REPORT

DATE: August 30, 2007

TO: Investment Subcommittee, Administration Committee

FROM: Wayne Moore, CFO, 213-236-1804, moore@scag.ca.gov

SUBJECT: IMPLEMENTATION REGARDING GASB 45 IRREVOCABLE TRUST

EXECUTIVE DIRECTOR'S APPROVAL:

RECOMMENDED ACTION:

Recommend that the Administration Committee approve the following documents relating to the implementation of the Governmental Accounting Standards Board Statement No. 45 (GASB 45) Irrevocable Trust:

(1) Agreement and Election to Prefund Other Post Employment Benefits with CalPERS; and the
(2) Resolution No. 07-490-1 providing for the Delegation of Authority to Request Disbursements.

BACKGROUND:

On July 12, 2007, the Regional Council accepted the joint recommendation of the Audit and Personnel Committees to establish an irrevocable trust to accumulate funding for SCAG's Other Post Employment Benefits (OPEB) to address GASB 45 requirements.

SCAG contracts with CalPERS for employee health benefits under the Public Employees' Medical and Hospital Care Act (PEMHCA) and is thus able to use the California Employers' Retiree Benefit Trust (CERBT) Fund. This is an investment vehicle for prefunding future OPEB costs.

The CERBT Fund is a Section 115 trust set up for the purpose of receiving employer contributions that will prefund OPEB costs for retirees and their beneficiaries. CalPERS has 75 years experience in administering employer-sponsored plans; they have administered public employee pension plans since 1932. Over the past twenty years, the average annual rate of return on investments was 10%. CalPERS charges lower administrative fees than the private sector. Over the past ten years, the average annual cost of managing the pension fund at CalPERS was 0.25 percent of assets. Private sector money managers charge 1% or more.

To participate in the CalPERS CERBT Fund, SCAG must:

(a) Obtain an actuarial valuation using the actuarial assumptions and methods prescribed by CalPERS;
(b) Adopt and execute the attached Agreement and Election to Prefund Other Post Employment Benefits;
(c) Adopt the attached Resolution regarding the delegation of authority to request disbursements from SCAG's prefunding plan; and
(d) Submit the Agreement, Resolution and the valuation to CalPERS for approval.

The minimum contribution is the lesser of $5,000 or the amount of the annual required contribution (ARC). The ARC is the actuarially determined amount that if set aside, will in time, satisfy the cost of all benefits promised. Employers are not required to fund the entire amount of the ARC. Contributions will be accepted seven days after the date the Agreement and Election to Prefund is approved by CalPERS.

FISCAL IMPACT:
The ARC for increasing SCAG's retiree medical contribution 2% triennially is $579,000. This is $206,000 more than the pay-as-you-go amount of $373,000 budgeted in FY08. The FY08 budget also includes $30,000 for actuarial services.

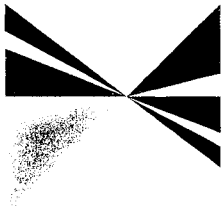
Reviewed by:

Division Manager

Reviewed by:

Chief Financial Officer

SOUTHERN CALIFORNIA



ASSOCIATION of GOVERNMENTS

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Tribal Government Representative: Andrew Masiel Sr., Pechanga Band of Luiseño Indians

Ventura County: Linda Parks, Ventura County • Glen Becerra, Simi Valley • Carl Morehouse, San Buenaventura • Toni Young, Port Hueneme

Orange County Transportation Authority: Art Brown, Buena Park

Riverside County Transportation Commission: Robin Lowe, Hemet

Ventura County Transportation Commission: Keith Millhouse, Moorpark

6/21/07

RESOLUTION No. 07-490-1

RESOLUTION OF THE SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS PROVIDING FOR THE DELEGATION OF AUTHORITY TO REQUEST DISBURSEMENTS OF CALPERS PREFUNDING PLAN RELATING TO OTHER POST EMPLOYMENT BENEFITS

WHEREAS, the Southern California Association of Governments (SCAG) is a Joint Powers Agency established pursuant to Section 6502 et seq. of the California Government Code;

WHEREAS, SCAG is a contracting agency with the California Public Employees' Retirement System (CalPERS) under the Public Employees' Medical and Hospital Care Act, and has elected to participate in CalPERS' California Employer's Retiree Benefit Trust Program (hereinafter referred to as "CERBT" or "Prefunding Plan") to assist in SCAG's payment of health care costs or other post employment benefits pursuant to the requirements of GASB 45; and

WHEREAS, SCAG is authorized to request disbursements from SCAG's prefunding account under the Prefunding Plan in accordance with procedures established by the CalPERS Board. Such procedures require that SCAG delegate who has the authority to request disbursements on behalf of SCAG, and this resolution establishes such delegation of authority.

NOW, THEREFORE, BE IT RESOLVED, by the Regional Council of the Southern California Association of Governments as follows:

1. The Regional Council hereby delegates to the incumbents in the positions of Executive Director and Chief Financial Officer the authority to request on behalf of SCAG disbursements from the Other Post Employment Prefunding Plan administered by CalPERS and to certify as to the purpose for which the disbursed funds will be used.

2. SCAG's Chief Financial Officer or his designee is authorized to transmit a copy of this Resolution to CalPERS for its records.

APPROVED AND ADOPTED by the Regional Council of the Southern California Association of Governments at a regular meeting this 30th day of August 2007.

Attested by:

Mark Pisano
Executive Director

Gary Ovitt
President
Supervisor, San Bernardino County

Approved as to Form:

Joanna Africa
Interim Director of Legal Services

CALIFORNIA EMPLOYER'S RETIREE BENEFIT TRUST PROGRAM ("CERBT")

AGREEMENT AND ELECTION
OF

SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG)

(NAME OF EMPLOYER)

TO PREFUND OTHER POST EMPLOYMENT BENEFITS THROUGH CalPERS

WHEREAS (1) Government Code Section 22940 establishes in the State Treasury the Annuitants' Health Care Coverage Fund for the prefunding of health care coverage for annuitants (Prefunding Plan); and

WHEREAS (2) The California Public Employees' Retirement System (CalPERS) Board of Administration (Board) has sole and exclusive control and power over the administration and investment of the Prefunding Plan (sometimes also referred to as CERBT), the purposes of which include, but are not limited to (i) receiving contributions from participating employers and establishing separate Employer Prefunding Accounts in the Prefunding Plan for the performance of an essential governmental function (ii) investing contributed amounts and income thereon, if any, in order to receive yield on the funds and (iii) disbursing contributed amounts and income thereon, if any, to pay for costs of administration of the Prefunding Plan and to pay for health care costs or other post employment benefits in accordance with the terms of participating employers' plans; and

WHEREAS (3) SOUTHERN CALIFORNIA ASSOCIATION OF GOVERNMENTS (SCAG)
(NAME OF EMPLOYER)
(Employer) is a contracting agency under the Public Employees' Medical and Hospital Care Act (PEMHCA) administered by the Board, and desires to participate in the Prefunding Plan upon the terms and conditions set by the Board and as set forth herein; and

WHEREAS (4) Employer may participate in the Prefunding Plan upon (i) approval by the Board and (ii) filing a duly adopted and executed Agreement and Election to Prefund Other Post Employment Benefits (Agreement) as provided in the terms and conditions of the Agreement; and

WHEREAS (5) The Prefunding Plan is a trust fund that is intended to perform an essential governmental function within the meaning of Section 115 of the Internal Revenue Code as an agent multiple-employer plan as defined in Governmental Accounting Standards Board (GASB) Statement No. 43 consisting of an aggregation of single-employer plans, with pooled administrative and investment functions;

NOW, THEREFORE, BE IT RESOLVED THAT EMPLOYER HEREBY MAKES THE FOLLOWING REPRESENTATION AND WARRANTY AND THAT THE BOARD AND EMPLOYER AGREE TO THE FOLLOWING TERMS AND CONDITIONS:

A. Representation and Warranty

Employer represents and warrants that it is a political subdivision of the State of California or an entity whose income is excluded from gross income under Section 115 (1) of the Internal Revenue Code.

B. Adoption and Approval of the Agreement; Effective Date; Amendment

(1) Employer's governing body shall elect to participate in the Prefunding Plan by adopting this Agreement and filing with the CalPERS Board a true and correct original or certified copy of this Agreement as follows:

Filing by mail, send to: CalPERS Employer Services Division
P.O. Box 942709
Sacramento, CA 94229-2709

Filing in person, deliver to:
CalPERS Mailroom
Attn: Employer Services Division
400 Q Street
Sacramento, CA 95814

(2) Upon receipt of the executed Agreement, and after approval by the Board, the Board shall fix an effective date and shall promptly notify Employer of the effective date of the Agreement.

(3) The terms of this Agreement may be amended only in writing upon the agreement of both CalPERS and Employer, except as otherwise provided herein. Any such amendment or modification to this Agreement shall be adopted and executed in the same manner as required for the Agreement. Upon receipt of the executed amendment or modification, the Board shall fix the effective date of the amendment or modification.

(4) The Board shall institute such procedures and processes as it deems necessary to administer the Prefunding Plan, to carry out the purposes of this Agreement, and to maintain the tax exempt status of the Prefunding Plan. Employer agrees to follow such procedures and processes.

C. Actuarial Valuation and Employer Contributions

(1) Employer shall provide to the Board an actuarial valuation report on the basis of the actuarial assumptions and methods prescribed by the Board. Such report shall be for the Board's use in financial reporting, shall be prepared at least as often as the minimum frequency required by GASB Statement No. 43, and shall be:

(a) prepared and signed by a Fellow or Associate of the Society of Actuaries who is also a Member of the American Academy of Actuaries or a person with equivalent qualifications acceptable to the Board;

(b) prepared in accordance with generally accepted actuarial practice and GASB Statement Nos. 43 and 45; and,

(c) provided to the Board prior to the Board's acceptance of contributions for the valuation period or as otherwise required by the Board.

(2) The Board may reject any actuarial valuation report submitted to it, but shall not unreasonably do so. In the event that the Board determines, in its sole discretion, that the actuarial valuation report is not suitable for use in the Board's financial statements or if Employer fails to provide a required actuarial valuation, the Board may obtain, at Employer's expense, an actuarial valuation that meets the Board's financial reporting needs. The Board may recover from Employer the cost of obtaining such actuarial valuation by billing and collecting from Employer or by deducting the amount from Employer's account in the Prefunding Plan.

(3) Employer shall notify the Board of the amount and time of contributions which contributions shall be made in the manner established by the Board.

(4) Employer contributions to the Prefunding Plan may be limited to the amount necessary to fully fund Employer's actuarial present value of total projected benefits, as supported by the actuarial valuation acceptable to the Board. As used throughout this document, the meaning of the term "actuarial present value of total projected benefits" is as defined in GASB Statement No. 45. If Employer's contribution causes its assets in the Prefunding Plan to exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board may refuse to accept the contribution.

(5) Any Employer contribution will be at least $5000 or be equal to Employer's Annual Required Contribution as that term is defined in GASB Statement No. 45. Contributions can be made at any time following the seventh day after the effective date of the Agreement provided that Employer has first complied with the requirements of Paragraph C.

D. Administration of Accounts, Investments, Allocation of Income

(1) The Board has established the Prefunding Plan as an agent plan consisting of an aggregation of single-employer plans, with pooled administrative and investment functions, under the terms of which separate accounts will be maintained for each employer so that Employer's assets will provide benefits only under employer's plan.

(2) All Employer contributions and assets attributable to Employer contributions shall be separately accounted for in the Prefunding Plan (Employer's Prefunding Account).

(3) Employer's Prefunding Account assets may be aggregated with prefunding account assets of other employers and may be co-invested by the Board in any asset classes appropriate for a Section 115 Trust.

(4) The Board may deduct the costs of administration of the Prefunding Plan from the investment income or Employer's Prefunding Account in a manner determined by the Board.

(5) Investment income shall be allocated among employers and posted to Employer's Prefunding Account as determined by the Board but no less frequently than annually.

(6) If Employer's assets in the Prefunding Plan exceed the amount required to fully fund the actuarial present value of total projected benefits, the Board, in compliance with applicable accounting and legal requirements, may return such excess to Employer.

E. Reports and Statements

(1) Employer shall submit with each contribution a contribution report in the form and containing the information prescribed by the Board.

(2) The Board shall prepare and provide a statement of Employer's Prefunding Account at least annually reflecting the balance in Employer's Prefunding Account, contributions made during the period and income allocated during the period, and such other information as the Board determines.

F. Disbursements

(1) Employer may receive disbursements not to exceed the annual premium and other costs of post employment healthcare benefits and other post employment benefits.

(2) Employer shall notify CalPERS in writing in the manner specified by CalPERS of the persons authorized to request disbursements from the Prefunding Plan on behalf of Employer.

1. Personal delivery. When personally delivered to the recipient. Notice is effective on delivery.

2. First Class Mail. When mailed first class to the last address of the recipient known to the party giving notice. Notice is effective three delivery days after deposit in a United States Postal Service office or mailbox.

3. Certified mail. When mailed certified mail, return receipt requested. Notice is effective on receipt, if delivery is confirmed by a return receipt.

4. Overnight Delivery. When delivered by an overnight delivery service, charges prepaid or charged to the sender's account, Notice is effective on delivery, if delivery is confirmed by the delivery service.

5. Telex or Facsimile Transmission. When sent by telex or fax to the last telex or fax number of the recipient known to the party giving notice. Notice is effective on receipt, provided that (i) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (ii) the receiving party delivers a written confirmation of receipt. Any notice given by telex or fax shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a nonbusiness day.

6. E-mail transmission. When sent by e-mail using software that provides unmodifiable proof (i) that the message was sent, (ii) that the message was delivered to the recipient's information processing system, and (iii) of the time and date the message was delivered to the recipient along with a verifiable electronic record of the exact content of the message sent.

Addresses for the purpose of giving notice are as shown in Paragraph B.(1) of this Agreement.

(b) Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger or overnight delivery service.

(c) Any party may change its address, telex, fax number, or e-mail address by giving the other party notice of the change in any manner permitted by this Agreement.

with such appointment shall be paid from the assets attributable to contributions by Employer.

(9) If Employer should breach the representation and warranty set forth in Paragraph A., the Board shall take whatever action it deems necessary to preserve the tax-exempt status of the Prefunding Plan.

I. General Provisions

(1) Books and Records.

Employer shall keep accurate books and records connected with the performance of this Agreement. Employer shall ensure that books and records of subcontractors, suppliers, and other providers shall also be accurately maintained. Such books and records shall be kept in a secure location at the Employer's office(s) and shall be available for inspection and copying by CalPERS and its representatives at any time.

(2) Audit.

(a) During and for three years after the term of this Agreement, Employer shall permit the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, at all reasonable times during normal business hours to inspect and copy, at the expense of CalPERS, books and records of Employer relating to its performance of this Agreement.

(b) Employer shall be subject to examination and audit by the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, during the term of this Agreement and for three years after final payment under this Agreement. Any examination or audit shall be confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement. Employer shall cooperate fully with the Bureau of State Audits, CalPERS, and its authorized representatives, and such consultants and specialists as needed, in connection with any examination or audit. All adjustments, payments, and/or reimbursements determined to be necessary by any examination or audit shall be made promptly by the appropriate party.

(3) Notice.

(a) Any notice, approval, or other communication required or permitted under this Agreement will be given in the English language and will be deemed received as follows:

(4) After Employer's participation in the Prefunding Plan terminates, disbursements from Employer's Prefunding Account may continue upon Employer's instruction or otherwise in accordance with the terms of this Agreement.

(5) After thirty-six (36) months have elapsed from the effective date of this Agreement:

(a) Employer may request a trustee to trustee transfer of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that the transfer will satisfy applicable requirements of the Internal Revenue Code and the Board's fiduciary duties, then the Board shall effect the transfer within one hundred twenty (120) days. The amount to be transferred shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the transfer by more than 120 days.

(b) Employer may request a disbursement of the assets in Employer's Prefunding Account. Upon satisfactory showing to the Board that all of Employer's obligations for payment of post employment health care benefits and other post employment benefits and reasonable administrative costs of the Board have been satisfied, then the Board shall effect the disbursement within one hundred twenty (120) days. The amount to be disbursed shall be the amount in the Employer's Prefunding Account as of the disbursement date and shall include investment earnings up to the investment earnings allocation date immediately preceding the disbursement date. In no event shall the investment earnings allocation date precede the disbursement by more than 120 days.

(6) After Employer's participation in the Prefunding Plan terminates and at such time that no assets remain in Employer's Prefunding Account, this Agreement shall terminate.

(7) If, for any reason, the Board terminates the Prefunding Plan, the assets in Employer's Prefunding Account shall be paid to Employer after retention of (i) amounts sufficient to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, and (ii) amounts sufficient to pay reasonable administrative costs of the Board.

(8) If Employer ceases to exist but Employer's Prefunding Plan continues to exist and if no provision has been made by Employer for ongoing payments to pay post employment health care benefits and other post employment benefits to annuitants for current and future annuitants, the Board is authorized to and shall appoint a third party administrator to carry out Employer's Prefunding Plan. Any and all costs associated

(3) Employer's request for disbursement shall be in writing signed by Employer's authorized representative, in accordance with procedures established by the Board. The Board may require that Employer certify or otherwise establish that the monies will be used for the purposes of the Prefunding Plan.

(4) Requests for disbursements that satisfy the requirements of paragraphs (2) and (3) that are received on or after the first of a month will be processed by the 15th of the following month. (For example, a disbursement request received on or between March 1st and March 31st will be processed by April 15th; and a disbursement request received on or between April 1st and April 30th will be processed by May 15th.)

(5) CalPERS shall not be liable for amounts disbursed in error if it has acted upon the instruction of an individual authorized by Employer to request disbursements. In the event of any other erroneous disbursement, the extent of CalPERS' liability shall be the actual dollar amount of the disbursement, plus interest at the actual earnings rate but not less than zero.

(6) No disbursement shall be made from the Prefunding Plan which exceeds the balance in Employer's Prefunding Account.

G. Costs of Administration

Employer shall pay its share of the costs of administration of the Prefunding Plan, as determined by the Board.

H. Termination of Employer Participation in Prefunding Plan

(1) The Board may terminate Employer's participation in the Prefunding Plan if:

(a) Employer gives written notice to the Board of its election to terminate;

(b) Employer ceases to be a PEMHCA participant;

(c) The Board finds that Employer fails to satisfy the terms and conditions of this Agreement or of the Board's rules or regulations.

(2) If Employer's participation in the Prefunding Plan terminates for any of the foregoing reasons, all assets in Employer's Prefunding Account shall remain in the Prefunding Plan, except as otherwise provided below, and shall continue to be invested and accrue income as provided in Paragraph D.

(3) After Employer's participation in the Prefunding Plan terminates, Employer may not make contributions to the Prefunding Plan.

(d) All notices, requests, demands, amendments, modifications or other communications under this Agreement shall be in writing. Notice shall be sufficient for all such purposes if personally delivered, sent by first class, registered or certified mail, return receipt requested, delivery by courier with receipt of delivery, facsimile transmission with written confirmation of receipt by recipient, or e-mail delivery with verifiable and unmodifiable proof of content and time and date of sending by sender and delivery to recipient. Notice is effective on confirmed receipt by recipient or 3 business days after sending, whichever is sooner.

(4) Modification

This Agreement may be supplemented, amended, or modified only by the mutual agreement of the parties. No supplement, amendment, or modification of this Agreement shall be binding unless it is in writing and signed by the party to be charged.

(5) Survival

All representations, warranties, and covenants contained in this Agreement, or in any instrument, certificate, exhibit, or other writing intended by the parties to be a part of their Agreement shall survive the termination of this Agreement until such time as all amounts in Employer's Prefunding Account have been disbursed.

(6) Waiver

No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right, or remedy. No waiver of any breach, failure, right, or remedy shall be deemed a waiver of any other breach, failure, right, or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.

(7) Necessary Acts, Further Assurances

The parties shall at their own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.

A majority vote of Employer's Governing Body at a public meeting held on the 30th day of the month of August 2007, authorized entering into this Agreement.

Signature of the Presiding Officer: _____

Printed Name of the Presiding Officer: Gary Ovitt, President

Name of Governing Body: Southern California Association of Governments (SCAG)

Name of Employer: Southern California Association of Governments (SCAG)

Date: _____

BOARD OF ADMINISTRATION
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

BY_____
ACTUARIAL AND EMPLOYER SERVICES BRANCH
CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

To be completed by CalPERS
The effective date of this Agreement is: _____