisor. The City has the following options related to the investment of its funds:

1. FIVE RISK TOLERANCE LEVELS

The City can participate in one of five risk tolerance levels that have been developed specifically for clients in PARS Section 115 Trust. The five portfolios include: (a) actively managed underlying mutual funds intended to

outperform benchmarks or (b) low-cost Index/Exchange-Traded Funds (ETFs) which are baskets of stocks tracking the composition and performance of most leading market indices. The following table provides shows the tactical asset allocation targets for each of the five portfolios as of March 31, 2022:

Strategy	Equity (%)	Fixed Income (%)	Cash (%)
CAPITAL APPRECIATION	73.12%	20.25%	6.62%
BALANCED	58.50%	36.00%	5.50%
MODERATE	48.75%	46.50%	4.75%
MOD. CONSERVATIVE	29.25%	67.50%	3.25%
CONSERVATIVE	14.63%	83.25%	2.13%

A full breakdown of the funds within the pre-established portfolios can be viewed in the *Appendix* under “Investment Portfolios.”

2. CUSTOMIZED APPROACH

The City can customize its own portfolio under the investment and fiduciary advice of HighMark to include: (a) any funds available under an open architecture trading platform, (b) any combination of active and index funds in the pre-established portfolios, or (c) individual securities/bonds to reduce costs. This customized option, which requires \$5 million in assets or more, gives the City full flexibility of its investments.

Explain your firm’s views on passive versus active management. What is your typical recommendation regarding the allocation of the Section 115 Trust assets between active and passive management?

HighMark believes in active management and frequently uses actively managed strategies. The firm has internal research teams dedicated to discovering the best active investments including equities, bonds, and actively managed funds. In many cases, this process has demonstrated HighMark’s ability to add risk-adjusted return versus passive benchmarks. In addition, whether based on client preference or when active strategies are not available or are not favorable, the firm will also utilize index-based securities such as exchange traded funds in order to gain diversification and exposure to various markets at a traditionally lower embedded fund fee than actively managed funds. To maximize flexibility, the City can select portfolios developed by HighMark for PARS Section 115 Trust as either active or passively managed.

What are the typical approaches made to rebalancing or reallocating asset classes, styles, and sectors for or on behalf of the fund/trust?

Rebalancing is an important part of the success story of any portfolio’s long-term returns, so HighMark places a high degree of importance on these decisions. HighMark’s approach to asset allocation and rebalancing client portfolios is driven specifically by HighMark’s Asset Allocation Committee (AAC). The AAC employs a multi-factor approach to establish long-term strategic asset allocation ranges as well as provide tactical diversification guidelines to capitalize on short-term market opportunities. The AAC team is comprised of 16 senior investment

professionals with an average of 26 years investment experience. The AAC meets monthly to review current portfolio positioning relative to the prevailing risks and opportunities across available asset classes. Tactical asset class overweight and underweight opportunities are proposed by committee members and formally approved by six voting members. On an annual basis, upon updating the capital market assumptions, HighMark's AAC reviews and approves any necessary adjustments to strategic policy allocations.

If at any point a portfolio's allocation veers significantly from long-term and/or established targets because of performance (for example, the equity allocation may have risen due to a general rise in the equity market or other performance), HighMark will generally rebalance to the long-term equity targets set by the AAC.

Are there minimum requirements for periodic contributions to the Section 115 Trust?

There are no minimum periodic contribution requirements for the PARS Section 115 Trust. Member agencies have full discretion to make contributions at any time.

FEES

Please provide all fees for the proposed services in a separate schedule, including administration, trustee, and investment management services.

A full fee schedule breakdown has been included in the response to a question below.

Detail any initial balance or start-up fees.

There are no initial balance or start-up fees associated with the PARS Section 115 Trust. In fact, no fees will be charged until after the City has made its first contribution since all fees are asset-based.

Are fees scalable dependent upon the amount of assets placed into the Section 115 Trust? If so, provide a schedule of the fees.

Yes. Fees for the program decrease as assets in the trust increase. A full breakdown of fees has been included in the response to the question below.

Identify fees for consulting, trustee, and investment services separately.

Fees for PARS' Section 115 Trust services are broken down into: 1) trust administration services and 2) discretionary trustee/investment management services. Please note there are no start-up or termination costs associated with the program.

The PARS fee schedule encompasses all services described in our proposal. The City's PARS service team will provide value-added, comprehensive services for the fees charged which differentiates us from other providers including:

- **A dedicated and knowledgeable team** with a combined two decades of experience in Section 115 trusts. In serving over 490 Section 115 trust clients, we have encountered a range of diverse scenarios and have an unparalleled track record with these specialized niche trusts to assist the City with any inquiries or issues that may arise. Team members provide hands-on service, direct investment advisory support, and individualized attention.
- **A dedicated HighMark Portfolio Manager** that will assist with ongoing reporting and attend meetings to provide City with periodic updates. The City will receive:
 - **Quarterly investment reports** – The reports provide a breakdown of the City's selected portfolio.
 - **Annual reviews** – The PARS team will arrange a meeting with the City at least annually. The meeting can be either in-person or virtual per the request of the City.
 - **Ad hoc meetings** – The Portfolio Manager will be available for meetings with staff, committee, and council at any time.
 - **Cell Access** – The City will be able to contact the Portfolio Manager directly for answers to any immediate questions or concerns.

- **Investment policy assistance** – The Portfolio Manager will discuss in detail the City's funding approach, risk tolerance, and goals to create an investment policy unique to the City's plan.
- **A dedicated administrative team** including:
 - **The PARS Consultant** will provide the City with ongoing analysis of contributions, distributions, and various funding scenarios. They will assist in creating and providing sample staff reports, ad hoc documents, and sample funding policies.
 - **The PARS Client Services Coordinator** will be available to supply same day response to day-to-day questions and requests. They will work with the City's staff on a variety of special reporting needs including but not limited to monthly/annual statements, GASB compliant reports, etc.
 - **The PARS team** will monitor state and federal trust compliance and update trust documents as necessary at no additional cost to relieve costs on the City.

Please note there are no fees for investment policy development, asset allocation recommendation, preparation of presentations, attending or presenting at City Council meetings. In addition, there are no surrender, withdrawal, or deferred sales charges, nor are there any fees associated with transfer of assets or termination of contract. There are no minimum fees, start-up or termination costs associated with our program, or transaction, trading, or hourly fees.

Trust Administration/Consulting Fees

Trust administration fees provide for all administration services, including compliance, consulting, recordkeeping, funding analysis, and reporting.

Company	Ongoing Fee
PARS	0.25% for assets under \$10 million
	0.20% for assets \$10—15 million
	0.15% for assets \$15—50 million
	0.10% for assets over \$50 million

Discretionary Trustee/Investment Advisory/Management Fees

With HighMark serving as the program's investment advisor, trustee and investment advisory/management fees are comprehensive and include investment fiduciary, investment policy development, asset allocation recommendations, asset management, and trustee/custodial services.

Company	Ongoing Fee
U.S. Bank/HighMark	0.35% for assets under \$5 million*
	0.25% for assets \$5—\$10 million
	0.20% for assets \$10—\$15 million
	0.15% for assets \$15—\$50 million
	0.10% for assets over \$50 million

*Please note that all fees are waived on the portfolio's money market fund. The 0.35% fee represents the highest weighted investment management fee that can be charged.

Provide historical fees for each of the prior five years (2012 through 2016).

There have been no fee changes since 2012.

Identify the expense structure of the Section 115 Trust investment platforms. Detail the expenses (i.e., no-load, low-load, proprietary funds, institutional shares, etc.).

The underlying investments within the HighMark portfolios are institutional share class funds. These types of funds will benefit the City because they are the lowest fee share class available and there are no additional fees either: (a) netted from investment performance, or (b) received by providers outside of investment performance.

Describe in detail the revenue-sharing agreement that the firm has with investment managers and/or subcontractors, insurance providers, and any remuneration that the firm derives from investment managers and/or sub-advisors. Include any 12b-1, service, distributor, or platform fees that the firm derives from investment managers and/or sub-advisors.

PARS is a fee-for-service provider. We have no revenue sharing agreements with any investment providers or managers, and/or subconsultants and derive no remuneration for services provided as part of the PARS Section 115 Trust.

U.S. Bank, as discretionary investment advisor utilizes HighMark Capital Management as a sub-advisor to provide investment advisory and management services for members of the PARS Trust. Under this sub-advisory arrangement, U.S. Bank pays HighMark 60% of the annual management/discretionary trustee fee for assets sub-advised by HighMark.

HighMark does not have any revenue sharing agreements. One hundred percent of HighMark's revenue is derived from fees from investment management and advisory services provided to its clients.

Describe any additional fees or potential hidden costs to be netted from investment performance.

The only additional fees not listed above are the embedded fund fees which are charged on the funds within each portfolio. Listed below are the weighted expense ratios for the pre-established portfolio options as of March 31, 2022. *Please note that these weighted expense are already netted out of reported performance returns and are not additional fees charged on top of the asset-based fees listed above.*

Strategy	Active Portfolios	Passive (Index) Portfolios
Capital Appreciation	0.43%	0.12%
Balanced	0.43%	0.11%
Moderate	0.43%	0.10%
Mod. Conservative	0.43%	0.09%
Conservative	0.43%	0.07%

A full breakdown of the weighted expense ratios within the pre-established portfolios can be viewed in the Appendix under "HighMark Weighted Expense Ratios."

Describe in detail any and all surrender, withdrawal, transfer, or deferred sales charges within your investment products.

There are no surrender, withdrawal, transfer, or deferred sales charges within any of the investment products used for the PARS Section 115 Trust.

Describe any fee related to the transfer of assets and restrictions or costs related to the termination of the agreement with your firm.

There are no fees or restrictions related to the transfer of assets or termination of the agreement. PARS simply requests a 30 day notice period in order for us to transfer assets to a like Section 115 Trust.

REFERENCES

Please list the name, address, contact name, telephone number, and email address of at least five public agency client references, emphasizing clients served by the Section 115 Trust pension program proposed in response to this RFP.

Reference	Contact
<p>County of Humboldt 825 Fifth St. Eureka, CA 95501</p> <p>PARS Section 115 Trust Client: 2015 – Present</p>	<p>Elishia Hayes, County Administrative Officer</p> <p>Phone: 707-445-7266 Email: ehayes@co.humboldt.ca.us</p>
<p>Humboldt Bay Municipal Water District 828 Seventh St. Eureka, CA 95502-0095</p> <p>PARS Section 115 Trust Client: 2018 – Present</p>	<p>John Friedenbach, General Manager</p> <p>Phone: 707-443-5018 Email: friedenbach@hbmwd.com</p>
<p>County of Lake 255 N. Forbes St. Lakeport, CA 95453</p> <p>PARS Section 115 Trust Client: 2018 – Present</p>	<p>Cathy Saderlund, Auditor & Controller</p> <p>Phone: 707-263-2312 Email: cathy.saderlund@lakecountycalifornia.gov</p>
<p>Town of Yountville 6550 Yount St. Yountville, CA 94599</p> <p>PARS Section 115 Trust Client: 2011 – Present</p>	<p>Steve Rogers, Town Manager</p> <p>Phone: 707-944-8851 Email: srogers@yville.com</p>
<p>City of Healdsburg 401 Grove St. Healdsburg, CA 95448</p> <p>PARS Section 115 Trust Client: 2015 – Present</p>	<p>Andrew Sturmfels, Administrative Services & Finance Director</p> <p>Phone: 707-431-3570 Email: asturmfels@ci.healdsburg.ca.us</p>

A full PARS Section 115 pension trust client list can be viewed in the *Appendix* under “*Client List.*”

APPENDIX: HISTORICAL RETURNS

HIGHMARK CAPITAL MANAGEMENT

As of March 31, 2022

ACTIVE PORTFOLIO RETURNS

Strategy	Equity (%)	1 Year	3 Years	5 Years	10 Years
Capital Appreciation	65-85%	4.22%	11.34%	9.99%	9.19%
Balanced	50-70%	2.49%	9.69%	8.73%	7.94%
Moderate	40-60%	1.50%	8.42%	7.64%	6.99%
Moderately Conservative	20-40%	-0.56%	5.80%	5.48%	5.16%
Conservative	5-20%	-2.02%	3.88%	3.92%	3.79%

* Past performance does not guarantee future results.

APPENDIX: TRUST DOCUMENTS

**PUBLIC AGENCIES
POST-EMPLOYMENT BENEFITS**

TRUST AGREEMENT

(Effective November 5, 2014)

SAMPLE

ARTICLE I

DEFINITIONS

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

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

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

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

1.22 “**Trust Agreement**” shall mean this Public Agencies Post-Employment Benefits trust document adopted by each Employer upon execution of an Adoption Agreement, as amended from time to time.

1.23 “**Trustee**” shall mean U.S. Bank National Association, or any successor trustee appointed by the Employers as provided herein. The Trustee shall serve as trustee of the Trust established pursuant to the provisions of this Trust Agreement until such Trustee resigns or is removed as provided in Article III.

ARTICLE II

THE TRUST

2.1 Multiple Employer Trust

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

2.2 Purpose

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

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

2.3 Employers

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

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

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

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

2.4 Agency Accounts

(a) Upon an Employer's adopting the Trust Agreement, as provided in Section 2.3, a separate "**Agency Account**" shall be established under the Trust for that Employer, and all Assets of the Trust attributable to that Employer shall be held in that Employer's Agency Account.

(b) An Employer's Agency Account comprises three subaccounts: a "**Pension Account**", an "**OPEB Account**", and a "**Suspense Account**". The Assets of the Trust that are held in the Employer's Pension Account will be available only to fund the Employer's Pension Obligation and defray the reasonable expenses associated with the same. The Assets of the Trust that are held in the Employer's OPEB Account will be available only to fund the Employer's OPEB Obligation and defray the reasonable expenses associated with the same.

(c) The Assets of the Trust that are held in an Employer's Agency Account shall not be available to pay any obligations incurred by any other Employer as provided in Section 2.8.

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

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

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

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

2.5 Assets of Agency Account

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

2.6 Aggregate Balance for Investment and Administration

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

2.7 Trustee Accounting

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

2.8 No Diversion of Assets

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

2.9 Type and Nature of Trust

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

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

2.10 Loss of Tax-Exempt Status as to Any Employer

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

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

ARTICLE III

ADMINISTRATIVE MATTERS

3.1 Appointment of Trustee

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

3.2 Resignation or Removal of Trustee

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

3.3 Withdrawal of Employer

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

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

3.4 The Plan Administrator

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

3.5 Failure to Appoint Plan Administrator

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

3.6 Delegatee

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

3.7 Certification to Trustee

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

3.8 Directions to Trustee

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

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

3.9 Appointment of Trust Administrator

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

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

3.10 Trust Administrator

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

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

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

3.11 Additional Trust Administrator Services

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

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

3.12 Trust Administrator's Compensation

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

3.13 Resignation or Removal of Trust Administrator

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

ARTICLE IV

THE TRUSTEE

4.1 Powers and Duties of the Trustee

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4.2 Additional Trustee Powers

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

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

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

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

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

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

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

ARTICLE V

INVESTMENTS

5.1 Discretionary Versus Directed Investment

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

5.2 Trustee Fees

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

5.3 Contributions

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

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

5.4 Records

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

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

5.5 Statements

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

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

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

5.6 Wire Transfers

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

5.7 Exclusive Benefit

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

5.8 Delegation of Duties

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

5.9 Distributions

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

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

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

ARTICLE VI

FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

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

6.2 Fiduciary Discharge of Duties

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

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

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

6.3 Limitations on Fiduciary Responsibility

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

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

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

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

6.4 Indemnification of Trustee by Employer

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

6.5 Indemnification of Employer by Trustee

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

6.6 Indemnification of Trustee by Trust Administrator

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

6.7 Indemnification of Trust Administrator by Trustee

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

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

6.8 Indemnification Procedures

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

6.9 No Joint and Several Liability

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

ARTICLE VII

AMENDMENT, TERMINATION AND MERGER

7.1 No Contractual Obligation

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

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

7.2 Amendment of Trust

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

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

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

(2) Permit the Assets of any Agency Account to be used for the benefit of any other Employer.

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

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

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

7.4 Fund Recovery Based on Mistake of Fact

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

7.5 Termination of Trust

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

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

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

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

ARTICLE VIII

MISCELLANEOUS PROVISIONS

8.1 Nonalienation

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

8.2 Saving Clause

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

8.3 Applicable Law

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

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

8.4 Joinder of Parties

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

8.5 Employment of Counsel

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

8.6 Gender and Number

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

8.7 Headings

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

8.8 Counterparts

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

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

U.S. BANK NATIONAL ASSOCIATION

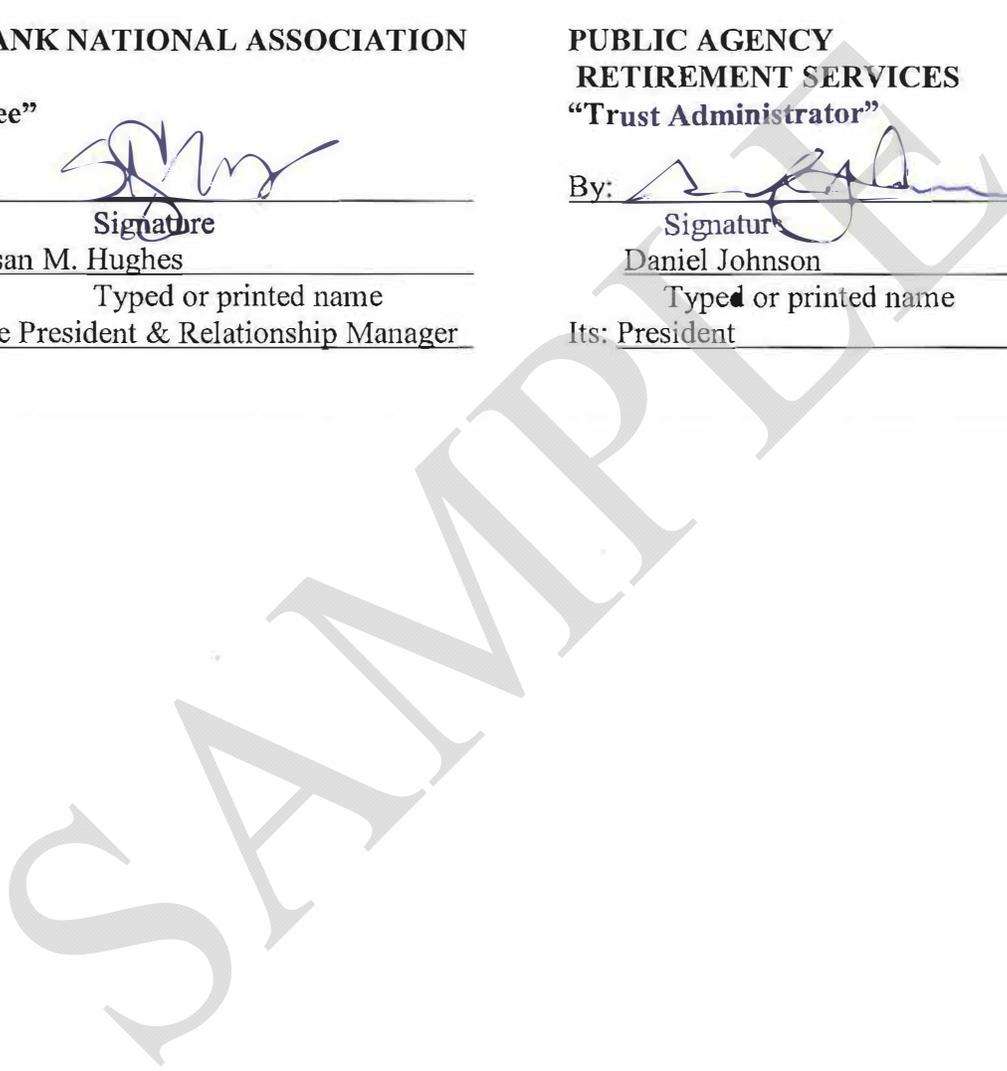
“Trustee”

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

**PUBLIC AGENCY
RETIREMENT SERVICES**

“Trust Administrator”

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



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

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

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

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

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

A.1.3. Pension Plan: _____

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

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

A.2.1. Employer:

Name: _____

U.S. mail address: _____

Phone number: _____

EIN: _____

Fiscal year end: _____

A.2.2. Plan Administrator:

Position at Employer: _____

Incumbent: _____

U.S. mail address: _____

Phone number: _____

Email address: _____

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

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

- OPEB Plan
- Pension Plan

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

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

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

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

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

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

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

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

A.4.2. **Investment Approach.**

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

Discretionary investment approach:

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

Directed investment approach:

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

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

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

Discretionary investment approach:

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

Directed investment approach:

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

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

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

[signature page follows]

EMPLOYER

By: _____

Its: _____

Date: _____

Accepted by:

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

By: _____
Daniel Johnson

Its: President _____

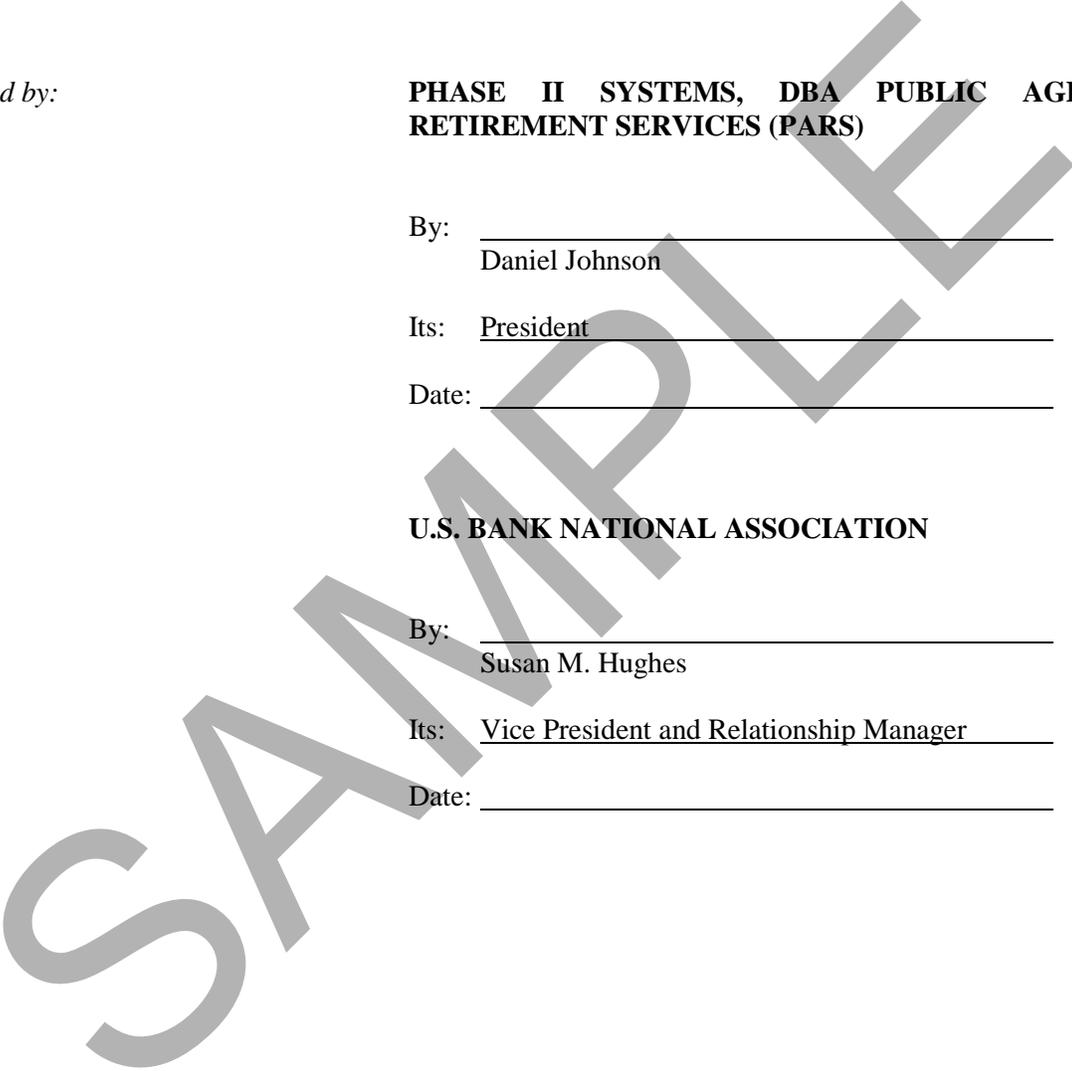
Date: _____

U.S. BANK NATIONAL ASSOCIATION

By: _____
Susan M. Hughes

Its: Vice President and Relationship Manager _____

Date: _____



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.

RESOLUTION NO. _____

RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF FORT BRAGG
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 City of Fort Bragg ("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 there under, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS the City's adoption and operation of the Program has no effect on any current or former employee's entitlement to post-employment benefits; and

WHEREAS the terms and conditions of post-employment benefit entitlement, if any, are governed by contracts separate from and independent of the Program; and

WHEREAS the City's funding of the Program does not, and is not intended to, create any new vested right to any benefit nor strengthen any existing vested right; and

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

NOW THEREFORE, BE IT RESOLVED THAT:

1. The City Council hereby adopts the PARS Public Agencies Post-Employment Benefits Trust, effective _____; and
2. The City Council hereby appoints the (POSITION OR TITLE) , or his/her successor or his/her designee as the City's Plan Administrator for the Program; and
3. The City's Plan Administrator is hereby authorized to execute the PARS legal and administrative documents on behalf of the City and to take whatever additional actions are necessary to maintain the City's participation in the Program and to maintain compliance of any relevant regulation issued or as may be issued; therefore, authorizing him/her to take whatever additional actions are required to administer the City's Program.

AYES: NOES: ABSENT: ABSTAIN:

STATE OF CALIFORNIA
COUNTY OF MENDOCINO

_____, the City Clerk of the City of Fort Bragg, State of California, hereby certifies that the above foregoing resolution was duly and regularly adopted by said City at a regular meeting thereof held on the _____ and passed by a _____ vote of said Council.

IN WITNESS WHEREOF I have hereunto set my hand and seal this _____, 2022.

City Clerk

APPENDIX: FORM ADV



Vision. Discipline. Results.™

Form ADV Part 2A

March 28, 2022

HighMark Capital Management, Inc.
350 California Street, Suite 1600
San Francisco, CA 94104

<https://www.unionbank.com/commercial/highmark-capital>

Contact Info: 1-800-582-4734

This Form ADV Part 2A (“the Brochure”) provides information about the qualifications and business practices of HighMark Capital Management, Inc. If you have any questions about the contents of this brochure, please contact us at 1-800-582-4734. The information in this brochure has not been approved or verified by the United States Securities and Exchange Commission or by any state securities authority.

HighMark Capital Management, Inc. is a registered investment adviser. Registration of an investment adviser does not imply any level of skill or training.

Additional information about HighMark Capital Management, Inc. is available on the SEC’s website at www.adviserinfo.sec.gov.

Item 2: Material Changes

Below is a summary of material changes made by HighMark Capital Management, Inc. (“HighMark”) to its Form ADV Part 2A (the “Brochure”), since its last update on November 11, 2021:

- Additional non-material changes that update, enhance, or further clarify existing language have also been incorporated throughout the Brochure since its prior version.

You may also request a free copy of the Brochure by calling 1-800-582-4734 or by visiting <https://www.unionbank.com/commercial/highmark-capital>, or on the SEC’s website at <https://adviserinfo.sec.gov>.

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Item 4: Advisory Business

HighMark is an investment adviser registered with the Securities and Exchange Commission (“SEC”), and a wholly owned subsidiary of MUFG Union Bank, N.A. (“MUFG Union Bank”), a national banking association regulated by the Office of the Comptroller of the Currency. HighMark and MUFG Union Bank’s ultimate parent company is Mitsubishi UFJ Financial Group, Inc. (“MUFG”), a Japan-based financial institution. Please refer to Item 10: Other Financial Industry Activities and Affiliations, for additional information regarding HighMark’s affiliates.

Including its predecessor organizations, HighMark has been managing client assets since 1919, and has been registered as an investment adviser with the SEC since 1998. As of December 31, 2021, HighMark had \$10.08 billion in assets under management, with \$9.3 billion of these assets managed on a discretionary basis, and over \$780 million managed on a non-discretionary basis. Assets under advisement total \$10.17 billion, and reflect client assets of MUFG Union Bank, wherein HighMark provides certain investment advisory services (including, but not limited to, investment research and strategies). These services are described in further detail below under “Services Provided to MUFG Union Bank”.

Managed Accounts

HighMark manages accounts for clients with which it has a direct investment management agreement and also manages accounts for certain MUFG Union Bank affiliates and U.S. Bank National Association (“U.S. Bank”) under applicable investment management agreements. HighMark clients includes institutional separate account portfolios for a wide variety of for-profit and non-profit organizations, public agencies, and public and private retirement plans. Services include some or all of the following:

- Assisting the client in developing and modifying investment objectives, guidelines, and restrictions.
- Determining an appropriate investment strategy, including asset allocation, consistent with the investment objectives, guidelines and restrictions established by the client, and reviewing and periodically modifying the strategy through meetings and consultations with the client or its agent.
- Implementing the client’s investment strategy through the purchase and sale of securities and other financial instruments, the exercise of options, warrants, and subscription rights, and the investment and re-investment of cash balances for the account.
- Providing information and instructions to the client or its custodian (or trustee) so that transactions for the account are settled in an accurate and timely manner.
- Reconciling its records with those of the client or its custodian (or trustee) on a periodic basis.
- Reviewing the client’s overall accounts and monitoring individual instruments so that the overall portfolio remains consistent with the account’s investment strategy, as well as the client’s investment objectives, guidelines and restrictions.
- Furnishing reports to the client on a periodic basis concerning account activity and performance.

For certain clients, HighMark provides clients access to third-party investment platforms. HighMark also engages an affiliated sub-adviser to provide selected investment strategies to institutional clients.

As a wholly owned subsidiary of MUFG Union Bank, HighMark is required to comply with MUFG Union Bank’s applicable compliance policies and procedures, which include reporting obligations that are not generally required by unaffiliated clients.

Sub-Advisory Services Provided to Non-Affiliated Parties

HighMark has a sub-advisory agreement with U.S. Bank to sub-advise certain client accounts. The range of services HighMark provides for these accounts is similar to the services described above. U.S. Bank pays HighMark a fee to provide these investment advisory services, as described in the agreement between U.S. Bank and HighMark.

Services Provided to MUFG Union Bank

Pursuant to a services agreement, HighMark furnishes its parent company, MUFG Union Bank with portfolio management and research support including without limitation, strategic and tactical asset allocation guidance, trading, operational, and certain compliance functions with respect to certain MUFG Union Bank trust and agency accounts. MUFG Union Bank's engagement of HighMark and the services HighMark provides are disclosed by MUFG Union Bank to its clients.

MUFG Union Bank pays HighMark a portion of the fees it receives as compensation for these services, as described in the agreement between MUFG Union Bank and HighMark. The range of services HighMark provides to MUFG Union Bank is similar to the services it provides to other managed accounts, as described above.

Consulting Services

HighMark provides investment consulting services, including supplying investment research and information, on a non-discretionary basis. These services consist of providing sample portfolios, investment strategies, general overviews of certain securities markets, or similar services. Fees for consulting services are negotiated in each case based on the nature and complexity of the services to be provided. Such fees may be fixed or based on a percentage of the assets subject to the consulting arrangement and such fees are generally payable upon provision of the services.

Item 5: Fees and Compensation

Fees are generally charged as a percentage of assets under management as described in the investment advisory agreement between HighMark and the client. Fees may be negotiated on a relationship basis.

HighMark's investment advisory fees range from .15% (typically charged for liquidity management strategies) to .75% (typically charged for equity management strategies). HighMark requires a minimum annual fee of \$10,000 for managed account investment management services. In certain circumstances, the fees charged for managed accounts and/or the minimum fee may be negotiable.

In addition to the investment advisory fee, it is possible that clients will pay other fees or expenses related to the management of their account depending on the type of account and investment such as, brokerage, trading, custody, transfer agent, fund accounting and administration, 12b-1, shareholder servicing and investment management fees associated with any third-party fund. Please see Item 12: Brokerage Practices.

For clients' assets custodied at MUFG Union Bank, clients generally choose to deduct fees from assets or receive a bill for fees incurred. For those clients' assets custodied outside of MUFG Union Bank, clients will be invoiced. Fees are paid in arrears and clients have the option to pay fees monthly or quarterly.

Fees are prorated for the billing period at the beginning or end of a client relationship. The method of fee calculations is disclosed to clients in their investment advisory agreements. For other accounts described under Item 4: Advisory Business, HighMark receives a fee for providing investment advisory services, as described in the agreement between HighMark and the respective party.

Portfolio managers receive a salary from HighMark and participate in the MUFG Union Bank's incentive compensation plan, which is an annual plan that pays a bonus.

On occasion, HCM employees may receive gifts of nominal value from product or service vendors. Certain vendors may also invite our employees to training or educational events or host reasonable business entertainment that is deemed necessary and/or customary industry practice. HCM has implemented policies and procedures governing receipt of gifts and entertainment to mitigate actual or perceived conflicts of interest.

Item 6: Performance-Based Fees and Side-By-Side Management

Generally, performance-based fee structures create a potential conflict of interest by creating incentives regarding portfolio investments that could compromise the independent judgment of the investment adviser. Although there are currently none, it is possible that HighMark might enter into performance-based fee arrangements to the extent permitted by applicable law. If HighMark had performance-based fee arrangements, they could vary depending on the client's needs and individual circumstances.

Item 7: Types of Clients

HighMark provides investment advice to pension and profit sharing plans, pooled investment vehicles, charitable organizations, corporations, state and municipal government entities, corporate employee benefit plans, public agencies, foundations and endowments, Taft-Hartley plans, hospital and religious organizations, and treasury departments.

HighMark generally requires a minimum account size of \$3 million for the client types described above, and \$10 million for liquidity accounts. HighMark may lower the minimum account size in its sole discretion.

Item 8: Methods of Analysis, Investment Strategies and Risk of Loss

Methods of Analysis

HighMark equity professionals combine fundamental and quantitative analyses to build diversified equity portfolios that aim to outperform respective benchmarks. Different style strategies focus on different criteria. The equity research team seeks companies that carry attractive return and growth profiles, sustainable competitive advantages, and are priced at reasonable valuations relative to those characteristics. We consider the risks involved in specific holdings and how such risk might affect the total portfolio.

HighMark's fixed income investment professionals utilize both a top down and bottom up investment process to build diversified fixed income portfolios that seek to capture investment opportunities by

actively managing risk through the various stages of the business and economic cycle. The top down process seeks to allocate sector, portfolio quality, duration, yield curve positioning, and implementation of key themes. Individual security and industry allocation uses extensive bottom-up credit research with a keen focus on identification of high-quality issues and downside protection. To minimize volatility in client portfolios, HighMark carefully manages interest rate and credit risk and repositions portfolios it deems appropriate to take advantage of opportunities arising from changes in interest rates, the yield curve and sector and issuer spreads. HighMark strives to avoid securities that are leveraged with respect to interest rate or prepayment risk.

HighMark's cash management specialists utilize extensive analysis of market sectors and individual issues to enhance diversification and reduce portfolio volatility. HighMark invests in a wide range of investment grade domestic and foreign dollar-denominated securities according to each client's specific liquidity needs.

Investment Strategies

HighMark provides a range of style-specific strategies using both internal and external managers. HighMark's approach is a disciplined, consistent process to actively manage portfolios including equity, fixed income, liquidity management and multi-asset strategies. Active management includes a variety of data sources, which includes data generated by third-party models.

Equity strategies include U.S. Large Cap Fundamental research-based strategies including Large Cap Value, Core Value, Fundamental Advantage, Dividend Advantage and Large Cap Growth. HighMark also employs fixed income strategies in the areas of Core, Intermediate Term, Investment Grade Corporates, Short Term, National Tax-Free and California Tax-Free. For management of institutions' cash and excess working capital, HighMark offers liquidity strategies invested principally in money market instruments. Multi-asset strategies include a variety of asset allocation based portfolios across a spectrum of risk profiles implemented with proprietary and / or third party investment strategies. HighMark offers other strategies through affiliated and third-party sub-adviser relationships, including Japanese equity strategies managed by HighMark's affiliate, Mitsubishi UFJ Trust and Banking ("MUFG: Trust Bank") as described further below. MUFG: Trust Bank is under the ownership of MUFG, also described further below.

Risk of Loss

Investments in HighMark strategies are not bank deposits, are not guaranteed by any agency of the U.S. government, and involve risk, including the possible loss of principal, a risk that clients should be prepared to bear.

Investment performance can also be affected by other risks such as:

- *Market Risk:* The risk of a security's market value declining, especially rapidly and unpredictably for short or extended periods. These fluctuations may cause a security to be worth less than the price the investor originally paid for it. Market risk can affect a single issuer, sector or the market as a whole.
- *Liquidity Risk:* The risk that a security is difficult or impossible to sell at the time and price the seller wishes. The seller may have to accept a lower price for the security, sell other securities instead, or forego a more attractive investment opportunity.
- *Credit Risk:* The risk that the issuer of a security, or the counterparty to a contract, will default or otherwise become unable to honor a financial obligation. Generally speaking, the lower a

security's credit rating, the higher its credit risks. If a security's credit rating is downgraded, its price tends to decline sharply, especially as it becomes more probable that the issuer will default.

- *Interest Rate Risk:* The risk that debt prices overall will decline over short or long periods due to rising interest rates. Interest rate risk usually is modest for shorter-term securities, moderate for intermediate-term securities, and high for longer-term securities. A change in a central bank's monetary policy or improving economic conditions may result in an increase in interest rates. Rising interest rates could decrease liquidity in the fixed income securities markets, making it more difficult to sell fixed income securities. In addition, decreased market liquidity also could make it more difficult to value a fixed income security.
- *Counterparty Risk:* The risk that the counterparty to a repurchase agreement or reverse repurchase agreement will not fulfill its obligation which would cause the income and the value of the investment to decline.
- *Foreign Risk:* Compared with investing in the United States, investing in foreign markets involves a greater degree and variety of risks including the possibility of delayed settlements, currency controls, adverse economic developments, and higher overall transaction costs. In addition, fluctuations in the U.S. dollar's value could erode or reverse gains from investments denominated in foreign currencies or widen losses. Exchange rate fluctuations also could impair an issuer's ability to repay U.S. dollar denominated debt, increasing credit risk of such debt. Finally, the value of foreign securities could be affected by incomplete or inaccurate financial information, smaller and less liquid securities markets, social upheavals or political actions ranging from tax code changes to significant governmental restructuring or collapse.
- *Reinvestment Risk:* The risk that the proceeds, dividends, or interest generated from an investment are reinvested in a security that offers a lower rate of return compared to the returns generated by the original investment.
- *Non-diversification Risk:* The risk involved with excessive exposure to securities in any one issuer, industry or sector.
- *Alternative Investment Risk:* Alternative mutual funds and other managers that employ alternative investment strategies primarily invest in non-traditional asset classes and implement speculative investment techniques. Alternative investments often offer investment return characteristics that are not correlated to traditional investments, but also present greater and/or unique risks to investors. Such risks include: loss of all or a substantial portion of the investment due to leveraging, short selling or other speculative practices; management risk; lack of liquidity; restrictions on transferring interests; higher or excessive volatility; absence of information for valuations and pricing; less transparency on underlying investments, complex tax structures and delays in tax reporting; less regulation; and potentially higher fees than traditional investments.
- *Management Risk:* The risk that a strategy or investment technique used by HighMark may fail to produce the intended result or achieve its investment objective.
- *Model Risk:* Highmark uses a variety of data, including data from third-party models, as inputs into the investment management process. Use of data generated by investment-related models invariably presents model risk, which is the potential for adverse consequences from asset allocation or investment management decisions based on incorrect or misused data output and reports.

- **Third-Party Risk:** HighMark relies on services from third-parties in the execution of investment management and servicing of clients' accounts. Types of such third parties may include but are not limited to: broker-dealers, reporting, pricing, proxy voting, research, investment-related models and technology providers.
- **Tax Risk:** The risk of unfavorable tax consequences to a client that could result from the administration of a client account pursuant to the advisory services described in this Brochure.

Item 9: Disciplinary Information

HighMark has not been involved in legal or disciplinary events that are material to its advisory business or the integrity of its management.

Item 10: Other Financial Industry Activities and Affiliations

Material Related Party Arrangements

As noted in Item 4: Advisory Business, HighMark is a wholly owned subsidiary of MUFG Union Bank. MUFG Union Bank is a principal subsidiary of MUFG Americas Holding Corporation ("MUAH"), a bank holding company regulated by the Federal Reserve Board. MUAH is wholly owned by MUFG Bank, Ltd. (formerly The Bank of Tokyo-Mitsubishi UFJ, Ltd.) headquartered in Tokyo, Japan. MUFG Bank, Ltd., in turn, is a wholly owned subsidiary of MUFG.

HighMark's ultimate parent company, MUFG, beneficially owns approximately 21.01% of the common stock of Morgan Stanley as of March 31, 2021 and is also represented by two seats on Morgan Stanley's Board of Directors. Morgan Stanley is a global financial services firm and is the parent company of several registered broker-dealers and asset managers. The conflicts of interest resulting from MUFG's beneficial ownership interest in Morgan Stanley may limit HighMark's ability to directly or indirectly transact in Morgan Stanley-related securities (including Morgan Stanley or Morgan Stanley affiliate-sponsored or advised funds) or use Morgan Stanley brokerage services for your account, and, in some cases, will wholly prevent such transactions and/or the use of Morgan Stanley brokerage services.

All employees of HighMark, including its board of directors, are also employees of MUFG Union Bank. Certain employees of HighMark may also perform work for MUFG Union Bank. MUFG Union Bank provides a variety of administrative services to HighMark, including, but not limited to, human resources, legal and accounting services.

MUFG Union Bank serves as the custodian for many of the accounts for which HighMark provides advisory services. In addition, MUFG Union Bank may refer clients to HighMark for advisory services and HighMark may refer clients to MUFG Union Bank for banking services.

MUFG Union Bank has an SEC-registered broker-dealer subsidiary, UBIS, which is also an SEC registered investment adviser. Both HighMark and UBIS are under the common control of MUFG Union

Bank. HighMark's President, Chief Executive Officer, Chairman of the Board and its Chief Compliance Officer, who are also each employees of MUFG UnionBank, are registered representatives with UBIS.

HighMark currently has no arrangements with UBIS to provide broker-dealer or advisory services to HighMark or its advisory clients. UBIS may refer a client to HighMark for advisory services.

HighMark engages MUFG: Trust Bank, as a sub-advisor for the management of certain equity strategies. These strategies call upon the MUFG: Trust Bank's experience in the Japanese equity markets, with a focus on investment in companies with varying market capitalization. Clients invested in these strategies may be referred and/or introduced to HighMark by a third-party placement agent for a fee. Management and other fees vary, and are detailed in the client's investment management agreement with HighMark. Brokerage placement and proxy voting will be determined by MUFG: Trust Bank. HighMark and MUFG: Trust Bank are ultimately under the common control and ownership of MUFG, as described previously. HighMark compensates MUFG: Trust Bank with a portion of the overall investment management fee paid by those clients.

On September 21, 2021, MUAH and its ultimate parent corporation, MUFG, entered into a Share Purchase Agreement (the "Purchase Agreement") with U.S. Bancorp ("USB"). Upon the terms and subject to the conditions set forth in the Purchase Agreement, USB will purchase from MUAH all the issued and outstanding shares of common stock of MUFG Union Bank, the direct parent company of HighMark.

While the transaction has not been completed and is subject to the satisfaction of customary closing conditions, including but not limited to the receipt of required regulatory approvals, it is expected to close in the first half of calendar year 2022. Subsequent filings with the SEC, by both USB and MUFG are accessible on the SEC's website at www.sec.gov.

Item 11: Code of Ethics, Participation or Interest in Client Transactions, and Personal Trading

Personal Transactions in Recommended Securities

HighMark generally does not buy or sell securities that it recommends to clients. HighMark's related persons may however, transact or hold securities that are or have been recommended by HighMark to its clients.

HighMark has adopted a Code of Ethics for all employees in accordance with Rule 204A-1 of the Investment Advisers Act of 1940 which describes standards for business conduct, fiduciary duty to clients and rules surrounding personal securities transactions. HighMark's officers and directors, and certain employees are required to report certain personal securities transactions and holdings. These personal securities transactions may raise potential conflicts with the interests of HighMark clients. The Code of Ethics mitigates potential conflicts of interest by requiring, among other things, prior approval of certain securities transactions. The Code of Ethics also requires regular employee certification and reporting and outlines disciplinary actions for exceptions. All Code of Ethics exceptions are reported to HighMark's Board of Directors. A copy of HighMark's Code of Ethics is available upon request by calling 1-800-582-4734.

Principal Transactions

HighMark does not, as principal, buy securities from or sell securities to its clients. HighMark also does not use its investment discretion to direct or authorize securities transactions between its related persons and its clients except in accordance with HighMark policy, and to the extent permitted by law. Certain related persons of HighMark, such as MUFG Bank Ltd., MUFG Union Bank, and UBIS, from time to time, may buy securities from or sell securities to HighMark's clients in connection with their own separate relationship with HighMark's clients. These activities of HighMark's related parties are not connected to HighMark's advisory business. The related persons engage in these activities in a manner that is consistent with customary commercial practice and applicable federal and state regulations.

Agency Transactions

HighMark does not process securities transactions for compensation as broker or agent for its clients. HighMark also does not use its investment discretion to direct or authorize client securities transactions in which a related person is a broker or agent except in accordance with HighMark policy, and to the extent permitted by law. Certain related persons of HighMark, such as MUFG Bank Ltd., MUFG Union Bank and UBIS, from time to time, may effect securities transactions for compensation as broker or agent for clients of HighMark or their counterparties in connection with their own separate relationships with such clients or other persons. These activities are not connected to HighMark's advisory business. The related persons engage in these activities in a manner that is consistent with customary commercial practice and applicable federal and state regulations.

MUFG's Investment in Morgan Stanley

Please see Item 10: Other Financial Industry Activities and Affiliations which discusses MUFG's investment in Morgan Stanley. Although HighMark does not consider this investment an arrangement that is material to its advisory business, this indirect affiliation prevents HighMark from effecting certain broker transactions with Morgan Stanley on behalf of certain client accounts. Where permitted by HighMark policy and law, HighMark may use Morgan Stanley in connection with certain brokerage transactions on an agency or principal basis.

Interest in Client Recommendations

Generally, HighMark does not recommend to clients that they buy or sell securities or investment products in which HighMark has a financial interest. However, HighMark may recommend to clients securities in which HighMark's related persons have a financial interest. HighMark considers that the range of the potential holdings of HighMark's related persons, and the range of the potential issuers to whom HighMark's related persons provide banking, custodial, brokerage and other services, is such that it would be inadvisable to exclude these securities from consideration for a client's portfolio solely because of these potential conflicts of interest. HighMark makes portfolio transaction decisions or recommendations independently and not based on the interests of any related person.

HighMark may also engage in cross transactions, most likely in a format where client accounts are matched to provide liquidity and avoid brokerage fees. These are broker-less and non-principal transactions and there is no compensation earned by HighMark. There may be nominal transaction processing fees involved in cross transactions. Cross transactions are done in compliance with applicable rules and procedures.

HighMark may purchase or recommend securities for clients issued by other clients. HighMark receives no additional compensation in this situation.

Item 12: Brokerage Practices

HighMark provides investment advice to clients on both a discretionary and non-discretionary basis, depending upon clients' wishes. For more information about the advisory services offered by HighMark, please refer to Item 4: Advisory Business.

Most clients authorize HighMark to use broker-dealers selected by HighMark, and to pay commission rates negotiated by HighMark with the broker-dealer. HighMark however, may, agree to take written direction from a client to use a broker-dealer selected by the client. Please see discussion below about "Client Directed Brokerage."

Client Directed Brokerage

HighMark may accept a client's written request for client directed brokerage by executing a transaction with the broker-dealer selected by the client, which may or may not be a broker-dealer used by HighMark for other trades in the same security during that period. In accordance with client directed brokerage instructions, the brokerage transactions may result in higher commissions, greater spreads, or less favorable net prices than would be the case if HighMark were authorized to select the broker-dealer. Client directed brokerage may not, in all cases, result in the best execution of securities transactions for the client. Clients acknowledge the possibility of paying higher commission rates and not obtaining best execution when they enter into their agreement with HighMark. HighMark may limit the extent to which it will agree to client directed brokerage.

Although HighMark has no brokerage commission recapture program, from time to time, certain clients may direct HighMark to a certain broker as part of their participation in such a program. Where a client directs the use of a particular broker-dealer, HighMark may be unable to achieve most favorable execution of client transactions and the client may pay more in execution fees than if HighMark was permitted to choose the executing broker-dealer. In such cases, HighMark may not be able to determine the terms of how an order will be handled with such broker-dealer and may not be able to freely negotiate commission rates. In addition, HighMark may not be able to aggregate the client's orders with other client orders, even to reduce transaction costs. As a result, a client's direction that HighMark use a particular broker-dealer may cause a client to pay higher commissions or receive less favorable net prices than would be the case if HighMark were given discretion to choose the broker-dealer through which to execute the transaction for the client's account.

Broker Selection

In selecting a broker-dealer for a transaction, HighMark endeavors to choose the broker-dealer most capable of providing the services necessary to obtain best execution of the transaction. HighMark maintains a list of approved broker-dealers from which its traders select a broker-dealer for a particular transaction. HighMark's Investment Policy Committee ("IPC"), a committee composed of HighMark's senior investment personnel, reviews and determines the approved broker-dealers list at least once a year. Broker-dealers are evaluated on various criteria, including the commissions charged, as well as the reliability, integrity, and financial condition of the firm, the timeliness and accuracy of trade execution skills, operational and settlement capabilities, and any research services or products offered. HighMark does not commit a specific amount of business to any broker-dealer, but does set an overall target based on what is required to gain the best arrangement of services, products, and best execution of client transactions. Actual brokerage business directed to any broker-dealer may not reach or may exceed the target. HighMark does not place brokerage orders for a client with UBIS, or with any other affiliate of HighMark, except in accordance with HighMark's policy, and to the extent permitted by law.

On a continuing basis, HighMark seeks to determine what levels of commission rates are reasonable for specific transactions. Consideration is given to factors including historical commission rates, market commission rates (based on publicly available information), the size and complexity of the transaction, the type and level of business done with a firm over a period of time, and the extent to which the broker-dealer has capital at risk in the transaction.

For each transaction, HighMark's trading desk determines which broker-dealer on the approved list can provide the best execution of a specific transaction. Consideration is given to various factors including consistency of quality execution, general order flow, market-making skills, ability or willingness to commit capital and provide liquidity, and sales trading and coverage skills. HighMark's policy does allow the use of a broker-dealer not on the approved list when HighMark deems it will be able to achieve best execution. Trades with brokers not on the approved list are reported to HighMark's Client Commissions Committee at its next meeting with an explanation as to why a broker not on the approved list was selected to provide best execution.

HighMark may effect transactions through an electronic crossing network ("ECN") in an attempt to find liquidity per price improvement not available through traditional trading methods. In selecting among market makers, and non-market makers or ECNs, HighMark generally seeks to select those it believes to be actively and effectively trading the security being purchased or sold. HighMark may select an ECN offered by a provider of services to HighMark in addition to ECNs offered by other vendors.

In some cases, HighMark aggregates as a block transaction multiple transaction orders that are received at about the same time. HighMark's policy is to engage in block transactions in a fair and equitable manner to all participating clients, so that the price of the securities purchased or sold of all participating clients will be the average share price for the block transaction with commissions and costs shared among the participating clients on a pro-rata basis. There can be no assurance, however, that any particular investment will be proportionally allocated among clients, or that the allocation process will achieve the same results for each client. HighMark does not receive additional compensation for aggregating orders in block transactions. HighMark believes that the use of block transactions may prevent the transaction of one client from affecting the purchase or sale price of a transaction for another client, and that the use of block transactions may enable HighMark, on average and over time, to obtain enhanced execution and lower brokerage commissions.

Client Commissions

HighMark may process securities transactions that result in a client paying an amount of commission in excess of the amount of commission another broker would have charged. In selecting such broker-dealer, HighMark will make a good faith determination that the amount of commission is reasonable in relation to the value of the brokerage services, research and investment information, viewed in terms of either the specific transaction or HighMark's overall responsibility to the accounts for which it exercises investment discretion.

In processing client brokerage transactions through broker-dealers, HighMark may receive from such broker-dealers, at no direct cost, certain investment information and research services, including conferences, research reports, oral advice, or data regarding particular companies, industries, or general market or economic conditions. To the extent legally allowed, certain of such services include the use of or delivery of quotation or computer systems whose software components are provided to HighMark as part of the services.

In any case in which information and other services can be used for both research and non-research purposes, HighMark will make an appropriate good faith allocation of those uses and will pay directly for that portion of the services to be used for non-research purposes.

HighMark uses investment information and research services that it receives from broker-dealers to evaluate securities and formulate investment recommendations for both discretionary and non-discretionary clients. These recommendations, as well as HighMark's analyses and the information and research services used to formulate recommendations, may be made available to HighMark's affiliates and all of HighMark's clients and are used by HighMark in providing services to all of its clients. A client account may pay commissions to a broker-dealer which supplies research services not utilized by the account. Non-discretionary clients for whom HighMark does not ordinarily place brokerage orders may benefit from such investment information, even though such information was generated through commission paid by other clients.

The procedure to determine the allocation amounts includes an evaluation by HighMark's traders of the broker-dealers' execution capability, and an evaluation by a committee of HighMark's equity advisory personnel of the quality and usefulness of the broker-dealers' research. The minutes of this committee are then reviewed and approved by HighMark's IPC. No absolute dollar amounts are required to be met, and in no case will an order be placed if the broker-dealer is not believed to be able to provide best execution of a particular transaction in light of all the factors HighMark considers. HighMark does endeavor to direct sufficient orders to such broker-dealers to ensure continued receipt of research services that HighMark believes are useful to all HighMark accounts. Substantial portions of brokerage commissions are paid to broker-dealers who supply investment information and research services to HighMark.

At HighMark's discretion, HighMark can choose to trade on an execution-only basis for a particular transaction or client account.

Initial Public Offerings

From time to time, HighMark may be offered securities in an initial public offering ("IPO") and HighMark will determine in its sole discretion whether to accept any such offer. Generally, HighMark does not accept offers to participate in IPOs. In the event that HighMark accepts an offer of IPO securities, HighMark's policy is to allocate the securities proportionally, based on asset value, among client portfolios for which the securities are deemed suitable. Suitability will be determined by HighMark's portfolio managers based on a number of factors, including but not limited to, investment goals, existing securities in the portfolio available cash and purchasing power, portfolio investment restrictions, and the subjective judgments of the portfolio managers. A small IPO offering may be allocated only to one client portfolio, if HighMark determines in its sole discretion that allocation among more than one portfolio would be inefficient for client accounts. While generally based on objective criteria, HighMark does not make IPO allocations based on strict, mathematical formulas. HighMark's allocation of any specific IPO offering may not result in proportional allocation across all its client portfolios. HighMark however, will treat all client portfolios fairly and will not give preferences to any particular client or type of clients when allocating IPOs.

HighMark may occasionally purchase securities for a client in an initial or secondary offering in which an affiliate is a syndicate member, which may create an indirect benefit to the affiliate. In such event, HighMark will purchase the security from a syndicate member that is not an affiliate and under procedures designed to minimize conflicts of interest.

Item 13: Review of Accounts

Account Review Process

Investment strategies, risk characteristics and performance are set and reviewed regularly by HighMark's IPC. HighMark's portfolio managers then review accounts on an ongoing basis to assess the appropriateness of client investments relative to the investment strategy and in accordance with the client's specific investment objective, guidelines and restrictions for the account. HighMark Operations routinely reviews direct account custodian reconciliations.

Trade Errors

It is HighMark's policy to ensure trading errors are handled and corrected in a timely manner in the best interests of the client affected by the error. All trade errors should be corrected within a reasonable period of time following discovery of the error. HighMark will not use commissions from client accounts to correct trade errors. It is the strict policy of HighMark that HighMark employees are not permitted to make payments to clients or to client accounts.

Reports to Clients

HighMark issues periodic reports to direct clients, which include transaction summaries, portfolio valuation, and performance data. These reports often include information compiled by others including MUFG Union Bank and U.S. Bank. MUFG Union Bank provides periodic reports to its trust and agency account clients. The information provided by MUFG Union Bank in these reports is similar to the information included in HighMark's periodic reports described above.

Item 14: Client Referrals and Other Compensation

HighMark or its related persons may from time to time receive some economic benefit from non-clients, such as a broker-dealer, in connection with giving advice to clients. See Item 12, Brokerage Practices.

Compensation for Client Referrals to MUFG Union Bank and Relationship Management of Clients Participating in MUFG Union Bank Services

MUFG Union Bank generally compensates certain employees and employees of its affiliates, such as UBIS and HighMark, when clients they refer to MUFG Union Bank establish an account, relationship or service. In addition, MUFG Union Bank generally pays certain MUFG Union Bank employees and employees of MUFG Union Bank's affiliates compensation for providing relationship management services that facilitate the coordination of the review, recommendation and integration of suitable products and services of MUFG Union Bank and its affiliates, including UBIS and HighMark, that are relevant to the client's overall financial situation. Such compensation can vary depending on the account, relationship or service.

Other Referral Arrangements

In addition, from time to time, HighMark and its related persons may also enter into cash referral arrangements with related and unrelated persons in accordance with Rule 206(4)-3 of the Investment Advisers Act of 1940, and compensate referrals with respect to such activities in accordance with Rule 206(4)-3 or other applicable regulations. The amounts of such fees are individually negotiated.

Item 15: Custody

The custodian of each client account (either MUFG Union Bank or a client-directed custodian) sends a periodic statement of the account to the client on at least a quarterly basis. HighMark recommends that clients compare the security positions shown on the investment statement they receive from HighMark to those shown on the statement they receive from the applicable custodian. Differences in reported security positions may exist because investment statements are presented on a trade date basis and custodial statements are often shown on a settlement date basis. Differences in the reported security values may exist due to the timing of posting of accrued but uncollected income and/or the use of differing valuation sources and methods by HighMark and the custodian. For clients who utilize MUFG Union Bank as their custodian, HighMark may be deemed to have custody of those assets because certain of HighMark's staff hold positions at MUFG Union Bank and HighMark shares premises with MUFG Union Bank. At no time does HighMark have physical custody of such client assets.

Item 16: Investment Discretion

Clients grant discretionary authority to HighMark at the outset of an advisory relationship when they execute an investment management agreement with HighMark. At such time, the client communicates the investment parameters, including limitations, restrictions, asset allocation requirements, and/or market capitalization thresholds that apply; any desire to invest only in socially responsible companies; and any other client-defined investment specifications.

Item 17: Voting Client Securities

HighMark's clients have the option to vote their proxies themselves or to authorize HighMark to vote such proxies on their behalf. Most clients authorize HighMark to vote proxies for securities held in the client's account. HighMark has established policies for voting these proxies in the interests of the clients.

HighMark retains ISS Governance Services ("ISS"), an independent proxy voting service, as its agent. HighMark delegates to ISS the authority to vote the proxies according to ISS' policies, subject to monitoring and review by HighMark. HighMark reserves the right to withdraw any proxy from ISS and vote the proxy with review and approval by the IPC. HighMark will withdraw a proposed proxy vote from ISS in the event that HighMark determines that the proposed vote by ISS would not be consistent with HighMark's fiduciary duty to one or more of its clients.

HighMark has written policies and procedures in place to address any situation where there is a conflict of interest between HighMark and a client. Before HighMark votes a proxy, the IPC will take steps to determine if HighMark has a conflict of interest in voting the proxy. If the IPC finds that a material conflict exists, either HighMark or MUFG Union Bank will retain an independent fiduciary to vote the proxy, depending on whether the client or MUFG Union Bank has engaged MUFG Union Bank for its investment advisory services.

The majority of the proxy voting records for HighMark are maintained by ISS. HighMark will make proxy voting records available to client as required by law. Clients may obtain a copy of HighMark's proxy voting policies and procedures and/or proxy voting records for their account by calling 1-800-582-4734.

Item 18: Financial Information

HighMark is not aware of any financial condition that is reasonably likely to impair its ability to meet contractual commitments. HighMark has not been the subject of a bankruptcy petition.

As noted in Item 10 above, on September 21, 2021, MUFG and MUAH entered into a Purchase Agreement with USB.

Subsequent filings with the SEC, by both MUFG and USB are accessible on the SEC's website at www.sec.gov.

Summary of Material Changes

HighMark Capital Management, Inc. (“HCM”) has amended its Form ADV Part 2A (the “Brochure”). Following are summaries of material changes HCM has made to its Brochure since its last update on November 11, 2021:

- Additional non-material changes that update, enhance, or further clarify existing language have also been incorporated throughout the Brochure since its prior version.

You may also request a free copy of the Brochure by calling 1-800-582-4734 or by visiting unionbank.com/commercial-bank/investment-management/highmark-capital-management or on the SEC’s website at www.adviserinfo.sec.gov.

APPENDIX:
**IRS PRIVATE LETTER RULING
(PLR)**

Internal Revenue Service

Department of the Treasury
Washington, DC 20224

Index Number: 115.00-00

Third Party Communication: None
Date of Communication: Not Applicable

U.S. Bank National Association
c/o Susan Hughes, Vice President
3121 Michelson Drive (Suite 300)
Irvine, CA 92612

Person To Contact:
Robin J. Ehrenberg, ID No. 1000219292
Telephone Number:
(202) 317-5800
Refer Reply To:
CC:TEGE:EOEG:EO3
PLR-146796-14
Date: June 5, 2015

Legend

Trust = Public Agencies Post-Employment Benefits Trust
Trust Agreement = Public Agencies Post-Employment Benefits Trust Agreement
Trustee = U.S. Bank National Association

Dear Ms. Hughes:

This letter responds to a letter from your authorized representative dated December 22, 2014, requesting rulings that (1) the Trust's income is excludable from gross income under section 115 of the Internal Revenue Code (IRC) and (2) the Trust is not required to file annual federal income tax returns under IRC section 6012(a)(4). The Trust represents the facts as follows:

FACTS

The Trust is a multiple employer trust established to enable public-agency employers to fund post-retirement employee benefits. Each participating employer must be a public agency that is a state, political subdivision of a state, or an entity the income of which is excludable from gross income under IRC section 115. The employer's governing body must authorize in writing the adoption of the Trust and the employer must execute the adoption agreement, which approves the Trust's administrator and provides that the agency adopts and agrees to be bound by the Trust Agreement. In the adoption agreement, the employer elects to fund obligations to provide benefits under a post-employment health care plan and contribute to a defined-benefit pension plan maintained by the employer that is qualified under IRC section 401(a). The employer may elect to fund either or both obligations.

The Trust Agreement provides that assets are held by the Trust for the exclusive purpose of funding participating employers' benefit obligations and defraying the reasonable expenses of the Trust. The Trust's assets may not be used for any other purpose. Each employer's contributions to the Trust, together with any allocable investment earnings and losses, are held in a separate account for that employer. Assets allocated to satisfy an employer's health and welfare benefit obligation or the employer's pension obligation may only be used for purposes of satisfying that particular obligation. The assets held in an employer's account are not available to pay any obligations incurred by any other employer.

The employers appoint the Trustee and the Trust's administrator and may remove the Trustee or the administrator by a two-thirds vote of all employers. The employers may amend the Trust Agreement with the approval of two-thirds of all employers then participating in the Trust. The employers may terminate the Trust by unanimous agreement of all employers.

Upon termination of the Trust, any assets remaining in an employer's account, after satisfaction of benefit and the Trust's obligations are returned to the employer to the extent permitted by law and consistent with the requirements of IRC section 115.

LAW AND ANALYSIS

Issue 1 - IRC section 115(1)

IRC section 115(1) provides that gross income does not include income derived from any public utility or the exercise of any essential governmental function and accruing to a state or any political subdivision thereof.

Rev. Rul. 77-261, 1977-2 C.B. 45, holds that income generated by an investment fund that is established by a state to hold revenues in excess of the amounts needed to meet current expenses is excludable from gross income under IRC section 115(1), because such investment constitutes an essential governmental function. The ruling explains that the statutory exclusion is intended to extend not to the income of a state or municipality resulting from its own participation in activities, but rather to the income of an entity engaged in the operation of a public utility or the performance of some governmental function that accrues to either a state or political subdivision of a state. The ruling points out that it may be assumed that Congress did not desire in any way to restrict a state's participation in enterprises that might be useful in carrying out projects that are desirable from the standpoint of a state government and that are within the ambit of a sovereign to conduct.

Rev. Rul. 90-74, 1990-2 C.B. 34, holds that the income of an organization formed, funded, and operated by political subdivisions to pool various risks (e.g., casualty, public liability, workers' compensation, and employees' health) is excludable from gross income under IRC section 115(1), because the organization is performing an essential governmental function. The revenue ruling states that the income of such an organization is excludable from gross income so long as private interests do not participate in the organization or benefit more than incidentally from the organization. The benefit to the employees of the insurance coverage obtained by the member political subdivisions was deemed incidental to the public benefit.

Through the Trust, participating public agency employers fund health and welfare and pension obligations for retired employees. Each of the Trust's participating employers is required to be a state, political subdivision of a state or an entity the income of which is excludable from gross income under IRC section 115. Providing health, welfare and pension benefits to current and former employees constitutes the performance of an essential government function within the meaning of IRC section 115(1). See Rev. Rul. 90-74 and Rev. Rul. 77-261.

The Trust's income accrues to its participating employers, all of which are political subdivisions of a state or entities the income of which is excludable from gross income under IRC section 115. No private interests will participate in, or benefit from, the operation of Trust, other than as providers of goods or services. The benefit to employees is incidental to the public benefit. See Rev. Rul. 90-74.

In no event, including dissolution, will the Trust's assets be distributed or revert to any entity that is not a state, a political subdivision of a state, or entity the income of which is excludable from its gross income by application of IRC section 115(1).

Issue 2- IRC section 6012(a)(4)

Section 301.7701-1(b) of the Procedure and Administration Regulations (Regulations) provides that the classification of organizations that are recognized as separate entities is determined under sections 301.7701-2, 301.7701-3, and 301.7701-4, unless a provision of the IRC provides for special treatment of that organization.

Section 301.7701-4(a) of the Regulations provides that, in general, an arrangement will be treated as if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of this responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

The Trust enables public-agency employers to set aside funds to be used to satisfy each employer's separate pension and health and welfare benefit obligations. The

Trustee is charged with the responsibility of the protection and conservation of the Trust property for the benefit of the beneficiaries of the Trust. The beneficiaries of the Trust cannot share in the discharge of the Trustee's responsibility for the protection and conservation of property and, therefore, are not associates in a joint enterprise for the conduct of business for profit. IRC section 6012(a)(4) provides that every trust having for the taxable year any taxable income or having gross income of \$600 or more, regardless of the amount of taxable income, shall make returns with respect to income taxes under Subtitle A.

Based solely on the facts and representations submitted by the Trust, we conclude that:

1. Because the income of the Trust derives from the exercise of an essential governmental function and will accrue to a state or a political subdivision thereof, the Trust's income is excludable from gross income under IRC section 115(1).
2. The Trust is classified as a trust within the meaning of IRC section 7701(a) and section 301.7701-4(a) of the Regulations. Because Trust's income is excludable from gross income under IRC section 115, the Trust is not required by IRC section 6012(a)(4) to file an annual income tax return.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. This ruling concerns only the federal tax treatment of the Trust's income and may not be cited or relied upon by any taxpayer, including the Trust, employers participating in the Trust, and any recipients of benefits paid under the terms of the Trust, as to any matter relating to the taxation of accident or health contributions or benefits.

This ruling is directed only to the taxpayer who requested it. IRC section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

A handwritten signature in black ink, appearing to read 'K. Griffin', with a stylized flourish at the end.

Kenneth M. Griffin
Branch Chief, Exempt Organizations Branch 3
(Tax Exempt and Government Entities)

cc: Marcus Wu
Pillsbury Winthrop Shaw Pittman LLP
12255 El Camino Real, Suite 300
San Diego, CA 92130-4088

Paul Marmolejo
Director, Office of Federal, State and Local Governments
SE:T:GE:FSL

APPENDIX: HIGHMARK WEIGHTED EXPENSE RATIOS

Active Portfolio as of March 2022

	PARS					Ticker	Actively Managed Mutual Funds Fund Name
	PARS Conservative	PARS Moderately Conservative	PARS Moderate	PARS Balanced	PARS Capital Appreciation		
Equity	<20% equity	<40% equity	<60% equity	50-70% equity	65-85% equity		
Large Cap Core	1.58%	2.93%	4.96%	6.04%	7.51%	COFYX	COLUMBIA CONTRARIAN CORE-I3
Large Cap Core	2.71%	5.50%	9.44%	11.50%	14.58%	VGIAX	VANGUARD GROWTH & INCOME-ADM
Large Cap Value	1.22%	2.57%	4.42%	5.30%	6.43%	DODGX	DODGE & COX STOCK
Large Cap Value	0.60%	1.20%	2.00%	2.40%	3.01%	IVE	ISHARES S&P 500 VALUE ETF
Large Cap Growth	0.79%	1.65%	2.82%	3.38%	4.12%	HNACX	HARBOR CAPITAL APPRECIATION-RTR
Large Cap Growth	0.79%	1.65%	2.82%	3.38%	4.12%	PRUFX	T ROWE PR GROWTH STOCK-I
Mid Cap Blend	1.50%	3.00%	4.93%	6.00%	7.50%	IWR	ISHARES RUSSELL MID-CAP ETF
Real Estate	0.50%	1.05%	1.77%	2.00%	2.00%	VNQ	VANGUARD REAL ESTATE ETF
Small Cap Value	1.23%	2.26%	3.73%	4.44%	5.18%	UBVFX	UNDISC MGRS BEHAV VAL-R6
Small Cap Growth	1.23%	2.26%	3.73%	4.44%	5.18%	VBK	VANGUARD SMALL-CAP GRWTH ETF
International	0.87%	1.79%	2.78%	3.28%	4.71%	DFALX	DFA L/C INTERNATIONAL PORTF
International	0.29%	0.69%	1.01%	1.17%	1.82%	DODFX	DODGE & COX INTL STCK
International	0.29%	0.69%	1.02%	1.17%	1.82%	MGRDX	MFS INTERNATIONAL GROWTH-R6
Emerging Markets	<u>1.00%</u>	<u>2.02%</u>	<u>3.32%</u>	<u>4.00%</u>	<u>5.14%</u>	HHEFX	HRTFRD SCHR EM MRKT EQ-F
	14.63%	29.25%	48.75%	58.50%	73.12%		
Fixed Income							
Short Term Bond	18.23%	13.33%	9.58%	6.63%	2.82%	VFSUX	VANGUARD S/T INVEST GRD-ADM
High Yield	1.10%	1.03%	1.01%	0.88%	0.80%	PHIYX	PIMCO HIGH YIELD FUND-INST
Interm Term Bond	21.30%	17.72%	11.97%	9.50%	5.54%	PTTRX	PIMCO TOTAL RETURN FUND-INST
Interm Term Bond	21.30%	17.72%	11.97%	9.50%	5.54%	PTRQX	PGIM TOTAL RETURN BOND-R6
Interm Term Bond	<u>21.30%</u>	<u>17.72%</u>	<u>11.97%</u>	<u>9.50%</u>	<u>5.54%</u>	DBLFX	DOUBLELINE CORE FIX INC-I
	83.25%	67.50%	46.50%	36.00%	20.25%		
Cash	2.13%	3.25%	4.75%	5.50%	6.62%	FGZXX	FIRST AM GOV OBLIG-Z
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%		
	0.43%	0.43%	0.43%	0.43%	0.43%	Weighted embedded expense ratio*	
	0.34%	0.34%	0.33%	0.33%	0.33%	Weighted investment management fee**	

*Represents the weighted embedded expense ratio for that fund (Source: Morningstar Direct)

**Represents the weighted investment management fee net of any waivers in place for assets invested in funds for which US Bank serves as advisor; assuming a \$5 million account

Passive Portfolio as of March 2022

	PARS						Passively Managed Mutual Funds
	PARS Conservative	Moderately Conservative	PARS Moderate	PARS Balanced	PARS Capital Appreciation	Ticker	Fund Name
Equity	<20% equity	<40% equity	<60% equity	50-70% equity	65-85% equity		
Large Cap Blend	4.29%	8.42%	14.40%	17.54%	22.10%	IVV	ISHARES CORE S&P 500 ETF
Large Cap Value	1.82%	3.77%	6.42%	7.70%	9.43%	IVE	ISHARES S&P 500 VALUE ETF
Large Cap Growth	1.59%	3.30%	5.63%	6.76%	8.25%	IVW	ISHARES S&P 500 GROWTH ETF
Mid Cap Blend	1.50%	3.00%	4.93%	6.00%	7.50%	IWR	ISHARES RUSSELL MID-CAP ETF
Real Estate	0.50%	1.05%	1.77%	2.00%	2.00%	VNQ	VANGUARD REAL ESTATE ETF
Small Cap Value	1.23%	2.26%	3.73%	4.44%	5.17%	IWN	ISHARES RUSSELL 2000 VALUE E
Small Cap Growth	1.23%	2.26%	3.73%	4.44%	5.17%	IWO	ISHARES RUSSELL 2000 GROWTH
International	1.46%	3.16%	4.81%	5.62%	8.36%	IEFA	ISHARES CORE MSCI EAFE ETF
Emerging Markets	<u>1.00%</u>	<u>2.02%</u>	<u>3.32%</u>	<u>4.00%</u>	<u>5.14%</u>	VWO	VANGUARD FTSE EMERGING MARKE
	14.63%	29.25%	48.75%	58.50%	73.12%		
Fixed Income							
Short Term Bond	18.23%	13.33%	9.58%	6.63%	2.82%	VFSUX	VANGUARD S/T INVEST GRD-ADM
High Yield	1.10%	1.03%	1.01%	0.88%	0.80%	VWEAX	VANGUARD HI YLD CORP-ADM
Intermediate Term Bond	<u>63.91%</u>	<u>53.15%</u>	<u>35.91%</u>	<u>28.50%</u>	<u>16.63%</u>	AGG	ISHARES CORE U.S. AGGREGATE
	83.25%	67.50%	46.50%	36.00%	20.25%		
Cash	2.13%	3.25%	4.75%	5.50%	6.62%	FGZXX	FIRST AM GOV OBLIG-Z
TOTAL	100.00%	100.00%	100.00%	100.00%	100.00%		
	0.07%	0.09%	0.10%	0.11%	0.12%	Weighted embedded expense ratio*	
	0.34%	0.34%	0.33%	0.33%	0.33%	Weighted investment management fee**	

*Represents the weighted embedded expense ratio for that fund (Source: Morningstar Direct)

**Represents the weighted investment management fee net of any waivers in place for assets invested in funds for which US Bank serves as advisor; assuming a \$5 million account

APPENDIX: INVESTMENT PORTFOLIOS

**PARS DIVERSIFIED PORTFOLIOS
CONSERVATIVE**

Q1 2022

**WHY THE PARS DIVERSIFIED
CONSERVATIVE PORTFOLIO?**

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

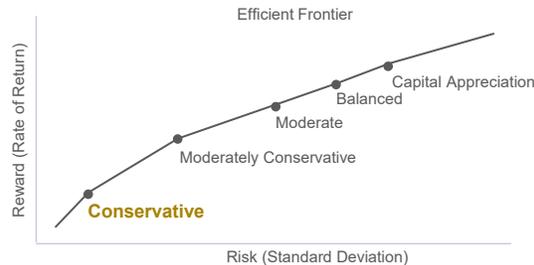
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide a consistent level of inflation-protected income over the long-term. The major portion of the assets will be fixed income related. Equity securities are utilized to provide inflation protection.



ASSET ALLOCATION — CONSERVATIVE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	5 – 20%	15%	15%
Fixed Income	60 – 95%	80%	83%
Cash	0 – 20%	5%	2%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
Current Quarter*	-5.24%	Current Quarter*	-5.36%
Blended Benchmark**, **	-4.65%	Blended Benchmark**, **	-4.65%
Year To Date*	-5.24%	Year To Date*	-5.36%
Blended Benchmark**, **	-4.65%	Blended Benchmark**, **	-4.65%
1 Year	-2.02%	1 Year	-2.34%
Blended Benchmark**	-1.78%	Blended Benchmark**	-1.78%
3 Year	3.88%	3 Year	3.50%
Blended Benchmark**	3.62%	Blended Benchmark**	3.62%
5 Year	3.92%	5 Year	3.54%
Blended Benchmark**	3.61%	Blended Benchmark**	3.61%
10 Year	3.79%	10 Year	3.41%
Blended Benchmark**	3.44%	Blended Benchmark**	3.44%

* Returns less than one year are not annualized. **Breakdown for Blended Benchmark: From 10/1/2012 - Present: 7.5% S&P500, 1.5% Russell Mid Cap, 2.5% Russell 2000, 1% MSCI EM (net), 2% MSCI EAFE (net), 52.25% Bloomberg US Agg, 25.75% ICE BofA 1-3 Yr US Corp/Govt, 2% ICE BofA US High Yield Master II, 0.5% Wishire REIT, and 5% FTSE 1 Mth US T-Bill. From 4/1/2007 – 9/30/2012, the blended benchmark was 12% S&P 500, 1% Russell 2000, 2% MSCI EAFE (net), 40% ICE BofA 1-3 Year Corp./Govt, 40% Bloomberg US Agg, 5% FTSE 1 Mth US T-Bill. Prior to April 2007, the blended benchmark was 15% S&P 500, 40% ICE BofA 1-3Yr Corp/Gov, 40% Bloomberg US Agg, and 5% FTSE 1 Mth US T-Bill.

ANNUAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
2008	-9.04%	2008	-6.70%
2009	15.59%	2009	10.49%
2010	8.68%	2010	7.67%
2011	2.19%	2011	3.70%
2012	8.45%	2012	6.22%
2013	3.69%	2013	3.40%
2014	3.88%	2014	4.32%
2015	0.29%	2015	0.06%
2016	4.18%	2016	3.75%
2017	6.73%	2017	5.52%
2018	-1.35%	2018	-1.09%
2019	11.05%	2019	10.37%
2020	9.03%	2020	8.56%
2021	2.20%	2021	1.97%

PORTFOLIO FACTS

HighMark Plus (Active)

Composite Inception Date 07/2004
No of Holdings in Portfolio 20

Index Plus (Passive)

Composite Inception Date
No of Holdings in Portfolio

HOLDINGS

HighMark Plus (Active)

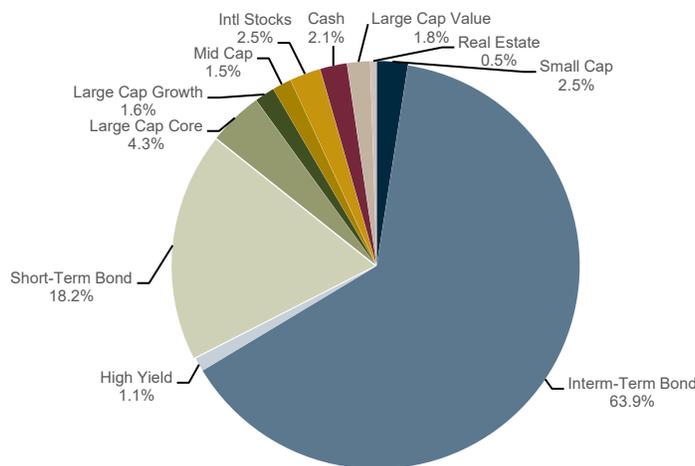
Columbia Contrarian Core I3
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 iShares S&P 500 Value ETF
 Harbor Capital Appreciation - Retirement
 T. Rowe Price Growth Stock - I
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 Undiscovered Managers Behavioral Value-R6
 Vanguard Small Cap Growth ETF
 DFA Large Cap International Portfolio
 Dodge & Cox International Stock
 MFS International Growth - R6
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO High Yield Instl
 PIMCO Total Return Fund - Inst
 PGIM Total Return Bond - R6
 DoubleLine Core Fixed Income - I
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500 Value ETF
 iShares S&P 500 Growth ETF
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 iShares Russell 2000 Value ETF
 iShares Russell 2000 Growth ETF
 iShares Core MSCI EAFE ETF
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 Vanguard High-Yield Corp Adm
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent size-weighted composites of tax exempt accounts that meet the following criteria: Accounts are managed by HighMark with full investment authority according to the PARS Conservative active and passive objectives.

The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.60% annual management fee based on a sliding scale. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 0.36% paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio's returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a \$10 million initial value would grow to \$12.53 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Gross returns are presented before management and custodial fees but after all trading expenses and reflect the reinvestment of dividends and other income. A client's return will be reduced by the advisory fees and other expenses it may incur as a client. Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The ICE BofA U.S. High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The ICE BofA 1-3 Year U.S. Corporate & Government Index tracks the bond performance of the ICE BofA U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged FTSE 1-Month U.S. Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

HighMark Capital Management, Inc. (HighMark), an SEC-registered investment adviser, is a wholly owned subsidiary of MUFG Union Bank, N.A. (MUB). HighMark manages institutional separate account portfolios for a wide variety of for-profit and nonprofit organizations, public agencies, and public and private retirement plans. MUB, a subsidiary of MUFG Americas Holdings Corporation, provides certain services to HighMark and is compensated for these services. Past performance does not guarantee future results. Individual account management and construction will vary depending on each client's investment needs and objectives. **Investments employing HighMark strategies are NOT insured by the FDIC or by any other Federal Government Agency, are NOT Bank deposits, are NOT guaranteed by the Bank or any Bank affiliate, and MAY lose value, including possible loss of principal.**

HIGHMARK CAPITAL MANAGEMENT

350 California Street
 Suite 1600
 San Francisco, CA 94104
 800-582-4734

ABOUT THE ADVISER

HighMark® Capital Management, Inc. (HighMark) has over 100 years (including predecessor organizations) of institutional money management experience with \$9.4 billion in assets under management and \$9.6 billion in assets under advisement*. HighMark has a long term disciplined approach to money management and currently manages assets for a wide array of clients.

ABOUT THE PORTFOLIO MANAGEMENT TEAM

Andrew Brown, CFA®

Senior Portfolio Manager
 Investment Experience: since 1994
 HighMark Tenure: since 1997
 Education: MBA, University of Southern California; BA, University of Southern California

Salvatore "Tory" Milazzo III, CFA®

Senior Portfolio Manager
 Investment Experience: since 2004
 HighMark Tenure: since 2014
 Education: BA, Colgate University

J. Keith Stribling, CFA®

Senior Portfolio Manager
 Investment Experience: since 1985
 HighMark Tenure: since 1995
 Education: BA, Stetson University

Christiane Tsuda

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2007
 Education: BA, University of California, Santa Barbara

Randy Yurchak, CFA®

Senior Portfolio Manager
 Investment Experience: since 2002
 HighMark Tenure: since 2017
 Education: MBA, Arizona State University; BS, University of Washington

Asset Allocation Committee

Number of Members: 17
 Average Years of Experience: 27
 Average Tenure (Years): 15

Manager Review Group

Number of Members: 7
 Average Years of Experience: 22
 Average Tenure (Years): 10

*Assets under management ("AUM") include assets for which HighMark provides continuous and regular supervisory and management services. Assets under advisement ("AUA") include assets for which HighMark provides certain investment advisory services (including, but not limited to, investment research and strategies) for client assets of its parent company, MUFG Union Bank, N.A.

PARS DIVERSIFIED PORTFOLIOS MODERATELY CONSERVATIVE

Q1 2022

WHY THE PARS DIVERSIFIED MODERATELY CONSERVATIVE PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

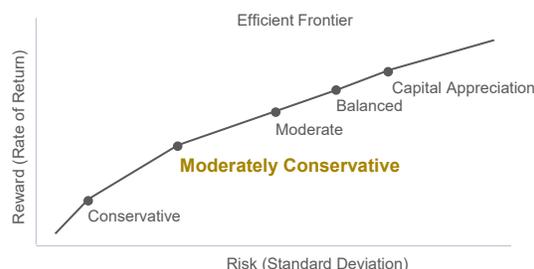
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide current income, with capital appreciation as a secondary objective. The major portion of the assets is committed to income-producing securities. Market fluctuations should be expected.



ASSET ALLOCATION — MODERATELY CONSERVATIVE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	20 - 40%	30%	29%
Fixed Income	50 - 80%	65%	68%
Cash	0 - 20%	5%	3%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
Current Quarter*	-5.15%	Current Quarter*	-5.36%
Blended Benchmark**, **	-4.96%	Blended Benchmark**, **	-4.96%
Year To Date*	-5.15%	Year To Date*	-5.36%
Blended Benchmark**, **	-4.96%	Blended Benchmark**, **	-4.96%
1 Year	-0.56%	1 Year	-0.55%
Blended Benchmark**	-0.08%	Blended Benchmark**	-0.08%
3 Year	5.80%	3 Year	5.43%
Blended Benchmark**	5.76%	Blended Benchmark**	5.76%
5 Year	5.48%	5 Year	5.12%
Blended Benchmark**	5.36%	Blended Benchmark**	5.36%
10 Year	5.16%	10 Year	4.89%
Blended Benchmark**	5.09%	Blended Benchmark**	5.09%

* Returns less than one year are not annualized. **Breakdown for Blended Benchmark: From 10/1/2012 - Present: 15.5% S&P500, 3% Russell Mid Cap, 4.5% Russell 2000, 2% MSCI EM (net), 4% MSCI EAFE (net), 49.25% Bloomberg US Agg, 14% ICE BofA 1-3 Yr US Corp/Gov't, 1.75% ICE BofA US High Yield Master II, 1% Wilshire REIT, and 5% FTSE 1 Mth US T-Bill. From 4/1/2007 - 9/30/2012: the blended benchmark was 25% S&P 500; 1.5% Russell 2000, 3.5% MSCI EAFE (net), 25% ICE BofA 1-3 Year Corp./Gov't, 40% Bloomberg US Agg, 5% FTSE 1 Mth US T-Bill. Prior to April 2007, the blended benchmark was 30% S&P 500, 25% ICE BofA 1-3Yr Corp/Gov, 40% Bloomberg US Agg, and 5% FTSE 1 Mth US T-Bill.

ANNUAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
2008	-15.37%	2008	-12.40%
2009	18.71%	2009	11.92%
2010	10.46%	2010	9.72%
2011	1.75%	2011	3.24%
2012	10.88%	2012	8.24%
2013	7.30%	2013	6.78%
2014	4.41%	2014	5.40%
2015	0.32%	2015	-0.18%
2016	4.94%	2016	5.42%
2017	9.56%	2017	8.08%
2018	-2.60%	2018	-2.33%
2019	13.73%	2019	13.53%
2020	10.76%	2020	9.74%
2021	5.15%	2021	5.33%

PORTFOLIO FACTS

HighMark Plus (Active)		Index Plus (Passive)	
Composite Inception Date	08/2004	Composite Inception Date	05 125
No of Holdings in Portfolio	20	No of Holdings in Portfolio	13

HOLDINGS

HighMark Plus (Active)

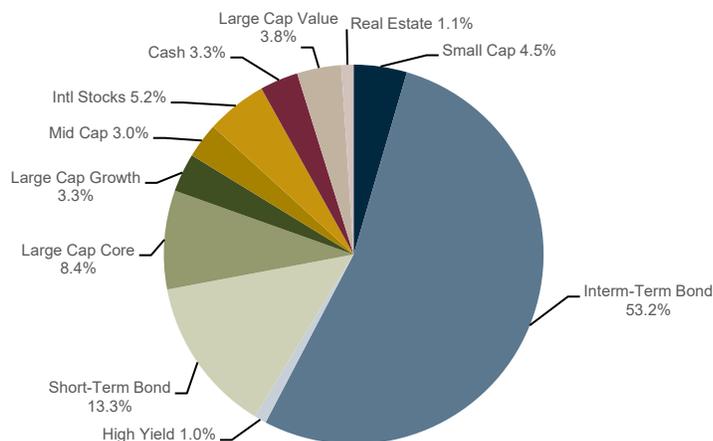
Columbia Contrarian Core I3
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 iShares S&P 500 Value ETF
 Harbor Capital Appreciation - Retirement
 T. Rowe Price Growth Stock - I
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 Undiscovered Managers Behavioral Value-R6
 Vanguard Small Cap Growth ETF
 DFA Large Cap International Portfolio
 Dodge & Cox International Stock
 MFS International Growth - R6
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO High Yield Instl
 PIMCO Total Return Fund - Inst
 PGIM Total Return Bond - R6
 DoubleLine Core Fixed Income - I
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500 Value ETF
 iShares S&P 500 Growth ETF
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 iShares Russell 2000 Value ETF
 iShares Russell 2000 Growth ETF
 iShares Core MSCI EAFE ETF
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 Vanguard High-Yield Corp Adm
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



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The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.60% annual management fee based on a sliding scale. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 0.36% paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio's returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a \$10 million initial value would grow to \$12.53 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Gross returns are presented before management and custodial fees but after all trading expenses and reflect the reinvestment of dividends and other income. A client's return will be reduced by the advisory fees and other expenses it may incur as a client. Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The ICE BofA U.S. High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The ICE BofA 1-3 Year U.S. Corporate & Government Index tracks the bond performance of the ICE BofA U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged FTSE 1-Month U.S. Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

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HIGHMARK CAPITAL MANAGEMENT

350 California Street
 Suite 1600
 San Francisco, CA 94104
 800-582-4734

ABOUT THE ADVISER

HighMark® Capital Management, Inc. (HighMark) has over 100 years (including predecessor organizations) of institutional money management experience with \$9.4 billion in assets under management and \$9.6 billion in assets under advisement*. HighMark has a long term disciplined approach to money management and currently manages assets for a wide array of clients.

ABOUT THE PORTFOLIO MANAGEMENT TEAM

Andrew Brown, CFA®

Senior Portfolio Manager
 Investment Experience: since 1994
 HighMark Tenure: since 1997
 Education: MBA, University of Southern California; BA, University of Southern California

Salvatore "Tory" Milazzo III, CFA®

Senior Portfolio Manager
 Investment Experience: since 2004
 HighMark Tenure: since 2014
 Education: BA, Colgate University

J. Keith Stribling, CFA®

Senior Portfolio Manager
 Investment Experience: since 1985
 HighMark Tenure: since 1995
 Education: BA, Stetson University

Christiane Tsuda

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2007
 Education: BA, University of California, Santa Barbara

Randy Yurchak, CFA®

Senior Portfolio Manager
 Investment Experience: since 2002
 HighMark Tenure: since 2017
 Education: MBA, Arizona State University; BS, University of Washington

Asset Allocation Committee

Number of Members: 17
 Average Years of Experience: 27
 Average Tenure (Years): 15

Manager Review Group

Number of Members: 7
 Average Years of Experience: 22
 Average Tenure (Years): 10

*Assets under management ("AUM") include assets for which HighMark provides continuous and regular supervisory and management services. Assets under advisement ("AUA") include assets for which HighMark provides certain investment advisory services (including, but not limited to, investment research and strategies) for client assets of its parent company, MUFG Union Bank, N.A.

WHY THE PARS DIVERSIFIED MODERATE PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

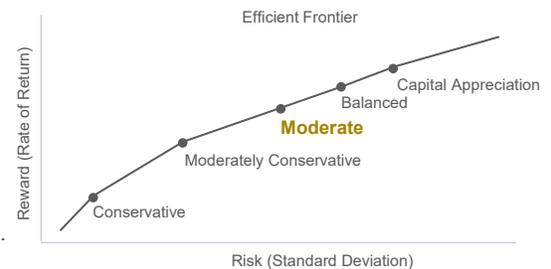
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide current income and moderate capital appreciation. It is expected that dividend and interest income will comprise a significant portion of total return, although growth through capital appreciation is equally important.



ASSET ALLOCATION — MODERATE PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	40 - 60%	50%	49%
Fixed Income	40 - 60%	45%	46%
Cash	0 - 20%	5%	5%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)

Current Quarter*	-5.07%
Blended Benchmark**,**	-4.97%
Year To Date*	-5.07%
Blended Benchmark**,**	-4.97%
1 Year	1.50%
Blended Benchmark**	2.42%
3 Year	8.42%
Blended Benchmark**	8.54%
5 Year	7.64%
Blended Benchmark**	7.61%
10 Year	6.99%
Blended Benchmark**	7.20%

Index Plus Composite (Passive)

Current Quarter*	-5.38%
Blended Benchmark**,**	-4.97%
Year To Date*	-5.38%
Blended Benchmark**,**	-4.97%
1 Year	1.94%
Blended Benchmark**	2.42%
3 Year	8.01%
Blended Benchmark**	8.54%
5 Year	7.20%
Blended Benchmark**	7.61%
10 Year	6.80%
Blended Benchmark**	7.20%

* Returns less than one year are not annualized. **Breakdown for Blended Benchmark: From 10/11/2012 – Present: 26.5% S&P500, 5% Russell Mid Cap, 7.5% Russell 2000, 3.25% MSCI EM (net), 6% MSCI EAFE (net), 33.50% Bloomberg US Agg, 10% ICE BofA 1-3 Yr US Corp/Govt, 1.50% ICE BofA US High Yield Master II, 1.75% Wilshire REIT, and 5% FTSE 1 Mth US T-Bill. From 4/1/2007 – 9/30/2012: the blended benchmark was 43% S&P 500; 2% Russell 2000, 5% MSCI EAFE (net), 15% ICE BofA 1-3 Year Corp./Govt, 30% Bloomberg US Agg, 5% FTSE 1 Mth US T-Bill. Prior to April 2007: the blended benchmark was 50% S&P 500, 15% ICE BofA 1-3Yr Corp/Gov, 30% Bloomberg US Agg, and 5% FTSE 1 Mth US T-Bill.

ANNUAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)

2008	-22.88%
2009	21.47%
2010	12.42%
2011	0.55%
2012	12.25%
2013	13.06%
2014	4.84%
2015	0.14%
2016	6.45%
2017	13.19%
2018	-4.03%
2019	17.71%
2020	12.92%
2021	9.31%

Index Plus Composite (Passive)

2008	-18.14%
2009	16.05%
2010	11.77%
2011	2.29%
2012	10.91%
2013	12.79%
2014	5.72%
2015	-0.52%
2016	7.23%
2017	11.59%
2018	-4.03%
2019	17.52%
2020	11.23%
2021	10.18%

PORTFOLIO FACTS

HighMark Plus (Active)

Composite Inception Date	10/2004
No of Holdings in Portfolio	20

Index Plus (Passive)

Composite Inception Date	05/ 127
No of Holdings in Portfolio	13

HOLDINGS

HighMark Plus (Active)

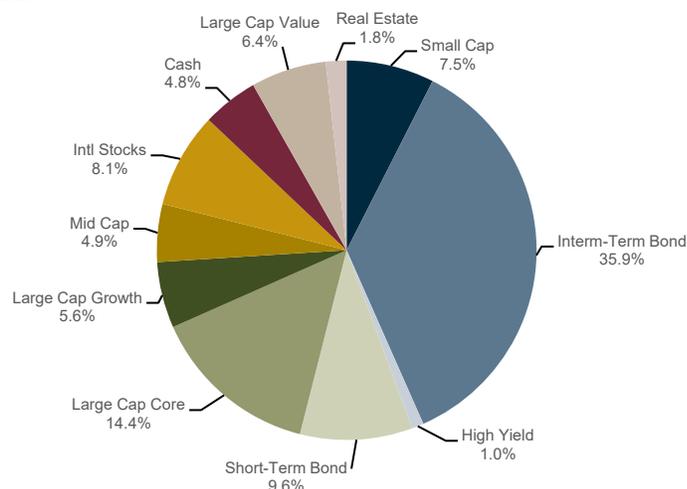
Columbia Contrarian Core I3
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 iShares S&P 500 Value ETF
 Harbor Capital Appreciation - Retirement
 T. Rowe Price Growth Stock - I
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 Undiscovered Managers Behavioral Value-R6
 Vanguard Small Cap Growth ETF
 DFA Large Cap International Portfolio
 Dodge & Cox International Stock
 MFS International Growth - R6
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO High Yield Instl
 PIMCO Total Return Fund - Inst
 PGIM Total Return Bond - R6
 DoubleLine Core Fixed Income - I
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500 Value ETF
 iShares S&P 500 Growth ETF
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 iShares Russell 2000 Value ETF
 iShares Russell 2000 Growth ETF
 iShares Core MSCI EAFE ETF
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 Vanguard High-Yield Corp Adm
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent size-weighted composites of tax exempt accounts that meet the following criteria: Accounts are managed by HighMark with full investment authority according to the PARS Moderate active and passive objectives.

The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.60% annual management fee based on a sliding scale. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 0.36% paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio's returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a \$10 million initial value would grow to \$12.53 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Gross returns are presented before management and custodial fees but after all trading expenses and reflect the reinvestment of dividends and other income. A client's return will be reduced by the advisory fees and other expenses it may incur as a client. Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The ICE BofA U.S. High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT Index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The ICE BofA 1-3 Year U.S. Corporate & Government Index tracks the bond performance of the ICE BofA U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged FTSE 1-Month U.S. Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

HighMark Capital Management, Inc. (HighMark), an SEC-registered investment adviser, is a wholly owned subsidiary of MUFG Union Bank, N.A. (MUB). HighMark manages institutional separate account portfolios for a wide variety of for-profit and nonprofit organizations, public agencies, and public and private retirement plans. MUB, a subsidiary of MUFG Americas Holdings Corporation, provides certain services to HighMark and is compensated for these services. Past performance does not guarantee future results. Individual account management and construction will vary depending on each client's investment needs and objectives. **Investments employing HighMark strategies are NOT insured by the FDIC or by any other Federal Government Agency, are NOT Bank deposits, are NOT guaranteed by the Bank or any Bank affiliate, and MAY lose value, including possible loss of principal.**

HIGHMARK CAPITAL MANAGEMENT

350 California Street
 Suite 1600
 San Francisco, CA 94104
 800-582-4734

ABOUT THE ADVISER

HighMark® Capital Management, Inc. (HighMark) has over 100 years (including predecessor organizations) of institutional money management experience with \$9.4 billion in assets under management and \$9.6 billion in assets under advisement*. HighMark has a long term disciplined approach to money management and currently manages assets for a wide array of clients.

ABOUT THE PORTFOLIO MANAGEMENT TEAM

Andrew Brown, CFA®

Senior Portfolio Manager
 Investment Experience: since 1994
 HighMark Tenure: since 1997
 Education: MBA, University of Southern California; BA, University of Southern California

Salvatore "Tory" Milazzo III, CFA®

Senior Portfolio Manager
 Investment Experience: since 2004
 HighMark Tenure: since 2014
 Education: BA, Colgate University

J. Keith Stribling, CFA®

Senior Portfolio Manager
 Investment Experience: since 1985
 HighMark Tenure: since 1995
 Education: BA, Stetson University

Christiane Tsuda

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2007
 Education: BA, University of California, Santa Barbara

Randy Yurchak, CFA®

Senior Portfolio Manager
 Investment Experience: since 2002
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Asset Allocation Committee

Number of Members: 17
 Average Years of Experience: 27
 Average Tenure (Years): 15

Manager Review Group

Number of Members: 7
 Average Years of Experience: 22
 Average Tenure (Years): 10

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PARS DIVERSIFIED PORTFOLIOS
BALANCED

Q1 2022

WHY THE PARS DIVERSIFIED BALANCED PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance. Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

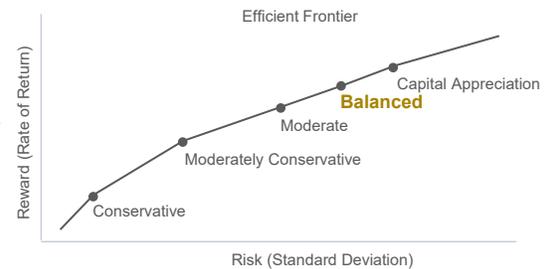
In order to meet the unique needs of our clients, we offer access to flexible implementation strategies: HighMark Plus utilizes actively managed mutual funds while Index Plus utilizes index-based securities, including exchange-traded funds. Both investment options leverage HighMark's active asset allocation approach.

Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide growth of principal and income. While dividend and interest income are an important component of the objective's total return, it is expected that capital appreciation will comprise a larger portion of the total return.



ASSET ALLOCATION — BALANCED PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	50 – 70%	60%	59%
Fixed Income	30 – 50%	35%	36%
Cash	0 – 20%	5%	5%

(Gross of Investment Management Fees, but Net of Embedded Fund Fees)

ANNUALIZED TOTAL RETURNS

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
Current Quarter*	-5.03%	Current Quarter*	-5.39%
Blended Benchmark*, **	-5.02%	Blended Benchmark*, **	-5.02%
Year To Date*	-5.03%	Year To Date*	-5.39%
Blended Benchmark*, **	-5.02%	Blended Benchmark*, **	-5.02%
1 Year	2.49%	1 Year	3.19%
Blended Benchmark**	3.64%	Blended Benchmark**	3.64%
3 Year	9.69%	3 Year	9.36%
Blended Benchmark**	9.92%	Blended Benchmark**	9.92%
5 Year	8.73%	5 Year	8.22%
Blended Benchmark**	8.72%	Blended Benchmark**	8.72%
10 Year	7.94%	10 Year	7.72%
Blended Benchmark**	8.26%	Blended Benchmark**	8.26%

* Returns less than one year are not annualized. **Breakdown for Blended Benchmark: From 10/1/2012 – Present: 32% S&P500, 6% Russell Mid Cap, 9% Russell 2000, 4% MSCI EM (net), 7% MSCI EAFE (net), 27% Bloomberg US Agg, 6.75% ICE BofA 1-3 Yr Corp/Govt, 1.25% ICE BofA US High Yield Master II, 2% Wishire REIT, and 5% FTSE 1 Mth US T-Bill. From 4/1/2007 – 9/30/2012: the blended benchmark was 51% S&P 500; 3% Russell 2000, 6% MSCI EAFE (net), 5% ICE BofA 1-3 Year Corp./Govt, 30% Bloomberg US Agg, 5% FTSE 1 Mth US T-Bill. Prior to April 2007: the blended benchmark was 60% S&P 500, 5% ICE BofA 1-3Yr Corp/Govt, 30% Bloomberg US Agg, and 5% FTSE 1 Mth US T-Bill.

ANNUAL RETURNS

(Gross of Investment Management Fees, but Net of Embedded Fund Fees)

HighMark Plus Composite (Active)		Index Plus Composite (Passive)	
2008	-25.72%	2008	-23.22%
2009	21.36%	2009	17.62%
2010	14.11%	2010	12.76%
2011	-0.46%	2011	1.60%
2012	13.25%	2012	11.93%
2013	16.61%	2013	15.63%
2014	4.70%	2014	6.08%
2015	0.04%	2015	-0.81%
2016	6.81%	2016	8.26%
2017	15.46%	2017	13.39%
2018	-4.88%	2018	-5.05%
2019	19.85%	2019	19.59%
2020	13.85%	2020	12.07%
2021	11.44%	2021	12.63%

PORTFOLIO FACTS

HighMark Plus (Active)

Composite Inception Date 10/2006
No of Holdings in Portfolio 20

Index Plus (Passive)

Composite Inception Date 10/2006
No of Holdings in Portfolio 129

HOLDINGS

HighMark Plus (Active)

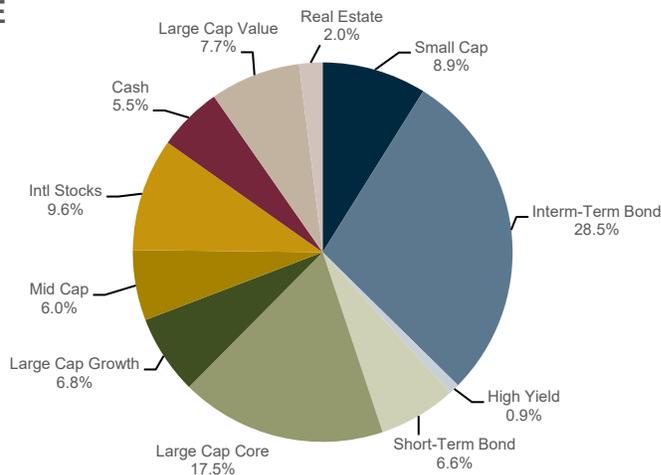
Columbia Contrarian Core I3
 Vanguard Growth & Income Adm
 Dodge & Cox Stock Fund
 iShares S&P 500 Value ETF
 Harbor Capital Appreciation - Retirement
 T. Rowe Price Growth Stock - I
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 Undiscovered Managers Behavioral Value-R6
 Vanguard Small Cap Growth ETF
 DFA Large Cap International Portfolio
 Dodge & Cox International Stock
 MFS International Growth - R6
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO High Yield Instl
 PIMCO Total Return Fund - Inst
 PGIM Total Return Bond - R6
 DoubleLine Core Fixed Income - I
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500 Value ETF
 iShares S&P 500 Growth ETF
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 iShares Russell 2000 Value ETF
 iShares Russell 2000 Growth ETF
 iShares Core MSCI EAFE ETF
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 Vanguard High-Yield Corp Adm
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent size-weighted composites of tax exempt accounts that meet the following criteria: Accounts are managed by HighMark with full investment authority according to the PARS Balanced active and passive objectives.

The composite name has been changed from PARS Balanced/Moderately Aggressive to PARS Balanced on 5/1/2013. The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.60% annual management fee based on a sliding scale. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 0.36% paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio's returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a \$10 million initial value would grow to \$12.53 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Gross returns are presented before management and custodial fees but after all trading expenses and reflect the reinvestment of dividends and other income. A client's return will be reduced by the advisory fees and other expenses it may incur as a client. Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The ICE BofA U.S. High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The ICE BofA 1-3 Year U.S. Corporate & Government Index tracks the bond performance of the ICE BofA U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged FTSE 1-Month U.S. Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

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HIGHMARK CAPITAL MANAGEMENT

350 California Street
 Suite 1600
 San Francisco, CA 94104
 800-582-4734

ABOUT THE ADVISER

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ABOUT THE PORTFOLIO MANAGEMENT TEAM

Andrew Brown, CFA®

Senior Portfolio Manager
 Investment Experience: since 1994
 HighMark Tenure: since 1997
 Education: MBA, University of Southern California; BA, University of Southern California

Salvatore "Tory" Milazzo III, CFA®

Senior Portfolio Manager
 Investment Experience: since 2004
 HighMark Tenure: since 2014
 Education: BA, Colgate University

J. Keith Stribling, CFA®

Senior Portfolio Manager
 Investment Experience: since 1985
 HighMark Tenure: since 1995
 Education: BA, Stetson University

Christiane Tsuda

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

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Number of Members: 17
 Average Years of Experience: 27
 Average Tenure (Years): 15

Manager Review Group

Number of Members: 7
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 Average Tenure (Years): 10

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PARS DIVERSIFIED PORTFOLIOS CAPITAL APPRECIATION

Q1 2022

WHY THE PARS DIVERSIFIED CAPITAL APPRECIATION PORTFOLIO?

Comprehensive Investment Solution

HighMark® Capital Management, Inc.'s (HighMark) diversified investment portfolios are designed to balance return expectations with risk tolerance.

Key features include: sophisticated asset allocation and optimization techniques, four layers of diversification (asset class, style, manager, and security), access to rigorously screened, top tier money managers, flexible investment options, and experienced investment management.

Rigorous Manager Due Diligence

Our manager review committee utilizes a rigorous screening process that searches for investment managers and styles that have not only produced above-average returns within acceptable risk parameters, but have the resources and commitment to continue to deliver these results. We have set high standards for our investment managers and funds. This is a highly specialized, time consuming approach dedicated to one goal: competitive and consistent performance.

Flexible Investment Options

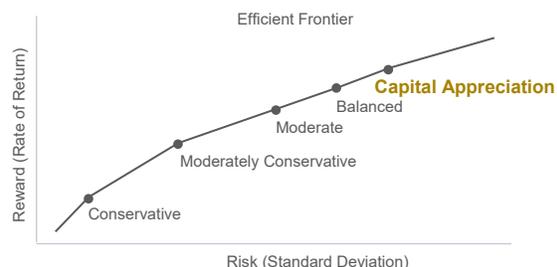
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Risk Management

The portfolio is constructed to control risk through four layers of diversification – asset classes (cash, fixed income, equity), investment styles (large cap, small cap, international, value, growth), managers and securities. Disciplined mutual fund selection and monitoring process helps to drive return potential while reducing portfolio risk.

INVESTMENT OBJECTIVE

To provide growth of principal. The major portion of the assets are invested in equity securities and market fluctuations are expected.



ASSET ALLOCATION — CAPITAL APPRECIATION PORTFOLIO

	Strategic Range	Policy	Tactical
Equity	65 - 85%	75%	73%
Fixed Income	10 - 30%	20%	20%
Cash	0 - 20%	5%	7%

ANNUALIZED TOTAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

Consolidated Composite

Current Quarter*	-5.19%
Blended Benchmark*,**	-5.09%
Year To Date*	-5.19%
Blended Benchmark*,**	-5.09%
1 Year	4.22%
Blended Benchmark**	5.24%
3 Year	11.34%
Blended Benchmark**	11.77%
5 Year	9.99%
Blended Benchmark**	10.21%
10 Year	9.19%
Blended Benchmark**	9.58%

* Returns less than one year are not annualized. **Breakdown for Blended Benchmark: 39.5% S&P500, 7.5% Russell Mid Cap, 10.5% Russell 2000, 5.25% MSCI EM (net), 10.25% MSCI EAFE (net), 16% Bloomberg US Agg, 3% ICE BofA 1-3 Yr US Corp/Gov't, 1% ICE BofA US High Yield Master II, 2% Wilshire REIT, and 5% FTSE 1 Mth US T-Bill.

ANNUAL RETURNS (Gross of Investment Management Fees, but Net of Embedded Fund Fees)

Consolidated Composite

2008	N/A
2009	23.77%
2010	12.95%
2011	-1.35%
2012	13.87%
2013	20.33%
2014	6.05%
2015	-0.26%
2016	8.79%
2017	16.72%
2018	-5.82%
2019	22.62%
2020	14.50%
2021	14.96%

PORTFOLIO FACTS

Consolidated Composite

Composite Inception Date	01/2009
No of Holdings in Portfolio	20

HOLDINGS

HighMark Plus (Active)

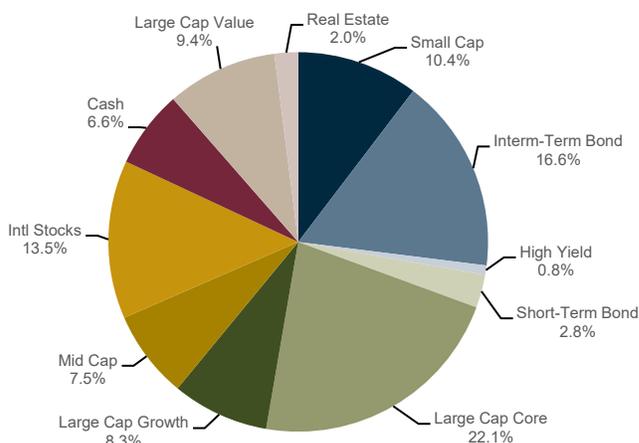
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 T. Rowe Price Growth Stock - I
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 Undiscovered Managers Behavioral Value-R6
 Vanguard Small Cap Growth ETF
 DFA Large Cap International Portfolio
 Dodge & Cox International Stock
 MFS International Growth - R6
 Hartford Schroders Emerging Markets Eq
 Vanguard Short-Term Invest-Grade Adm
 PIMCO High Yield Instl
 PIMCO Total Return Fund - Inst
 PGIM Total Return Bond - R6
 DoubleLine Core Fixed Income - I
 First American Government Obligations Z

Index Plus (Passive)

iShares Core S&P 500 ETF
 iShares S&P 500 Value ETF
 iShares S&P 500 Growth ETF
 iShares Russell Mid-Cap ETF
 Vanguard Real Estate ETF
 iShares Russell 2000 Value ETF
 iShares Russell 2000 Growth ETF
 iShares Core MSCI EAFE ETF
 Vanguard FTSE Emerging Markets ETF
 Vanguard Short-Term Invest-Grade Adm
 iShares Core U.S. Aggregate
 Vanguard High-Yield Corp Adm
 First American Government Obligations Z

Holdings are subject to change at the discretion of the investment manager.

STYLE



The performance records shown represent a size-weighted composite of tax exempt accounts that meet the following criteria: Accounts are managed by HighMark with full investment authority according to the PARS Capital Appreciation active and passive objectives.

The adviser to the PARS portfolios is US Bank, and HighMark serves as sub-adviser to US Bank to manage these portfolios. US Bank may charge clients as much as 0.60% annual management fee based on a sliding scale. US Bank pays HighMark 60% of the annual management fee for assets sub-advised by HighMark under its sub-advisory agreement with US Bank. The 0.36% paid to HighMark, as well as other expenses that may be incurred in the management of the portfolio, will reduce the portfolio's returns. Assuming an investment for five years, a 5% annual total return, and an annual sub-advisory fee rate of 0.36% deducted from the assets at market at the end of each year, a \$10 million initial value would grow to \$12.53 million after fees (Net-of-Fees) and \$12.76 million before fees (Gross-of-Fees). Gross returns are presented before management and custodial fees but after all trading expenses and reflect the reinvestment of dividends and other income. A client's return will be reduced by the advisory fees and other expenses it may incur as a client. Additional information regarding the firm's policies and procedures for calculating and reporting performance results is available upon request. Performance results are calculated and presented in U.S. dollars and do not reflect the deduction of investment advisory fees, custody fees, or taxes but do reflect the deduction of trading expenses. Returns are calculated based on trade-date accounting.

Blended benchmarks represent HighMark's strategic allocations between equity, fixed income, and cash and are rebalanced monthly. Benchmark returns do not reflect the deduction of advisory fees or other expenses of investing but assumes the reinvestment of dividends and other earnings. An investor cannot invest directly in an index. The unmanaged S&P 500 Index is representative of the performance of large companies in the U.S. stock market. The MSCI EAFE Index is a free float-adjusted market capitalization index designed to measure developed market equity performance, excluding the U.S. and Canada. The MSCI Emerging Markets Index is a free float-adjusted market capitalization index that is designed to measure equity market performance in the global emerging markets. The Russell Midcap Index measures the performance of the mid-cap segment of the U.S. equity universe. The Russell 2000 Index measures the performance of the small-cap segment of the U.S. equity universe. The ICE BofA U.S. High Yield Master II Index tracks the performance of below investment grade U.S. dollar-denominated corporate bonds publicly issued in the U.S. domestic market. Wilshire REIT index measures U.S. publicly traded Real Estate Investment Trusts. The unmanaged Bloomberg U.S. Aggregate Bond Index is generally representative of the U.S. taxable bond market as a whole. The ICE BofA U.S. Corporate & Government Index tracks the bond performance of the ICE BofA U.S. Corporate & Government Index, with a remaining term to final maturity less than 3 years. The unmanaged FTSE 1-Month U.S. Treasury Bill Index tracks the yield of the 1-month U.S. Treasury Bill.

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HIGHMARK CAPITAL MANAGEMENT

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ABOUT THE ADVISER

HighMark® Capital Management, Inc. (HighMark) has over 100 years (including predecessor organizations) of institutional money management experience with \$9.4 billion in assets under management and \$9.6 billion in assets under advisement*. HighMark has a long term disciplined approach to money management and currently manages assets for a wide array of clients.

ABOUT THE PORTFOLIO MANAGEMENT TEAM

Andrew Brown, CFA®

Senior Portfolio Manager
 Investment Experience: since 1994
 HighMark Tenure: since 1997
 Education: MBA, University of Southern California; BA, University of Southern California

Salvatore "Tory" Milazzo III, CFA®

Senior Portfolio Manager
 Investment Experience: since 2004
 HighMark Tenure: since 2014
 Education: BA, Colgate University

J. Keith Stribling, CFA®

Senior Portfolio Manager
 Investment Experience: since 1985
 HighMark Tenure: since 1995
 Education: BA, Stetson University

Christiane Tsuda

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2010
 Education: BA, International Christian University, Tokyo

Anne Wimmer, CFA®

Senior Portfolio Manager
 Investment Experience: since 1987
 HighMark Tenure: since 2007
 Education: BA, University of California, Santa Barbara

Randy Yurchak, CFA®

Senior Portfolio Manager
 Investment Experience: since 2002
 HighMark Tenure: since 2017
 Education: MBA, Arizona State University; BS, University of Washington

Asset Allocation Committee

Number of Members: 17
 Average Years of Experience: 27
 Average Tenure (Years): 15

Manager Review Group

Number of Members: 7
 Average Years of Experience: 22
 Average Tenure (Years): 10

*Assets under management ("AUM") include assets for which HighMark provides continuous and regular supervisory and management services. Assets under advisement ("AUA") include assets for which HighMark provides certain investment advisory services (including, but not limited to, investment research and strategies) for client assets of its parent company, MUFG Union Bank, N.A.

APPENDIX: CLIENT LIST

PARS CLIENT LIST – PRSP (261)

Updated April 2022

CITIES & TOWNS (128)

Alameda
Anaheim
Atherton
Atwater
Bakersfield
Beaumont
Bell Gardens
Benicia
Beverly Hills
Brea
Brisbane
Burlingame
Camarillo
Capitola
Carmel
Chino Hills
Chula Vista
Claremont
Colma
Commerce
Corcoran
Coronado
Costa Mesa
Cudahy
Cupertino
Cypress
Daly City
Dana Point
Del Rey Oaks
Dinuba
Duarte
Dublin
El Cajon
El Centro
El Segundo
Emeryville
Escondido
Fairfax
Fairfield
Fountain Valley
Fullerton
Garden Grove
Gilroy
Glendale
Goleta
Grass Valley
Half Moon Bay
Healdsburg
Hercules
Huntington Beach
Indian Wells
Indio
La Habra
La Mesa
La Quinta
La Verne
Laguna Niguel
Lake Forest
Lemon Grove
Lodi
Los Alamitos
Los Altos Hills
Manhattan Beach
Merced
Modesto
Monrovia
Morgan Hill
Napa
National City
Norco
Norwalk
Novato
Oakley
Oroville
Pacifica
Palmdale

COUNTIES (22)

Palo Alto
Pasadena
Patterson
Perris
Pico Rivera
Piedmont
Pinole
Pittsburg
Placentia
Pleasant Hill
Pleasanton
Port Hueneme
Rancho Cucamonga
Redwood City
Rialto
Rio Vista
Riverside
Rohnert Park
Rolling Hills
Ross
San Anselmo
San Jacinto
San Leandro
San Ramon
Sanger
Santa Ana
Santa Clara
Santa Clarita
Sausalito
Selma
Solana Beach
Stanton
Stockton
Taft
Temecula
Thousand Oaks
Tiburon
Tustin
Twenty-nine Palms
Union City
Upland
Vallejo
Villa Park
Walnut
West Covina
West Sacramento
Westminster
Woodland
Woodside
Yountville
Yuba City
Yucca Valley
Calaveras
Colusa
Humboldt
Kings
Lake
Lassen
Mariposa
Merced
Monterey
Napa
Nevada
Placer
Plumas
Riverside
San Benito
Siskiyou
Solano
Sutter
Tehama
Tulare
Yolo
Yuba

EDUCATION DISTRICTS (47)

Alisal Union SD
Allan Hancock CCD
Alta Loma USD
Bass Lake Joint Union ESD
Beverly Hills USD
Brea Olinda USD
Calistoga Joint USD
Campbell Union HSD
Citrus CCD
Coast CCD
Corning Union ESD
Coronado USD
Cotati-Rohnert Park USD
El Monte Union HSD
Fontana USD
Grossmont-Cuyamaca CCD
Hartnell CCD
Hermosa Beach City SD
Hesperia Unified SD
Imperial CCD
Lakeside Union SD
Lemon Grove SD
Lindsay USD
Madera Unified SD
Marin CCD
Natomas USD
Ocean View SD
Ontario-Montclair SD
Palos Verdes Peninsula USD
Pasadena CCD
Placer Union HSD
Porterville USD
Rancho Santiago CCD
Rio Hondo CCD
River Delta USD
Roseville JUHSD
San Bernardino CCD
San Marino USD
Santa Rita Union SD
Shasta County OE
Shasta-Trinity-Tehama Joint CCD
SLO County CCD (Cuesta College)
Victor Valley CCD
Visalia USD
West Valley-Mission CCD
Whittier City SD
Yosemite CCD

SPECIAL DISTRICTS (64)

Agoura Hills/Calabasas Community Center JPA
Alameda County Mosquito Abatement District
Alpine Fire Protection District
Beach Cities Health District
Bighorn-Desert View Water Agency
Central Contra Costa Sanitary District
Conejo Recreation & Park District
Delta Diablo (Sanitation District)
East Bay Regional Park District
East Contra Costa Fire Protection District
East Orange County Water District
El Dorado Hills County Water District
Fallbrook Public Utility District
Goleta West Sanitary District
Great Basin Unified Air Pollution Control District
Greater Vallejo Recreation District
Hesperia Fire Protection District
Housing Authority of the County of Butte
Housing Authority of the County of San Bernardino
Housing Authority of the County of Santa Cruz
Humboldt Bay Municipal Water District
Mesa Water District
Metropolitan Transportation Commission
Midpeninsula Regional Open Space District
Midpeninsula Water District
Mojave Desert Air Quality Management District
Montecito Fire Protection District
Monterey Bay Unified Air Pollution Control District
Monterey County Mosquito Abatement District
Moraga-Orinda Fire Protection District
Mosquito & Vector Mgmt Dist. of Santa Barbara Co.
Mountains Recreation and Conservation Authority
Municipal Pooling Authority
Municipal Water District of Orange County
Napa County Mosquito Abatement District
Nevada County Consolidated Fire Department
North Central Fire District
Novato Sanitary District
Orange County Fire Authority
Orange County LAFCO
Orange County Mosquito & Vector District
Orchard Dale Water District
Pebble Beach Community Services District
Placer County Air Pollution Control District
Public Agency Risk Sharing Authority of CA
Rancho Cucamonga Fire Protection Department
Regional Housing Authority
Sacramento Area Flood Control Agency
San Elijo Joint Powers Authority
San Mateo Mosquito and Vector Control District
Santa Fe Irrigation District
Shasta Valley Cemetery District
South Coast Water District
Southern Marin Fire Protection District
Superior Court of CA, County of Inyo
Superior Court of CA, County of Kern
Sweetwater Springs Water District
Three Valleys Municipal Water District
Twenty-nine Palms Water District
Union Sanitary District
West Bay Sanitary District
Western Riverside Council of Governments
Yorba Linda Water District
Zone 7 Water District



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Text File

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Agenda Number: 3B.

Receive Report Regarding Childcare for City Councilmembers



CITY OF FORT BRAGG

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COUNCIL COMMITTEE ITEM SUMMARY REPORT

MEETING DATE: June 8, 2022
TO: Finance and Administration Committee
FROM: Juli Mortensen, Human Resources Analyst
AGENDA ITEM TITLE: Receive Report Regarding Childcare for City Councilmembers

BACKGROUND AND OVERVIEW:

During the May 9, 2022 City Council meeting, Councilmember Albin-Smith asked City staff to research options for providing assistance for childcare to allow more citizens of Fort Bragg to run for City Council by reducing the barrier of the cost of childcare required to perform the duties of a City Councilperson.

At this time, if one decides to run for City Council and they have dependent children, then they must have the ability to procure and pay for childcare when attending City Council meetings, committee meetings and other activities. If interested parties are unable to fund or arrange for childcare, then they are unable to run for office due to lack of childcare. Currently, the City does not have any childcare benefit for Council.

Childcare Costs

The cost of childcare can be prohibitive. Some preliminary research has provided some information, but there are several parameters that do not allow for a definitive answer. For example, a childcare provider may offer a discounted rate when more than one child is being cared for. Another variable is the age of the child(ren) being cared for. Childcare for a child up to the age of three has different adult-to-child parameters set by law. One adult may only care for four children under the age of two. In contrast, childcare providers may have up to twelve children per adult when the children are of kindergarten or elementary school age. Providing childcare to school age children is much more cost effective due to the differing staff required to perform the care. Another variable is the availability of qualified staff that can vary in terms of the local labor market and the overall economy of the area in question.

Quotes provided by an employee with several children stated the rates two years ago for a younger child (baby/toddler) would run \$14 to \$18 per hour. Putting this in today's dollars, accounting for an 8% inflation this year, would be \$15.12 to \$19.44 hourly. Childcare rates typically decrease by half for school age children. The City has averaged 47 Council meetings per year over the last six years. Meetings typically last between two and four hours. For this calculation, an average of 3 hours per meeting is being used. Using a typical three hour City Council meeting, at the younger child rate of \$15.12 per hour, it would cost \$45.36 per Council meeting and approximately \$2,131.92 annually for a single Councilmember.

Please see the attached document entitled *City Council Salaries and Benefits*, presented at the League of California Cities general session in September 2011, and a summary of the legal considerations for offering childcare assistance to City Councilmembers.

AVAILABLE OPTIONS

As the result of research, there are several options to consider. They are listed below. Each of the options will be discussed separately in the following sections.

- Dependent Care Flexible Spending Account
- Childcare stipend
- Direct Childcare expense reimbursement
- Health plan coverage

Dependent Care Flexible Spending Account option

A flexible spending account (FSA), as defined by Healthcare.gov explains, "A Flexible Spending Account (also known as a flexible spending arrangement) is a special account you put money into that you use to pay for certain out of pocket health care costs (*or dependent care*). The most notable part is that the employers do not pay taxes on the money. In short, an FSA saves on taxes, allocating that money towards medical (dependent care) expenses instead. There are two types of FSAs, healthcare and dependent care. The healthcare FSA is only for eligible medical, dental, and vision expenses as defined by the Internal Revenue Service.

The Health FSA is not relevant to this discussion because a Health FSA is a pre-tax benefit that is used to pay for eligible medical, dental and vision expenses. Essentially those that are not covered by the City's health care plan or elsewhere, that the IRS deems are eligible expenses. Childcare expenses are not considered healthcare and therefore is not relevant to this analysis and will not be discussed further.

Employees are able to participate in the Dependent Child Flexible Spending Account (Dependent Care FSA) program. A Dependent Care FSA allows an employee to contribute up to \$5,000 on a pre-tax basis per plan year (July 1st to June 30th) for qualified daycare expenses for qualified dependents. A qualified dependent is a dependent child

up to age of 13 or dependent adults who live in their homes, including spouses and parents. There is no carryover allowed as per Internal Revenue Service (IRS) regulations. Qualified daycare expenses do not include reimbursing an older child who watches a younger sibling.

Both parents may use a Dependent Care FSA and jointly contribute up to \$5,000 per year. If both spouses have an FSA, they could end up contributing too much for the year. If that happens, one spouse will need to claim the additional amount deferred as taxable income. This additional amount must be added in on IRS Form 2441 as income if one takes advantage of the Dependent Care Tax Credit. There are complex tax rules in regarding Dependent Care FSA and claiming the household and Dependent Care credit on one's federal tax return. The tax implications to the participant should be addressed between the participant and their chosen tax professional.

In conducting research for the Dependent Care FSA option, it is possible for the City to make contributions to the Dependent Care FSA but the combined contribution may not be more than \$5,000. Employer contributions are not a match. Participants will receive the full contribution amount regardless of what their election is, even if they elect \$0. Contribution amounts are set during the City's open enrollment period and cannot be changed outside of open enrollment unless there is a qualifying life event.

As previously stated, Dependent Care FSA rules do not allow for a change mid-year unless there is a qualifying life event. Qualifying life events are marital status changes, a change in number of dependents, employment change and similar events. Once a child reaches the age of 13, they are no longer eligible to be reimbursed. If a child attains age 13, it is considered a qualifying event and would be a reason to terminate participation in the Dependent Care FSA. There is, however, a grace period, for the Dependent Care FSA and the City's plan offers a 60 day grace period after the plan year ends to submit reimbursements for eligible expenses.

Another Dependent Care FSA rule to consider is that one only has access to Dependent Care funds that have been deducted from their pay check each period. There is no early access to funds. Only the amount in the Dependent Care FSA are available, no over dipping. There is no carry over. Amount left in the account at the end of the plan year are forfeited. The unused portion of the Dependent Care FSA may not be paid to the participant in cash or other benefits, including transferring money between FSAs.

A Dependent Care FSA is designed to cover daycare expenses that employees incur because they are working, so a taxpayer must have earned income in order to have a Dependent Care FSA. If the taxpayer is married, the spouse must have an earned income, be actively looking for work or be enrolled as a full-time student. IRS regulation Section 129 Dependent Care Assistance Programs regulates what expenses may be reimbursed. Employment-related means an expense for dependent care that allows an individual or their spouse, if applicable, to be gainfully employed.

Offering the Dependent Care FSA is a viable option, but it should be offered to all employees, which could dramatically increase the cost. Another consideration is that

while the Dependent Care FSA provides a debit card to submit the expenses, many employees have encountered providers that do not accept payment by debit card. Instead, one has to pay with their own non-FSA money and then submit for payment. It has proven to be an obstacle to having more employees participate in the Dependent Care FSA. The assumption would be that the City would provide a contribution towards the Dependent Care FSA based to provide an incentive for more citizens to run for office. The decision could be to just allow Council to participate in the FSA plans.

Councilmembers can join mid-year (basically like a new hire). Changing the plan to have city contributions can be done, but the timing is uncertain. It is possible that a plan change like that would need to wait until the FY 2023-24 plan year. Additionally, the City's FSA vendor has their rules for processing. Therefore, the exact process in accomplishing the chosen option (*choosing whether or not there will be city funds contribution or just do employee only contributions*) will need to be further researched if this is the option chosen to determine the timing of the change

Stipends

Stipends would seem that is an option as a Car Allowance is allowable because the code permits City Councilmembers to contract directly with the city for a vehicle allowance when the Councilmembers' travel expenses by law. However, when this is applied to other types of stipends, the practice would seem to constitute monetary compensation that is not authorized by a salary ordinance or by a statutory provision such as Section 1223 regarding car allowances.

One way to do the stipend is to do a \$150 a month stipend for Councilmembers who have children to care for. Providing the stipend for only Councilmembers and therefore would be considered salary. Based on the fact there has been 10 years since the last salary ordinance, we can increase it no more than \$150 a month. It is \$150 a month because ten years times the 5% is 50%. One takes 1.5 times the current monthly Council salary is \$450 monthly. The difference between the \$450 and \$300 is \$150. Using the \$150 per month, it would be \$1,800 per Councilmember. Again, doing this just for Council would be \$1,800 per Councilmember annually. To implement this program, the City would need to define the eligibility requirements are for the program.

If this benefit were to be extended to employees, then assuming twenty employees use this (about 30% of employee population), then the total cost annually would be \$36,000 annually ($(\$150 \times 12) \times 20$ employees = \$36,000). The benefit to this proposal would be it allows for the perception of equity and provides evidence that the City is a family friendly employer. Again, if the City were to implement this program, the City would need to define eligibility requirements. Using this option allows for greater flexibility.

Direct Childcare Reimbursement

Another possibility is to reimburse Councilmembers directly for their childcare expenses for their attendance at Council meetings. Pursuant to Government Code Section 36514.5, City Councilmembers may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Any amounts paid by a city to reimburse a Councilmember for actual and necessary shall not be included for purposes of determining salary. (§36516(e)).

One question is whether or not childcare is a necessary expense. As per a paper titled "Councilmember Expenditures/Reimbursements" through the League of California Cities, states that general law cities have to go by government code and are more limited on what one can do than charter cities. The City of Fort Bragg is a general law city. In this paper, referring to 65 Ops.Cal.Atty.Gen 517-523, the attorney general opined: "an actual expense refers to a specific sum of money which the Councilmember has either paid or become legally liable to pay." Therefore, a reimbursement payment that is not itemized would not constitute an "actual" expense.

The Attorney General goes on to specify the dictionary definition of necessity ("something that cannot be done without") was not required. Instead, "practical necessity" should be the standard. The Attorney General referred to Albright v. City of South San Francisco by surmising that while it is physically possible to perform official duties at remote points without expenditures for hotel rooms and meals, it may not be practical to do so. An example would be bringing meals from home may not be convenient or practical. In doing this research, there is no mention of whether childcare is considered necessary. The articles have consistently referred to expenses incurred while traveling for official public business such as meals and hotel expenses.

If one goes by the travel expense rules, staying in town to attend a City Council meeting, it would appear childcare expenses will not meet the necessity threshold. It might for the out of town meetings. It should also be noted that if we do this for Councilmembers, then it should also be an reimbursable expense for city staff to ensure equity and comply with regulations. This is probably not the best method because it does not meet the day to day issue of attending an average of 47 Council meetings annually. Having childcare available and at a cost effective rate is imperative to help remove the childcare barrier to allow more citizens to run for City Council. Additionally, in keeping with equity, the cost may be prohibitive to reimburse city staff if they must travel for trainings or city business. Costs will add up quickly.

Health Plan Coverage

This option was researched and childcare is not covered via the City's health plan, nor does any other medical plan. In reaching out to RealCare Inc., the City's benefits broker, they referred to the option of providing a Dependent Care FSA. The Dependent Care FSA option was covered earlier so there is no need to discuss it in this section.

RECOMMENDATION:

Elect to provide a stipend of no more than \$150 per month to Council. This has the drawback of perceived inequity, but complies with the various regulations. Providing a stipend of \$150 per month is \$1,800 annually per Council participant.

A variation of this is to provide a stipend to all eligible employees. Assuming 30% employee population (65/20 employees is 30%) participating, then the annual cost would amount to \$3,600. This is least expensive, even when offering it to employees. The eligibility parameters would need to and enrollment procedures would need to clearly documented.

ALTERNATIVES:

Elect the Dependent Care FSA with no city contribution. This allows the ability to help with childcare without increasing the City's budget, still ensures equity, and shows the City to be a family friendly employer. This should be offered to all employees.

Elect to utilize the Dependent Care FSA with City contribution by having the City contribute money into the Dependent Care FSA and have the same amount contributed to City staff who elect to participate in the program. This also serves as a method of providing equity and shows the City of Fort Bragg as a family friendly employer. Regarding the amount, the City could provide the entire \$5,000, which is expensive because it would be \$130,000 annually (assuming 30% of employees utilize the program or in other terms, 20 employees. The City could elect to contribute a lesser amount, say 50%, \$2,500 annually per participant resulting in an annual cost of \$50,000 assuming 30% participation. This would need to be extended to employees as well to comply with regulations and ensure equity.

Both of the above options can be done with no City contributions to save money. If this is the option chosen, then it is not really providing additional assistance to participants, whether or not is for all City employees and Council or if it is exclusively for Council.

In all options using the Dependent Care FSA, the decision for whether an item is reimbursable is dictated by the IRS and the vendor. In the City's case, the flexible spending account vendor is iSolved Benefit Services. Employees are already familiar with this benefit and has been mostly well received, other than the debit card payment issue. This issue would be applicable with any FSA vendor and not just iSolved.

The main changes with this option are allowing City Councilmembers to participate and to have the City provide monies towards this. The City's open enrollment period is underway for plan year 2022-23. As stated previously, more research is needed to determine the timing if the City elects to contribute money towards the Dependent Care FSA.

ATTACHMENTS:

- *Councilmember Expenditures/Reimbursements white paper*
- *League of California Cities City Council Salaries and Benefits 2011*
- *Legal Considerations for Childcare Benefit for Council 6.3.22*

Councilmember Expenditures/Reimbursements

A NOTE ON THE TITLE

I had intended to call this paper “A Heartbreaking Work of Staggering Genius,” but was stunned to discover that someone had already taken that title.¹ After overcoming my disappointment, and upon further reflection, I determined that such an auspicious title was probably inaccurate. In point of fact, this is your standard, garden-variety League paper—a summary of the relevant law, some issues to watch out for, and some recommendations. Nothing too sexy or exciting. Of course, if you are reading this paper without the benefit of having heard the talk that accompanied it—well, that was a horse of a different color . . .

So why the dry title? I did consider yet another title option to try to jazz things up a bit. Recognizing that the issues of council expenditures and reimbursements are inextricably intertwined, I considered “Payback’s a bitch.” However, I thought this might encounter some editorial resistance. Further, anyone doing a keyword search on the topic of councilmember expenditures and reimbursements would not likely encounter this paper. Consequently, I opted for the somewhat pedestrian, but Boolean-friendly title which appears above.

THE ACTUAL PAPER

So you’ve just been elected to the City Council. There is a crisis in the State—hypothetically, let’s say it is a budget crisis. You and some of your fellow councilmembers determine that a visit to the capitol is appropriate. You inquire of your compatriots “The City pays for all of this, right?” The response is a resounding “Of course. Absolutely. Mostly. Probably. So how about them Dodgers?”

The determination of what constitutes a permissible City Council expenditure is almost as confusing as how that expenditure gets paid. Assuming an expenditure is legally permissible, that expenditure can be paid in advance by the City, the councilmember can receive a check or cash as an advance to make the expenditure, the councilmember can use a city credit card, or the councilmember can be reimbursed for expenses. Regardless of how the expenditure gets paid, however, the threshold question to be asked is whether your city is a general law city or charter law city.

CHARTER v. GENERAL LAW CITIES

Although there may not be many areas in which the two types of cities differ anymore, allowable council expenditures is one of those areas. To refresh, general law cities derive authority from the California Constitution (police power) and statutes adopted by the California legislature. A Charter law city derives its authority from the California Constitution (authority to regulate over municipal affairs) and its charter.

¹ Dave Eggers, *Heartbreaking Work of Staggering Genius* (2000).

Additionally, where the charter is silent and/or state law in an area governs a matter of statewide concern (as opposed to a municipal affair) a charter city will be governed by state statutes.

What this means in the context of council expenditures is that general law cities are governed (read limited) by state statutes—and interpretations thereof (discussed more fully below) and charter law cities will be governed by the provisions of their charters, or ordinances adopted pursuant to authority in such charters. Thus, charter law cities have a great deal more flexibility in addressing the issue of council expenditures, and can be very detailed in regulations/provisions/policies pertaining to council expenditures. General law cities adopting such detailed regulations/provisions/policies have no assurance that a court or the legislature will agree that the regulations/provisions/policies are consistent with governing state law.

THE CHARTER CITY FREE FOR ALL

The Attorney General's office recently issued an opinion concerning Government Code section 36415.5,² in response to an inquiry from the Public Integrity Division of the Los Angeles County District Attorney's Office.³ The DA's office wanted to know whether the funds of a general law city or a charter city may be used to reimburse city council members for their expenses in purchasing meals for others, such as legislators, constituents and representatives of private businesses, during a lunch or dinner meeting where legislation or other matters of importance to the city are discussed.

The AG concluded that the funds of a charter law city, but not those of a general law city, may be expended for such purposes.⁴

With regard to charter law cities, the AG opined that notwithstanding state law provisions,

“ . . . We believe that reimbursement of city officers and employees for expenses incurred in performing city duties is a municipal affair within the meaning of article XI, section 5. [Citation] Thus a city charter may provide for the reimbursement of expenses of members of a city council in a manner different from that provided in section 36514.5. . . .[T]he electorate of a charter city through the adoption of a charter or its amendment has the constitutional authority to determine which, if any, expenses incurred by city council members will be

² which prompted this paper

³ 85 Ops.Cal.Atty.Gen. 210 (2002).

⁴ Actually, the AG issued two opinions. In the first, the AG concluded that no city official in a general law city could be reimbursed for such expenses. In response to criticism that Govt. Code section 36514.5 only speaks to “city councilmen,” the opinion was reissued, with its application expressly limited to city councilmen.

reimbursed. The charter and any implementing ordinances would govern the right to reimbursement in the circumstances presented.”⁵

The Attorney General cites to *Porter v. City of Riverside* in support of this analysis. In *Porter*, the City of Riverside’s Charter provided that the city council was to receive no compensation, but was entitled to reimbursement for council-authorized travel and expenses when on official duty. Additionally, “[E]ach member shall receive such amount as may be fixed by ordinance, which amount shall be deemed to be reimbursement for other out-of-pocket expenditures and costs imposed upon him in serving as a city councilman.”

At the time of the lawsuit, each councilperson was receiving a payment of \$350 per month pursuant to this provision and an implementing ordinance. A citizen brought suit, challenging the payment. The trial court considered evidence of the actual out-of-pocket expenditures of Riverside councilpersons, which ranged from \$150 to \$555. Consequently, the trial court found that the \$350 was in excess of the actual and allowable out-of-pocket expenses and costs “incurred,” and therefore the excess must be “compensation,” in violation of the charter’s prohibition on compensation.

The appellate court disagreed, and the rationale is very important for charter city fans out there. The court pointed out that

“[a]n ordinance stands in the same relationship to a city charter as does a statute to the constitution of the state. . . The same presumptions that favor the constitutionality of state legislative enactments apply also to ordinances. . . .When the right to enact a law depends upon the existence of a fact, the passage of the act implies and the conclusive presumption is, that the Legislature performed its duty and ascertained the existence of the fact before enacting and approving the law—a decision which the courts have no right to question or review.

. . .

Whether we view the presumption in support of the validity of enactments as a conclusive presumption which the courts have no right to question or review . . . or follow the more limited rules to the effect that the enactment is presumed to be constitutional and must be deemed to have been enacted on the basis of any state of facts supporting it that “reasonably can be conceived” [cites omitted] or “reasonably could be assumed” [cites omitted], or are “possible” [cites omitted], it inevitably follows that the trial court’s determination holding the expense allowance invalid was erroneous”⁶

⁵ 85 Ops.Cal.Atty.Gen. at 214, citing 65 Ops.Cal.Atty.Gen. 517, and *Porter v. City of Riverside* (1968) 261 Cal.App.2d 832, 834-39.

⁶ *Porter* at 836-37.

In short, for purposes of analyzing what constitutes a lawful expenditure or reimbursement in a charter law city, the charter and ordinances promulgated pursuant thereto rule. As made clear by *Porter*, a council person in a charter law city can receive a “reimbursement” without actually expending any money! A court will not disturb the legislative determination of a charter law city concerning entitlement to reimbursements (regardless of whether expenses are in fact incurred), provided that the charter authorizes such legislation.

But it is important to ensure that such legislation is on the books before engaging in practices such as monthly expense allowances. In *Albright v. City of South San Francisco*, a citizen challenged the city’s practice of paying the council and mayor flat monthly expense allowances, without requiring any documentation as to whether any expenses were actually incurred.⁷ The court held that the practice of reimbursing unitemized expenses in the absence of a resolution or ordinance authorizing the reimbursements violated the California Constitution. “In the absence of a valid ordinance or resolution, a flat expense allowance to the extent that in any one month it exceeds amounts actually expended for a verifiable municipal purpose is the equivalent of a gift of public funds, in contravention of section 25, article XIII, of the California Constitution.”⁸

“In the absence of a valid ordinance or resolution”? How much easier could they make this? Clearly, in the charter law city arena, the relevant issue is not whether an expense is for a municipal purpose—or even if the expense was incurred at all—the relevant determination to be made is what do you have on the books that authorizes “reimbursement” payments.

GENERAL LAW CITIES—A DIFFERENT LATITUDE

General law cities do not enjoy such latitude in the arena of expenditures and reimbursements. Depending upon your disposition, either citizens in general law cities have greater assurance that city funds are being appropriately utilized for public expenditures, or city councilpersons in general law cities have to be a lot more careful than their peers in charter law cities.

⁷ *Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866.

⁸ *Id.* at 869-70. It is important to note that the *Albright* opinion seems to imply that South San Francisco should have adopted an ordinance authorizing flat monthly expense allowances, such an ordinance was not actually before the court. Had such an ordinance been before the court, it seems likely the ordinance would have been problematic in light of the “actual” and “necessary” elements of Govt. code section 36514.5. (see discussion below concerning general law cities). An ordinance limiting the flat monthly payment to a car allowance may have worked. (See Govt. Code § 1223 and *Citizen Advocates v. Board of Supervisors* (1983) 146 Cal.App.3d 171.

As stated above, charter law cities can adopt, and to a large extent interpret, their own provisions concerning expenditures and reimbursements. General law cities, and charter law cities that have not adopted any provisions, are limited by state statutes (and interpretations of same, as discussed below).

Government Code section 50023 provides in relevant part:

“The legislative body of a local agency, directly or through a representative, may attend the Legislature and Congress, and any committees thereof, and present information to aid the passage of legislation which the legislative body deems beneficial to the local agency or to prevent the passage of legislation which the legislative body deems detrimental to the local agency. . . . The cost and expense incident thereto are proper charges against the local agency.”

For purposes of our analysis, the operative elements of this statute require that a cost or expense be “incident” to attendance at and presentation to the Legislature, Congress, or a committee.⁹

Government Code section 36514.5, “Expenses of councilmen” provides (in full):

“City councilmen may be reimbursed for actual and necessary expenses incurred in the performance of official duties.”

Without getting too pedantic, the elements of this grant of authority:

1. Are limited to “councilmen”¹⁰
2. for an “actual” expense;
3. that is also “necessary”;
4. and was “incurred in the performance of official duties.”

One would surmise that I could assume everyone understands what is meant by the first element and just move on to a discussion of what is meant by “actual.” However, a pause to reemphasize the fact that the Government Code section is limited to

⁹ On the bright side, while the AG and/or the court may question expenses “incident” to a Legislative trip, a court is unlikely to question the appropriateness of the trip itself to weigh in on any particular piece of legislation. *Powell v. San Francisco* (1944) 62 Cal.App.2d 291.

¹⁰ Presumably this legislation also applies to councilwomen and councilpersons. The lack of gender-neutrality in legislation is beyond the scope of this paper.

“city councilmen” is probably appropriate for some people—and you know who you are.¹¹

Returning to the recent AG opinion concerning reimbursement for meals paid for by councilmembers, the AG opined, without any real analysis, that payment for meals of non-councilmembers is not an “actual or necessary” expense under 36514.5. The AG did reference a prior AG opinion that provided an analysis of each of the elements of section 36514.5.¹²

In that prior opinion, the AG examined whether the travel expenses of an aide for a handicapped city councilmember was a reimbursable expense under section 36514.5. The AG set the stage:

“An expenditure of municipal funds is permitted only where it appears that the welfare of the community and its inhabitants is involved and benefit results to the public.”¹³

“When an officer is required to travel in order to perform his duty, the payment of his actual necessary living expenses while away from home is a proper item of state expense and, unless expressly forbidden by the Constitution, it is a proper exercise of legislative authority to provide for the officer’s reimbursement.”¹⁴

With regard to “actual”, the AG opined: “an actual expense refers to a specific sum of money which the councilmember has either paid or become legally liable to pay.”¹⁵ Thus, a flat monthly expense allowance or reimbursement payment that is not itemized would not constitute an “actual” expense.

With regard to the element of necessity, the AG opined that the dictionary definition of necessity (“something that cannot be done without”) was not required. Rather “practical necessity” should be the standard.

“It is physically possible to perform official duties at remote points without expenditures for hotel rooms and meals. One could carry meals from home and sleep in the car though this may not be convenient or very practical. The *Collins* case indicates that practical necessity is all that is required under the reimbursement statutes—a practical need based upon the prevailing business practices.”¹⁶

¹¹ See footnote 4.

¹² 65 Ops.Cal.Atty.Gen. 517.

¹³ 65 Ops.Cal.Atty.Gen. at 519, citing *Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866, 869.

¹⁴ 65 Ops.Cal.Atty.Gen at 519, citing *Collins v. Riley* (1944) 24 Cal.2d 912, 918.

¹⁵ 65 Ops.Cal.Atty.Gen. at 521.

¹⁶ 65 Ops.Cal.Atty.Gen. at 523.

If you are unsure as to what is meant by “based upon the prevailing business practices,” there is a trap for the unwary here. According to the AG, the determination as to whether or not an expense is “necessary” is first made by the councilmember when he or she elects to incur the expense. However, the determination is subject to approval by the entire council. Section 36514.5 does not mandate reimbursement, it states that a council person “may be reimbursed.” “Thus a city council may refuse to reimburse an expense of one of its members which was actually incurred and necessary to the performance of the member’s official duties.”¹⁷

So, before you go out of pocket, it is a good idea to make sure you are on good terms with at least a majority of the council.

As to the fourth element “incurred in the performance of official duties,” the AG did not provide guidance on that, although as discussed more fully below, there are plenty of other folks who are willing to chime in on that element.

With regard to section 50023, the AG (in the Public Integrity Division opinion) again relied upon a prior opinion (66 Ops.Cal.Atty.Gen 186) to determine that meals of others is not an “incident” expense under 50023:

“If meals are served at this meeting, then the county representatives’ costs of their meals result from and are connected with that meeting and are therefore incident thereto and chargeable to the county under section 50023. However, the cost of meals of others attending the same meeting, though incident to the meeting and perhaps chargeable to their employers, are not chargeable to the county under section 50023.”

Obviously, reasonable minds can dispute the “necessity” of buying meals for legislators to obtain an audience with them. Perhaps the easy solution is to have someone else at the table (City Manager, etc.) pick up the tab. But that solution does not get to the real issue—which is whether the payment of meals really is a “necessary” expense (a question that does not have to be asked in charter law cities). And that gets to the issue of who is the ultimate arbiter on the issue of expenses.

WHO’S WATCHING?

There are at least seven different groups of people who may weigh in on any expenditure issue. The first are the persons incurring the expense—the city councilpersons. The second group, as described above, are those councilpersons who did not incur the expense, but nevertheless have to approve payment for the expense, through approval of the warrant register, or other means, depending upon how your city’s finances function.

¹⁷ 65 Ops.Cal.Atty.Gen. at 523.

The third reviewing body is the Legislature, which adopts statutes, such as Govt. code sections 36514.5 and 50023. It is within their purview to amend those statutes or adopt new statutes, as the spirit (or other influential forces) moves them.

The fourth body is the AG's office, who is happy to opine on almost any issue, when asked. While you may not always agree with the AG's opinions, and the AG's opinions are not binding upon a court (but can be persuasive), it is important to note that the AG's opinions are certainly influential on the fifth body—the District Attorney.

Your local District Attorney not only can seek opinions from the AG, as evidenced by the Los Angeles DA seeking an opinion on the meal reimbursement issue, but is very likely to rely upon those opinions in deciding whether or not to prosecute an “illegal” expenditure of public funds. At the time of the writing of this paper, the Los Angeles County District Attorney has obtained indictments and is prosecuting several councilmembers for alleged improper expenditures (for meals and other things). And again, whether or not you agree with the AG or the DA, you may have serious problems with the sixth group of people looking over your shoulder as the waiter delivers the lunch tab, the press.

Nothing gets ink like a good political scandal. The recent indictments by the DA in L.A. County have gotten a lot of press already—and once the trial starts the coverage will intensify. In Ventura County, the press had a field day with one official's submittal for reimbursement for breath mints (a meal expense).

And finally, the ultimate arbiter of the appropriateness of a public expenditure would be a court—assuming you have survived long enough to get that far. And even if you are ultimately vindicated by a court, it is important to calculate the “cost” (in terms of political capital, reputation, stress, etc.) of such vindication when considering whether or not to expense an item.

ADVANCES, CHARGES, PAYBACK AND THE “FLOAT”

Which brings us to the part of the paper where I am supposed to make some helpful suggestions (practice tips) and raise some scholarly, though potentially irrelevant in daily practice, issues.

The First scholarly issue: Throughout this paper I have used the terms reimbursement, advance, and expenditure interchangeably—largely because the cases and AG opinions do so. This may be because regardless of the method of payment for an expense, the council, AG, DA, the Legislature, the press and the courts may not draw any distinction.

To be more concrete, if you, as a council person, intend to travel to and stay in Sacramento to visit the Legislature, and you know of this visit far enough in advance, you could have the city pay for your travel and hotel before you even go. No reimbursement would be necessary. But if the expense was questioned, the analysis of the

appropriateness of such an “expenditure” would likely follow the same path as if you had paid the expense and requested reimbursement.

What about the circumstance where you are issued a city credit card, which you use to pay for the travel? Same analysis?

The Second scholarly issue: But city credit cards raise an interesting issue. What if on the trip, you have a massage (it’s a stressful trip) and charge it on the city card. Assume for the moment that you are not going to try to pass this off as an actual and necessary public expense. The day you get back to the City you write a check to the City for the full amount of the massage. Any problem? What if you pay it back 2 weeks later, but before the City has paid the credit card bill? What if you pay it back six months later, well after the City has paid the credit card bill?

This is one of the issues in the cases the Los Angeles DA is prosecuting right now. According to press accounts, defendants claim their city had a practice of allowing personal charges on the city’s credit card, and all such charges were paid back. The DA asserts that all such charges were not paid back, those that were paid back were paid back several months after they were incurred, and this “practice” was not in writing anywhere.

Assuming that the practice were in writing, would such a “float” on the city’s credit card be an impermissible loan under California Constitution Article XVI section 6. I was unable to locate an opinion on this issue—but let me just suggest that you do not want to be the test case on this issue. No matter how a court comes rules, you will not look good.

CONCLUSION

Other than that, the clear message that comes out of the cases and opinions in this area is that the greatest protection you as a councilperson, and your city for that matter, can achieve in this area comes in the form of clear written ordinances, resolutions, and/or policies that spell out as specifically as possible what expenses are reimburseable in your city, and what the process for reimbursement, or check requests, or use of city credit cards, etc. is. Of course such policies, procedures, etc. must be consistent with the scope of your authority, be you general law or charter law city. But the more explicit the language, the greater the likelihood you can avoid criticism (and incarceration).

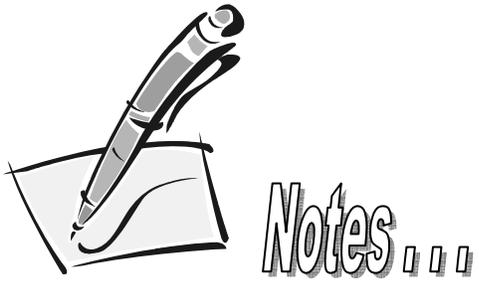
Oh, and if you are a general law city—adopt a charter.



City Council Salaries and Benefits

Thursday, September 22, 2011 General Session; 3:15 – 4:45 p.m.

Brian Libow, City Attorney, San Pablo





CITY COUNCIL SALARY AND BENEFITS

**LEAGUE OF CALIFORNIA CITIES
CITY ATTORNEYS' DEPARTMENT**

**ANNUAL CONFERENCE
SEPTEMBER 22, 2011**

Brian M. Libow
City Attorney
City of San Pablo

CITY COUNCIL SALARIES, REIMBURSEMENTS AND BENEFITS

In the wake of the City of Bell scandal, salaries and benefits provided to city council members have come under greater scrutiny. Particularly in the area of permissible health and welfare benefits, the various statutes that govern these matters form a nearly incomprehensible morass of ambiguous and seemingly contradictory provisions. The purpose of this paper is to try to make sense of these statutory provisions, dividing the analysis into three major categories: salary and reimbursements; health and welfare benefits that are available to current city council members; and benefits that are available to retired or former city council members.

An underlying principle behind the interpretation of these statutes is that, whether they concern salary, expense reimbursement, or benefits, they are to be *strictly construed in favor of the City and against the public officer*. *County of San Diego v. Milotz*, 46 Cal.2d 761, 767 (1956); *Madden v. Riley*, 53 Cal.App.2d 814, 822 (1942); 65 Ops.Cal.Atty.Gen. 517, 520-21 (1982).

On the other hand, the rule with respect to retirement benefits is that ambiguities must be resolved in favor of those receiving public pensions. See, e.g., *Ventura County Deputy Sheriffs' Assn. v. Board of Retirement* (1977) 16 Cal.4th 483, 490; *Hittle v. Santa Barbara County Employees' Retirement Assn.* (1985) 39 Cal.3d 374, 390; 90 Ops. Cal. Atty. Gen. 32 (2007).

I. CITY COUNCIL SALARY

A. Maximum Amounts; 5% Increases; Election

Government Code section 36516¹ authorizes a city to provide its city council members with an initial salary of between \$300 and \$1,000 per month, depending upon the city's population. Section 36516.5 also authorizes an increase in Council salaries in an amount not to exceed 5% for each calendar year from the operative date of the last adjustment. Thus, if the Council has not had a salary increase in the last twenty years, it can adopt an ordinance effectively doubling its salary: $20 \times 5\% = 100\%$. Of course, if the Council does not want to take action itself, it may place a salary measure on the ballot. (§36516(b)).

The Attorney General has ruled that the maximum 5% per year percentage increase must be applied only once, with no compounding. 89 Ops.Cal.Atty.Gen. 159 (2006). You can only calculate the increase based on what the actual salary was, not on what it could have been. In other words, the city may not apply the 5% to the currently received salary amount only for the first year, and then apply it to the newly calculated amount for the second year, and continue these separate calculations for each intervening year. For example, if six years have passed since the last salary increase,

¹ All references are to the Government Code unless otherwise noted.

only one calculation – an increase of 30% - is to be made, not six separate calculations, one on top of the other.

A directly elected mayor may be provided with compensation in addition to that which he or she receives as a council member. (§36516.1). That additional compensation may be provided by an ordinance adopted by the city council or by a majority vote of the electors voting on the proposition at a municipal election. The Attorney General has also ruled that the prohibition against “mid-term” salary increases, applicable to council members pursuant to section 36516.5, (*see section B, infra*), does *not* apply to elected mayors. The additional compensation for performing mayoral duties is not received as “a councilperson.” 89 Ops.Cal.Atty.Gen. 159 (2006)

For the same reason, it would seem that the 5% annual maximum, while applicable to salary received as a council member, would not apply to any additional compensation provided to elected mayors.

B. No Increase May Take Effect Until The Beginning of New Terms of Office

Government Code section 36516.5 prohibits any change in compensation during the council member’s term of office. This does not mean that Councilmember X, elected in 2008, must wait until her next term of office begins in 2012. Because city council members serve staggered terms, Councilmember X will be eligible for an increase following the next municipal election in 2010, when two or three of her compatriots must run for reelection, even though X is in the middle of her own term.

C. No Automatic Increases

Section 36516(a)(4) provides, in pertinent part, that “no ordinance shall be enacted or amended to provide automatic future increases in salary.” The council may grant city *employees* a three year MOU, with cost-of-living increases on July 1 of each year of the contract. But it may not do so for itself.

D. How To Measure “Calendar Year”

Section 36516(a)(4) provides: “The salary of council members may be increased beyond the amount provided in this subdivision by an ordinance or by an amendment to an ordinance, but the amount of the increase shall not exceed an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted...”

Suppose the operative date of the last salary increase immediately followed the municipal election in November of 2008. The next year, in June, 2009, can the City Council adopt another ordinance increasing its salary an additional 10%, to be effective

following the November, 2010 election? This would constitute 5% for each of the two calendar years between the effective dates of the increases. Or, would NO increase be justified, since not even one full calendar year had elapsed between the effective date of the last increase (November 2008) and the ordinance to increase the salaries an additional 10% (June, 2009)?

While the statute restricts the effective date for increases, it does not address the *timing* of the ordinance providing for such increases. There is no case law or Attorney General opinion on this issue. The statute does define when the “calendar year” count is supposed to *start*, but does not define when the count is supposed to *end* – the date the ordinance is introduced? Adopted? Takes effect? Or when the new salary goes into effect? In the absence of guidance from the courts or the Attorney General, the extremely conservative approach would be to calculate the permitted increase based on the number of *complete* years from the operative date of the last adjustment to the date of adoption of the ordinance granting the next salary adjustment.

But the most logical, consistent approach seems to be calculating increases from the *effective* date of the last increase to the *effective* date of the next increase. In this way we avoid the uncertainties and ambiguities in trying to figure out what to do with *partial* calendar years.

E. Salary Must Be Established By Ordinance

The establishment of city council salary must be by ordinance, not resolution. (§36516(a)(4)). What if a city council has not adopted the maximum 5% per year increase, but is receiving other monetary payments which, when added to the actual adopted salary, is still under the maximum limit? If the Council has provided for the receipt of such monetary payments by ordinance, as required by section 36516(a)(4), then those payments might rightfully be considered part of salary and, if under the maximum, should be permissible. If there is no authorizing ordinance, however, then whether or not this is lawful depends on whether these additional monetary payments are considered allowable expense reimbursements, or retirement or health and welfare benefits. Subsections (d) and (e) of section 36516 provide as follows:

(d) Any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for purposes of determining salary under this section, provided that the same benefits are available and paid by the city for its employees.

(e) Any amounts paid by a city to reimburse a council member for actual and necessary expenses pursuant to Section 36514.5 shall not be included for purposes of determining salary pursuant to this section.

Under these sections, if payment to a council member is not a permissible retirement or health and welfare benefit, or is not a valid expense reimbursement, then necessarily it will be counted for purposes of determining salary. Take, for example, a city policy granting a monetary payment of 50% of the monthly medical premium “in-lieu of” medical coverage, where the employee would otherwise have dual coverage because of coverage by a spouse with another employer.

Let’s say the ordinance provides that councilmembers receive \$1,000 per month in compensation, but the compensation rate could have been \$1,500 had the council taken all of the permissible annual increases, and those council members are also receiving \$500 per month in lieu of health insurance benefits.

The Attorney General has ruled that such a payment is lawful if it is contributed to a deferred compensation account, because it can be characterized as a “retirement” benefit under subsection (d), and will therefore not count as salary. 89 Ops.Cal.Atty.Gen. 107 (2006). If paid in cash, however, the Attorney General has ruled that it is neither a retirement benefit nor can it be considered a health and welfare benefit, like direct payment of a medical premium.²

Thus, if the in-lieu payment is part of the city’s deferred compensation “retirement” program, it will not count as salary and may be authorized by resolution. If the payment is made in cash, however, it should probably be considered part of salary and subject both to the maximum limit, and the requirement that salary must be established by city council ordinance. Just because the city council *could have* increased its salary over the years to \$1,500, doesn’t mean that its salary can be \$1,500 without an ordinance that increases the salary to that amount. In the example, the Council is legally allowed to receive only \$1,000 per month under law (their own ordinance). However, they are now effectively receiving \$500 more in salary by virtue of receipt of the in-lieu payment.

May a council member participate in a city’s flexible benefits plan, where the city, along with the employee, contributes pre-tax dollars to pay for medical or childcare expenses? The council member would then receive a cash payment after incurring the expense. In my opinion, this is a valid health and welfare benefit despite its form as a direct payment to the council member, as it is effectively a reimbursement for actual medical expenses. This should be allowable, and, as a health and welfare benefit received by all other city employees, may be authorized by resolution as well as by ordinance, as discussed below.

Permissible health and welfare benefits, and provisions for expense reimbursement, may of course be established by resolution; an ordinance is not necessary. What about payments such as cell phone stipends or other advance payments? So long as they are authorized by ordinance and, when added to normal salary, are under the maximum, such payments would be allowable. What about cities that provide cell

² There is at least an argument that the AG erred in this analysis. See footnote 15, *infra*.

phones, computers, or fax lines to council members instead of reimbursing them for city-related costs? It is my opinion that non-monetary benefits do not impact salary and are therefore not subject to Government Code section 36516's limitations on salary. Of course, use of such property for non-public purposes has its own problems in terms of the laws prohibiting unlawful gifts of public funds and misuse of city facilities.

F. Reduction In Salary

In 80 Ops.Cal.Atty.Gen. 119 (1997), the Attorney General concluded that a city council could not reduce its salary, the mayor's salary, or their own health and welfare benefits during their current terms of office. Reasoning that reduction in a council member's or mayor's compensation or health and welfare benefits during his or her term of office would impair the obligation of a contract (U.S. Const., art. I, §10; Cal. Const., art. I, §9) or deprive the council member of a vested property right (U.S. Const., 14th Amend.; Cal. Const., art. I, §7, subd.(a)), the opinion cites cases to the effect that the employment relationship between a city council member and the city is contractual, and the elements of compensation and benefits for such an office become contractually vested upon acceptance of employment. Interpreting the language of the statutes in light of these constitutional principles, the Attorney General found "that it forbids decreases in compensation during a council member's current term of office. Of course, as a practical matter, council members may contribute back to the city whatever portion of their salaries they wish. No statutory authorization is necessary for such voluntary action to take place."

As a result, Government Code section 36516(f) now provides that "a city council member may waive any or all of the compensation permitted by this section."

G. Reimbursement of Expenses

Pursuant to Government Code section 36514.5, city council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Any amounts paid by a city to reimburse a council member for actual and necessary expenses shall not be included for purposes of determining salary. (§36516(e)).

Reimbursement for expenses is subject to Government Code sections 53232.2 and 53232.3. Under these sections, the City must adopt a written policy which specifies the types of occurrences that qualify for reimbursement. The policy may also specify reasonable reimbursement rates. The Council must complete expense reports documenting that the expenses meet the existing policy. These reports must be submitted within a reasonable time, and must be accompanied by receipts. All such documentation is public record.

For example, council members may be reimbursed for lodging and transportation costs for attendance at meetings and conferences. Government Code section 53232.3

requires council members to report on their attendance at those meetings and conferences at the next council meeting. The statute does not provide any guidance as to how detailed the disclosures must be. In a brief, informal survey, all 15 responding cities (all but one located in the Bay Area) simply had council members disclose which meetings and conferences they had attended since the last council meeting. These reports did not include disclosure of the costs of such attendance or the amount of reimbursement, although these expense reports are public records and would be disclosed upon request.

Spouses and Third Parties Don't even *think* of having the city reimburse a councilmember for his or her spouse's expenses while accompanying the councilmember on official city business. 75 Ops. Cal. Atty. Gen. 20 (1992); *Albright v. City of South San Francisco* (1975) 44 Cal.App.3d 866 (unauthorized reimbursement is illegal gift of public funds). Additionally, city council members cannot be reimbursed for purchasing meals for third parties such as constituents, legislators, and private business owners. 85 Ops.Cal.Atty.Gen. 210 (2002) And, of course, if a councilmember gets a fine from the FPPC, she is on her own. 61 Ops. Cal. Atty. Gen. 342 (1978)

Ethics Training Note also that if a city does provide for reimbursement of expenses, then all council members must undergo mandatory ethics training on a regular basis. (§§53234-53235).

Car Allowance/Other Monthly Stipends Government Code section 1223 permits city council members to contract directly with the city for a vehicle allowance when the council members' travel expenses are allowed by law.

Following the passage of Assembly Bill 1234 in 2005, which enacted Government Code sections 53202.3 and 53202.2, many city attorneys advised that the payment of predetermined monthly car allowances was legally questionable. After all, the statutes require *receipts for expenses*, a requirement that a car allowance is designed to make unnecessary. And, these "reimbursement statutes" were enacted *after* section 1223 and should therefore take precedence.

In light of the above, may a city council still receive a monthly, pre-determined car allowance, rather than reimbursement for actual vehicle expenses? The Attorney General ruled in 2010 that such a practice is still permissible, because a car allowance is not, strictly speaking, a "reimbursement" for expenses since it is a fixed amount paid periodically, and likely in advance, pursuant to section 1223. 93 Ops.Cal.Atty. Gen. 9 (2010).³

3 The courts, too, have taken an expansive view of section 1223. In *Citizen Advocates, Inc. v. Board of Supervisors* (1983) 146 Cal.App.3d 171, the court upheld, as allowable under section 1223, a county policy that authorized payment to certain designated county officials of an auto allowance of \$100 per month in addition to payment of mileage at a fixed rate. The court interpreted the disjunctive "or" in the statute to mean the conjunctive "and."

Caveat: What about other monthly stipends? For example, instead of providing cell phones for employees, what if a city has a policy of paying its employees a monthly stipend for using their personal cell phones for city business? While an invoiced reimbursement for official phone calls would clearly be permissible, a stipend is not a “reimbursement” under the AG’s analysis. While permissible for other city employees, the payment of such stipends to council members would seem to constitute monetary compensation that is authorized neither by the ordinance establishing their salaries, nor by a statutory provision such as Section 1223 regarding car allowances.

H. Payments for Service on Other Boards or Commissions

Unless specifically authorized by state law, a city council may not pay itself more money for serving on other boards and commissions. This is one case where an ordinance will definitely not count as a statute.⁴ If the other statute that authorizes the compensation does not specify the amount of compensation, the maximum amount is one hundred fifty dollars (\$150) per month for each commission, committee, board, authority, or similar body. (Government Code §36516(c).)

One common example is service on the Board of Directors of a Redevelopment Agency. A maximum stipend of \$30 per meeting attended, not to exceed four meetings per month, is authorized by Health and Safety Code section 33114.5.

Practice Tip: Because Redevelopment Agency actions are often accompanied by City Council action, some cities have found it convenient to combine the agendas of the two entities into one agenda, so that it is not necessary to adjourn one meeting and then convene the other. This means that, when action on redevelopment matters is necessary, the City Council meeting is denominated as a “joint” meeting with the Redevelopment Agency. The City Clerk may inadvertently label a council meeting as a joint meeting even where no specific Agency action will take place. No payments should be made to council members for Agency meetings unless the joint meeting actually has items of business for the Agency contained therein. 83 Ops. Cal. Atty. Gen. 215 (2000).

New Legislation: Note that new Assembly Bill 23, creating a new section 54952.3, will, as of January 1, 2012, require local agencies conducting simultaneous or serial meetings of multiple boards or commissions to publicly, orally announce any compensation received by the local legislative body for such additional meeting(s), in

⁴ For an Attorney General opinion discussing the circumstances under which a municipal ordinance will not count as a “statute,” see 81 Ops.Cal.Atty.Gen. 75 (1998), concluding that the appointment power of an elected mayor of a general law city extends to appointments that a city ordinance requires to be made by the city council despite Government Code §40605’s mayoral appointment directive. (The AG reputed this conclusion in 2006, concluding that §40605 addresses *membership* on the commission (e.g. how many members; should the members be residents; should the members have different skills such as design or architecture, etc.) and does not address the appointment *process*).

excess of or in addition to statutorily established amounts.

I. Conflict of Interest/Government Code Section 1090

Under Government Code section 53208, there will be no section 1090 violation when council members approve salary or health benefits for themselves.

As far as the Political Reform Act is concerned, council members may ordinarily vote for the ordinance increasing their salary. However, if any particular vote will only affect *some* council members, but not *others*, then a conflict may be deemed to exist.

Section 87100 of the Political Reform Act prohibits any public official from making, participating in making, or using his or her official position to influence a governmental decision in which the official has a financial interest.

A public official has a “financial interest” in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official’s economic interests.⁵ (§87103; 2 CCR §18700(a).)

As relevant here, section 87103 provides that a public official has a “financial interest” in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or on any of the official’s economic interests. A city council member would have two economic interests in his or her salary:

- An economic interest in a source of income, including promised income, which aggregates to \$500 or more within 12 months prior to the decision. (§87103(c); Regulation 18703.3.)
- An economic interest in his or her personal finances, including those of his or her immediate family. (§87103; Regulation 18703.5.)

City Council salary does not constitute an “economic interest in a source of income,” because the Act’s definition of *income* expressly excludes salary and reimbursement for

⁵ The Commission has adopted an eight-step standard analysis for deciding whether an individual has a disqualifying conflict of interest in any given governmental decision. To determine whether a given individual has a disqualifying conflict of interest under the Act, officials apply the following eight criteria: (1) Determine whether the individual is a public official; (2) Determine whether the public official will be making, participating in making, or using or attempting to use his/her official position to influence a government decision; (3) Identify the public official’s economic interests; (4) For each of the official’s economic interests, determine whether that interest is directly or indirectly involved in the decision; (5) Determine the applicable materiality standard; (6) Determine whether it is reasonably foreseeable that the decision will have a material financial effect on each economic interest; (7) Determine if the reasonably foreseeable financial effect is distinguishable from the effect on the public generally; and (8) Determine if the public official’s participation is legally required.

expenses and per diem received from a state, local, or federal government agency.⁶

Nonetheless, FPPC advice letters make clear that an effect on an official's governmental salary may still be disqualifying under limited circumstances as a "material and foreseeable financial effect on the official's personal finances." See, *Scott Howard Advice Letter, A-07-182*, and *Robert Hoffman Advice Letter, I-11-005*.

Under Regulation 18705.5(a), a financial effect of a decision on an official's personal finances is material if it is at least \$250 in any 12-month period. Certainly almost any salary increase would exceed this amount. However, Regulation 18705.5(b) also includes an exception to the personal financial effects rule for certain governmental decisions that affect only the salary, per diem, or reimbursement of the public official:

"The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of his or her immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of his or her immediate family, *or to set a salary for the official or a member of his or her immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.*" (Emphasis added)

Thus, the FPPC has advised that generally an official is not disqualified from taking part in salary and benefit decisions that will affect his or her income as an employee of the agency. However, the Act would prohibit the official from taking part in salary and benefit decisions that will set a salary or benefits for the official different from other employees in the same job classification or position.

For example, where the Council is voting on whether to provide itself with a particular retirement benefit (such as the monetary contribution to deferred compensation "in-lieu of" city payment of the council members' medical premiums, discussed *supra*, and only two of five council members were eligible to receive the in-lieu payment, those council members must abstain. See, e.g. *Scott Howard Advice Letter, A-07-182* (Council member, who is nominated to be mayor, may not participate in the debate and vote to appoint a Mayor where the appointed Mayor will receive an additional \$150 a month in his automobile allowance).

⁶ Government Code Section 82030(b)(2) provides that "income" does not include:

"Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code."

Practice Tip: Look carefully at how a council vote may impact different council members differently. Although nominally broad in application, if the real life impacts of the ordinance will affect some council members but not others, a conflict of interest is deemed to exist.

J. Charter Cities

There are no cases explicitly addressing whether charter cities are subject to the strictures of section 36516 et seq. regarding Council salaries. But the proposition is well-established that the compensation paid to officers and employees of charter cities is a municipal affair subject to the city charter. See, e.g., *Bishop v. San Jose* (1969) 1 Cal.3d 56, 64 (*wages of city employees not subject to prevailing wage requirements*); *Sonoma County Organization of Public Employees v. Sonoma* (1979) 23 Cal.3d 296, 317 (*determination of wages paid to employees*).

However, the Legislature has declared, via Government Code section 53208.5, that the area of *health benefits* provided to city council members is a matter of statewide concern and not a municipal affair.

II. HEALTH AND WELFARE BENEFITS FOR CURRENTLY SERVING COUNCIL MEMBERS

Several provisions in the Government Code allow the City to provide benefits for current employees and council members, subject to certain restrictions.

PEMHCA Coverage

Many cities are members of California Public Employee's Retirement System (PERS). The Public Employees' Medical and Hospital Care Act ("PEMHCA" - Gov. Code, §§22750-22948) allows public agencies to provide medical benefits to their employees and "annuitants" (retirees) under specified circumstances. PEMHCA is administered by PERS. A local "contracting agency," such as the city, and "each employee or annuitant" must contribute to the cost of health plan coverage provided under a plan approved by PERS. (§22890(a)). (89 Ops.Cal.Atty.Gen. 232 (2006)).

While there is no case law making this distinction, the Attorney General has held that PEMHCA authorizes an alternative method for local agencies to provide health benefits. An agency can operate under the PERS-PEMHCA scheme for medical coverage, and also provide other health and welfare benefits that are not subject to PEMHCA. 76 Ops.Cal.Atty.Gen. 91 (1993). When an agency contracts for its own health insurance coverage for elected officials (e.g. dental, vision, life, or possibly additional medical coverage beyond that afforded in the City's PERS resolution), the legality of that coverage is subject to Government Code sections 53200-53210. Those sections are not applicable to PEMHCA coverage. See, 90 Ops. Cal. Atty. Gen. 32 (2007) (County

may contribute towards the cost of health care coverage provided under PEMHCA for a retired board member “who is a CALPERS member and is otherwise eligible for such health care coverage” even though the retired member does not meet the criteria set forth in Government Code section 53201).

Caveat: City council members are automatically excluded from PERS membership unless they file an election in writing to become a member pursuant to Government Code section 20322. Why a councilmember would choose not to be enrolled in PERS is beyond me, but if she is not enrolled, it is questionable as to whether she is entitled to receive medical coverage under PEMHCA. Government Code section 22772, subsection (a)(2) includes elected officials of contracting agencies in the definition of “employee” under PEMHCA, only *if* the elected official participates in “the retirement system provided by the employer.” This phrase is not defined in the PERS statutes. Use of the word “the,” as opposed to “a,” might mean that only the PERS retirement system is contemplated. But it is conceivable that the statute could be interpreted to apply to more than one retirement system offered by the City – a deferred compensation or annuity program, for example. Government Code section 22920 might lend credence to this position. It sets forth criteria for entities to become subject to PEMHCA. First, an agency that contracts with PERS is eligible for PEMHCA. But an agency that is not subject to PERS and that “provides a retirement system for its employees funded wholly or in part by public funds...” is also eligible.

I think the better view is that entities which do not contract with PERS but have their own retirement system in lieu of PERS are still eligible for PEMHCA coverage. But it seems reasonable to conclude that, once a city does contract with PERS, PERS becomes “the retirement system” referred to in the statute. This approach would require all council members to enroll in PERS in order to receive medical coverage under the PERS system.

Non-PEMHCA Coverage: Government Code Section 53200 et seq.

Government Code section 53205⁷, in conjunction with section 53201(a)⁸, makes clear

7 “From funds under its jurisdiction, the legislative body may authorize payment of all, or such portion as it may elect, of the premiums, dues, or other charges for health and welfare benefits of officers, employees, retired employees, former elective members specified in subdivision (b) of Section 53201, and retired members of the legislative body subject to its jurisdiction. Those expenditures are charges against the funds....” “Officers and employees” is defined by Government Code §53200(e) to include current members of the city council. (Emphasis added)

8 “(a) The legislative body of a local agency, subject to conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body, as provided in subdivision (b), who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that the charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Section 53205.” (Emphasis added)

that the City may pay for all, or such portion as it elects, of the health and welfare benefits offered to the Council and to city employees. Government Code Section 53205.1, read in conjunction with section 53200(e),⁹ also authorizes the provision of health benefits for spouses and dependents of council members. See, 76 Ops.Cal.Atty.Gen. 91 (2003).

Further, section 53201 provides, in subsection (a), that the city council may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body who elect to accept the benefits and who authorize the local agency to deduct the premiums from their compensation, *to the extent that the charges are not covered* by payments from funds under the jurisdiction of the local agency as permitted by section 53205. Section 53208 confirms that any member of a legislative body may participate in any plan of health and welfare benefits permitted by law.

Three other statutes place constraints on the amount and level of benefits the city council (and employees) may receive:

1. The benefits provided for council members must be the “same benefits” that the City pays for “its employees” (§36516(d));
2. The “medical plan” must provide benefits for “large number of employees” (§53202.3);
3. Where different benefit structures are provided for different sets of employees, the maximum benefits received by the Council can be no greater than the most generous “schedule of benefits” provided to any category of *non-safety* employees (§53208.5).

How these quoted phrases are ultimately defined and harmonized by the courts will determine the legality of benefits offered to city councils. There is practically no guidance on these issues from the Attorney General’s office, let alone the judiciary.

9 Section 53205.1(a) provides: “From funds under its jurisdiction, the legislative body may authorize payment of all or any portion as it may elect of the premiums, dues, or other charges for health and welfare benefits on the spouse and dependent children under the age of 21, dependent children under the age of 25 who are full-time students at a college or university, and dependent children regardless of age who are physically or mentally incapacitated, of those officers and employees, including retired officers and employees, subject to the jurisdiction and for whom those health and welfare benefits have been provided.”

Section 53200(e): “Employees” or “officers and employees” mean all employees and officers, including members of the legislative body, who are eligible under the terms of any plan of health and welfare benefits adopted by a local agency pursuant to this article.”

A. “Same Benefits” For Council As For “Its Employees” (§36516(d))

As stated, the benefits provided for council members must be the “same benefits” that the City pays for “its employees” (§36516(d)). Is this section violated if the Council gets much better benefits than most city employees? The question turns on how to define “its employees.” Does this mean that the City must pay exactly the same amount, and no greater, for the city council and *all or most city employees, or just some employees?*

The question is answered by interpreting and harmonizing this requirement in a manner consistent with another provision in the statutory scheme – section 53208.5, which makes clear that where different benefit structures are provided for different sets of employees, the maximum benefits received by the Council can be no greater than the most generous “schedule of benefits” provided to any category of non-safety employees. Since this specific statutory provision allows city council members to receive greater benefits than most categories of city employees, Section 36516(d) ought to be interpreted in the same way. Code of Civil Procedure section 1859 expresses the canon of statutory interpretation that when a general and particular provision is inconsistent, the latter is paramount to the former. Thus, so long as *some non-safety* employee groups get the same coverage as the council, the statutes allow the council to receive those same benefits even though they may be higher than for most employees.

B. The Health Care “Plan” Must Provide “Benefits” For “Large Numbers of Employees”

Government Code section 53202.3 provides in relevant part that “all plans, policies or other documents used to effectuate the purposes of this article shall provide benefits for large numbers of employees....”

The same question presents itself: whether exactly the same coverage, on the same terms, must be provided to large numbers of employees, or whether there may be differences in coverage so long as the health plan itself offers some coverage to large numbers of employees. For example, a city might have several bargaining groups or other recognized employee units. While the City would offer health insurance to all groups, the City might pick up different degrees of the monthly premiums, depending on the unit.

The plain language of the statute speaks in terms of the plan offering benefits to large numbers of employees. On its face, it does not require that the same benefit package be offered to all employees. The “statute’s plain meaning controls the court’s interpretation unless its words are ambiguous. If the plain language of a statute is unambiguous, no court need, or should, go beyond that pure expression of legislative intent.”¹⁰ Further, the court’s primary objective is to determine the legislative intent

10 See *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 572 (1999), *quoting* *Kobzoff v. Los Angeles County Harbor/UCLA Medical Center*, 19 Cal.4th 851, 861 (1998).

behind the enactment of the statute.¹¹

Again, by harmonizing this statute with others, we see that the Legislature contemplated that cities would offer different benefit packages to different groups of employees. This is explicitly stated in Government Code section 53208.5's reference to "agencies with different benefit structures...." The one appellate case to discuss this issue has interpreted the statutes to contain no limit on the amount or kinds of benefits that a city may provide its legislative body except that those benefits must not exceed the level of benefits given to any non-safety group. In *Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 630, 654-55 (2008)¹², the court considered the validity of granting benefits to superior court judges. Though focused on other statutes, the opinion considers the application of Section 53201, which authorizes local agencies to provide "any health and welfare benefits for the benefit of its officers, employees, *retired employees, and retired members of the legislative body*," and the Section 53208.5 limitation of such benefits to the most generous benefits offered to non-safety employees. The court indicates that there is "no limitation on the amount or kinds of benefits a local agency may provide its employees or any requirement the benefits be provided on a uniform basis to all classes and categories of employees, except that the benefits provided to members of an agency's legislative body are limited to "the most generous schedule of benefits being received by any category of nonsafety employees."¹³ (Emphasis added) This language is shadowed in at least one Attorney General opinion, recognizing that benefits "must be part of a *plan* for large numbers of employees." 80 Ops. Cal. Atty. Gen. 119 (1997)(emphasis added). The wording implies that the level of benefits offered to different groups need not be identical, so long as the plan itself offers some coverage to large numbers of employees.

Thus, so long as a large number of employees receive some level of benefits under the medical plan, section 53202.3 should not be an issue. What constitutes a "large number?" There is virtually no guidance on this issue. In 83 Ops. Cal. Atty. Gen. 45 (2000), the Attorney General examined certain annuities offered by a county office of education, concluding that they were not "health and welfare" benefits under Government Code sections 53200-53210. In so concluding, the AG noted the requirement that any plan "shall provide benefits for large numbers of employees"

11 See *White v. Ultramar, Inc.*, 21 Cal. 4th 563, 572 (1999), *quoting* *Dyna-Med, Inc. v. Fair Employment & Housing Com.*, 43 Cal.3d 1379, 1386 (1987).

12 Note: overturned on unrelated constitutional grounds

13 "In the context of the wide range of benefits allowed by section 53201, section 53200.3 only requires that each county provide its judges the same or similar health and employee benefits it provides "its employees." Because, as section 53208.5 expressly recognizes, the benefits permitted under section 53201 may vary substantially between classes and categories of employees and may be subject to abuse, the reference to benefits provided "employees" in section 53200.3 does not contain a readily discernible standard or safeguard." *Sturgeon v. County of Los Angeles*, 167 Cal.App.4th 630, 654-55 (2008) Section 53200.3 limits superior court judges "to the same or similar employee benefits as are now required or granted to employees of the county," a standard just as ambiguous as that contained in Sections 53202.3 and 36516(d).

and observed that the “plan was offered to 58 out of 1,410 employees of the county office.” Based on the tenor of this observation, it is predictable that the AG would have found that this percentage did not constitute “large numbers of employees.”

Caveat: There are Attorney General opinions implying, without explicitly ruling, that the “same” level of benefits must be received by large numbers of employees.¹⁴ But I think it would be fair to conclude that, to the extent the City participates in a health care “plan” such as Kaiser or Blue Cross, the statute is satisfied if the basic coverage is the same for everybody even though the City might pay a higher share of the premiums for some employee groups as opposed to others. On the other hand, where the City provides certain benefits that are not part of a “plan,” per se, then it *might be* reasonable to conclude that such a benefit constitutes its own “plan” and the same benefit must be provided to large numbers of employees. For example, in 73 Ops.Cal.Atty.Gen. 296 (1990), the AG ruled that the city council of a general law city may provide for its members during their current terms of office a prepaid whole life insurance policy which would provide a member upon resignation or termination a direct and immediate cash benefit, provided that such benefits are available to a large number of the city's employees.

In the wake of the Bell scandal, there can be no guarantees that a court will apply these principles of statutory construction in the same manner. A trial or appellate court might easily fall into the trap of focusing on the exact benefit being offered, as opposed to entire “plan” or “policy,” of which the one benefit is just a component.¹⁵ Again, there are

14 These AG opinions mentioning §53202.3 seem to assume that the actual benefits provided to council members are the same as provided to large numbers of employees. The Attorney General has ruled that a school board may grant fully paid health and welfare benefits to age 65 to its former elective members who have served at least 12 years on the board after January 1, 1981, if such benefits are a continuation of a grant made or in effect during the members' respective terms of office and the benefits are provided to large numbers of the school district's employees. 77 Ops. Cal. Atty. Gen. 50 (1994). In that opinion, and one other, 73 Ops. Cal. Atty. Gen. 296 (1990), the AG seemed to imply, without discussing directly, that the exact benefits provided to council members must be the same as provided to large numbers of employees.

15 In fact, the Attorney General did just this in its opinion on the legality of the “in-lieu” pay, 89 Ops.Cal.Atty.Gen. 107 (2006), discussed in Section 1.F, supra. The AG ruled that “in-lieu” pay was not part of the health and welfare plan offered to employees, because it was a cash payment as opposed to a payment directly for health and welfare coverage. A good argument can be made that the AG erred in focusing its analysis on the *benefit received*, as opposed to the “*plan*.” The provision of in-lieu benefits to city officials and employees can be argued to be part and parcel of the city’s medical “plan;” since council members “may participate in *any plan* of health and welfare benefits,” such a benefit should be allowable. Such a reading gives a more expansive interpretation to the term “plan of health and welfare benefits,” reasoning that the plan’s allowance of in-lieu pay when dual medical coverage would otherwise occur results in a saving of city funds, and is in furtherance of the city’s ability and obligation to pay for medical coverage of all city employees. Because the AG fell into the seductive trap of concentrating on the exact benefit as opposed to the “plan” in its entirety, it would not be shocking to see a court follow the same mindset.

no Attorney General opinions directly on point, and even the holding in the *Sturgeon* case is not directly on point. In light of the *Sturgeon* case, however, it should be safe to assume that a city need not pay the same amount for all employees, and that council members are not restricted to exactly the same city payments as “most” other employees.

III. MEDICAL BENEFITS FOR COUNCIL MEMBERS WHO LEAVE OFFICE

Cities may provide post-service health benefits by two different means: 1) through a PERS retirement contribution; and 2) in addition to, or in place of, PERS benefits. Consequently, in reviewing the legality of this benefit, it is necessary to analyze two different statutory schemes as set forth below:

PERS Contribution: The Public Employees' Medical and Hospital Care Act (“PEMHCA” - Gov. Code, §§ 22750-22948) permits public agencies to provide health care benefits to their employees and “annuitants” (retirees) under specified circumstances. PEMHCA is administered by PERS. A local “contracting agency,” such as the city, and “each employee or annuitant” must contribute to the cost of health plan coverage provided under a plan approved by PERS. (§22890(a)). (89 Ops.Cal.Atty.Gen. 232 (2006).)

Non-PEMHCA Coverage: While there is no case law making this distinction, the Attorney General has held that PEMHCA authorizes an alternative method for local agencies to provide health benefits. One agency can operate under the PERS-PEMHCA scheme for medical coverage, and also provide other health and welfare benefits that are not subject to PEMHCA. 76 Ops.Cal.Atty.Gen. 91 (1993). When an agency contracts for its own health insurance coverage for elected officials (e.g. dental, vision, legal, life), the legality of that coverage is subject to Government Code sections 53200-53210.

A. Retiree Medical Coverage Under PEMHCA

Under Government Code sections 22890 and 22892, both the city and employees/annuitants are to contribute towards the cost of the medical premiums. The amount of the city contribution is set by city council resolution to be filed with PERS. That amount shall be equal for both employees and annuitants, and cannot be less than \$97 per month as of 1998, adjusted each year by PERS to reflect CPI.¹⁶ Notwithstanding this equal contribution requirement, the city is allowed to establish a lesser monthly city contribution for annuitants than employees, provided that the city contribution for annuitants is annually increased by a specified formula until the contributions are equal. The annual adjustment requirement only applies to cities which become subject to it after January 1, 1986. Thus, the statute anticipates that, eventually, the City will contribute an equal amount to medical coverage for both current employees *and* retirees.

¹⁶ The current amount: \$285 for family coverage; \$220 for two-party coverage; \$108 for single coverage.

Following negotiations with represented employees, a city could choose to prospectively amend its resolution, or adopt a resolution under Government Code section 22893, which authorizes the City to contribute to retiree medical coverage in specified percentages, such as 50% after 10 years of service, up to 100% after 20 years of service. Certain other provisions in the statute govern the calculations.

When PERS issues its monthly retirement checks, it will deduct the entire cost of medical insurance from the retiree's check, backfilled by the amount that the City contributes pursuant to its resolution which established the amounts contributed for employees and annuitants.¹⁷ The same benefit is provided to all employees, elected officials, and retirees, and thus would be in full compliance with Government Code section 53200 et seq., if a court were to rule that coverage under PEMHCA was also subject to the limitations and restrictions set forth in this other statutory scheme.

B. Non-PEMHCA Continuation of Health Coverage

If a city supplements medical coverage payments to former council members beyond the amount set forth in its PEMHCA resolution, or offers additional health and welfare coverages, the supplement must be analyzed as a "health and welfare" benefit under Government Code section 53201 et seq.

The applicable statute here is Government Code section 53201, repeated in its entirety, with emphasis added, in the footnote.¹⁸

¹⁷ 2 C.C.R. §599.504(f)

¹⁸ (a) The legislative body of a local agency, subject to conditions as may be established by it, may provide for any health and welfare benefits for the benefit of its officers, employees, retired employees, and retired members of the legislative body, as provided in subdivision (b), who elect to accept the benefits and who authorize the local agency to deduct the premiums, dues, or other charges from their compensation, to the extent that the charges are not covered by payments from funds under the jurisdiction of the local agency as permitted by Section 53205.

(b) The legislative body of a local agency may also provide for the continuation of any health and welfare benefits for the benefit of former elective members of the legislative body who (1) served in office after January 1, 1981, and whose total service at the time of termination is not less than 12 years, or (2) have completed one or more terms of office, but less than 12 years, and who agree to and do pay the full costs of the health and welfare benefits.

(c) (1) Notwithstanding any other provision of law, a legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body January 1, 1995, shall not provide those benefits to any person first elected to a term of office that begins on or after January 1, 1995, unless the recipient participates on a self-pay basis, as provided in subdivision (b).

(2) A legislative body of a local agency that did not provide benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, shall not provide those benefits to former elective members of the legislative body after January 1, 1994, unless the recipients participate on a self-pay basis.

(3) A legislative body of a local agency that provided benefits pursuant to subdivision (b) to former elective members of the legislative body before January 1, 1994, may continue to provide those benefits to those members who received those benefits before January 1, 1994.

In interpreting this statute, the first key is realizing that there is a difference between “retired” members of the legislative body, and “former” members of the legislative body. Government Code section 53201, subdivisions (b) and (c) prohibit continued medical coverage only for “former” council members, as opposed to council members “retired” under PERS and subject to PEMHCA. A “former” council member is someone who has served on the council but does not retire upon leaving office.¹⁹ The Attorney General has ruled that there is no contradiction between this statutory scheme and PEMHCA, because the prohibitions and restrictions of section 53201 regarding “former members” have no application to annuitants enrolled under PEMHCA. 90 Ops. Cal. Atty. Gen. 32 (2007).

In a PERS jurisdiction, a one-term council member would be a former member, because he or she would not have served for the five years necessary to vest under PERS. For these council members who leave office without having officially “retired,” the statute seemingly provides as follows:

First, a council could provide for “former” council members serving after 1981 to receive continued coverage if they have served at least 12 years. If less than 12 years, the former member could participate in the health plan on a self-pay basis. As of 1995, however, this broad authorization for city-paid coverage after 12 years, set forth in subsection (b) was terminated by subsection (c). See 83 Ops. Cal. Atty. Gen. 14 (2000) (city could provide for continued health coverage for former councilmember who has served 12 years, but not for former councilmember who has served 5 years.)

Second, where a city did provide these benefits to former council members as of January 1, 1995, those council members would be grandfathered in when they leave office, but the city could not offer the same coverage to council members first elected after January 1, 1995. If the City did not provide “former” council members with medical coverage before that date, it cannot thereafter provide it to council members unless it is on a self-pay basis, even though the council members may have been on the council prior to the cut-off date.

(d) The legislative body of a local agency that is a local hospital district may provide for any health and welfare benefits for the benefit of (1) members of its medical staff, employees of the medical staff members, and the dependents of both groups on a self-pay basis; and (2) employees of any entity owned, managed, controlled, or similarly affiliated with, the legislative body of the local hospital district, and their dependents, on a self-pay basis.

(e) The provisions of this section are severable. If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

¹⁹ Under PERS, this means not only that the official serve at least five years, but that he or she file retirement papers within 120 days of separation of service. (Gov’t Code §22760(c)) In other words, a councilmember who served well over the five year minimum, but left office when he was only 35 years old, could not receive city-paid PEMHCA continued health care coverage because he would not be eligible to retire until the age of 50.

Summary: In the modern era, any council member in a PERS city who serves less than five years, or is not yet 50 years old at the time he leaves the Council, will not be entitled to PEMHCA medical coverage, or city-paid health and welfare coverage unless it is on a self-pay basis. No city may, at this point, provide for city-paid health and welfare coverage for “former” council members where it had not done so before 1994.

C. Non-PEMHCA Coverage For “Retired” Council Members

Are “retired” members subject to the same constraints as “former” members, as set forth in subsections (b) and (c)? As to the City’s payments to PERS for coverage under PEMHCA, the answer is no. The AG has ruled that a county may contribute toward the costs of health care coverage provided under PEMHCA for a retired member of the board of supervisors who is a PERS member and is otherwise eligible for such health care coverage, even though the supervisor did not meet the criteria in subdivisions (b) and (c): subdivisions (b) and (c) are not applicable to PEMHCA annuitants (council members who retire under the PERS system), as those provisions would conflict with the mandate of Government Code section 22890(a), that contracting agencies must contribute to the health care coverage of their annuitants (retirees). 90 Ops. Cal. Atty. Gen. 32 (2007).

If the Attorney General is correct in its interpretation of the statute,²⁰ and its opinion is applied at face value, the 12 years of service requirement for a former council member to receive continued, city-paid health and welfare benefits, and other restrictions in the section 53200 series, does not apply where a council member has retired.²¹

The unanswered question: if indeed a councilmember has attained “retired” status, are the section 53201 restrictions on health and welfare benefits inapplicable even as to benefits that are above and beyond the city’s PEMCHA contribution? For example, may a city provide continued dental coverage to retired council members even though they did not serve for 12 years? Even though such coverage was not provided before 1995? Assuming that the City’s PERS resolution does not provide full medical coverage for retirees, can the City “supplement” its contribution so that the entire premium is paid by the City, instead of just the portion set forth in the section 22890 resolution?

Government Code section 53205 expressly provides that the council may authorize payment of all, or such portion as it may elect, of the premiums, dues, or other charges for health and welfare benefits of “officers, employees, retired employees, former elective members specified in subdivision (b) of section 53201, and *retired* members of the legislative body subject to its jurisdiction.” This explicit reference to retired members of the legislative body in the same sentence as “former” members provides support for

²⁰ While AG opinions are treated with “great respect,” they are not binding upon a court. *Thorning v. Hollister School Dist.* (1993) 11 Cal.App.4th 1598, 1604.

²¹ 90 Ops. Cal. Atty. Gen. 32 (2007).

the position that a city may provide for retired council members both a supplement to its PEMHCA contribution (so long as provided to other non-safety employees), as well as any other health and welfare benefits not covered by PEMHCA, such as dental or life insurance.

On the other hand, the AG opinion, 90 Ops. Cal. Atty. Gen. 32 (2007), rests on the conclusion that applying the section 53201 restrictions to PEMHCA payments would conflict with the PEMHCA statutory scheme. It did not discuss whether, once retired under PEMHCA, a council member is restricted to the benefits offered by that system. If the City is picking up payments in addition to, and not required by PEMHCA, the underlying rationale for exempting “retired” as opposed to “former” council members from section 53201 may be lost.

It can thus easily be argued that council members retired under PERS are exempt from those restrictions only to the extent that they receive PERS-authorized and mandated continued medical coverage as set forth in each city’s resolution under Government Code sections 22890 and 22892. In light of the statutory intent of the entire statutory scheme²² there is a risk that a court would rule that a supplement beyond the resolution’s amount would violate section 53201(b).

However, the fact is that both the statutory scheme and the AG opinions do draw a clear line between status of “former” council member, and the status of “retired” council member. Cities that choose to take that division at face value certainly have a good faith argument in their favor. In fact, good policy reasons for this division can be articulated: the requirement to be “retired,” at least in a PERS jurisdiction, means that no council member who has left service is entitled to any city-paid benefits unless he or she is at least fifty years old, has served 5 years, and files retirement papers right after separation from service. So, anyone who serves on a council at a young age, and leaves the council prior to age 50, does not qualify under PERS rules for PEMHCA coverage because of the necessary lapse in time between separation from service and the retirement date. Similarly, he or she does not qualify for “continued” benefits under Section 53201 because he or she will not be retired until long after leaving office, even if he or she has served 12 years, and thus will not be receiving PEMHCA coverage when

22 Government Code section 53208.5 provides, in relevant part: “(a) It is the intent of the Legislature in enacting this section, to provide a uniform limit on the health and welfare benefits for the members of the legislative bodies of all political subdivisions of the state, including charter cities and charter counties. The Legislature finds and declares that uneven, conflicting, and inconsistent health and welfare benefits for legislative bodies distort the statewide system of intergovernmental finance. The Legislature further finds and declares that the inequities caused by these problems extend beyond the boundaries of individual public agencies. Therefore, the Legislature finds and declares that these problems are not merely municipal affairs or matters of local interest and that they are truly matters of statewide concern that require the direct attention of the state government. In providing a uniform limit on the health and welfare benefits for the legislative bodies of all political subdivisions of the state, the Legislature has provided a solution to a statewide problem that is greater than local in its effect.”

he or she does finally file with PERS for retirement.

If, in fact, the statute's restrictions are completely inapplicable to any kind of health and welfare benefit offered to "retired" members, and that a city therefore has decided to supplement its payments for PEMHCA medical coverage beyond the amounts set forth in its section 22890 resolution, one more issue presents itself: Does payment of the remaining cost of medical insurance premiums directly to the council member qualify under section 53200(d) as an allowable "health and welfare benefit?" That section defines the term to mean "any one or more of the following: hospital, medical, surgical, disability, legal expense or related benefits including, but not limited to, medical, dental, life, legal expense, and income protection insurance or benefits, whether provided on an insurance or a service basis, and includes group life insurance." (Emphasis added).

In 83 Ops. Cal. Atty. Gen. 124 (2000), the Attorney General considered the meaning of the words "provided on an insurance or a service basis." The AG determined that a "service" plan is distinguished from an "insurance" plan in that the latter features indemnity paid to the "insured." It reimburses for all or part of an obligation which was incurred. The principal feature of a "service" plan, on the other hand, is that the physician has agreed to look exclusively to the plan for payment. The member owes nothing. Regardless of whether the plan is an insurance plan or a service plan, the AG held that the school district was authorized to pay all or a part of the cost of such benefits.

The Attorney General then concluded that the school district could allow its governing board members to choose their own service or insurance plans and be reimbursed for such costs. "If the school district chooses to grant such approval, we see no impediment to the district paying for the benefit by way of reimbursement to its officers or employees instead of making direct payment to the insurer or health care provider." The AG did rule that a school district may not make cash payments to members of its governing board in lieu of providing them with health insurance benefits.

Summary: The Attorney General in 90 Ops. Cal. Atty. Gen. 32 (2007) held that the section 53201 restrictions will not apply to retired council members, and thus cities which have provided such supplemental benefits have at least a good faith basis to conclude that direct reimbursement to retired council members for the cost of their medical premiums is a permissible health insurance benefit under the Government Code, provided that it satisfies the other requirements set forth in Government Code section 53200 et seq. However, logically, an argument can be made that the AG's analysis should be limited to medical benefits provided under PEMHCA. Moreover, it has never been blessed by a court, and there are substantial arguments that could lead a court to conclude otherwise.

IV. OTHER RETIREMENT BENEFITS

Government Code section 53060.1 declares that the extent of retirement benefits for legislative bodies, including city councils, is a matter of statewide concern and is not a municipal affair. The statute places similar constraints on the receipt of retirement benefits as the section 53200 series does on health and welfare benefits. Specifically, the statute provides that council retirement benefits “shall be no greater than that received by nonsafety employees” of the city, and that “in the case of agencies with different benefit structures, the benefits of members of the legislative body shall not be greater than the most generous schedule of benefits being received by any category of nonsafety employees.” The section is applicable to any member of a legislative body whose first service commences on and after January 1, 1995.

One other statutory scheme deserves mention. Government Code section 45300 et seq. provides that “any city may establish a retirement system for its officers and employees and provide for the payment of retirement allowances, pensions, disability payments, and death benefits...” (§45301). The city cannot adopt an ordinance establishing such a system unless the employees first approve it in a secret ballot election. The ordinance requires a 2/3 vote of the Council or a majority vote of the electorate, and only the electorate can repeal it. Under the statute, this city retirement system can establish reciprocity with PERS.

V. Conclusion

Each city council faced with the question of determining its own salary and benefits must confront an ethical dilemma and must make a value judgment as to salary and benefits. It is likely that some of the electorate in your city, in the wake of the Bell scandal, now feels that all public servants, including council members, are overpaid. Many may feel that, since members of boards of directors of local non-profit corporations receive no salary for their charitable endeavors, so, too, councilmembers should also receive no salary or benefits since they are engaged in a public, charitable endeavor for the good of the community. On the other hand, it can also be fairly stated that council members can and do put in long hours and have sometimes weighty responsibilities, worthy of recompense.

In determining that any salary (and benefits) should be paid, or that existing salaries should be increased, a city council must weigh and balance these two competing theories, and try to minimize the inherent self-interest involved in voting on such items.

This paper has attempted to answer some of the questions involved in these decisions. It does NOT cover IRS /tax implications where a city pays for medical or retirement expenses, and, given the uncertainty of the law in these areas, it certainly does not purport to offer definitive answers and unassailable conclusions. The author will be happy to discuss any issues, however, with inquiring minds.

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CITY OF FORT BRAGG

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Legal Considerations for Offering Childcare Assistance to City Council Members

This request must consider the rules and regulations surrounding City Council salaries, reimbursements and benefits. In the wake of the City of Bell scandal, salaries and benefits provided to city council members are under increased scrutiny. Government Code Section 36516 authorizes councilmember monthly salaries for cities with populations of up to and including 35,000 people, that must be approved by ordinance, up to a maximum of \$300 per month. This is councilmembers current salary. Government code allows cities to increase the salary of councilmembers beyond what is provided in the government section by an ordinance or by amendment to an ordinance by no more than an amount equal to 5 percent for each calendar year from the operative date of the last adjustment of the salary in effect when the ordinance or amendment is enacted. The maximum 5% per year percentage must only be applied once, with no compounding. The calculation may only be based on what the actual salary was, not on what it could have been. In the City of Fort Bragg's case, it has been ten years since the last salary ordinance in 2012. Therefore, only one calculation – an increase of 50% - is to be made (10 years times 5% = 50%), not ten separate calculations, one on top of another. This calculation amounts to \$450 per month, an increase of \$150 per month or \$1,800. Automatic future increases are not allowed.

If the a salary ordinance was enacted, Government Code Section 36515.5 prohibits any change in compensation during the council member's term of office. It does not mean that Councilmember X, elected in 2020, must wait until their next term of office beginning in 2024. Since city council members serve staggered terms, Councilmember X will be eligible for an increase following the next municipal election in 2024, when two or three of their compatriots must run for reelection, even though X is in the middle of their own term. There are more rules regarding salary, but this is meant to provide the main points. If it ends up that council wants to move in this direction, then more specifics will be provided.

While it may seem the above is not relevant, it is relevant due to the rules regarding stipends, which is one possible way to provide childcare assistance. In general, if payment to a council member is not a permissible retirement or health and welfare benefit, or is not a valid expense reimbursement, then it will be counted for purposes of determining salary.

Another area to look at is through the City's health and welfare benefits. Pursuant to Government Code Section 36515, any amounts paid by a city for retirement, health and welfare, and federal social security benefits shall not be included for the purposes of determining salary under Government Code Section 31516, provided the same benefits are available and paid by the City for other employees. Amounts paid by a city for actual and necessary expenses shall not be included for the purpose of determining salary pursuant to Government Code Section 36514.5 under Section 36515.

Currently, the City's municipal code title 2.04.065 provides "City councilmembers and their dependents are eligible for health care and dental insurance through plans offered by the Redwood Empire Municipal Insurance Fund (REMIF). The premiums for such health care insurance and dental insurance are paid by the City during the time that a Councilmember serves on the City Council. The City also provides a life insurance and accidental death and dismemberment policy in the amount of \$5,000 for each Councilmember. The aforementioned benefits are not included for the purposes of determining salary provided the same benefits are available and paid by the City for its employees. This ordinance passed on June 11, 2012. Vision is also included as it is 100% paid for all City employees. As no mention is ma

The relevant municipal code mentioned above is silent on flexible spending accounts. Referring to a 2011 white paper authored by Brian Libow, City Attorney, San Pablo, obtained through the City of Fort Bragg's city attorney, Keith Collins, it is the author's opinion that a council member may participate in the City's flexible benefits plan, where the City, along with the employee, contributes pre-tax dollars to pay for medical or childcare expenses. Mr. Libow states the flexible spending arrangement is a valid health and welfare benefit despite its form as a direct payment to the council member, as it is effectively a reimbursement for actual medical expenses. This should be allowable and, as a health and welfare benefit received by all other city employees, may be authorized by resolution as well as by ordinance, as provided in the next paragraph.

Permissible health and welfare benefits, and provisions for expense reimbursement, may be established by resolution. An ordinance is not necessary. Since this is the case, what about payments such as stipends, such as cell phone, or other advance payments? So long as they are authorized by ordinance and, when added to normal salary, are under the maximum, such payments would be allowable. The legal article talks about other stipends. In our case, it would be a stipend for childcare by stating "While an invoiced reimbursement for official phone calls would clearly be permissible, a stipend is not a "reimbursement" under the Attorney General's analysis. While it is permissible for other city employees, the payment of such stipends to council members would seem to constitute monetary compensation that is not authorized by either by a salary ordinance, nor by a statutory provision, such as Section 1223 regarding car allowances. Since a childcare stipend is considered income, then the most the stipend can be is \$150 per month (\$1,800 annually). Otherwise, the City cannot allocate public funds for childcare purposes UNLESS the City does this for City employees, which we do not.

Based on the above information, it seems the options thus far are either to provide flexible spending account, dependent care, with the City contributing money along with the employee, or to allow for direct reimbursement. Offering a stipend is not an option. Direct reimbursement for childcare while conducting City business does seem to be an option. Pursuant to Government Code Section 36514.5, city council members may be reimbursed for actual and necessary expenses incurred in the performance of official duties. Any amounts paid by a city to reimburse a council member for actual and necessary expenses shall not be included for purposes of determining salary (§36516(e)). Reimbursement for expenses is subject to Government Code sections 53232.2 and 53232.3. Under these sections, the City must adopt a written policy which specifies the types of occurrences that qualify for reimbursement. The policy may also specify reasonable reimbursement rates. Council must complete the expense reports documenting that the expenses meet the existing policy and must be submitted within a reasonable time, and must be accompanied by receipts. The documentation is considered a public record.

At this time, the City's municipal code is silent on offering flexible spending reimbursement accounts (FSA) to council members. The City offer's two FSAs, a health care reimbursement (Health FSA) and a dependent care reimbursement (Dependent Care FSA). Neither of these FSA accounts have city contribution. All FSA contributions are employee contributions made on a pre-tax basis. The Health FSA is not relevant because it is meant to cover medical, dental and vision expenses, that are defined by the Internal Revenue Service (IRS). Health FSAs do not allow dependent care expenses. The Dependent Care FSA *does* allow and is specifically for childcare expenses.

It is also important to factor in any conflict of interest concerns. Government Code Section 1090, there will be no violation when council members approve salary or benefits for themselves. Regarding the Political Reform Action, council members may ordinarily vote for the ordinance increasing their salary. However, if any particular vote will only affect *some* council members, but not *others*, then a conflict may be deemed to exist.

Section 87100 of the Political Reform Act prohibits any public official from making, participate in making, or using their official position to influence a governmental decision in which the official has a financial interest. A public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect on one or more of the public official's economic interest (§87103(c); Regulation 18703.3.) This section provides that a public official has a "financial interest" in a governmental decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on the official or on any of the official's economic interests. For council members, there are two economic interests in their salary.

- An economic interest in a source of income, including promised income, which aggregates to \$500 or more within twelve months prior to the decision.
- An economic interest in their personal finances, including those of their immediate family.

City Council salary does not constitute an “economic interest in a source of income,” because the Act’s definition of *income* expressly excludes salary and reimbursement for expenses and per diem received from a state, local, or federal government agency. However, Fair Practices Political Commission (FPPC) letters clearly specify that an effect on an official’s governmental salary may still be disqualifying under limited circumstances as it would be considered “material and foreseeable financial effect on the official’s personal finances” based on *Scott Howard Advice Letter, A-07-182, and Robert Hoffman Advice Letter, I-11-005*. Under Regulation 18705.5(a), a financial effect of a decision on an official’s personal finances is material if it is at least \$250 in any 12-month period. As noted above an annual childcare expenses is approximately \$2,131 annually. There is an exception, however, under Regulation 18705.5(b) for certain governmental decisions that affect only the salary, per diem, or reimbursement of the public official:

“The financial effects of a decision which affects only the salary, per diem, or reimbursement for expenses the public official or a member of their immediate family receives from a federal, state, or local government agency shall not be deemed material, unless the decision is to hire, fire, promote, demote, suspend without pay or otherwise take disciplinary action with financial sanction against the official or a member of their immediate family, *or to set a salary for the official or a member of their immediate family which is different from salaries paid to other employees of the government agency in the same job classification or position.*”
(emphasis added and changed to reflect gender neutral language)

Therefore, the FPPC has advised that generally an official is not disqualified from taking part in salary and benefit decisions that will affect their income as an employee of the agency. However, the Act would prohibit the official from taking part in salary and benefit decisions that will set a salary or benefits for the official different from other employees in the same job classification or position. The bottom-line on this area is that careful consideration of how a council vote may impact different council members differently. Though nominally broad in application, if the real life impacts of the ordinance will affect some council members, but not others, a conflict of interest is deemed to exist.

This a summary of the League of California Cities paper titled: *City Council Salaries and Benefits*, presented at League of California Cities general session in September 2011 prepared by HR Analyst, Juli Mortensen.



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