

**RESOLUTION NO. 2018-**

**RESOLUTION OF THE NAPA COUNTY BOARD OF SUPERVISORS, STATE OF CALIFORNIA, APPROVING THE ADOPTION OF THE PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS)**

**WHEREAS**, Public Agency Retirement Services (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**, Napa County (“County”) 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 it a tax-exempt trust under the relevant statutory provisions of the State of California; and

**WHEREAS**, the County’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.

**WHEREAS**, the County’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 County reserves the right to make contributions, if any, to the Program.

**NOW, THEREFORE, BE IT RESOLVED**, by the Napa County Board of Supervisors, as follows:

1. The Board of Supervisors hereby adopts the PARS Public Agencies Post-Employment Benefits Trust, effective October 30, 2018; and
2. The Board of Supervisors hereby appoints the County Executive Officer, or their successor or designee as the County’s Plan Administrator for the Program; and
3. The County’s Plan Administrator is hereby authorized to execute the PARS legal and administrative documents, including the Adoption Agreement attached hereto as Exhibit “A,” on behalf of the County and to take whatever additional actions are necessary to maintain the County’s participation in the Program and to maintain compliance of any relevant regulation issued or as may be issued; therefore authorizing them to take whatever additional actions are required to administer the County’s Program.

**[REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY]**

**THE FOREGOING RESOLUTION WAS DULY AND REGULARLY ADOPTED**  
 by the Napa County Board of Supervisors, State of California, at a regular meeting of the Board  
 held on the 30th day of October 2018, by the following vote:

AYES: SUPERVISORS \_\_\_\_\_  
 \_\_\_\_\_

NOES: SUPERVISORS \_\_\_\_\_  
 \_\_\_\_\_

ABSTAIN: SUPERVISORS \_\_\_\_\_  
 \_\_\_\_\_

ABSENT: SUPERVISORS \_\_\_\_\_  
 \_\_\_\_\_

NAPA COUNTY, a political subdivision of  
 the State of California

By: \_\_\_\_\_  
 BRAD WAGENKNECHT, Chair of the  
 Board of Supervisors

<p>APPROVED AS TO FORM          Office of County Counsel</p> <p>By: <u>Jennifer Yasumoto</u>          Chief Deputy County Counsel</p> <p>Date: <u>October 15, 2018</u></p>	<p>APPROVED BY THE NAPA          COUNTY          BOARD OF SUPERVISORS</p> <p>Date: _____          Processed By:          _____          Deputy Clerk of the Board</p>	<p>ATTEST: JOSE LUIS VALDEZ          Clerk of the Board of Supervisors</p> <p>By: ____</p>
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## AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement (“Agreement”) is made this 30<sup>th</sup> day of October 2018, 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 Napa County (“Agency”).

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

NOW THEREFORE, the parties agree:

1. **Services.** PARS will provide the services pertaining to the Plan as described in “Exhibit 1A” (“Services”), attached hereto, 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 “Exhibit 1B” (“Fees for Services”), attached hereto.
3. **Payment Terms.** Payment for the Services will be remitted directly from Plan assets.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in the PARS’ standard fee schedule in effect at the time the services are provided and shall be payable as described in Section 3 of this Agreement. Before any such services are performed, PARS will provide the Agency with a detailed description of the services, terms, and applicable rates for such services. Such services, terms, and applicable rates shall be agreed upon in writing and executed by both parties.
5. **Information Furnished to PARS.** PARS will provide the Services contingent upon the Agency’s providing PARS the information specified in the exhibit attached hereto as “Exhibit 1C” (“Data”). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the Plan, to determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or to determine or inquire whether contributions made to the Plan are in compliance with the Plan or applicable law. In addition, PARS shall not be liable for non performance of Services to the extent such non performance is caused by or results from erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner and pursuant to the specifications in Exhibit 1C, PARS reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon no less than ninety (90) days written notice to the Agency.

6. **Records.** Throughout the duration of this Agreement, and for a period of seven (7) 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 afforded 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, provided that PARS takes commercially reasonable steps to ensure that such party shall not further disclose any information relating to the Plan and shall comply with this Confidentiality provision.
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. PARS shall indemnify and hold the Agency, its Board of Supervisors, Districts, Special Districts, Departments, their respective directors and officers, and representatives harmless from any wage and hour claims that may be filed by PARS' workers.
9. **Indemnification.** PARS and the Agency hereby indemnify each other and hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of, to the extent, PARS' or the Agency's, as the case may be, negligent acts, errors or omissions with respect to the performance of their respective duties hereunder. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under attorney-client privilege or attorney work product privilege.
10. **Insurance.** PARS obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:
  - (a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, PARS shall provide workers' compensation insurance for the performance of any of PARS' duties under this Agreement, including but not limited to,

coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide the Agency with certification of all such coverages upon request by the Agency's Risk Manager.

(b) Liability Insurance. PARS shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company licensed (admitted or non-admitted) to do business in California and having an A.M. Best rating of A-:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of PARS or any officer, agent, or employee of PARS under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of PARS arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with PARS' business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 including symbol 1 (any Auto) or equivalent. If PARS owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If PARS or PARS' employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, PARS shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 10(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of Agency's Risk Manager, demonstrated by other evidence of coverage acceptable to Agency's Risk Manager, which shall be filed by PARS with the Assistant County Executive Officer prior to commencement of performance of any of PARS' duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its Napa County number or title and department; shall be kept current during the term of this Agreement; shall provide that the Agency shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days written notice shall be required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 10(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 10(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, PARS shall also file with the evidence of coverage an endorsement from the insurance provider naming Napa County, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, PARS shall file an endorsement waiving subrogation with the evidence of coverage.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of PARS not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of PARS shall pertain only to liability for activities of PARS under this Agreement, and that the insurance provided is primary coverage to the Agency with respect to any insurance or self-insurance programs maintained by the Agency. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by the Agency's Risk Manager, PARS shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, the Agency's Risk Manager, which approval shall not be denied unless the Agency's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of PARS by this Agreement. At the option of and upon request by the Agency's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions related to the Agency, its officers, employees, agents and volunteers or PARS shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) **Inclusion in Subcontracts.** PARS agrees to require all subcontractors and any other entity or person involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 10.

**11. 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.

**12. 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 initiates legal proceedings

to enforce or interpret this Agreement, venue and jurisdiction shall be in the Superior Court of California, County of Napa, or for any legal action in federal court filed, if permitted by law and a party so elects, venue and jurisdiction shall be the Northern District of California.

13. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.
14. **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.
15. **Assignment and Delegation.** PARS shall not delegate or assign the services described in this Agreement to any third parties on behalf of PARS without the prior written consent of the Agency, which consent shall not be unreasonably withheld, conditioned or delayed. Any attempted delegation or assignment which is contrary to this provision shall be deemed void and of no force or effect. In the event that the Agency approves of any delegation or assignment, it must be committed to in writing approved by the Agency's Plan Administrator. PARS remains solely responsible to ensure that any such delegation or assignment performed by third parties is in accordance with all applicable laws and regulations, and are in full compliance with this Agreement. PARS shall maintain ultimate responsibility and accountability to the Agency for the performance of the services under this Agreement.
16. **Licenses and Permits.** PARS shall comply with all State or other licensing requirements necessary for the provision of services under this Agreement. PARS warrants that it has all necessary license, certificates, permits, approvals, waivers and exemptions necessary for performance of this Agreement as required by relevant federal and state laws, and other governmental agencies, and shall maintain these throughout the term of this Agreement.
17. **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.
18. **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: Napa County; 1195 Third Street, Suite 310, Napa, California 94559; Attention: County Executive Officer

Notices shall be deemed given on the date received by the addressee.

19. **Term of Agreement.** This Agreement shall remain in effect for the period beginning October 30, 2018 and ending October 30, 2021 (“Term”). This Agreement may be terminated at any time by giving ninety (90) days written notice to the other party of the intent to terminate. Absent a ninety (90) day written notice to the other party of the intent to terminate, this Agreement shall continue unchanged for successive twelve month periods following the Term.
20. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the parties hereto.
21. **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.
22. **Severability.** In the event any provision in this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will nevertheless continue in full force without being impaired or invalidated in any way.
23. **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.
24. **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.
25. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
26. **Authority to Contract.** PARS and the Agency each warrant that the individuals signing below have the authority to execute this Agreement and that such signatories have the authority to legally bind the parties to the terms and conditions of this Agreement, including any attachments hereto.



27. **Effective Date.** This Agreement shall be effective on the date first above written, and the date the Agreement is executed.

**AGENCY:**

BY: \_\_\_\_\_  
Minh C. Tran

TITLE: County Executive Officer

DATE: \_\_\_\_\_

<p><b>APPROVED AS TO FORM</b> Office of County Counsel By: <u>Jennifer Yasumoto, Chief Deputy</u> Date: <u>October 18, 2018</u></p>
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**PARS:**

BY: \_\_\_\_\_  
Tod Hammeras

TITLE: Chief Financial Officer

DATE: \_\_\_\_\_

EXHIBIT 1A  
SERVICES

PARS will provide the following services for the Napa County Public Agencies Post-Employment Benefits Trust:

1. Plan Installation Services:

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

2. Plan Administration Services:

- (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Public Agencies Post-Employment Benefits Trust ("Trustee"), based upon information received from the Agency and the Trustee;
- (B) Performing periodic accounting of Plan assets, reimbursements/distributions, and investment activity, based upon information received from the Agency and/or Trustee;
- (C) Coordinating the processing of distribution payments pursuant to authorized direction by the Agency, and the provisions of the Plan, and, to the extent possible, based upon Agency-provided Data;
- (D) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope this Agreement;
- (E) Preparing and submitting a monthly report of Plan activity to the Agency, unless directed by the Agency otherwise;
- (F) Preparing and submitting an annual report of Plan activity to the Agency;
- (G) Facilitating actuarial valuation updates and funding modifications for compliance with GASB 45/75, if prefunding OPEB obligations;
- (H) Coordinating periodic audits of the Trust;
- (I) Monitoring Plan and Trust compliance with federal and state laws.

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

EXHIBIT 1B  
FEES FOR SERVICES

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

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

<u>For Plan Assets from:</u>			<u>Annual Rate:</u>
\$0	to	\$10,000,000	0.25%
\$10,000,001	to	\$15,000,000	0.20%
\$15,000,001	to	\$50,000,000	0.15%
\$50,000,001	and	above	0.10%

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

EXHIBIT 1C  
DATA REQUIREMENTS

PARS will provide the Services under this Agreement contingent upon receiving the following information:

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.