

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: CHIEF EXECUTIVE OFFICE

BOARD AGENDA # *B-4

Urgent _____ Routine X

AGENDA DATE April 24, 2001

CEO Concurs with Recommendation YES NO
(Information Attached)

4/5 Vote Required YES _____ NO _____

SUBJECT:

APPROVE TO ESTABLISH THE PUBLIC AGENCY RETIREMENT SYSTEM-
RETIREMENT PLAN (PARS-REP) FOR THE MANAGING DIRECTOR OF THE
HEALTH SERVICES AGENCY.

STAFF
RECOMMEN-
DATIONS:

- 1) APPROVE A RESOLUTION TO ADOPT THE PUBLIC AGENCY RETIREMENT SYSTEMS RETIREMENT ENHANCEMENT PLAN (PARS REP).
- 2) APPROVE AGREEMENT FOR ADMINISTRATIVE SERVICES BETWEEN PHASE II SYSTEMS, AS TRUST ADMINISTRATOR TO THE PARS TRUST AND AUTHORIZE THE COUNTY TREASURER TO SIGN.
- 3) AUTHORIZE THE COUNTY AUDITOR/CONTROLLER TO TRANSFER FUNDS PREVIOUSLY HELD BY THE HARTFORD TO PARS.

FISCAL
IMPACT:

In 1989, the County entered into an agreement with the Managing Director of the Health Services Agency to establish an alternative plan to provide for the retirement of the Director in lieu of participating in the County's retirement system. A plan was established with The Hartford and funded by the County in the amount set forth in the contract. Over the years the plan has accumulated funds which will be transferred to a PARS-REP, a supplemental retirement plan which qualifies under the Internal Revenue Code and the California Government Code. There will be a standard administrative fee of 5.5 percent of all contributions made into the trust. Inasmuch as there is a transfer of existing accumulated funds, there is no further fiscal impact associated with the recommended actions.

BOARD ACTION AS FOLLOWS:

No. 2001-292

On motion of Supervisor Simon, Seconded by Supervisor Mayfield

and approved by the following vote,

Ayes: Supervisors: Mayfield, Simon, Caruso, and Chair Paul

Noes: Supervisors: None

Excused or Absent: Supervisors: Blom

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

Motion:

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

By: Deputy

Christine Ferraro

File No.

DISCUSSION: **Background**

In November 1989, the County entered into an agreement with the Hospital Administrator (Chief Executive Officer) of Scenic General Hospital, (Contractor). The agreement included a provision for Contractor to be eligible to receive additional compensation, which provided retirement benefits in lieu of participation in the county retirement system. The Contractor waived any right to participate in County's retirement system.

County staff has worked with representative of PARS who have made available its Retirement Enhancement Plan (REP) to the County. This plan is designed to meet the County's obligations associated with only this specific employment agreement.

Attached is a resolution, which is required to be adopted by PARS and the administrative service agreement between Phase II Systems, as Trust Administrator to the PARS Trust.

POLICY

ISSUE: The Board's authorization is required for the recommended actions. This request supports the Board's priority of promoting efficient government operations.

STAFFING

IMPACT: There is no staffing impact associated with the above-recommended actions.

**THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
STATE OF CALIFORNIA**

Date: April 24, 2001

No. 2001-292

On motion of Supervisor Simon , Seconded by Supervisor Mayfield ,
and approved by the following vote,
Ayes: Supervisors: Mayfield, Simon, Caruso, and Chair Paul
Noes: Supervisors: None
Excused or Absent: Supervisors: Blom
Abstaining: Supervisor: None

*B-4

THE FOLLOWING RESOLUTION WAS ADOPTED:

WHEREAS, the County of Stanislaus ("COUNTY") is a member of the Public Agency Retirement System ("PARS"), a governmental plan, which has made available its Retirement Enhancement Plan ("REP"), a supplemental retirement plan qualifying under relevant sections of the Internal Revenue Code and California Government code.

NOW, THEREFORE, be it resolved that

- (1) The Board of Supervisors of the COUNTY does hereby adopt the PARS REP, as part of the COUNTY retirement.
- (2) The Board of Supervisors of the COUNTY hereby appoints the Treasurer/Tax Collector, or his designee or his successor as COUNTY Plan Administrator for PARS REP, and further authorizes him to implement the Plan.
- (3) The COUNTY Plan Administrator is hereby authorized to execute the PARS REP legal documents on behalf of the COUNTY and to take whatever additional actions are necessary to maintain the participation of the COUNTY in PARS REP.

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk
Stanislaus County Board of Supervisors,
State of California,

Christine Ferraro
By: Deputy

File No.

AGREEMENT FOR ADMINISTRATIVE SERVICES

This agreement ("Agreement") is made this 24th day of April, 2001, between Phase II Systems ("Phase II Systems"), a corporation organized and existing under the laws of the State of California and *the County of Stanislaus* ("Agency").

WHEREAS, Agency is desirous of retaining Phase II Systems, as Trust Administrator to the PARS Trust, to provide administrative and consulting services;

NOW THEREFORE, the parties agree:

1. **Services.** Phase II Systems will provide the services pertaining to the Plan ("Services") as described in the exhibit attached hereto as "Exhibit 1A" in a timely manner, subject to the further provisions of this Agreement.
2. **Fees for Services.** Phase II Systems will be compensated for performance of Services as described in the exhibit attached hereto as "Exhibit 1B".
3. **Payment Terms.** Payment for Services will be remitted directly from Plan assets unless otherwise stated in Exhibit 1B. In the event that the Agency chooses to make payment directly to Phase II Systems, it shall be the responsibility of the Agency to remit payment directly to Phase II Systems based upon an invoice prepared by Phase II Systems and delivered to the Agency. If payment is not received by Phase II Systems within thirty (30) days of the invoice delivery date, the balance due shall bear interest at the rate of 1.5% per month. If payment is not received from the Agency within ninety (90) days of the invoice delivery date, payment plus accrued interest will be remitted directly from Plan assets, unless Phase II Systems has previously received written communication disputing the subject invoice that is signed by a duly authorized representative of the Agency.
4. **Fees for Services Beyond Scope.** Fees for services beyond those specified in this Agreement will be billed to the Agency at the rates indicated in Phase II Systems' standard fee schedule in effect at the time the services are provided, subject to the terms established in Section 3 of this Agreement. Before any such services are performed, Phase II Systems will provide the Agency with written notice of the subject services, terms, and an estimate of the associated fees.
5. **Information Furnished to Phase II Systems.** Phase II Systems will provide the Services under this Agreement contingent upon the Agency providing Phase II Systems information ("Data"), as specified in the exhibit attached hereto as "Exhibit 1C". It shall be the responsibility of the Agency to certify the accuracy, content and completeness of the Data so that Phase II Systems may rely on such information without further audit. It shall further be the responsibility of the Agency to deliver the Data to Phase II Systems in such a manner that allows for a reasonable amount of time for the Services to be performed. Unless specified in Exhibit 1A, Phase II Systems shall be under no duty to question Data received from the Agency, or compute contributions made to the Plan, or determine or inquire whether contributions are adequate to meet and discharge liabilities under the Plan, or determine or inquire whether contributions made to the Plan are in

compliance with the Plan or applicable law. Furthermore, Phase II Systems shall not be liable for non-performance of Services if such non-performance is directly caused by erroneous and/or late delivery of Data from the Agency. In the event that the Agency fails to provide Data in a complete, accurate and timely manner, and pursuant to the specifications in Exhibit 1C, Phase II Systems reserves the right, notwithstanding the further provisions of this Agreement, to terminate this Agreement upon written notice of ninety (90) days.

6. **In the Event of Suspension of Contributions.** In the event contributions are suspended, either temporarily or permanently, prior to the complete discharge of Phase II Systems' obligations under this Agreement, Phase II Systems reserves the right to bill the Agency for Services under this Agreement at the rates indicated in Phase II Systems' standard fee schedule in effect at the time the services are provided, subject to the terms established in Section 3 of this Agreement. Before any such services are performed, Phase II Systems will provide the Agency with written notice of the subject services, terms, and an estimate of the associated fees.
7. **Records.** Throughout the duration of this Agreement, and for a period of five (5) years after termination of this Agreement, Phase II Systems shall provide duly authorized representatives of Agency access to all records and material relating to calculation of Phase II Systems' fees under this Agreement. Such access shall include the right to inspect, audit and reproduce such records and material and to verify reports furnished in compliance with the provisions of this Agreement. All information so obtained shall be accorded confidential treatment as provided under applicable law.
8. **Confidentiality.** Phase II Systems shall not disclose any information relating to the Plan except to duly authorized officials of Agency, subject to applicable law, and to parties retained by Phase II Systems to perform specific services within this Agreement. Agency shall not disclose any information relating to the Plan to individuals not employed by the Agency without the prior written consent of Phase II Systems, except as such disclosures may be required by applicable law.
9. **Independent Contractor.** Phase II Systems is and at all times hereunder shall be an Independent Contractor. As such, neither the Agency nor any of its officers, employees or agents shall have the power to control the conduct of Phase II Systems, its officers, employees or agents, except as specifically set forth and provided for herein. Phase II Systems shall pay all wages, salaries and other amounts due its employees in connection with this Agreement and shall be responsible for all reports and obligations respecting them, such as social security, income tax withholding, unemployment compensation, workers' compensation and similar matters.
10. **Indemnification.** Phase II Systems and Agency agree to indemnify each other and to hold the other harmless, including their respective officers, directors, employees, agents and attorneys, from any claim, loss, demand, liability, or expense, including reasonable attorneys' fees and costs, incurred by the other as a consequence of Phase II Systems' or Agency's, as the case may be, gross negligence or willful misconduct with respect to the performance of their respective duties hereunder.

11. **Omissions.** In the event that either party hereto discovers any material omission in the provisions of this Agreement which such party believes is essential to the successful performance of this Agreement, the party may so inform the other party in writing, and the parties hereto shall thereafter promptly negotiate in good faith with respect to such matters for the purpose of making such reasonable adjustments as may be necessary to perform the objectives of this Agreement.
12. **Compliance with Applicable Law.** The Agency shall observe and comply with federal, State and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding the administration of the Plan. Phase II Systems shall observe and comply with federal, State and local laws in effect when this Agreement is executed, or which may come into effect during the term of this Agreement, regarding Plan administrative services provided under this Agreement.
13. **Applicable Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of California. In the event any party institutes legal proceedings to enforce or interpret this Agreement, venue and jurisdiction shall be in any state court of competent jurisdiction sitting in either Orange County, California or Los Angeles County, California.
14. **Force Majeure.** When satisfactory evidence of a cause beyond a party's control is presented to the other party, and nonperformance is unforeseeable, beyond the control and not due to the fault of the party not performing, a party shall be excused from performing its obligations under this Agreement during the time and to the extent that it is prevented from performing by such cause, including but not limited to: any incidence of fire, flood, acts of God, commandeering of material, products, plants or facilities by the federal, state or local government, or a material act or omission by the other party.
15. **Ownership of Reports and Documents.** The originals of all letters, documents, reports, and data produced for the purposes of this Agreement shall be delivered to, and become the property of the Agency. Copies may be made for Phase II Systems but shall not be furnished to others without written authorization from Agency.
16. **Designees.** The Plan Administrator of the Agency, or their designee, shall have the authority to act for and exercise any of the rights of the Agency as set forth in this Agreement, subsequent to and in accordance with the authority granted by the Governing Board of the Agency. Any officer of Phase II Systems, or their designees, shall have the authority to act for and exercise any of the rights of Phase II Systems as set forth in this Agreement.
17. **Notices.** All notices hereunder and communications regarding the interpretation of the terms of this Agreement, or changes thereto, shall be effected by delivery of the notices in person or by depositing the notices in the U.S. mail, registered or certified mail, return receipt requested, postage prepaid and addressed as follows:
 - (A) To Phase II Systems: Phase II Systems; 3961 MacArthur Boulevard, Ste. 200; Newport Beach, CA 92660; Attention: President

(B) To Agency: County of Stanislaus; 1010 Tenth Street, Modesto, CA 95353;
Attention: Treasurer/Tax Collector

18. **Term of Agreement.** This Agreement shall remain in effect for the period beginning *January 1, 2001* and ending *December 31, 2001* ("Term"). This Agreement will continue unchanged for successive twelve-month periods following the Term unless either party gives written notice to the other party of the intent to terminate prior to 90 days before the end of the Term.
19. **Amendment.** This Agreement may not be amended orally, but only by a written instrument executed by the Designees of the parties as contained in this Agreement.
20. **Entire Agreement.** This Agreement, including exhibits, contains the entire understanding of the parties with respect to the subject matter set forth in this Agreement. In the event a conflict arises between the parties with respect to any term, condition or provision of this Agreement, the remaining terms, conditions and provisions shall remain in full force and legal effect. No waiver of any term or condition of this Agreement by any party shall be construed by the other as a continuing waiver of such term or condition.
21. **Counterparts.** This Agreement may be executed in any number of counterparts, and in that event, each counterpart shall be deemed a complete original and be enforceable without reference to any other counterpart.
22. **Headings.** Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.
23. **Effective Date.** This Agreement shall be effective on the date first above written, and also shall be the date the Agreement is executed.

AGENCY:

BY: Tom Watson
TITLE: Treasurer/Tax Collector
DATE: 5-14-2001

PHASE II SYSTEMS:

BY: Tod Hammer
TITLE: C.F.O.
DATE: 3/27/01

APPROVED AS TO FORM

MICHAEL H. KRAUSNICK

COUNTY COUNSEL

BY: M. H. Krausnick

DATE: 3-30-01

EXHIBIT 1A

SERVICES

Phase II Systems will provide the following services for the *County of Stanislaus Retirement Enhancement Plan*:

1. Plan Installation Services:

- (A) Meeting with appropriate Agency personnel to discuss plan provisions, implementation timelines, benefit communication strategies, data reporting and contribution submission requirements;
- (B) Providing the necessary analysis and advisory services to finalize these elements of the Plan;
- (C) Providing for review by Agency legal counsel the documentation needed to establish the Plan;
- (D) Upon Agency authorization, preparing and submitting application to the Internal Revenue Service for a determination that the Plan is qualified (the application fee for which shall be paid by the Agency).

2. Plan Administration Services:

- (A) Monitoring the receipt of Plan contributions made by the Agency to the trustee of the PARS Trust Program ("Trustee"), based upon information received from the Agency and the Trustee;
- (B) Performing periodic accounting of Plan assets, including the allocation of employer contributions, distributions, investment activity and expenses (if applicable), based upon information received from the Agency and/or Trustee;
- (C) Acting as on-going liaison between the Participant and the Agency in regard to distribution payments, which shall include use by the Participants of toll-free telephone communication to Phase II Systems;
- (D) Producing benefit illustrations and processing enrollments;
- (E) Coordinating the processing of Participant distribution payments pursuant to authorized written Agency certification of distribution eligibility, authorized direction by the Agency, and the provisions of the Plan; and, to the extent possible based upon Agency-provided Data;
- (F) Directing Trustee to liquidate Plan assets (if necessary) and make Participant distribution payments, which includes the provision of required tax filings in regards to these distribution payments;
- (G) Notifying the Trustee of the amount of Plan assets available for further investment and management; or, the amount of Plan assets necessary to be liquidated in order to fund Participant distribution payments;
- (H) Coordinating actions with the Trustee as directed by the Plan Administrator within the scope this Agreement;

- (I) Preparing and submitting a report of Plan activity to the Agency, unless directed by the Agency otherwise;
 - (J) Coordinating and selection of licensed actuary to perform actuarial valuation on a periodic basis to comply with state and federal laws (the actuarial certification fee for which shall be paid by the Agency);
 - (K) Preparing and submitting the Annual Report of Financial Transactions to the California State Controller, as required by law, for the PARS Trust Program, including the required certified audit of the PARS Trust.
3. Phase II Systems is not licensed to provide and does not offer tax, accounting, legal, investment or actuarial advice. In providing the services specified above, we will retain qualified professional service providers at our cost as we deem necessary if the service lies outside our area of expertise.

EXHIBIT 1B

FEEES FOR SERVICES

1. Phase II Systems will be compensated for performance of Services, as described in Exhibit A based upon the following schedule:
 - (A) A one-time IRS Letter of Determination fee of \$700.00, which is paid directly to the Internal Revenue Service;
 - (B) An on-going administration fee equal to:
 - 1.) Five and one-half percent (5.50%) of all contributions made by the District on behalf of participants in the subject plan. Fees will be billed to the Trustee as contributions are made by the District, and it will be the responsibility of the Trustee to pay those fees from the assets of the plan. These fees are exclusive of Trustee and investment management fees, which are based on the standard fees charged by the Trustee;
 - (C) A fee equal to actuarial expenses charged to Phase II Systems by an outside contractor for an actuarial valuation of the District's plan ("Actuarial Valuation Fee").

EXHIBIT 1C

DATA REQUIREMENTS

Phase II Systems will provide the Services under this Agreement contingent upon the Agency providing Phase II Systems the following employee information as required to process a benefit distribution:

1. Participant Data:

- (A) Participant's legal name;
- (B) Participant's position;
- (C) Participant's address;
- (D) Participant's birth date;
- (E) Participant's hire date;
- (F) Participant's highest compensation while employed with the District;
- (G) Years of District Service
- (H) Retirement Date;