

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this ____ day of _____, 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 the City of Emeryville ("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's providing PARS the information specified in the exhibit attached hereto as "Exhibit 1C" ("Data"). It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that PARS may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to PARS in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, PARS shall be under no duty to question Data received from the Agency, to compute contributions made to the

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

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

11. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction.
12. **Force Majeure.** When a party's nonperformance hereunder was beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, acts of terrorism or war, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.
13. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for PARS but shall not be furnished to others without written authorization from Agency.
14. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the written authority granted by the Governing Body of the Agency, a copy of which writing shall be delivered to PARS. Any officer of PARS, or his or her designees, shall have the authority to act for and exercise any of the rights of PARS as set forth in this Agreement.
15. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (A) To PARS: PARS; 4350 Von Karman Avenue, Suite 100, Newport Beach, CA 92660; Attention: President
 - (B) To Agency: City of Emeryville; 1333 Park Avenue, Emeryville, CA 94608; Attention: City ManagerNotices 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 May 1, 2018 and ending April 30, 2021 ("Term"). Except as provided for in paragraph 5, 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.
23. **Business License.** Prior to commencement of the services to be provided hereunder, PARS shall apply to the City of Emeryville Finance Department for a business license, pay the applicable business license tax and maintain said business license during the term of this Agreement, as provided in Article 1 of Chapter 1 of Title 3 of the Emeryville Municipal Code.
24. **Living Wage.** If this Agreement provides for compensation of \$25,000 or more within a single fiscal year for providing services to the City to PARS, then PARS shall comply with the requirements of Chapter 31 of Title 5 of the Emeryville Municipal Code ("Living Wage Ordinance"), unless (i) this Agreement is subject to a higher prevailing wage rate as defined in the California Labor Code, or (ii) this Agreement is subject to federal or state laws or regulations that would preclude the application of the Emeryville Municipal Code. Compliance with the Living Wage Ordinance, if applicable, shall be required during the term of the Agreement for all employees of PARS who perform at least twenty-five percent (25%) of the work arising from this Agreement, unless said employees are otherwise exempt from the application of the Living Wage Ordinance pursuant to Section 5-31.08. PARS shall promptly provide to the Agency documents and information verifying compliance with the requirements of the Living Wage Ordinance within ten (10) working days following a written request for such documentation and information from the Agency. Failure to comply with the Living Wage Ordinance provides that a person claiming a violation thereof may bring an action against PARS for back pay, reinstatement and compensatory damages, as well as a penalty up to three times the amount of damages for a willful violation, plus reasonable attorney's fees and costs. In addition, the Agency may terminate the Agreement and pursue any other remedies available to the Agency, including debarment, for violations of the Living Wage Ordinance. PARS shall notify each of its affected employees regarding wages that are required to be paid pursuant to this Agreement. "Living Wage" means no less than \$14.83 per hour (as of July 1, 2016, subject to increase annually on July 1st to reflect the

twelve-month average increase to the Consumer Price Index for all urban consumers in the San Francisco-Oakland-San Jose Metropolitan Statistical Area for the preceding year from May to April, not to exceed three percent (3%) in any one year) including wages and health benefits. If employer contributions for health benefits are not paid on an hourly basis, the employer must demonstrate to the Agency the hourly value of such benefits in order to receive credit for such payments to covered employees.

AGENCY:

BY: _____

Carolyn Lehr

TITLE: _____

City Manager

DATE: _____

Approved As To Form


City Attorney's Office

PARS:

BY: _____



Tod Hammeras

TITLE: _____

Chief Financial Officer

DATE: _____

4/21/2018

EXHIBIT 1A

SERVICES

PARS will provide the following services for the City of Emeryville 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 within 30 days of receiving a certified resolution of adoption of the PARS Public Agencies Post-Employment Benefits Trust by the Agency. 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 monthly 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 annual audits of the Trust;
 - (I) Monitoring Plan and Trust compliance with federal and state laws, and report any compliance issues identified by PARS to the Agency in a reasonable time period.
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.