



Expo

Exposition Metro Line
Construction Authority


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6.b

DATE: NOVEMBER 2, 2006

TO: BOARD OF DIRECTORS

FROM: RICHARD D. THORPE 
CHIEF EXECUTIVE OFFICER

**ACTION: ADOPT THE PUBLIC AGENCY RETIREMENT SERVICES
(PARS) RESOLUTION AND PARS TRUST AGREEMENT**

RECOMMENDATION

Adopt the Exposition Metro Line Construction Authority (Authority) Resolution authorizing the establishment of a PARS Retirement Plan and adopt the PARS Trust Agreement.

SUMMARY

At the October 2006 Board meeting, the Board received a report on the PARS pension and benefit plan for Authority employees. In order to establish the PARS defined benefit pension plan, a two-part action was required. The October 2006 report put the public on notice of the Board's intention to adopt the defined benefit pension plan. The action before the Board today will formally adopt the PARS pension plans and trust agreement.

DISCUSSION

When the Employee Pension plan was brought before the Board in January 2006, it was determined that both PARS and PERS offered different benefits to Authority employees and provided the Authority with the maximum amount of flexibility. As a new agency, the Authority has employees that have prior CalPERS service, has employees already retired under CalPERS, and those that have years of service in other retirement systems. As a result, it was determined that offering both plans served the Authority's needs. The PARS pension plan needs to be adopted before the CalPERS plan because when the CalPERS

program goes into effect, all new employees hired after that effective date will be required to participate in the CalPERS program only.

PARS is a private firm that administers public pension plans for public agencies. PARS has created a Master Trust called the Public Agency Retirement System Trust, under which public agencies may sponsor 401(a) defined benefit and 401(a) defined contribution plans. PARS serves as the Trust Administrator and establishes the plans, coordinates the contributions and distributions, as well as other ongoing administrative aspects of the plan.

The Authority is sponsoring a 401(a) defined benefit plan through PARS that mimics the formula offered by CalPERS, called the 2.5% at 55 plan. This was the formula approved by the Board in January 2006, for future Authority CalPERS participants. The benefits received by an employee are determined by a formula and to retire under the PARS plan, an employee must meet minimum eligibility requirements of at least 3 years of service with the Authority, be at least age 50, terminate their service and retire.

An actuarial valuation by a licensed and certified actuary is required under State law to determine the projected cost of the defined benefit plan and the initial contribution rate required to amortize the cost of the program. This valuation was prepared by Milliman, Inc., a national employee benefits consulting firm. The results of the valuation determined that the Authority's contribution rate should be 18.52%. Under the proposed plan, there are only employer contributions.

At the January 2006 Board meeting, the Board also approved establishing a 401(a) defined contribution plan for all Authority employees. Since CalPERS does not offer this plan, it was determined that PARS would be able to offer this plan to all Authority employees regardless of which pension plan they select (PARS or CalPERS). This plan will permit employees to make contributions each payroll period into the PARS Master Trust to increase their retirement savings. There will be no employer contributions into the plan. Employees will have a one time irrevocable election to select their contribution level ranging from 0% to 20% of pay each payroll period. Employees will be able to self-direct their investments, using a range of 20 mutual funds offered by Union Bank of California's wholly-owned subsidiary, SelectBenefit.

FINANCIAL IMPACT

PARS charges an initial fee to establish their plans and then ongoing monthly fees to administer both plans. The initial set up fee is \$3500 and the combined ongoing fees are \$650 per month with a 3% annual cost of living adjustment. These costs are included in the Authority's FY07 budget. The cost of the employer contribution of the defined benefit plan of 18.52% is also included in the Authority budget under Authority staff costs.

State legislation that formed the Authority also requires its dissolution upon completion of the project to Santa Monica. Depending on the duration of Authority operations, there may be a termination cost liability that applies to both PARS and CalPERS. There is no way to know this amount now, but a reserve within the Authority Project budget will be established to cover any anticipated future financial liabilities beyond the dissolution of the Authority.

NEXT STEPS

Because of certain rules that pertain to enrollment in CalPERS, once the Board has adopted the PARS resolution, the Authority will then apply for enrollment in CalPERS. It is expected that the contribution rate and cost to the Authority will mirror the costs of the PARS plan.

ATTACHMENTS

- A. PARS Resolution
- B. PARS Trust Agreement

RESOLUTION NO. 007

RESOLUTION OF THE BOARD OF DIRECTORS
OF THE
THE EXPOSITION METRO LINE CONSTRUCTION AUTHORITY

AUTHORIZING THE ESTABLISHMENT OF THE PARS DEFINED
BENEFIT AND THE PARS DEFINED CONTRIBUTION
RETIREMENT PLANS TO BE ADMINISTERED BY PUBLIC
AGENCY RETIREMENT SERVICES, THE PARS TRUST
ADMINISTRATOR

WHEREAS, it is determined to be in the best interest of the Exposition Metro Line Construction Authority (the "Authority") and its employees to establish the PARS 401(a) Defined Benefit Retirement Plan and the PARS 401(a) Defined Contribution Retirement Plan to provide retirement benefits for its eligible employees; and

WHEREAS, the Authority is eligible to be a member of the Public Agency Retirement System (PARS) Trust, which has made available governmental plans, qualifying under the relevant sections of the Internal Revenue Service Code and the California Government Code; and;

NOW, THEREFORE, BE IT RESOLVED THAT:

1. The governing Board of Directors of the Authority hereby adopts the PARS Trust, including the PARS 401(a) Defined Benefit Retirement Plan and the PARS 401(a) Defined Contribution Retirement Plan, as part of the Authority's Retirement Program, effective July 1, 2006; and
2. The Board of Directors of the Authority hereby appoints the Chief Executive Officer, or his/her successor, or his/her designee, as the Authority's Plan Administrator for the Public Agency Retirement System; and
3. The Authority's PARS Plan Administrator is hereby authorized to implement the plans, execute the PARS legal and administrative service documents on behalf of the Authority, and to take whatever additional actions are necessary to maintain the participation of the Authority in PARS, and to maintain PARS compliance with relevant regulations issued or as may be issued. In addition, if the Authority's PARS Plan Administrator finds that the PARS plan benefit must be limited under Section 415 of Internal Revenue Service Code, then the Plan Administrator will implement replacement benefit programs at no additional cost to the Authority.

I, JUANITA CAREY, Clerk of the Board of the Exposition Metro Line Construction Authority, do hereby certify that the foregoing Resolution was duly and regularly adopted by the Authority at a meeting held on the 2nd day of November, 2006.

AYES: _____
NOES: _____
ABSTAIN: _____

DATED: _____

JUANITA CAREY
Clerk of the Board

APPROVED AS TO FORM:

George Joseph
General Counsel

**PUBLIC AGENCY
RETIREMENT SYSTEM (PARS)
TRUST AGREEMENT**

PREAMBLE

The Huntington Beach City School District and State Center Community College District formed and adopted the Public Agency Retirement System Trust ("PARS Trust") on July 1, 1991 ("Effective Date"). Subsequent to the Effective Date other California public agencies adopted the PARS Trust as the funding vehicle for tax qualified retirement plans for employees. Subsequent to the Effective Date the PARS Trust was amended. Effective as of July 1, 1999 ("Amended Effective Date") the PARS Trust was amended and restated in its entirety as contained herein. This amended and restated Trust shall supersede all prior versions of the PARS Trust as of the Amended Effective Date.

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Article I

DEFINITIONS

- 1.1 "Act" shall mean California Government Code Sections 53215 - 53224, or their successor sections.
- 1.2 "Agreement for Administrative Services" shall mean the agreement executed between the Member Agency and the Trust Administrator which authorizes the Trust Administrator to perform specific duties of administering the Member Agency Plan and related Agency Trust.
- 1.3 "Amended Effective Date" shall mean July 1, 1999, the date the PARS Trust Agreement was amended and restated in its entirety.
- 1.4 "Assets" shall mean all contributions and transfers of assets received by an Agency Trust on behalf of a Member Agency's Plan, together with the income and earnings from such contributions and transfers and any increments accruing to them.
- 1.5 "Agency Trust" shall mean the legally separate and individual trust, whose provisions are identical to those of the PARS Trust Agreement, that is established by a Member Agency when it adopts the PARS Trust by executing an Adoption Agreement.
- 1.6 "Alternate Trustee" shall mean a trustee, other than the Trustee of the PARS Trust Program, appointed by a Member Agency to serve as a trustee of a portion of such Agency Trust's assets as to which the Trustee serves as custodian.
- 1.7 "Code" shall mean the Internal Revenue Code of 1986 as amended from time to time.
- 1.8 "Custodian" shall mean Union Bank of California, N.A. whose duties are limited to those specified in Section 4.3.
- 1.9 "Delegatee" shall mean an individual or entity, appointed by the Plan Administrator or Member Agency to act in such matters as are specified in the appointment.
- 1.10 "Effective Date" shall mean July 1, 1991, the date the PARS Trust Program was established.
- 1.11 "Investment Fiduciary" shall mean the fiduciary with the authority and duty to direct the investment and management (including the power to direct the

acquisition and disposition) of some or all of the Assets of the Agency Trust appointed by a Member Agency for its Agency Trust.

- 1.12 "Omnibus Account" shall mean an account, established for record keeping purposes only, to commingle the Assets of the Agency Trust.
- 1.13 "Member Agency" shall mean a California public agency that adopts the provisions of the PARS Trust Agreement.
- 1.14 "Plan" shall mean the tax qualified plan whose assets the Agency Trust holds.
- 1.15 "Plan Administrator" shall mean the individual designated by position of employment at the Member Agency to act on its behalf in all matters relating to the Member Agency's participation in the PARS Trust Program and Agency Trust.
- 1.16 "PARS Trust Agreement" or "Trust Agreement" shall mean the pro forma Public Agency Retirement System trust document adopted by each Member Agency upon execution of an Adoption Agreement, as amended from time to time.
- 1.17 "PARS Trust Program" shall mean the Public Agency Retirement System trust arrangement.
- 1.18 "Participant" shall mean individual participating in a Member Agency Plan or that individual's beneficiary.
- 1.19 "Trust Administrator" shall mean Phase II Systems.
- 1.20 "Trustee" shall mean the entity appointed as trustee of the PARS Trust that shall also serve as trustee of each Agency Trust established pursuant to the provisions of this trust agreement except where an Alternate Trustee has been appointed.

Article II

THE PARS TRUST PROGRAM

2.1 Multiple Employer Trust

The PARS Trust Program 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 of their Member Agency Plans maintained for the benefit of their employees. The PARS Trust Program consists of the Agency Trusts adopted and not terminated by Member Agencies.

2.2 Qualified Governmental Retirement Trust

The PARS Trust Program is established pursuant to the provisions of Section 501 of the Internal Revenue Code of 1986, as amended (the "Code"), and California Government Code Sections 53215 through 53224 providing for pension trusts established by public agencies.

2.3 Date of Adoption

The date as of which each Member Agency adopts the PARS Trust Program shall be the "Effective Date" of the PARS Trust Agreement and the Agency Trust, as defined in Section 2.5, as to that Member Agency.

2.4 Member Agencies

Any California public agency may, by action of its governing body in a writing accepted by the Trustee, adopt the provisions of the PARS Trust Agreement as the trust portion of a qualified governmental retirement plan established for the benefit of its employees. Executing an adoption instrument for the PARS Trust Program ("Adoption Agreement"), attached hereto as Exhibit "A", 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 Phase II Systems, the Trust Administrator, pursuant to section 3.6 of this PARS Trust Agreement. Such adopting employer shall then become a Member Agency of the PARS Trust Program.

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

- (a) a certified copy of the Member Agency governing body resolution authorizing the adoption of the PARS Trust Agreement and the appointment of an individual designated by position of employment at the Member Agency to act on its behalf in all matters relating to the Member Agency's participation in the PARS Trust Program and Agency Trust ("Plan Administrator");
- (b) an original of the Adoption Agreement executed by the Plan Administrator or other duly authorized Member Agency employee;
- (c) an original of the Agreement for Administrative Services with Phase II Systems executed by the Plan Administrator or other duly authorized Member Agency employee and Phase II Systems;
- (d) an address notice; and

(e) such other documents as the Trustee may reasonably request.

2.5 Agency Trust

By adopting the PARS Trust Agreement, as provided in Section 2.4, a Member Agency shall be deemed to have adopted a legally separate and individual Agency Trust whose provisions are identical to those of the PARS Trust Agreement. The Assets of an Agency Trust shall be available only to pay benefits pursuant to the provisions of the Plan to participants and beneficiaries of the Member Agency entitled to receive benefits under the provisions of the Plan. The Agency Trust is created for the purpose of receiving contributions made to fund the Member Agency's Plan; accumulating, managing and investing those contributions; and providing benefits to active or retired participants of the Plan, their joint annuitants, or their beneficiaries. Each Agency Trust shall be used to fund only a single Plan maintained by the Member Agency. A Member Agency may establish additional Agency Trusts to fund the assets of additional Plans by executing one or more additional Adoption Agreement(s).

2.6 Assets of Agency Trust

The assets of the Agency Trust shall consist of all contributions and transfers received by the Agency Trust on behalf of the Member Agency's Plan, together with the income and earnings from such contributions and transfers, and any increments accruing to them ("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 of the Agency Trust 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 Trust by the Member Agency and the Trustee and the Trust Administrator shall not be responsible for the collection of any contributions or transfers to the Agency Trust.

2.7 Commingling for Investment and Administration

The Assets of more than one Agency Trust may be commingled by the Trustee or Investment Fiduciary in one or more Omnibus Accounts for investment and administrative purposes, to provide economies of scale and efficiency of administration to the Agency Trusts. The responsibility for Plan level accounting within this Omnibus Account(s) shall be that of the Trust Administrator.

2.8 Trustee Accounting

The Trustee shall be responsible only for maintaining records and maintaining accounts for the aggregate assets of the PARS Trust Program. The

responsibility for Plan level accounting for each Agency Trust, based upon the Omnibus Account(s), shall be that of the Trust Administrator.

2.9 No Diversion of Assets

The Assets in each Agency Trust shall be held in trust for the exclusive purpose of providing benefits to the Participants of the Plan for which the Agency Trust is holding assets and defraying the reasonable expenses of such Plan. The Assets shall not be used for or diverted to, any other purpose.

2.10 Type and Nature of Trust

Neither the full faith and credit nor the taxing power of each Member Agency, the State of California or any political subdivision thereof other than each Member Agency is pledged to the distribution of benefits 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 Member Agency, but are payable solely from the Assets of each Agency Trust, as more fully described herein. No employee of any Member Agency or beneficiary may compel the exercise of the taxing power by any Member Agency.

Distributions of Assets under any Agency Trust are not debts of any Member Agency, the State of California or any of its political subdivisions 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 a Member Agency's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of each Plan, Agency Trust and the Act, set aside for distributions. Neither the members of the legislative body of any Member Agency nor its officers, employees, agents or volunteers are liable hereunder.

Article III

ADMINISTRATIVE MATTERS

3.1 Appointment of Trustee

Two thirds or more of the Member Agencies acting jointly, may by a two-thirds or greater vote, act to appoint a bank, trust company, retirement board, insurer, committee or such other entity as permitted by California law, to serve as the trustee of the PARS Trust Program ("Trustee"). Such action must be in writing. Upon the written acceptance of such entity it shall become the Trustee of the PARS Trust Program and, subject to the provisions of Section 3.10, the trustee of each Agency Trust. By executing an Adoption Agreement, the adopting Member

Agency hereby appoints the Union Bank of California, N.A. as the Trustee as of the Amended Effective Date.

3.2 Removal of Trustee

Two thirds or more of the Member Agencies acting jointly, may by a vote of two - thirds or greater, act to remove the Trustee. Such action must be in writing and delivered to the Trustee and the Trust Administrator. Upon such removal from the PARS Trust the Trustee shall also be removed as trustee of each of the Agency Trusts. The Plan Administrator may remove the Trustee as trustee of an Agency Trust by giving at least ninety (90) days prior written notice to the Trustee and the Trust Administrator and withdrawing from the PARS Trust Program.

3.3 Resignation of Trustee

The Trustee may resign as trustee of the PARS Trust Program at any time by giving at least ninety (90) days prior written notice to the Trust Administrator and to each Plan Administrator of each Member Agency that has adopted the PARS Trust Agreement and not terminated its participation in the PARS Trust Program. Such resignation shall also be deemed a resignation as trustee of each of the Agency Trusts. The Trustee may resign as trustee of an Agency Trust by giving at least ninety (90) days written notice to the Plan Administrator of such Agency Trust and to the Trust Administrator. The Member Agency's appointment of a successor trustee to the Agency Trust will vest the successor trustee with title to the Assets of its Agency Trust upon the successor trustee's acceptance of such appointment.

3.4 The Plan Administrator

The governing body of each Member Agency shall have plenary authority for the administration and investment of the Agency Trust pursuant to the laws and Constitution of the State of California and applicable federal laws and regulations. Each Member Agency 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 Member Agency in all matters pertaining to the Member Agency's participation in the PARS Trust Program and in regard to the Agency Trust of the Member Agency. 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 Trust Administrator are furnished with a resolution of the Member Agency 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 Member Agency shall be deemed to be the Plan Administrator. As used in this document

Plan Administrator shall be deemed to mean Member Agency when a Plan Administrator has not been appointed.

3.6 Delegatee

The Plan Administrator, acting on behalf of the Member Agency, may delegate certain authority, powers and duties to an entity to act in those matters specified in the delegation ("Delegatee"). 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 and is acknowledged in writing by the Delegatee, the Trust Administrator (if not the Delegatee) and the Trustee. 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 Member Agency, 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 Member Agency whose names and specimen signatures shall be kept accurate by the Member Agency acting through a duly authorized official or governing body of the Member Agency. The Trustee and the Trust Administrator shall have no liability if it acts 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 Member Agency has informed the Trustee and the Trust Administrator of such change.

3.8 Directions to Trustee

Except as provided in Section 5.18 of this Trust Agreement, 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 direction of the Plan Administrator, or Delegatee, appointed in accordance with the provisions of this PARS 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 Agency 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 PARS Trust Program and/or any Agency Trust 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 PARS 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 Alternate Trustee

A Member Agency may appoint a trustee, other than the Trustee, as to a portion of the assets in the Agency Trust by designating such person or entity as an Alternate Trustee on the Adoption Agreement and by specifying which assets shall be subject to the fiduciary management of the Alternate Trustee. Such appointment shall not be effective unless it is in writing, specifies clearly the assets as to which the Alternate Trustee is to have trustee powers, is acknowledged in writing by the Alternate Trustee, is delivered to and acknowledged by the Trustee and the Trust Administrator. Only a bank, trust company, retirement board, insurer, the Member Agency or such entity as permitted by California law to be a trustee may be appointed an Alternate Trustee. Such appointment will become effective upon acceptance by the Alternate Trustee.

3.10 Powers Of Alternate Trustee

The Alternate Trustee shall be deemed to have all of the powers and duties and responsibilities specified in the PARS Trust Agreement for the PARS Trustee in Article IV unless otherwise specified in the Adoption Agreement.

3.11 Responsibility of Trustee Upon Appointment of Alternate Trustee

Upon the appointment of an Alternate Trustee, the Trustee shall have no liability or responsibility for any matters relating to the management, investment or administration of those assets as to which the Alternate Trustee has been appointed and shall only have the duties set forth in Section 4.3.

3.12 Trust Administrator

The Member Agencies have appointed Phase II Systems as the Trust Administrator. The Trust Administrator has accepted its appointment subject to each Member Agency's delegation of authority, to act as such, pursuant to Section 3.6 of this PARS Trust Agreement. 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 the Agency Trust;
- (b) Directing the Trustee to make distributions from the Agency Trust to Participants pursuant to the provisions of the Member Agency's Plan and liquidate assets in order to make such distributions;
- (c) Notifying the Investment Fiduciary of the amount of Assets in the Agency Trust available for further investment and management by the Investment Fiduciary;
- (d) Allocating contributions, earnings and expenses to each Agency Trust;
- (e) Directing the Trustee to pay insurance premiums, 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 Agency Trusts.
- (f) Such other services as the Member Agency and the Trust Administrator may agree in the Agreement for Administrative Services pursuant to Section 2.4.

3.13 The Trust Administrator shall be entitled to rely on, and shall be under no duty to question, 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 Agency Trust, determine or inquire whether contributions made to the Agency Trust by the Plan Administrator or other duly authorized entity are adequate to meet and discharge liabilities under the Plan; or determine or inquire whether contributions made to the Agency Trust are in compliance with the Plan; The Trust Administrator shall not be liable for non performance of duties if such non performance is directly caused by erroneous, and/or late delivery of, directions or data from the Plan Administrator, or other duly authorized entity.

3.14 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 Member Agency or the Plan Administrator by this PARS Trust Agreement or by the Member Agency's Plan. The Trust Administrator shall be separately compensated for such service and such services shall not be deemed to be contrary to the PARS Trust Agreement.

3.15 Trust Administrator's Compensation

As may be agreed upon from time to time by the Member Agency 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 the Agency Trust and to the PARS Trust Program in accordance with Section 53217 of the Act.

3.16 Resignation or Removal of Trust Administrator

The Trust Administrator may resign at any time by giving at least one hundred twenty (120) days written notice to each Member Agency of the PARS Trust Program and the Trustee. The Member Agencies, by a two-thirds or greater vote, may remove the Trust Administrator by delivering, at least one hundred twenty (120) days prior to the effective date of such removal, written notice to the Trust Administrator and to the Trustee.

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 Agency 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. 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 Agency 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 PARS Trust Agreement by this reference. The combining of money and other assets of the Agency Trust with money and other assets of other 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 Agency 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, and to receive compensation from the sponsor of such fund(s) for services rendered, separate and apart from any Trustee's fees hereunder. Trustee or Trustee's 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 Agency 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 as directed by the Investment Fiduciary or other person with investment discretion over the trust assets: 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 Agency 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 Agency 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 Agency Trust or the Plan;
- (l) As directed by the Trust Administrator, to hold term or ordinary life insurance contracts on the lives of Participants (but in the case of conflict between any such contract and the Plan, the terms of the Plan shall prevail); to pay from the Agency Trust the premiums on such contracts; to distribute, surrender or otherwise dispose of such contracts; to pay the proceeds, if any, of such contracts to the proper persons in the event of the death of the insured Participant; to enter into, modify, renew and terminate annuity contracts of deposit administration of immediate participation or other group or individual type with one or more insurance companies and to pay or deposit all or any part of the Agency Trust Assets thereunder; to provide in any such contract for the investment of all or any part of funds so deposited with the insurance company in securities under separate accounts; to exercise and claim all rights and benefits granted to the contract holder by any such contracts;
- (m) To exercise all the further rights, powers, options and privileges granted, provided for, or vested in trustees generally under applicable federal or California 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, and whether or not the Member Agency has retained investment authority or delegated it to an Investment Fiduciary or Participants in Participant Directed Accounts, 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 Union Bank of California N.A., or any mutual fund or short term investment fund ("Fund"), whether sponsored or advised by Union Bank of California or any affiliate thereof; Union Bank of California, N.A. or its affiliate may be compensated for providing such investment advice and providing other services 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 Agency 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 Agency Trust any investment in bearer form, but the books and records of the Agency Trust shall at all times show that all such investments are a part of the Agency Trust and the Trustee shall hold evidences of title to all such investments;
- (c) To serve as sole custodian with respect to the Agency Trust Assets;
- (d) To employ such agents and counsel as may be reasonably necessary in managing and protecting the Assets and to pay them reasonable compensation; to employ any broker-dealer, including a broker-dealer affiliated with the Trustee, and pay to such broker-dealer at the expense of the Agency Trust, its standard commissions; to settle, compromise or abandon all claims and demands in favor of or against the Agency Trust; and to charge any premium on bonds purchased at par value to the principal of the Agency Trust without amortization from the Agency 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 Agency Trust, as though the absolute owner thereof;
- (f) To abandon, compromise, contest, arbitrate or settle claims or demands; to prosecute, compromise and defend lawsuits, but without obligation to do so, all at the risk and expense of the Agency Trust;
- (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 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 this Agency Trust;
- (k) As directed by the Plan Administrator or Delegatee if duly authorized, to cause the benefits provided under the Plan to be paid directly to the persons entitled thereto under the Plan, and in the amounts and in the manner specified, and to charge such payments against the Agency Trust with respect to which such benefits are payable;
- (l) 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 the administration of the Plan and to pay from the Agency Trust the necessary expenses of such firms, personnel and assistants, to the extent not paid by the Plan Administrator;
- (m) To act upon proper written directions of the Plan Administrator or Delegatee, including directions given by photostatic transmissions using facsimile signature;
- (n) To pay from the Agency Trust the expenses reasonably incurred in the administration of the Agency Trust as provided in the Plan;
- (o) 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.

4.3 Custodial Powers

If an Alternate Trustee has been appointed pursuant to Section 3.9, Union Bank of California, N.A., ("Bank") as Custodian, shall only have the following responsibilities:

- (a) Keep records of all transactions entered into for the Agency Trust and furnish to Alternate Trustee statements no less frequently than quarterly showing all principal and income transactions and Agency Trust Assets, which shall be deemed ratified and approved by Alternate Trustee unless Custodian is advised to the contrary within ninety (90) days of Custodian's mailing thereof by first class mail to Alternate Trustee;
- (b) Receive payments of income and principal on Agency Trust Assets, and retain or remit in accordance with Alternate Trustee's written instructions;
- (c) Hold Agency Trust Assets in Bank's name as Custodian for Alternate Trustee or in Bank's nominee name, or, as to securities eligible to be held by the depository trust company or other depository, in its nominee name;
- (d) Purchase and sell securities, attend to the exchange of securities, deposit or exchange securities of companies in reorganization, and tender securities on redemption or tender offer solely upon direction of Alternate Trustee;
- (e) Sign the name of Alternate Trustee to stock and bond powers and any other instruments required for the proper exercise of Bank's duties, and Bank is appointed Alternate Trustee's attorney-in-fact for these purposes;
- (f) Forward all proxies and accompanying materials to Alternate Trustee to be voted unless directed in writing to the contrary. Disclose Alternate Trustee's name and address in response to requests from issuers of securities and others to facilitate direct communication for proxy and tender offer response;
- (g) Sell all fractional shares of stock received as a result of stock dividends or other corporate action;
- (h) Notify Alternate Trustee of any inability to collect income or principal if the securities or other property constituting Assets upon which such amount is payable is in default, or if payment is refused after due demand. Bank shall be under no obligation or duty to take any action to effect collection of defaulted payments, or to file or pursue any bankruptcy or class action claims with respect to Agency Trust.

- (i) Perform a telephonic verification to Alternate Trustee or Alternate Trustee's authorized representative or such other security procedure selected by Alternate Trustee prior to wiring funds or following facsimile directions as Bank may require. Alternate Trustee assumes all risk of delay of transfer if Bank is unable to reach Alternate Trustee or Alternate Trustee's authorized representative, or in the event of delay as a result of attempts to comply with any other security procedure selected by Alternate Trustee.

Article V

INVESTMENTS

5.1 Investment Fiduciary

Except as herein provided, the Plan Administrator shall be the Investment Fiduciary.

5.2 Appointment of Trustee or an Investment Manager as Investment Fiduciary

The Plan Administrator may appoint the Trustee or an investment manager as the Investment Fiduciary, with the authority and duty to direct the investment and management of all or any portion of the Assets of the Agency Trust.

5.3 Appointment of Investment Fiduciary

No action of the Plan Administrator pursuant to 5.2 shall be effective until a certified copy of the revised Adoption Agreement and, if required, any such resolution of the governing body of the Member Agency or Plan Administrator action is delivered to the Trustee. Upon receipt and acceptance, the Trustee or investment manager, as the case may be, shall assume fiduciary responsibility with respect to the investment and management of such assets of the Agency Trust as are specified in the resolution or action. Any transfer of investment authority to the Trustee or to an investment manager may be revoked by delivering to the Trustee or the investment manager a written notice from either the Member Agency governing body or the Plan Administrator, as the case may be.

5.4 Reliance by Trustee on Investment Fiduciary

The appointment, selection and retention of an Investment Fiduciary shall be solely the responsibility of the Member Agency acting through its governing body or the Plan Administrator. The Trustee may rely upon the fact that the

Investment Fiduciary is authorized to direct the investment and management of the Assets of the Agency Trust until such time as the Plan Administrator shall notify the Trustee in writing that another Investment Fiduciary has been appointed to replace the Investment Fiduciary named, or, in the alternative, that the Investment Fiduciary named has been removed.

5.5 When Trustee is not Investment Fiduciary

The Trustee shall not be the Investment Fiduciary and shall have no responsibility or authority for the investment and management of assets unless specifically designated as the Investment Fiduciary as to some or all of the assets in the Agency Trust and accepts such designation.

- (a) During such period or periods of time, if any, as the Plan Administrator or an Investment Fiduciary is authorized to direct the investment and management of the Assets of the Agency Trust, the Trustee shall (subject to the overriding limitations hereinafter set forth) effect and change investment of the Assets of the Agency Trust as directed in writing by the Plan Administrator, or Investment Fiduciary, as the case may be, and shall neither effect nor change any such investments without such direction and shall have no right, duty or responsibility to recommend investments or investment changes. The following provisions shall govern the Trustee during such period or periods of time, if any, during which the Plan Administrator or an Investment Fiduciary is authorized to direct the investment and management of the Assets of any Agency Trust:
- (b) So long as the Plan Administrator retains or reacquires full power and responsibility to direct the Trustee with respect to the investment and management of all or any portion of the Assets of the Agency Trust, the Trustee shall not be liable nor responsible for losses or unfavorable results arising from the Trustee's compliance with proper directions of the Plan Administrator which are made in accordance with the terms of this Trust Agreement and which are not contrary to the provisions of any applicable federal or state statute regulating such investment.
- (c) In the event an Investment Fiduciary is given authority and responsibility with respect to the investment and management of the Assets of the Agency Trust, neither the Trustee nor the Plan Administrator shall be liable or responsible in any way for any losses or other unfavorable results arising from the Trustee's compliance with investment or management directions received by the Trustee from the Investment Fiduciary.

5.6 Investment Directions Must be in Writing

Subject to the provisions of Section 5.18, in order to be valid all directions concerning investments made by the Plan Administrator, or the Investment

Fiduciary, or PARS Trustee must be signed by the authorized person or persons acting on behalf of the Plan Administrator, Investment Fiduciary or Trustee, as the case may be.

5.7 Trustee Reliance On Directions

- (a) The Trustee shall be entitled to rely upon directions which the Trustee receives. The Trustee shall be under no duty to question any directions of the Investment Fiduciary or Plan Administrator nor to review any securities or other property of the PARS Trust or Agency Trust constituting assets thereof with respect to which an Investment Fiduciary or the Plan Administrator has investment responsibility, nor to make any suggestions to the Investment Fiduciary or Plan Administrator in connection therewith. The Trustee shall, as promptly as possible, comply with any written directions given by the Plan Administrator or an Investment Fiduciary hereunder. The Trustee shall not be liable, in any manner nor for any reason, for the making or retention of any investment pursuant to such directions, nor shall the Trustee be liable for its failure to invest any or all of the Assets of the Agency Trust in the absence of such written directions. The Trustee shall be under no obligation to seek written clarification in the event of ambiguity.
- (b) During such period of time, if any, as the Plan Administrator, or an Investment Fiduciary, is authorized to direct the Trustee, the Trustee shall have no obligation to determine the existence of any conversion, redemption, exchange, subscription or other right relating to any securities purchased of which notice was given prior to the purchase of such securities, and shall have no obligation to exercise any such right unless the Trustee is informed of the existence of the right and is instructed to exercise such right, in writing, by the Plan Administrator or the Investment Fiduciary, as the case may be, within a reasonable time prior to the expiration of such right.
- (c) In any event, neither the Plan Administrator nor any Investment Fiduciary referred to above shall direct the purchase, sale or retention of any Assets of the Agency Trust if such directions are not in compliance with applicable law.

5.8 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 Agency Trust or the PARS Trust.

5.9 Contributions

The Plan Administrator shall make all of its contributions to the Trustee, and shall also transmit all contributions of Plan participants, as may be required or allowed by the Plan, 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 Agency Trust made to the Trustee by any Plan Administrator are in compliance with the 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 and discharge liabilities under the Plan. The contributions received by the Trustee from each Member Agency shall be held and administered pursuant to the terms hereof without distinction between income and principal.

5.10 Money Market Fund

Pending any investment directions, such cash in the Agency Trust in an amount as is reasonable in the discretion of the Trustee, may be deposited in a money market fund selected by the Trustee or the Member Agency.

5.11 Purchase of Contracts

The Trustee shall have the authority to purchase individual or group insurance, annuity, preliminary term, group pension, and variable annuity contracts in accordance with the directions of the Plan Administrator or other insurance contracts at the direction of the Plan Administrator or Investment Fiduciary if such contracts are acceptable to the Trustee. The Trustee shall act as custodian of such contracts if an Alternate Trustee is appointed as to such contracts.

5.12 Records

- (a) The Trustee shall maintain accurate records and detailed accounts of all investments, receipts, disbursements and other transactions hereunder at the PARS 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) Valuation. The assets of the Agency 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 Plan Administrator 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 Agency 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.

5.13 Statements

- (a) Periodically as specified, and within sixty days after June 30, or the end of the PARS 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 PARS Trust. Such account shall set forth the assets and liabilities of the PARS 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.

5.14 Wire Transfers

The Trustee shall follow the Plan Administrator's, Delegatee'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 Delegatee, of 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.

5.15 Exclusive Benefit

The Assets of the Agency Trust shall be held in trust for the exclusive purpose of providing benefits to the participants and their beneficiaries of the Member Agency Plan, and defraying reasonable expenses of the Plan, and shall not be

used for or diverted to any other purpose. No party shall have authority to use or divert such Plan's Assets for the payment of benefits or expenses of any other Member Agency's Plan.

5.16 Delegation of Duties

The Plan Administrator, Delegatee, 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, Delegatee 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.

5.17 Distributions

All benefits payable pursuant to the Plan shall be paid out of the Assets of the Agency Trust by the Trustee pursuant to the direction of the Plan Administrator or Delegatee. The Trustee shall, from time to time, upon the written direction of the Plan Administrator or Delegatee, make distributions from the Assets of the Agency Trust to or for the benefit of such persons, in such manner in such form(s), in such amounts and for such purposes as may be specified in such directions. The Trustee at the direction of the Plan Administrator or Delegatee may make any distribution required to be made by it hereunder by delivering to the Plan Administrator or Delegatee:

Its check payable to the person to whom such distribution is to be made, for delivery to such person; or

Its check payable to an insurer for the benefit of such person, for delivery by such insurer; or insurance contracts held on the life of the Participant to whom or with respect to whom the distribution is being made, for redelivery to the person to whom such distribution is to be made; provided that any contract distributed shall be endorsed as non-transferable.

In directing the Trustee to make distributions, the Plan Administrator or Delegatee shall follow the provisions of the Plan and shall not direct that any distribution be made either during the existence or upon discontinuance of the Plan, which would cause any part of the Assets of the Agency Trust to be used for or diverted to purposes other than as provided in the Plan and this PARS Trust. In no event shall the Trustee have any responsibility respecting the application of such distributions, nor for determining or inquiring into whether such distributions are in accordance with the Plan.

5.18 Participant Directed Accounts

The Member Agency may, by written resolution and execution of the Adoption Agreement, terminate the Plan Administrator's right to direct the investment and management of all or any portion of the Assets of the Agency Trust and allow Participants to direct their own account balances ("Participant Directed Accounts"). Notwithstanding any other provision of this Trust Agreement, for Participant Directed Accounts, the Trustee shall be entitled to act upon proper directions of the Plan Administrator, Trust Administrator, and Participants including directions in writing, or oral instructions which Trustee in its discretion may follow without receipt of written instructions, instruction given by photostatic teletransmission using facsimile signature, or those instructions which are digitally recorded on the UBOC Voice Response Unit ("VRU") or internet website. Trustee is hereby authorized to record conversations and transmissions made in connection with the Agency Trust. Trustee's recording or lack of recording of any such oral, internet or digital instructions, and/or receipt or lack of receipt of facsimile transmissions, as reflected in the Trustee's records maintained in the ordinary course of business shall constitute conclusive proof of Trustee's receipt or non-receipt of such instructions.

The Trustee and/or Trust Administrator shall not be liable in any manner for investment or other losses or other liability attributable to Participant's directions, or lack thereof, or exercise of control over the investments of their Participant Directed Accounts. Likewise, the Trustee and/or Trust Administrator shall have no duty or responsibility to review, monitor or make recommendations regarding investments made at the direction of the Participants or the Plan Administrator. In order for Member Agency to be relieved of investment fiduciary liability, the requirements of California law including Section 53213.5 of the California Government Code must be met. The Plan Administrator shall establish uniform and nondiscriminatory rules for the operation of the Participant Directed Accounts, including whether the Participant shall direct the Trustee or direct the Plan Administrator who directs the Trust Administrator who forwards such directions to the Trustee. Member Agency shall designate whether Participant Directed Accounts are to be established pursuant to the provisions of section 5.18(a) or 5.18(b), below:

- (a) Participant Direction in Individually Directed Accounts. If the Member Agency has so elected, Participants may have investment direction power over their own segregated account balances ("Individually Directed Account" or "IDA"). Investments may be directed by Participants into assets administratively acceptable to Trustee, as limited by guidelines developed by the Plan Administrator (the "Permissible Investment Guidelines"). Plan Administrator shall notify Participants of the Plan's Permissible Investment Guidelines as in effect from time to time. In the absence of directions from a Participant, the Plan Administrator may direct the investment of the IDA. The Trustee may refuse to comply with the

directions of the Participant to invest in assets other than those listed in its Permissible Investments Guidelines or with directions which the Trustee deems to be improper or contrary to the provisions of the Plan and Agency Trust or the Internal Revenue Code and shall have no liability for such refusal.

- (b) Participant Directed Account within Plan Administrator Selected Investment Options ("SelectBENEFIT Accounts"): If the Member Agency so elects, the Participant's Account Balance shall be segregated into a Participant Directed Account ("SelectBENEFIT Account"), over which the Participant may direct investment into one or more investment alternatives ("Investment Options"). The Plan Administrator or its appointed Investment Fiduciary shall have full responsibility for designating the Investment Options under the Plan and for selecting the underlying investment vehicle(s) for each designated Investment Option into which a Participant may direct investment of his or her SelectBENEFIT Account. To the extent allowed by law, neither the Member Agency, the Plan Administrator, the Trust Administrator nor the Trustee shall have any responsibility for monitoring the directions of the Participant nor shall the Member Agency, the Plan Administrator, the Trust Administrator or the Trustee be liable in any manner for investment or other losses or other liability for following directions of a Participant.
- (c) If SelectBENEFIT Accounts are established, notwithstanding any other provision of this Trust Agreement, the Member Agency may appoint the Trustee to provide ministerial services as recordkeeper for such accounts by so indicating in the Member Agency's Adoption Agreement, provided that an acceptable service agreement has been executed by and between the Member Agency, the Plan Administrator, the Trustee and the Trust Administrator.

Article VI

FIDUCIARY RESPONSIBILITIES

6.1 More Than One Fiduciary Capacity

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

6.2 Fiduciary Discharge of Duties

Except as otherwise provided in the Code and applicable law each fiduciary shall discharge such fiduciary's duties with respect to the PARS Trust Agreement and the Plan:

Solely in the interest of the Participants and for the exclusive purpose of providing benefits to Participants, and defraying reasonable expenses of administering the Plan. 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. By diversifying the investments of the Plan and the Agency Trust so as to minimize the risk of loss and to maximize the rate of return, unless under the circumstances it is clearly prudent not to do so.

6.3 Limitations on Fiduciary Responsibility

To the extent permitted by applicable law:

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 unless the non-breaching fiduciary knowingly participates in such a breach, knowingly undertakes to conceal such breach, or has actual knowledge of such breach and fails to take reasonable steps to remedy such breach.

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 Member Agency

The Trustee shall not be liable for, and Member Agency shall indemnify, defend (as set out in 6.8 of this Trust Agreement), and hold the Trustee (including its officers, agents, employees and attorneys) and other Member Agencies and Alternate Trustees, 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 Member Agency'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 Member Agency by Trustee

The Member Agency shall not be liable for, and Trustee shall indemnify, defend (as set out in 6.8 of this Trust Agreement), and hold the Member Agency (including its officers, agents, employees and attorneys) and other Member Agencies and Alternate Trustees, 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 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 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 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.

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 Member Agency shall be responsible for any contributions, costs or distributions of any other Member Agency.

Article VII

AMENDMENT, TERMINATION AND MERGER

7.1 No Obligation to Continue Plan and Trust

Continuance of the Agency Trust, participation in the PARS Trust Program and continuation of the Plan are not assumed as a contractual obligation of the Member Agency.

7.2 Amendments

- (a) The PARS Trust Agreement may only be amended or terminated as provided herein. A two-thirds majority or greater of the Member Agencies shall have the right to amend this Trust Agreement from time to time, and to similarly amend or cancel any amendments. A copy of all amendments shall be delivered to the Trustee, the Trust Administrator and Plan Administrators promptly as each is made.
- (b) Such amendments shall be set forth in an instrument in writing executed by the amending party, the Trust Administrator and the Trustee. Any amendment may be current, retroactive or prospective, provided, however, that no amendment shall:
 - (1) Cause the Assets of any Agency Trust to be used for or diverted to purposes other than for the exclusive benefit of Participants who have an interest in such Agency Trust or for the purpose of defraying the reasonable expenses of administering such Agency Trust.

- (2) Have any retroactive effect so as to reduce the benefits of any Participant having an interest in the Agency Trust as of the date the amendment is adopted, except that such changes may be made as may be required to permit this PARS Trust Agreement to meet the requirements of applicable law.
- (3) Change or modify the duties, powers or liabilities of the Trustee or the Trust Administrator hereunder without its consent.
- (4) Permit the Assets of any Agency Trust to be used for the benefit of any other Plan of the Member Agency unless the Member Agency agrees to such use.

7.3 Termination of Plan

A termination of the Plan for which the Agency Trust was established shall not, in itself, effect a termination of an Agency Trust. Upon any termination of the Plan, the Assets of the Agency Trust shall be distributed by the Trustee as and when directed by the Plan Administrator. From and after the date of such termination of the Plan and until final distribution of the Assets 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 Trust shall continue until the interests of all Participants have been completely distributed to or for the benefit of the Participants in accordance with the Plan.

7.4 Reversion

In the event a Member Agency's Plan is terminated, the vested interest of any Participant shall not be diminished or adversely affected. Except as may be provided in this Trust Agreement or the Plan, such termination shall not vest in the Member Agency any corpus or income under the Agency Trust, nor permit the Plan to discriminate as to coverage, or as to allocation of contributions or earnings, in favor of employees who are officers, shareholders, or highly compensated, nor cause the Agency Trust to lose its exemption pursuant to 501(a) of the Code. No modification, amendment or termination of the Plan shall be construed to be a termination of the Agency Trust so as to require the Trustee to make a distribution of any of the Assets of the Agency Trust to any Participant. In order to make such distribution the Trustee must receive written instructions from the Plan Administrator or Delegatee in a form acceptable to the Trustee.

If any Member Agency adopts a Plan whose assets are maintained in an Agency Trust and makes application to the Internal Revenue Service, within one year from the date of adoption of such Plan, for a determination that such Plan is a qualified plan under Section 401 (a) of the Code, and if such Plan is determined by the Internal Revenue Service not to be a qualified Plan, then all contributions

and investment income attributable to such Plan shall be returned to the Member Agency upon application to the Trustee.

7.5 Fund Recovery Based on Mistake of Fact

Except as hereinafter provided, the Assets of the Agency Trust shall never inure to the benefit of the Member Agency. The Assets shall be held for the exclusive purposes of providing benefits to Participants having an interest in the Plan and defraying reasonable expenses of administering the Agency Trust. The sole exception to the foregoing is as follows:

Mistake of Fact. In the case of a contribution which is made by the Plan Administrator 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 Plan Administrator, provided such return occurs within one (1) year after discovery by the Plan Administrator of the mistake. If any repayment is payable to the Plan Administrator, then, as a condition to such repayment, and only if requested by Trustee, the Plan Administrator 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.

7.6 Transfers from Other Qualified Plans

Notwithstanding any other provision hereof, there may be transferred to the Trustee, upon direction of the Plan Administrator, all or any of the assets held (whether by a trustee, custodian or otherwise) on behalf of any other plan which satisfies the applicable requirements of Section 401 of the Code, and which is maintained for the benefit of any persons who are or will become Participants in the Plan.

7.7 Termination

The PARS Trust Agreement may be terminated only by a unanimous agreement of all Member Agencies. Such action must be in writing and delivered to the Trustee and Trust Administrator.

Article VIII

MISCELLANEOUS PROVISIONS

8.1 Nonalienation

To the maximum extent permitted by law, a Participant's interest in the Agency 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 the Participant or any other party. Agency Trust Assets shall not be subject to the claims of the Member Agency or the claims of its creditors.

8.2 Saving Clause

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

8.3 Applicable Law

This PARS Trust Agreement and each Agency Trust shall be construed, administered and governed under the Code and the applicable provisions of California law. To the extent any of the provisions of this Trust Agreement or the Plan are inconsistent with the Code or applicable California law, the provisions of the Code or California 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 and the Plan being a qualified governmental retirement trust and plan 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 any Agency Trust 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 or Member Agency Plan Administrator) and charge the Agency Trust.

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

The Adoption Agreement of 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.

Article IX

ACKNOWLEDGMENT AND ACCEPTANCE

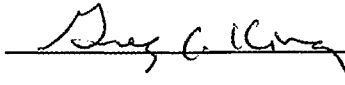
The provisions of the PARS Trust Agreement as contained herein are hereby amended and restated as of July 1, 1999 (the "Amended Effective Date")

IN WITNESS WHEREOF, the Plan Administrator (by executing the Adoption Agreement) the Trust Administrator and Trustee have executed this Trust Agreement by their duly authorized agents on this 19th day of January, 2000.

ACKNOWLEDGED AND ACCEPTED this 19th day of January, 2000.

THE TRUSTEE

UNION BANK OF CALIFORNIA, N.A.

By:  _____

Title: Senior Vice President

THE TRUST ADMINISTRATOR

PHASE II SYSTEMS

By:  _____

Title: President