



BOARD OF DIRECTORS  
BUDGET AND FINANCE COMMITTEE MEETING

COMMITTEE MEMBERS

BAY AREA  
AIR QUALITY  
MANAGEMENT  
DISTRICT

CAROLE GROOM – CHAIR  
DAVID CANEPA  
JOHN GIOIA  
NATE MILEY  
MARK ROSS

KATIE RICE – VICE CHAIR  
CINDY CHAVEZ  
DAVE HUDSON  
KAREN MITCHOFF

WEDNESDAY  
APRIL 26, 2017  
9:30 A.M.

1<sup>ST</sup> FLOOR YERBA BUENA ROOM  
375 BEALE STREET  
SAN FRANCISCO, CA 94105

AGENDA

1. **CALL TO ORDER - ROLL CALL – PLEDGE OF ALLEGIANCE**

*The Committee Chair shall call the meeting to order and the Clerk of the Boards shall take roll of the Committee members. The Committee Chair shall lead the Pledge of Allegiance.*

2. **PUBLIC COMMENT PERIOD**

*(Public Comment on Non-Agenda Items Pursuant to Government Code § 54954.3) Members of the public are afforded the opportunity to speak on any agenda item. All agendas for regular meetings are posted at District headquarters, 375 Beale Street, San Francisco, CA, at least 72 hours in advance of a regular meeting. At the beginning of the regular meeting agenda, an opportunity is also provided for the public to speak on any subject within the Committee's subject matter jurisdiction. Speakers will be limited to three (3) minutes each.*

*This meeting will be webcast. To see the webcast, please visit <http://www.baaqmd.gov/The-Air-District/Board-of-Directors/Agendas-and-Minutes.aspx> at the time of the meeting.*

Staff/Phone (415) 749-

3. **APPROVAL OF THE MINUTES OF MARCH 22, 2017** Clerk of the Boards/5073

*The Committee will consider approving the draft minutes of the Budget and Finance Committee Meeting of March 22, 2017.*

4. **CONTINUED DISCUSSION OF FISCAL YEAR ENDING (FYE) 2018 PROPOSED AIR DISTRICT BUDGET AND CONSIDERATION TO RECOMMEND ADOPTION**

J. McKay/4629

[jmckay@baaqmd.gov](mailto:jmckay@baaqmd.gov)

*The Committee will continue discussion of the proposed budget for Fiscal Year Ending (FYE) 2018 and consider recommending Board of Directors adoption of the proposed FYE 2018 Budget.*

5. **PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST PROGRAM ADMINISTERED BY AGENCY SERVICES (PARS) AND CONSIDERATION TO RECOMMEND ADOPTION**

J. McKay/4629

[jmckay@baaqmd.gov](mailto:jmckay@baaqmd.gov)

*The Committee will receive information regarding the Public Agencies Post-Employment Trust program and consider recommending Board of Directors adoption.*

6. **THIRD QUARTER FINANCIAL REPORT – FISCAL YEAR ENDING (FYE) 2017**

J. McKay/4629

[jmckay@baaqmd.gov](mailto:jmckay@baaqmd.gov)

*The Committee will receive an update on the Air District's financial results for the third quarter of Fiscal Year Ending (FYE) 2017.*

7. **COMMITTEE MEMBER COMMENTS / OTHER BUSINESS**

*Any member of the Board, or its staff, on his or her own initiative or in response to questions posed by the public, may: ask a question for clarification, make a brief announcement or report on his or her own activities, provide a reference to staff regarding factual information, request staff to report back at a subsequent meeting concerning any matter or take action to direct staff to place a matter of business on a future agenda. (Gov't Code § 54954.2)*

8. **TIME AND PLACE OF NEXT MEETING**

*Wednesday, May 24, 2017, Bay Area Air Quality Management District Office, 375 Beale Street, San Francisco, CA 94105 at 9:30 a.m.*

9. **ADJOURNMENT**

*The Committee meeting shall be adjourned by the Committee Chair.*

**CONTACT:**

**MANAGER, EXECUTIVE OPERATIONS**  
**375 BEALE STREET, SAN FRANCISCO, CA 94105**  
[mmartinez@baaqmd.gov](mailto:mmartinez@baaqmd.gov)

**(415) 749-5016**  
**FAX: (415) 928-8560**  
**BAAQMD homepage:**  
[www.baaqmd.gov](http://www.baaqmd.gov)

- To submit written comments on an agenda item in advance of the meeting. Please note that all correspondence must be addressed to the “Members of the Budget and Finance Committee” and received at least 24 hours prior, excluding weekends and holidays, in order to be presented at that Committee meeting. Any correspondence received after that time will be presented to the Committee at the following meeting.
- To request, in advance of the meeting, to be placed on the list to testify on an agenda item.
- Any writing relating to an open session item on this Agenda that is distributed to all, or a majority of all, members of the body to which this Agenda relates shall be made available at the District’s offices at 375 Beale Street, Suite 600, San Francisco, CA 94105, at the time such writing is made available to all, or a majority of all, members of that body.

**Accessibility and Non-Discrimination Policy**

The Bay Area Air Quality Management District (Air District) does not discriminate on the basis of race, national origin, ethnic group identification, ancestry, religion, age, sex, sexual orientation, gender identity, gender expression, color, genetic information, medical condition, or mental or physical disability, or any other attribute or belief protected by law.

It is the Air District’s policy to provide fair and equal access to the benefits of a program or activity administered by Air District. The Air District will not tolerate discrimination against any person(s) seeking to participate in, or receive the benefits of, any program or activity offered or conducted by the Air District. Members of the public who believe they or others were unlawfully denied full and equal access to an Air District program or activity may file a discrimination complaint under this policy. This non-discrimination policy also applies to other people or entities affiliated with Air District, including contractors or grantees that the Air District utilizes to provide benefits and services to members of the public.

Auxiliary aids and services including, for example, qualified interpreters and/or listening devices, to individuals who are deaf or hard of hearing, and to other individuals as necessary to ensure effective communication or an equal opportunity to participate fully in the benefits, activities, programs and services will be provided by the Air District in a timely manner and in such a way as to protect the privacy and independence of the individual. Please contact the Non-Discrimination Coordinator identified below at least three days in advance of a meeting so that arrangements can be made accordingly.

If you believe discrimination has occurred with respect to an Air District program or activity, you may contact the Non-Discrimination Coordinator identified below or visit our website at [www.baaqmd.gov/accessibility](http://www.baaqmd.gov/accessibility) to learn how and where to file a complaint of discrimination.

Questions regarding this Policy should be directed to the Air District’s Non-Discrimination Coordinator, Rex Sanders, at (415) 749-4951 or by email at [rsanders@baaqmd.gov](mailto:rsanders@baaqmd.gov).

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**  
**375 BEALE STREET, SAN FRANCISCO, CALIFORNIA 94105**  
**FOR QUESTIONS PLEASE CALL (415) 749-5016 or (415) 749-4941**

**EXECUTIVE OFFICE:**  
**MONTHLY CALENDAR OF AIR DISTRICT MEETINGS**

**APRIL 2017**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	26	9:30 a.m.	1st Floor, Yerba Buena Room #109
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i> - CANCELLED	Thursday	27	9:30 a.m.	1 <sup>st</sup> Floor Board Room

**MAY 2017**

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i> - CANCELLED	Wednesday	3	9:45 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i> - CANCELLED	Monday	15	9:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Stationary Source Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i> - CANCELLED	Monday	15	10:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Budget Hearing</b> <i>(At the Call of the Chair)</i>	Wednesday	17	9:45 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	17	Following Budget Hearing	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Climate Protection Committee</b> <i>(Meets on the 3<sup>rd</sup> Thursday of every other Month)</i>	Thursday	18	9:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	24	9:30 a.m.	1st Floor, Yerba Buena Room #109
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	25	9:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Special Board of Directors Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	31	9:45 a.m.	1 <sup>st</sup> Floor Board Room

## JUNE 2017

<u>TYPE OF MEETING</u>	<u>DAY</u>	<u>DATE</u>	<u>TIME</u>	<u>ROOM</u>
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	7	9:45 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Executive Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	19	9:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Stationary Source Committee</b> <i>(Meets on the 3<sup>rd</sup> Monday of each Month)</i>	Monday	19	10:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Regular Meeting</b> <i>(Meets on the 1<sup>st</sup> &amp; 3<sup>rd</sup> Wednesday of each Month)</i>	Wednesday	21	9:45 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Mobile Source Committee</b> <i>(Meets on the 4<sup>th</sup> Thursday of each Month)</i>	Thursday	22	9:30 a.m.	1 <sup>st</sup> Floor Board Room
<b>Board of Directors Budget &amp; Finance Committee</b> <i>(Meets on the 4<sup>th</sup> Wednesday of each Month)</i>	Wednesday	28	9:30 a.m.	1st Floor, Yerba Buena Room #109

HL – 4/19/17 3:15 p.m.)

G/Board/Executive Office/Moncal

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Carole Groom and Members  
of the Budget and Finance Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: April 12, 2017

Re: Approval of the Minutes of March 22, 2017

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RECOMMENDED ACTION

Approve the attached draft minutes of the Budget and Finance Committee (Committee) meeting of March 22, 2017.

DISCUSSION

Attached for your review and approval are the draft minutes of the Committee meeting of March 22, 2017.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Marcy Hiratzka  
Reviewed by: Maricela Martinez

Attachment 3A: Draft Minutes of the Committee Meeting of March 22, 2017

# AGENDA: 3A – ATTACHMENT

Draft Minutes – Budget and Finance Committee Meeting of March 22, 2017

Bay Area Air Quality Management District  
375 Beale Street, Suite 600  
San Francisco, California 94105  
(415) 749-5073

## DRAFT MINUTES

Summary of Board of Directors  
Budget and Finance Committee Meeting  
Wednesday, March 22, 2017

### 1. CALL TO ORDER – ROLL CALL

Budget and Finance Committee (Committee) Chairperson, Carole Groom, called the meeting to order at 9:30 a.m.

Present: Committee Chairperson Carole Groom, Vice Chair Katie Rice; and Directors David J. Canepa, Cindy Chavez, David Hudson, Nate Miley, Karen Mitchoff, and Mark Ross.

Absent: Director John Gioia.

Also Present: Board of Directors (Board) Chair Liz Kniss.

### 2. PUBLIC COMMENT ON NON-AGENDA MATTERS:

Public comments were given by Susan Gustofson of Valero.

### 3. APPROVAL OF THE MINUTES OF FEBRUARY 22, 2017

#### Public Comments:

No requests received.

#### Committee Comments:

None.

#### Committee Action:

Director Canepa made a motion, seconded by Director Mitchoff, to **approve** the Minutes of February 22, 2017; and the motion **carried** by the following vote of the Committee:

AYES: Canepa, Chavez, Groom, Hudson, Kniss, Mitchoff, and Rice.  
NOES: None.  
ABSTAIN: None.  
ABSENT: Gioia, Miley, and Ross.

#### 4. DISCUSSION OF PROPOSED BUDGET FOR FISCAL YEAR ENDING 2018

Dr. Jeff McKay, Deputy Air Pollution Control Officer, gave the staff presentation *Discussion of Proposed Budget Fiscal Year End (FYE) 2018 Budget*, including: outline; current Fiscal Year projections for FYE 2017; District reserve funds: audited values excluding building proceeds; financial history: actions taken during downturn; Proposed Budget for FYE 2018; General Fund revenue sources and expenditures of the FYE 2018 Proposed Budget; services, supplies, and capital (actuals); FYE 2018 Proposed Fees and full-time equivalent staffing level; additional staffing; new reserve designations; Technology Implementation Office (TIO); FYE 2018 use of reserves; Clean Air Plan (CAP) implementation; \$1.7M meteorology equipment; reserves policy; fund balance and unfunded liability; CalPERS pension retirement overview, ratio, rate of return, change in rate of return, estimated impact to rate of return, possible strategy to address impact, who is Public Agency Retirement Services (PARS), and possible trust implementation steps; other postemployment benefits (OPEB) retirement medical and overview; office building obligations; budget summary FYE 2018; and next steps.

NOTED PRESENT: Director Miley was noted present at 9:40 a.m. and Director Ross was noted present at 9:57 a.m.

##### Public Comments:

None.

##### Committee Comments:

The Committee and staff discussed the Committee's concern of the increase in ongoing expenses (versus one-time expenses), which are at the mercy of the economy; the need for the District to provide the public with an explanation for the increase in the General Fund Budget so that there is no confusion as to how the increase came to be and for what purposes it may be used; how three existing positions were transferred to the TIO, and the status of the recruitment for the TIO Officer; the District's intention to create a revolving loan or grant fund that will generate administration fees, which will pay for TIO expenses; the District's definition of "capital"; the Committee's request for a presentation on Public Agency Retirement Services Pension Trust Fund options, for the District's OPEB and CalPERS contracts be analyzed in a comparative manner with PARS options, and to look at the employee count relative to their funding sources; the need to distinguish revenue expenditures *from reserves* from revenue expenditures *from ongoing revenue*, as the Committee is concerned that the public will not be able to tell the difference; the District's possible subsequent cash purchase of \$4 million for 10,000 square feet of additional office space at 375 Beale Street; the meaning of the acronyms relative to OPEB retirement medical (actuarially accrued liability, market value of assets, and actuarial value of assets); the funding sources of the \$4 million FYE 2018 Proposed Pre-Fund; and the District's limited options for capital diversification.

##### Committee Action:

None; receive and file.



## **5. PROPOSED AMENDMENTS TO REGULATION 3: FEES**

Mr. Broadbent, Executive Officer/Air Pollution Control Officer, explained that the Proposed Fee amendments are designed to recover the costs of regulatory program activities in accordance with the Air District's Cost Recovery Policy. He introduced Jaime Williams, Director of Engineering, who gave the staff presentation *Proposed Amendments to Regulation 3: Fees*, including: outline; revenue sources FYE 2016; cost recovery background; trends in cost recovery and cost cutting; FYE 2018 Proposed Fees; proposed changes to fee schedules; Proposed Fee schedules with no increase; Regulation 11, Rule 18 rule development underway, facility-wide Health Risk Assessment (HRA) fees, and risk reduction plan fees; other proposed amendments; impact on small businesses; impact on large facilities: petroleum refineries and power plants; public comments; and rule development schedule.

### Public Comments:

None.

### Committee Comments:

The Committee and staff discussed how the 2.7% increase for Schedule M (Major Stationary Source Fees) and Schedule U (Indirect Source Fees), and other future increases, may affect the one hundred Title V facilities in the Bay Area; how increases in activity levels, as well as increases in rates, both contribute to fee increases; the Committee's gratitude to staff for reaching out to small businesses about these amendments; the need for the full Board to understand the District's Cost Recovery Program when this item is brought to the Board for consideration; how penalties are determined by the State; potential examples (at both ends of the spectrum) of risk reduction plan fees regarding Draft Rule 11-18; how often and the manner in which reduction plan fees and facility-wide HRA fees would be collected; and how the implementation of reduction plan fees and facility-wide HRA fees are contingent upon the adoption of Draft Rule 11-18.

### Committee Action:

None; receive and file.

## **6. COMMITTEE MEMBER COMMENTS / OTHER BUSINESS**

None.

## **7. TIME AND PLACE OF NEXT MEETING**

Wednesday, April 26, 2017, Bay Area Air Quality Management District Office, 375 Beale Street, San Francisco, CA 94105 at 9:30 a.m.

**8. ADJOURNMENT**

The meeting adjourned at 10:50 a.m.

Marcy Hiratzka  
Clerk of the Boards

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Carole Groom and Members  
of the Budget and Finance Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: April 7, 2017

Re: Continued Discussion of Fiscal Year Ending (FYE) 2018 Proposed Air District Budget  
and Consideration to Recommend Adoption

RECOMMENDED ACTION

The Committee will continue discussion of the proposed budget for FYE 2018 and consider recommending that the Board of Directors:

1. Adopt the Fiscal Year Ending (FYE) 2018 Proposed Budget

BACKGROUND

As directed by the Board of Directors at its March 15, 2017 regular board meeting, the FYE 2018 Proposed Budget was referred to the Budget and Finance Committee for review at the Committee's March 22, 2017 meeting.

On March 22, 2017, staff presented the FYE 2018 proposed budget to the Committee. The proposed budget is balanced, with the General Fund totaling \$94.8 million and the Consolidated Funds (including program distributions) totaling \$154.7 million. Proposed capital requests are \$5.7 million.

DISCUSSION

The Committee will continue its discussion of the FYE 2018 Proposed Budget at its April 26, 2017 meeting. The FYE 2018 Proposed Budget includes the following recommendations for the Committee's consideration:

- Continuation of contribution to prefund Other Post Employment Benefits (OPEB) in the amount of \$4.0 million
- Prefund CalPERS Pension plan in an amount of \$1.0 million
- Use of \$7.9 million reserves to fund one-time purchases
- Increase budgeted positions from 346 to 359

In addition to these recommendations, the Committee directed staff to prepare the following for the April 26, 2017 Committee meeting:

- A comparison of recurring versus on-going revenues and expenditures
- A summary of employee count relative to funding source
- Employee benefit summary for Other Post Employment Benefit (OPEB) and Pension

Staff will present information on these items at the April 26, 2017 Committee meeting.

Staff requests that the Budget and Finance Committee at its April 26, 2017 meeting complete its review and recommend adoption of the proposed budget to the Board. This will allow staff the necessary time required to amend, if necessary, the budget for the first public hearing of the proposed budget to be held on May 17, 2017.

Staff will publish, prior to April 26, 2017 a public notice that the first of two public hearings on the budget will be conducted on May 17, 2017 and that the second hearing will be conducted on June 21, 2017.

#### BUDGET CONSIDERATION/FINANCIAL IMPACT

The proposed consolidated budget for FYE 2017 is \$154,712,448 and is a balanced budget.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Stephanie Osaze  
Reviewed by: Rex Sanders and Jeff McKay

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Carole Groom and Members  
of the Budget and Finance Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: April 10, 2017

Re: Public Agencies Post-Employment Benefits Trust Program Administered by Public  
Agency Retirement Services (PARS)

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RECOMMENDED ACTION

None; receive and file.

DISCUSSION

As part of the Fiscal Year Ending (FYE) 2017 Budget process, the Board directed staff to review and consider options for funding pension liability. At the March 22, 2017 Budget & Finance Committee meeting, staff presented prefunding pension through an irrevocable trust fund with PARS. The Committee directed staff to bring back an agenda item at its April 26, 2017 meeting on the PARS program.

BACKGROUND

The Air District provides a defined-benefit pension to its retirees through California Public Employees Retirement System (CalPERS), Funding of CalPERS pensions relies on three sources: employee contributions, employer contributions, and investment returns (which vary per the performance of financial markets).

CalPERS actuarial reports have changed significantly in recent years with the Board lowering the discount rate, changing demographic assumptions, and implementing other changes, all of which have caused the normal cost and our unfunded liability to increase, which in turn drives the Air District's required annual contributions higher. On December 21, 2016, the CalPERS Board of Administration voted to lower the discount rate (also known as the assumed rate of return) from 7.5 percent to 7.0 percent over the next three years. This means that employers that contract with CalPERS will see additional increases in both their normal costs and unfunded actuarial liabilities.

In 2012, the Government Accounting Standards Board (GASB) issued Statement No. 68, Accounting and Financial Reporting for Pensions. GASB 68 requires that governmental employers that sponsor defined benefit plans (i.e., CalPERS) must recognize a net pension liability (also known as an unfunded actuarial accrued liability (UAAL)) on their balance sheet. This is the difference between the Air District's total pension liability and actual plan assets.

GASB 68 became effective for fiscal years starting after June 15, 2014. Audited financial statements for Fiscal Year Ending 2016 show an unfunded pension liability of \$55 million.

Until recently, the Air District's only option for reducing the UAAL was to commit additional funds to CalPERS. Unfortunately, these additional funds would be subject to the same market volatility risk as the CalPERS investment rate of return. A recent ruling received from the Internal Revenue Service established that public agencies could create a separate trust to "pre-fund" its CalPERS unfunded liability. This would provide the Air District with an alternative to sending funds to CalPERS and will provide greater Air District control over assets and portfolio management.

In addition, the Air District would also have the same investment advantages with PARS when prefunding OPEB. Currently, additional OPEB funding is being sent to California Employers Retirement Benefit Trust (CERBT) administered by CalPERS. PARS participation will allow the Air District to diversify these investments for OPEB as well.

#### BUDGET CONSIDERATION/FINANCIAL IMPACT

As a part of the FYE 2018 Proposed Budget, Staff is recommending a total of \$5 million towards prefunding these obligations; \$4 million towards OPEB and \$1 million for pension. Additionally, in the FYE 2017 Adopted Budget, the Board set aside \$280,000 for prefunding pension; increasing the total prefunding of pension to \$1.028 million. All funds placed into the irrevocable trust fund can only be used to pay for retirement obligations.

The Air District would pay fees to PARS for management of the trust fund. These fees will be paid from the trust assets and staff anticipates that the investment earnings will be more than adequate to pay the fees.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Stephanie Osaze  
Reviewed by: Rex Sanders and Jeff McKay

- Attachment 5A: Letter from Internal Revenue Service regarding Public Agencies Post-Employment Benefits Trust Agreement
- Attachment 5B: Example Draft Resolution Approving the Adoption of the Public Agencies Post-Employment Benefits Trust Administered by Public Agency Retirement Services (PARS)

**Internal Revenue Service**

Department of the Treasury  
Washington, DC 20224

Index Number: 115.00-00

Third Party Communication: None  
Date of Communication: Not Applicable

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

Person To Contact:  
Robin J. Ehrenberg, ID No. 1000219292

Telephone Number:  
(202) 317-5800

Refer Reply To:  
CC:TEGE:EOEG:EO3  
PLR-146796-14

Date: June 5, 2015

### Legend

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

Dear Ms. Hughes:

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

### FACTS

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

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

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

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

## LAW AND ANALYSIS

### Issue 1 - IRC section 115(1)

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,

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

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

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

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

RESOLUTION NO. \_\_\_\_\_

RESOLUTION OF THE GOVERNING BOARD OF DIRECTORS  
OF THE BAY AREA AIR QUALITY MANAGEMENT DISTRICT  
APPROVING THE ADOPTION OF THE  
PUBLIC AGENCIES POST-EMPLOYMENT BENEFITS TRUST  
ADMINISTERED BY PUBLIC AGENCY RETIREMENT SERVICES (PARS)

WHEREAS Bay Area Air Quality Management District (“District”) is currently participating in CalPERS California Employers Retirement Benefit Trust (CERBT) for the pre-funding of its retiree health benefits and other post-retirement benefits (OPEB) other than pension benefits; and

WHEREAS the District desires to set aside funds for the purpose of pre-funding its CalPERS pension obligations that will be held in trust for the exclusive purpose of making future contributions of the District’s required pension contributions and any employer contributions in excess of such required contributions at the discretion of the District; and

WHEREAS PARS has made available the PARS Public Agencies Post-Employment Benefits Trust (the “Program”) for the purpose of pre-funding both pension obligations and/or OPEB obligations; and

WHEREAS the District is eligible to participate in the Program, a tax-exempt trust performing an essential governmental function within the meaning of Section 115 of the Internal Revenue Code, as amended, and the Regulations issued there under, and is a tax-exempt trust under the relevant statutory provisions of the State of California; and

WHEREAS the District can manage the pre-funding of its pension and OPEB obligations under this program; and

WHEREAS the District’s participation in PARS and CERBT will provide diversification of district’s assets; and

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

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

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

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

NOW THEREFORE, BE IT RESOLVED THAT:

1. The Governing Board hereby adopts the PARS Public Agencies Post-Employment Benefits Trust, effective \_\_\_\_\_, 2017; and

2. The Governing Board hereby appoints the Executive Officer, or his/her successor or his/her designee as the District's Plan Administrator for the Program; and
3. The District's Plan Administrator is hereby authorized to execute the PARS legal and administrative documents on behalf of the District and to take whatever additional actions are necessary to maintain the District's participation in the Program and to maintain compliance of any relevant regulation issued or as may be issued; therefore, authorizing him/her to take whatever additional actions are required to administer the District's Program.

The foregoing resolution was duly and regularly introduced, passed and adopted at a regular meeting of the Board of Directors of the Bay Area Air Quality Management District on the Motion of Director \_\_\_\_\_, seconded by Director \_\_\_\_\_, on the \_\_\_\_\_ day of \_\_\_\_\_ 2017

by the following vote of the Board:

AYES:

NOES:

ABSENT:

\_\_\_\_\_  
LIZ KNISS  
Chairperson of the Board of Directors

ATTEST:

\_\_\_\_\_  
KATIE RICE  
Secretary of the Board of Directors

**BAY AREA AIR QUALITY MANAGEMENT DISTRICT**

Memorandum

To: Chairperson Carole Groom and Members  
of the Budget and Finance Committee

From: Jack P. Broadbent  
Executive Officer/APCO

Date: April 11, 2017

Re: Third Quarter Financial Report – Fiscal Year Ending (FYE) 2017

**RECOMMENDED ACTION**

None; receive and file.

**DISCUSSION**

Finance staff will present an update on the Air District’s financial results for the third quarter of the 2016-17 fiscal year. The following information summarizes those results.

**GENERAL FUND BUDGET: STATEMENT OF REVENUES – Comparison of Prior Year Quarter Actual and Current Year Budget to Actual**

REVENUE TYPE	3RD QTR FY 2016	3RD QTR FY 2017	FY 2017 - % of BUDGETED REVENUE
County Receipts	\$16,306,294	\$16,698,101	62%
Permit Fee Receipts	\$28,999,475	\$30,870,732	92%
Title V Permit Fees	\$4,636,534	\$4,653,797	99%
Asbestos Fees	\$2,855,744	\$3,030,181	117%
Toxic Inventory Fees	\$215,872	\$168,113	70%
Penalties and Settlements	\$5,917,183	\$2,517,392	114%
Miscellaneous Revenues	\$178,177	\$256,543	128%
Interest Revenues	\$39,973	\$75,483	50%
Total Revenue	\$59,149,253	\$58,270,342	83%

**GENERAL FUND: STATEMENT OF EXPENDITURES - Comparison of Prior Year Quarter Actual and Current Year Budget to Actual**

EXPENDITURE TYPE	3RD QTR FY 2016	3RD QTR FY 2017	FY 2017 - % of BUDGETED EXPENDITURES
Personnel - Salaries*	\$26,063,897	\$26,580,883	71%
Personnel - Fringe Benefits*	\$13,930,322	\$14,361,433	74%
Operational Services / Supplies	\$13,046,025	\$13,317,126	62%
Capital Outlay	\$5,834,915	\$2,733,616	69%
Total Expenditures	\$58,875,160	\$56,993,058	69%

\*Consolidated (includes Special Funds)

**CASH INVESTMENTS IN COUNTY TREASURY – Account Balances as of 3rd Quarter**

<b>CASH/INVESTMENTS</b>	<b>3RD QTR FY 2016</b>	<b>3RD QTR FY 2017</b>
General Fund	\$58,384,528	\$73,236,606
TFCA	\$78,310,617	\$86,313,059
MSIF	\$31,646,609	\$36,672,835
Carl Moyer	\$5,003,236	\$4,783,613
CA Goods Movement	\$8,114,757	\$8,349,154
Bike Share	\$2,930,969	\$1,063,615
<b>Total</b>	<b>\$184,390,716</b>	<b>\$210,418,883</b>

	<b>6/30/2015</b>	<b>6/30/2016</b>	<b>6/30/2017</b>
<b>FUND BALANCES</b>	<b>Audited</b>	<b>Audited</b>	<b>Projected</b>
DESIGNATED: *			
Economic Contingency	\$11,114,309	\$16,519,959	\$16,614,025
IT- Desktop Equipment	\$500,000	\$0	\$0
IT- Event Response	\$500,000	\$500,000	\$500,000
Pension & Post Employment Liability	\$1,800,000	\$1,600,000	\$800,000
Tech- Meteorological Network Equipment	\$417,100	\$417,100	\$417,100
Tech- Mobile Monitoring Instruments	\$450,000	\$450,000	\$450,000
GHG Abatement Technology Study	\$0	\$1,500,000	\$1,500,000
Worker's Comp Self -Funding	\$1,000,000	\$1,000,000	\$1,000,000
Total Designated Reserves	\$15,781,409	\$21,987,059	\$21,281,125
Undesignated Fund Balance	\$15,122,475	\$13,366,286	\$13,366,286
<b>TOTAL DESIGNATED &amp; UNDESIGNATED</b>	<b>\$30,903,884</b>	<b>\$35,353,345</b>	<b>\$34,647,411</b>
Building Proceeds	\$14,168,200	\$4,668,200	\$4,668,200
<b>TOTAL FUND BALANCE</b>	<b>\$45,072,084</b>	<b>\$40,021,545</b>	<b>\$39,315,611</b>
* Designated Fund Balances are subject to change at Board's discretion.			
<b>UNFUNDED LIABILITIES (Based on 2015 Actuarial Valuation Report)</b>			
CalPERS Pension Retirement			\$59,242,771
Other Post- Employment Benefits			\$32,954,000
<b>TOTAL UNFUNDED LIABILITIES</b>			<b>\$92,196,771</b>

**VENDOR PAYMENTS**

In accordance with provisions of the Administrative Code, Division II Fiscal Policies and Procedures - Section 4 Purchasing Procedures: 4.3 Contract Limitations, staff is required to present recurring payments for routine business needs such as utilities, licenses, office supplies and the like, more than, or accumulating to more than \$100,000 for the fiscal year. In addition, this report includes all of the vendors receiving payments in excess of \$100,000 under contracts that have not been previously reviewed by the Board. In addition, staff will report on vendors

that undertook work for the Air District on several projects that individually were less than \$100,000, but cumulatively exceed \$100,000.

Below is a list of vendors with cumulative payments made through the third quarter of 2016-2017 fiscal year that exceeded \$100,000 and meets the reporting criteria noted above. All expenditures have been appropriately budgeted as a part of the overall Air District budget for Fiscal Year 2016-17.

<b>VENDOR NAME</b>	<b>AMOUNT PAID (July 2016 - March 2017)</b>	<b>Explanation</b>
1. Alliant Insurance Services	\$436,359	Various Business Insurance Policies
2. Benefits Coordinators Corp.	\$648,505	Life Insurance Plan & LTD Insurance
3. CA Public Employee Retirement System	\$4,171,370	Health Insurance Plan
4. CA Public Employee Retirement System	\$9,175,002	Retirement Benefits & 457 Supplemental Plan
5. CAPCOA	\$644,042	Pass through EPA grants
6. Cubic Transportations Systems	\$277,612	Clipper Transit Subsidy
7. Direct Mail Center	\$112,299	Public Notice Mailing Services
8. Employee Benefit Specialists	\$236,446	Medical & Dependent Care Flexible Spending Plan
9. Enterprise Fleet Services	\$367,095	Fleet Leasing and Maintenance services
10. Hartford Life Ins Co.	\$444,601	457 Supplemental Insurance
11. Preferred Benefit Insurance AD	\$510,868	Dental Insurance Plan
12. Renne Sloan Holtzman Sakai	\$129,464	Human Resources Consulting Services
13. Thermo Environmental Instrument	\$141,740	Air monitoring and source rest instrumentation
14. Verizon Wireless	\$146,796	Cell phone services

**BUDGET CONSIDERATION/FINANCIAL IMPACT**

None; receive and file.

Respectfully submitted,

Jack P. Broadbent  
Executive Officer/APCO

Prepared by: Stephanie Osaze  
Reviewed by: Rex Sanders