



Office of the City Manager

CONSENT CALENDAR  
April 12, 2022

To: Honorable Mayor and Members of the City Council

From: Dee Williams-Ridley, City Manager

Submitted by: Donald E. Ellison, Interim Director of Human Resources

Subject: Ratify the execution of the pre-approved PARS Plan document, amended and restated effective January 1, 2022, and related Amendments by Interim Deputy City Manager on December 27, 2021.

RECOMMENDATION

Adopt a Resolution to acknowledge and ratify the execution of the pre-approved PARS Plan document, amended and restated effective January 1, 2022, and related Amendments by Interim Deputy City Manager on December 27, 2021.

FISCAL IMPACTS OF RECOMMENDATION

There are no fiscal impacts associated with adopting the attached resolution.

CURRENT SITUATION AND ITS EFFECTS

The prescribed IRS deadline for the City to adopt the restated PARS Plan document and Amendments is July 31, 2022. The Agency running the PARS Plan, however, set a deadline of December 31, 2021 for plan sponsors to adopt the Plan documents. Because the City Council was not scheduled to meet prior to deadline, the restated PARS Plan document and first Amendment (for SECURE and CARES Acts) were executed by the Interim Deputy City Manager with the understanding the City Council would later acknowledge and ratify such action.

BACKGROUND

The City previously determined that it was in its best interest to offer a qualified retirement system to all hourly and daily paid employees, thereby satisfying the requirements of Section 11332 of the Social Security Act. In that regard, the City adopted the Public Agency Retirement System - Alternate Retirement System ("PARS" or "Plan") as a tax qualified governmental profit sharing plan effective October 1, 1993 for the benefit of its eligible employees.

PARS is a multiemployer retirement system that is made up of various public agency employers that have elected to opt-in, including the City. It is also intended that PARS, and the trust established to hold the assets of the Plan, be tax qualified and tax-exempt under Sections 401(a) and 501(a) of the Internal Revenue Code (the "Code"), respectively, as amended from time to time. PARS is also established and operated pursuant to a pre-approved Plan document, which is periodically reviewed by the Internal Revenue Service ("IRS").

Applicable IRS rules require all pre-approved Plan documents to be restated to incorporate changes from recent legislation applicable to qualified retirements plans (both optional and required changes). To satisfy that requirement, the PARS Plan document was amended and restated effective January 1, 2021, and then subsequently submitted to the IRS for a determination as to its qualified status.

On June 30, 2020, the IRS issued a favorable determination letter covering the PARS pre-approved Plan document. Plan sponsors that have adopted the pre-approved PARS Plan document (like the City), may also rely on the favorable IRS determination letter for their own plans without having to apply for their own separate determination letters with the IRS, provided the plan sponsors adopt the restated pre-approved Plan document within 2 years from the date of the opinion letter.

The pre-approved PARS Plan document includes two optional Amendments for consideration by plan sponsors (like the City). The first Amendment relates to required and optional changes to the Plan for recent federal legislation (known as the "SECURE Act" and "CARES Act"). These are technical amendments related to mandatory distributions under the Plan called "required minimum distributions." These are required provisions that the City agreed to add to the Plan. The second Amendment relates to whether the City would like to add mandatory arbitration provisions to the Plan. This is an optional provision that the City declined to add to the Plan.

For pre-approved documents, such as this one, unless it's an optional provision, there is little room to revise or amend. Doing so puts the Plan at risk of falling out of "pre-approved" status, meaning there would no reliance on the IRS's favorable determination letter issued to the pre-approved PARS Plan document.

The prescribed IRS deadline for the City to adopt the restated PARS Plan document and Amendments is July 31, 2022. The Agency running the PARS Plan, however, set a deadline of December 31, 2021 for plan sponsors to adopt the Plan documents. Because the City Council was not scheduled to meet prior to deadline, the restated PARS Plan document and first Amendment (for SECURE and CARES Acts) were executed by the Interim Deputy City Manager with the understanding the City Council would later acknowledge and ratify such action.

In consideration of the above, we recommend the City Council acknowledge and ratify the execution of the pre-approved PARS Plan document, amended and restated effective January 1, 2022, and related Amendments by Interim Deputy City Manager on December 27, 2021.

ENVIRONMENTAL SUSTAINABILITY AND CLIMATE IMPACT

There are no identifiable environmental effects or opportunities associated with the subject of this report.

RATIONALE FOR RECOMMENDATION

In consideration of the above, we recommend the City Council adopt a resolution to acknowledging and ratifying the execution of the pre-approved PARS Plan document, amended and restated effective January 1, 2022, and related Amendments by Interim Deputy City Manager on December 27, 2021.

ALTERNATIVE ACTIONS CONSIDERED

None

CONTACT PERSON

Donald E. Ellison, Interim Human Resources Director, 510-981-6807

Attachments

1. Resolution - Acknowledge and Ratify the Execution of the Pre-Approved PARS Plan Document, Amended and Restated Effective January 1, 2022 and Related Amendments by Interim Deputy City Manager on December 27, 2021  
Exhibit A: PARS ARS Amended and Restated

RESOLUTION NO. ##,###-N.S.

ACKNOWLEDGE AND RATIFY THE EXECUTION OF THE PRE-APPROVED PARS PLAN DOCUMENT, AMENDED AND RESTATED EFFECTIVE JANUARY 1, 2022 AND RELATED AMENDMENTS BY INTERIM DEPUTY CITY MANAGER ON DECEMBER 27, 2021

WHEREAS, The City previously determined that it was in its best interest to offer a qualified retirement system to all hourly and daily paid employees, thereby satisfying the requirements of Section 11332 of the Social Security Act. In that regard, the City adopted the Public Agency Retirement System - Alternate Retirement System (“PARS” or “Plan”) as a tax qualified governmental profit sharing plan effective October 1, 1993 for the benefit of its eligible employees; and

WHEREAS, On June 30, 2020, the IRS issued a favorable determination letter covering the PARS pre-approved Plan document. Plan sponsors that have adopted the pre-approved PARS Plan document (like the City), may also rely on the favorable IRS determination letter for their own plans without having to apply for their own separate determination letters with the IRS, provided the plan sponsors adopt the restated pre-approved Plan document within 2 years from the date of the opinion letter; and

WHEREAS, the prescribed IRS deadline for the City of Berkeley (the “City”) to adopt the restated pre-approved PARS Plan document and Amendments is July 31, 2022; and

WHEREAS, the pre-approved PARS Plan document includes two optional Amendments for consideration by plan sponsors (like the City); and

WHEREAS, The first Amendment relates to required and optional changes to the Plan for recent federal legislation (known as the “SECURE Act” and “CARES Act”). These are technical amendments related to mandatory distributions under the Plan called “required minimum distributions.” These are required provisions that the City agreed to add to the Plan; and

WHEREAS, The second Amendment relates to whether the City would like to add mandatory arbitration provisions to the Plan. This is an optional provision that the City declined to add to the Plan; and

BE IT FURTHER RESOLVED by the Council of the City of Berkeley acknowledges and ratifies the execution of the pre-approved PARS Plan document, amended and restated effective January 1, 2022, and related Amendments by Interim Deputy City Manager on December 27, 2021.

Exhibit A: PARS ARS Amended and Restated

**CITY OF BERKELEY**  
**PUBLIC AGENCY RETIREMENT SYSTEM**  
**ALTERNATE RETIREMENT SYSTEM**

**(PARS-ARS)**

**AMENDED AND RESTATED**  
**EFFECTIVE JANUARY 1, 2021**

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## INTRODUCTION

The City of Berkeley (the "Employer") has adopted this tax qualified governmental profit sharing plan for the benefit of its Eligible Employees as Plan Number: 002. This document is a full and complete amendment and restatement of the City of Berkeley PARS Alternate Retirement System.

It is intended that this Plan and the Trust established to hold the assets of the Plan shall be qualified under Section 401(a) and tax-exempt under Section 501(a) of the Internal Revenue Code of 1986, together with any amendments thereto (the "Code"). It is also intended that this Plan shall meet the requirements of a governmental plan under Section 414(d) of the Code and of a pension trust. At any time prior to the satisfaction of all liabilities with respect to Participants and their Beneficiaries under this Plan, the Trust assets shall not be used for, or diverted to, purposes other than the exclusive benefit of Participants or their Beneficiaries, as prescribed in Section 401(a)(2) of the Code.



ARTICLE I

DEFINITIONS

- 1.1 **"Account"** means, with respect to each Participant, the value of all accounts maintained on behalf of the Participant.
- 1.2 **"Aggregate Account"** means, with respect to each Participant, the value of all accounts maintained on behalf of the Participant, whether attributable to Employer or Employee contributions.
- 1.3 **"Amended Effective Date"** means January 1, 2021.
- 1.4 **"Beneficiary"** means the person, trust or other entity to whom a share of a deceased Participant's Aggregate Account is payable.
- 1.5 **"Code"** means the Internal Revenue Code of 1986 as amended from time to time.
- 1.6 **"Compensation"** means all compensation for that portion of the Plan Year during which the Employee was a Participant, paid in cash by the Employer to the Participant for personal services. Further, the Employer defines compensation as "W-2 Wages" defined as all remuneration to a Participant by the Employer during the Plan Year and reportable on Box 1 of Form W-2. The annual compensation of each Participant, as defined above by the Employer, taken into account in determining allocations for any Plan Year beginning after December 31, 2016 shall not exceed \$270,000, as adjusted for cost-of-living increases in accordance with Section 401(a)(17)(B) of the Code. For any short Plan Year, the Compensation limit shall be an amount equal to the Compensation limit for the calendar year in which the Plan Year begins multiplied by a ratio obtained by dividing the number of full months in the short Plan Year by twelve (12). The limitation on the maximum amount of Compensation that may be taken into account under the Plan shall not apply to any Participant eligible for a higher limit on annual compensation under the transition rule described in Section 1.401(a)(17)-1(d)(4)(ii) of the Treasury Regulations.
- 1.7 **"Effective Date"** means October 1, 1993.
- 1.8 **"Eligible Class of Employees"** means the eligible class of employees as provided herein and in the applicable governing board policies and regulations promulgated thereunder by the Employer.
- 1.9 **"Eligible Employee"** means all of those Employees of the Employer whose Participation in this Plan are not prohibited or restricted by the provisions of a collective bargaining agreement or another plan or retirement system maintained by the Employer. Employees who are exempt from coverage under Social Security by federal law or regulation shall not be Eligible Employees.

- 1.10 **"Employee"** means an employee of the Employer.
- 1.11 **"Employee Contribution Account"** means the account by that name established pursuant to Section 3.2 hereof.
- 1.12 **"Employer"** means the City of Berkeley that has adopted this Plan. Only an employer eligible to adopt a governmental plan pursuant to Section 414(d) of the Code may be an "Employer" under this Plan.
- 1.13 **"Employer Contribution Account"** means the account by that name established pursuant to Section 3.1 hereof.
- 1.14 **"Inactive Participant"** means a Participant who is no longer eligible to participate because he is no longer in a class of Employees eligible to participate in this Plan but is still employed by the Employer.
- 1.15 **"Ineligible Employee"** means all of those Employees of the Employer whose participation in this Plan is prohibited or restricted by the provisions of a collective bargaining agreement, another plan or retirement system maintained by the Employer, or exempt from coverage under Social Security by federal law or regulation.
- 1.16 **"Investment Manager"** means the entity appointed by the Employer as the investment manager under the Plan.
- 1.17 **"Limitation Year"** means the limitation year under Section 3.5 hereof and shall mean the Plan Year.
- 1.18 **"Normal Retirement Age"** means sixty-two (62) years of age.
- 1.19 **"Participant"** means a Participant under Article II hereof.
- 1.20 **"Participant Aggregate Accounts"** means the accounts by that name established pursuant to Article III hereof.
- 1.21 **"Participant Contributions"** means contributions made on behalf of the Participant by the Employer as Pick Up Contributions and/or Participant after tax contributions.
- 1.22 **"Participant Contribution Account"** means the value of the Participant's interest in this Plan that is attributable to Pick Up Contributions and/or Participant after tax contributions.

- 1.23 "Pick Up Contributions"** means Participant Contributions made by the Employer on behalf of the Participant pursuant to Section 414(h) of the Internal Revenue Code. Pick Up Contributions shall not under any circumstances be paid to the Participant or be directed by the Participant for any purpose except as Pick Up Contributions to this Plan. The Employer may make Pick Up Contributions through a reduction in salary, an offset against future salary increases, or a combination of the two.
- 1.24 "Plan"** means City of Berkeley PARS Alternate Retirement System.
- 1.25 "Plan Administrator"** means the individual or position designated by the Employer to act on behalf of the Employer in matters relating to this Plan. If no designation is made, the Employer shall be the Plan Administrator. If a Plan Administrator has been appointed, the word "Employer" as used in this Plan shall mean Plan Administrator unless the context indicates a different meaning is intended.
- 1.26 "Plan Year"** means the consecutive twelve-month period beginning on January 1 and ending on December 31.
- 1.27 "Public Agency"** means an Employer authorized to establish a pension trust.
- 1.28 "Regulations"** means the regulations adopted or proposed by the Department of Treasury from time to time pursuant to the Code.
- 1.29 "Retirement System"** means any plan that meets the requirements for a retirement system under Section 3121(b)(7)(F) of the Code and the final regulations thereunder.
- 1.30 "Social Security"** means the Social Security program as set forth in Title 42 of the United States Code, Section 301 et seq.
- 1.31 "Trust"** means the trust established as part of the Public Agency Retirement System Trust to hold the assets of the Plan.
- 1.32 "Trustee"** means the trustee of the Trust.
- 1.33 "Valuation Date"** means the last day of the Plan Year or such other day on which the assets of the Trust are valued and the value of each Participant's Aggregate Account is determined.
- 1.34 "Vested"** means the nonforfeitable portion of any Account maintained on behalf of a Participant.

**ARTICLE II**

**ELIGIBILITY REQUIREMENTS FOR PARTICIPATION**

**2.1 Time of Participation**

An Eligible Employee shall participate in this Plan on each day during which the Employee is not accruing a benefit under Social Security, or another Retirement System provided and maintained by the Employer.

**2.2 Termination of Participation**

A Participant shall cease to be a Participant on the date on which the Participant begins to participate in another Retirement System or the date of his or her termination of employment as determined by the Employer.

**2.3 Effect of Transfer to Ineligible Employment**

If a Participant is no longer an Eligible Employee and becomes an Ineligible Employee, such Employee will participate immediately upon returning to the Eligible Class of Employees. Such participation shall commence as of the first day of such eligible employment.

**2.4 In Service Distributions**

A Participant who is no longer eligible to participate because he is no longer in the class of Eligible Employees, but who has not terminated employment with the Employer, shall become an Inactive Participant and shall remain such for twenty-four (24) months after which his interest in the Plan will be distributed to him upon consent.

**ARTICLE III**  
**CONTRIBUTIONS**

**3.1 Amount of Employer Contributions**

There is hereby created and established and shall be maintained by the Plan Administrator the Employer Contribution Account. For Compensation earned during each day that an Employee remains a Participant under this Plan, the Employer shall make a contribution of three and seventy-five hundredths percent (3.75%) of Compensation. Such contribution shall be made no later than the close of the Plan Year. This amount shall be credited to the Employer Contribution Account. Employer contributions will be allocated to each Participant in the ratio that such Participant's compensation bears to the compensation of all Participants.

**3.2 Amount of Employee Contributions**

There is hereby created and established and shall be maintained by the Plan Administrator the Employee Contribution Account. For Compensation earned during each day that an Employee remains a Participant under this Plan, the Employee shall make a contribution of three and seventy-five hundredths percent (3.75%) of Compensation. Such contribution shall be credited to the Employee Contribution Account. In accordance with Section 414(h) of the Code and Sections 1.21 and 1.23 of this Plan, the contributions required under this Section 3.2 shall be Pick Up Contributions. Pick Up Contributions shall meet the requirements of Revenue Ruling 2006-43.

**3.3 Administrative Expenses**

The Employer may make contributions to the Trust sufficient to defray all or part of the expenses of administering the Plan or may pay such expenses directly.

**3.4 Allocation of Administrative Expenses**

If the Employer chooses not to pay the expenses of administering this Plan, such expenses shall be charged ratably against the Participants' Aggregate Accounts.

**3.5 Limits on Annual Additions**

Annual additions credited to a Participant's Account during a Limitation Year shall not exceed the lesser of \$40,000 (adjusted as permitted by Section 415(d) of the Code and Regulations issued thereunder) or 100 percent of Section 415 Compensation (provided that such 100 percent limitation shall not apply to any contributions for medical benefits after separation from service, within the meaning of Section 401(h) or Section 419A(f)(2) of the Code). This Section 3.5 shall be construed and interpreted in accordance with the provisions of Article IX.

### **3.6 Vesting**

Except as set forth in Section 5.1, a Participant will be fully Vested in his Aggregate Account at all times. If the Plan's vesting schedule is amended or the Plan is amended in any way that directly or indirectly affects the computation of a Participant's nonforfeitable percentage, each Participant with at least three years of service with the Employer may elect within a reasonable period of time after the adoption of the amendment or change to have his nonforfeitable percentage computed under the Plan without regard to the amendment or change.

### **3.7 Investment in Accordance with Applicable Law**

All contributions, interest earned, and any assets of the Plan shall at all times be invested and managed in accordance with the requirements of applicable law.

### **3.8 Reversions**

The Employer shall have the right to a reversion of assets from this Plan if (1) a contribution is conditioned upon the initial qualification of the Plan, a timely determination letter request is filed, and the Plan receives an adverse determination, or (2) the reversion is due to a good faith mistake of fact, or (3) the contribution is conditioned on its deductibility under Section 404 of the Code. Notwithstanding the foregoing, (i) any contribution made by the Employer because of a mistake of fact must be returned to the Employer within one year of the contribution; (ii) in the event the deduction of a contribution made by the Employer is disallowed under Section 404 of the Code, such contribution (to the extent disallowed) must be returned to the Employer within one year of the disallowance of the deduction; and (iii) in the event that the Commissioner of Internal Revenue determines that the Plan is not initially qualified under the Internal Revenue Code, any contribution made incident to that initial qualification by the Employer must be returned to the Employer within one year after the date the initial qualification is denied, but only if the application for the qualification is made by the time prescribed by law for filing the Employer's return for the taxable year in which the Plan is adopted, or such later date as the Secretary of the Treasury may prescribe.

## ARTICLE IV

### FUNDING AND VALUATION

#### 4.1 Funding

The assets of the Plan shall be held in a trust or invested in an insurance contract, which may or may not be held in a trust. For the purpose of funding this Plan, the Employer shall provide the Trustee or Investment Manager with written direction on how to invest the assets of the Plan. Notwithstanding anything to the contrary contained in the Trust Agreement, in-kind contributions shall not be permissible under the Plan. In the case of any conflict between this Plan document and any trust or custodial document under which assets of the Plan are held, this Plan document shall control.

#### 4.2 Valuation

The value of a Participant's Employer Contribution Account and Employee Contribution Account shall be determined annually on a date hereafter referred to as a Valuation Date. As of each Valuation Date there shall be determined the amount of the investment gain or loss to be credited to the total of all assets held for Employer Contribution Accounts and Employee Contribution Accounts during the period since the preceding Valuation Date. The total adjustment shall be allocated among all of the individual Participant and Inactive Participant Accounts as of the current Valuation Date. The assets of the Trust shall be valued annually at fair market value. On the Valuation Date, the earnings and losses of the Trust will be allocated to each Participant and Inactive Participant.

#### 4.3 Type and Nature of Plan

Neither the faith and credit nor the taxing power of the Employer, the State of California or any other political subdivision thereof other than the Employer is pledged to the distribution of benefits hereunder. Except for contributions and other amounts hereunder, no other amounts are pledged to the distribution of benefits hereunder. Distributions of benefits are neither general nor special obligations of the Employer, but are payable solely from contributions, as more fully described herein. No Employee or Beneficiary may compel the exercise of the taxing power by the Employer. Distributions of benefits are not a debt of the Employer, the State of California or any of its political subdivisions within the meaning of any constitutional or statutory limitation or restriction. Distributions are not a legal or equitable pledge, charge, lien, or encumbrance, upon any of the Employer's property, or upon any of its income, receipts, or revenues, except amounts in the accounts which are, under the terms of this Plan, set aside for distributions of benefits. Neither the Participants of the legislative body of the Employer nor its officers, employees, agents, or volunteers are liable hereunder. Benefits under the Plan may not be assigned or alienated except to the extent allowable under Sections 401(a)(13) and 414(p) of the Code.

**ARTICLE V**

**VESTING**

**5.1 Vesting in Employer Contribution Account**

Each Participant shall be one hundred percent (100%) Vested in his Employer Contribution Account at all times.

**5.2 Vesting in Employee Contribution Account**

Each Participant shall be one hundred percent (100%) Vested in his Employee Contribution Account at all times.

**5.3 Full or Partial Termination**

Notwithstanding the vesting schedule in 5.1 and 5.2, upon the complete discontinuance of Employer contributions to the Plan or upon any full or partial termination of the Plan, all amounts credited to the Account of any affected Participant shall become one hundred percent (100%) Vested and shall not thereafter be subject to forfeiture for any reason.



## ARTICLE VI

### DISTRIBUTION OF BENEFITS

#### 6.1 Incidental Death Benefits

(a) Distributions from the Plan shall be made in accordance with Section 401(a)(9) of the Code, including the incidental death benefits under Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the Participant shall be as follows:

(b) A Participant shall have the option of commencing distributions by April 1 following age 70½ or deferring payment until actual retirement. For avoidance of doubt, a Participant is not required to receive a distribution while an Employee (in 2009 or any other year).

(c) Time and Manner of Distribution.

(i) Required Beginning Date. The Participant's entire interest will be distributed to the Participant no later than the Participant's Required Beginning Date.

(ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed no later than December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) Forms of Distribution. The Participant's interest shall be distributed in the form of a single sum on or before the Required Beginning Date.

(iv) Required Beginning Date. The April 1 of the calendar year following the calendar year in which the Participant attains age 70½ or, if the Participant opts to defer payment until retirement, the April 1 of the calendar year following the calendar year in which the Participant actually retires.

#### 6.2 Amount of Distribution

A Participant who terminates employment for any reason shall be entitled to one hundred percent (100%) of the value of his Aggregate Account determined as of the most current Valuation Date.

#### 6.3 Lump Sum Distributions

All distributions shall be made in a lump sum payment in cash constituting the entire value of the distributee's Aggregate Account.

#### **6.4 Time of Distribution**

Unless otherwise specified herein, benefits shall become distributable to a Participant (or the Participant's Beneficiary in any case of the Participant's death) upon any termination of the Participant's employment by reason of resignation, discharge, retirement, disability, or death. This Plan does not provide for mandatory distributions of any amount. Therefore, no distribution is made (regardless of the amount of the distribution) without the consent of the Participant (or the Participant's Beneficiary in any case of the Participant's death).

#### **6.5 Participant's Rights Not Subject to Execution**

The right of a Participant to a benefit under this Plan is not subject to execution or any other process whatsoever, except to the extent permitted and is unassignable.

#### **6.6 Unclaimed Benefits**

Each Participant and Beneficiary of a deceased Participant shall file with the Plan Administrator from time to time in writing, his home address and each change of home address. Any communication shall be addressed to the Participant or the Beneficiary at his last home address filed with the Plan Administrator, or if no such address was filed, then at his last home address as shown on the Employer's records, shall be binding on the Participant or Beneficiary for all purposes of the Plan. The Participant's Account balance shall be subject to the abandoned property law of the applicable jurisdiction.

#### **6.7 Direct Rollovers**

(a) Notwithstanding any provision of the Plan to the contrary that would otherwise limit a distributee's election under this Plan, a distributee may elect, at the time and in the manner prescribed by the Plan Administrator, to have any portion of an eligible rollover distribution paid directly to an eligible retirement plan specified by the distributee in a direct rollover. A distributee includes an Employee or former Employee. In addition, the Employee's or former Employee's surviving spouse and the Employee's or former Employee's spouse or former spouse who is the alternate payee under a qualified domestic relations order, as defined in Section 414(p) of the Code, are distributees with regard to the interest of the spouse or former spouse.

(b) A Beneficiary who is not the spouse of the Participant may elect a direct trustee to trustee transfer that qualifies as an eligible rollover distribution under this Section 6.7. Such transfer shall be made to an individual retirement plan described in Section 408(a) of the Code or an individual retirement account that is established for the purpose of receiving the distribution on behalf of such Beneficiary. Such individual retirement account shall be deemed an inherited IRA pursuant to the provisions of Section 402(c)(11) of the Code. Also, in this case, the determination of any required minimum distribution under Code Section 401(a)(9) that is ineligible for rollover shall be made in accordance with Notice 2007-7, Q&A 17 and 18, 2007-5 I.R.B. 395.

(c) Definitions

(i) Eligible Rollover Distribution

An eligible rollover distribution is any distribution of all or any portion of the balance to the credit of the distributee, except that an eligible rollover distribution does not include: (i) any distribution that is one of a series of substantially equal periodic payments (not less frequently than annually) made for the life (or life expectancy) of the distributee or the joint lives (or joint life expectancies) of the distributee and the distributee's designated Beneficiary, or for a specified period of ten (10) years or more; (ii) any distribution to the extent such distribution is required under Section 401(a)(9) of the Code; (iii) any hardship distribution; (iv) and any other distribution(s) that is reasonably expected to total less than \$200 during a year. For purposes of the \$200 rule, a distribution from a designated Roth account and distributions from other accounts under the Plan are treated as made under separate plans. Any portion of a distribution that consists of after-tax employee contributions which are not includable in gross income may be transferred only to (A) a traditional individual retirement account or annuity described in Section 408(a) or (b) of the Code or Roth individual retirement account or annuity described in Section 408A of the Code; or (B) to a qualified plan described in Section 401(a) of the Code or to an annuity contract described in Section 403(b) of the Code, that agrees to separately account for amounts so transferred (and earnings thereon), including separately accounting for the portion of the distribution that is includable in gross income and the portion of the distribution that is not so includible.

(ii) Eligible Retirement Plan

An eligible retirement plan is an eligible plan under Section 457(b) of the Code which is maintained by a state, political subdivision of a state, or any agency or instrumentality of a state or political subdivision of a state and which agrees to separately account for amounts transferred into such plan from this Plan, a traditional IRA, a Roth IRA, an annuity plan described in Section 403(b) of the Code or a qualified plan described in Section 401(a) of the Code, that accepts the distributee's eligible rollover distribution. The definition of eligible retirement plan shall also apply in the case of a distribution to a surviving spouse, or to a spouse or former spouse who is the alternate payee under a qualified domestic relation order, as defined in Section 414(p) of the Code. If any portion of an eligible rollover distribution is attributable to payments or distributions from a designated Roth account, an eligible retirement plan with respect to such portion shall include only another designated Roth account of the individual from whose account the payments or distributions were made, or a Roth IRA of such individual.

(iii) Direct Rollover

A direct rollover is a payment by the Plan to the eligible retirement plan specified by the distributee.

## **6.8 Military Service**

Notwithstanding any provision of this Plan to the contrary, contributions, benefits, and service credit with respect to qualified military service will be provided in accordance with Section 414(u) of the Code. In addition, the survivors of any Participant who dies on or after January 1, 2007, while performing qualified military service, are entitled to any additional benefits (other than benefit accruals relating to the period of qualified military service) provided under the Plan had the Participant resumed and then terminated employment on account of death.

## ARTICLE VII

### DEATH BENEFITS

#### 7.1 Designation of Beneficiary

Each Participant and Inactive Participant shall have the right to designate a Beneficiary to receive the death benefits that are payable from this Plan. Such designation must be evidenced by a written instrument filed with the Employer on a form prescribed by the Employer and signed by the Participant.

#### 7.2 Married Participant

The Beneficiary for a married Participant shall at all times be the Participant's spouse and may not be changed to someone other than such spouse unless the consent of such spouse is provided upon a written form witnessed by a duly authorized Plan representative or a notary public and acceptable to the Employer. If no such designation is on file with the Employer at the time of the death of the Participant, or if for any reason at the sole discretion of the Employer such designation is defective, then the spouse of such Participant shall be conclusively deemed to be the Beneficiary designated to receive such benefit.

#### 7.3 Spouse's Signature

The signature of the Participant's spouse shall be required on a designation of beneficiary form if the spouse is not the Beneficiary, unless the Participant declares in writing that one of the following conditions exists:

- (a) The Participant is not married;
- (b) The Participant does not know and has taken all reasonable steps to determine the whereabouts of the spouse;
- (c) The spouse is incapable of executing the acknowledgement because of an incapacitating mental or physical condition.

#### 7.4 Default Beneficiary

In the event the Participant dies and is not survived by a spouse, the Aggregate Account shall pass by the laws of intestacy.

## 7.5 Domestic Partners

For purposes of this Article VII only: (1) all references to “marriage” shall also include “registered domestic partnerships,” (2) individuals in a “registered domestic partnership” shall be considered “married,” and (3) all references to a “spouse” shall also include a “registered domestic partner.” A “registered domestic partner” and a “registered domestic partnership” refer to persons and partnerships satisfying the requirements of applicable law (including any registration requirements) as of the date of death.

## ARTICLE VIII

### ADMINISTRATION AND AMENDMENT OF PLAN

#### 8.1 Designation of Plan Administrator

The Employer is the Plan Administrator under this Plan unless an individual employed by, or a position within the Employer, has been appointed by the Employer as Plan Administrator. In addition to a Plan Administrator the Employer may designate a delegatee to perform those activities relating to the Plan as specified in the written appointment of such delegatee. The term "Employer" as used in this Article VIII shall mean the Plan Administrator or delegatee where responsibility for administration of the Plan has been given to such parties.

#### 8.2 Rules and Regulations

The Employer shall supervise and control the operation of this Plan in accordance with its terms and may make rules and regulations for the administration of this Plan that are not inconsistent with the terms and provisions hereof. The Employer shall determine any questions arising in connection with the interpretation, application, or administration of the Plan (including any question of fact relating to age, employment, Compensation, or eligibility of Employees) and its decisions or actions in respect thereof shall be conclusive and binding upon any and all persons and parties. The Employer's interpretations, determinations and actions taken under the Plan shall in all cases result in like treatment for Employees who are similarly situated. In the event of any conflict between the terms of this Plan and conflicting provision contained in the Trust, the terms of this Plan will govern.

#### 8.3 Amendment and Termination

The Employer shall have the right to amend, modify or terminate this Plan at any time. In the event of a termination or the complete discontinuance of this Plan, the entire interest of each Participant affected thereby shall immediately become 100% Vested. The Employer shall not be liable for the payment of any benefits under this Plan and all benefits hereunder shall be payable solely from the assets of the Trust. The Provider, as defined in section 4.08 of Rev. Proc. 2017-41, may amend any part of the Plan. However, for purposes of reliance on an Opinion Letter, the Provider will no longer have the authority to amend the Plan on behalf of the Employer as of the date (1) the Employer amends the Plan to incorporate a type of plan described in section 6.03 of Rev. Proc. 2017-41 that is not permitted under the Pre-approved Plan program, or (2) the Internal Revenue Service notifies the Employer, in accordance with section 8.06(3) of Rev. Proc. 2017-41, that the Plan is an individually designed plan due to the nature and extent of Employer amendments to the Plan. The Provider will inform the Employer of any amendments made to the Plan or of the discontinuance of the Plan.

## ARTICLE IX

### ANNUAL ADDITION LIMITS

#### 9.1 Construction

Section 3.5 of the Plan shall be construed in accordance with this Article IX. Unless the context clearly requires otherwise, words and phrases used in this Article IX shall have the same meanings that are assigned to them under the Plan.

#### 9.2 Definitions

As used in this Article IX, the following terms shall have the meanings specified below.

(a) **"Annual Additions"** shall mean the sum credited to a Participant's Accounts for any Plan Year of (i) Employer contributions, (ii) Employee contributions, (iii) forfeitures, (iv) amounts credited after March 31, 1984 to an individual medical account, as defined in Section 415(1)(2) of the Code which is part of a pension and annuity maintained by the Employer, (v) amounts derived from contributions paid or accrued which are attributable to post-retirement medical benefits, allocated to the separate account of a key employee, as defined in Section 419A(d)(3) of the Code, under a welfare benefit fund, as defined in Section 419(e) of the Code, maintained by the Employer, and (vi) allocations under a simplified employee pension.

(b) **"Defined Benefit Plan"** means a plan described in Section 414(j) and 414(k)(2) of the Code.

(c) **"Defined Contribution Plan"** means a plan described in Section 414(i) and 414(k)(2) of the Code.

(d) **"Section 415 Compensation"** shall mean a Participant's wages within the meaning of Code Section 3401(a) and all other payments of compensation to the Participant by the Employer (in the course of the Employer's business) for which the Employer is required to provide the Participant a written statement under Code Sections 6041(d), 6051(a)(3) and 6052. Section 415 Compensation shall be determined without regard to any rules under Code Section 3401(a) that limit the remuneration included in wages based on the nature or location of the employment or the services performed. Compensation for any Limitation Year is the compensation actually paid or includible in gross income during such year. Compensation paid or made available during a Limitation Year shall include amounts that would otherwise be included in compensation but for an election under Code Sections 125(a), 132(f)(4), 402(e)(3), 402(h)(1)(B), 402(k) or 457(b). After December 31, 2008, differential wage payments shall be treated as payment of wages under Code Section 3401(a) for purposes of Code Section 415(c)(3). Section 415 Compensation does not include any amounts paid following a severance from employment, except amounts paid or includible in gross income by the later of 2 1/2 months after a severance from employment or the end of the Plan Year that includes the severance from employment shall be included if, (i) absent the severance



from employment, such compensation would have been paid to the Participant while the Participant continued in employment with the Employer, and such payments represent regular compensation for services during the Participant's regular working hours (or compensation for services outside the Participant's regular working hours, such as overtime or shift differential), commissions, bonuses or similar compensation, (ii) the payment is for unused accrued bona fide sick, vacation or other leave that the Participant would have been able to use if employment had continued, or (iii) the payment is received by the Participant pursuant to a nonqualified unfunded deferred compensation plan and would have been paid at the same time if employment had continued, but only to the extent includible in gross income. Any payments not described above shall not be considered Section 415 Compensation if paid after severance from employment, even if they are paid by the later of 2 1/2 months after the date of severance from employment or the end of the Limitation Year that includes the date of severance from employment.

### **9.3 Annual Addition Limitations**

(a) Annual Additions shall not exceed the limit set forth in Section 3.5 of Article III of the Plan.

(b) The compensation limitation of Section 3.5 of the Plan shall not apply to any contribution for medical benefits (within the meaning of Code Section 419A(f)(2)) after separation from service which is treated as an Annual Addition.

(c) If any Employer contributes amounts, on behalf of Participants covered by the Plan, to other defined contribution plans, the limitation on Annual Additions provided in Article III of the Plan shall be applied to Annual Additions in the aggregate to the Plan and such other plans. reduction of Annual Additions, where required, shall be accomplished by reducing contributions under such other plans pursuant to the directions of the fiduciary for administration of such other plans or under priorities, if any, established by the terms of such other plans, and then, if necessary, by reducing contributions under the Plan.

(1) This Section 9.3(c)(1) applies if, in addition to this Plan, the Participant is covered under another qualified pre-approved defined contribution plan maintained by the Employer, a welfare benefit fund maintained by the Employer, an individual medical account maintained by the Employer, or a simplified employee pension maintained by the Employer, that provides an Annual Addition during any Limitation Year. The Annual Additions which may be credited to a Participant's account under this Plan for any such Limitation Year will not exceed the maximum permissible amount reduced by the Annual Additions credited to a Participant's account under the other qualified pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions for the same Limitation Year. If the Annual Additions with respect to the Participant under other qualified pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions maintained by the Employer are less than the maximum permissible amount and the employer contribution that would otherwise be contributed or allocated to the participant's account under this Plan would cause the Annual Additions for the Limitation Year to exceed this limitation, the amount contributed or allocated will be reduced so that the Annual Additions under all such plans and funds for the

Limitation Year will equal the maximum permissible amount. If the Annual Additions with respect to the Participant under such other qualified pre-approved defined contribution plans, welfare benefit funds, individual medical accounts, and simplified employee pensions in the aggregate are equal to or greater than the maximum permissible amount, no amount will be contributed or allocated to the Participant's account under this Plan for the Limitation Year.

(2) If the Participant is covered under another qualified defined contribution plan maintained by the Employer which is not a pre-approved plan, Annual Additions which may be credited to the Participant's account under this plan for any Limitation Year will be limited in accordance with this section as though the other plan were a pre-approved plan.

(d) If a short Limitation Year is created because of an amendment changing the Limitation Year to a different 12-consecutive month period, the maximum permissible amount will not exceed the limitation in Section 3.5 multiplied by a fraction, the numerator of which is the number of months in the short Limitation Year, and the denominator of which is 12.

(e) In the event the limitations of Section 3.5 of the Plan or Sections 9.3(a) through (d) of this Article IX are exceeded such excess may be corrected through the Employee Plans Compliance Resolution System as permitted by applicable IRS guidance (such as under Rev. Proc. 2016-51 or its successors).

**ADOPTION OF THE  
AMENDED AND RESTATED  
CITY OF BERKELEY  
PARS ALTERNATE RETIREMENT SYSTEM**

The Employer may rely on an opinion letter issued by the Internal Revenue Service as evidence that the Plan is qualified under Section 401 of the Internal Revenue Code except to the extent provided in Rev. Proc. 2017-41.

An Employer who has ever maintained or who later adopts any plan (including a welfare benefit fund, as defined in Section 419(e) of the Code, which provides post-retirement medical benefits allocated to separate accounts for key employees, as defined in Section 419A(d)(3) of the Code, or an individual medical account, as defined in Section 415(l)(2) of the Code) in addition to this Plan may not rely on the opinion letter issued by the Internal Revenue Service with respect to the requirements of Section 415.

The Employer may not rely on the opinion letter in certain other circumstances, which are specified in the opinion letter issued with respect to the Plan or in Rev. Proc. 2017-41.

The Amended and Restated City of Berkeley PARS Alternate Retirement System is hereby adopted.

BY: \_\_\_\_\_  
Ravinder Rangi

TITLE: Employee Relations Officer

DATE: \_\_\_\_\_

Provider: Public Agency Retirement Services  
P.O. Box 11119  
Newport Beach, CA 92658-5019  
  
(800) 540-6369

Opinion Letter Serial No: Q702335a

**AMENDMENT TO THE  
CITY OF BERKELEY  
PARS ALTERNATE RETIREMENT SYSTEM**

**WHEREAS**, the City of Berkeley (the "Employer") adopted the City of Berkeley PARS Alternate Retirement System (the "Plan"), amended and restated effective January 1, 2021; and

**WHEREAS**, the Employer desires to amend the Plan in response to the Setting Every Community up for Retirement Act (the "SECURE Act") to increase the Required Beginning Date age to 72 for participants who turn 70½ in the calendar year 2020 and after; and

**WHEREAS**, the Employer further desires to amend the Plan in response to the Coronavirus Aid, Relief, and Economic Security Act (the "CARES Act") to waive 2020 required minimum distributions; and

**WHEREAS**, the Employer has the right to amend the Plan in accordance with Section 8.3 of the Plan.

**NOW THEREFORE, BE IT RESOLVED**, effective January 1, 2020, the Plan is hereby amended as follows:

1. Section 6.1, **Incidental Death Benefits**, is hereby amended in its entirety to read.

**6.1 Incidental Death Benefits**

(a) Distributions from the Plan shall be made in accordance with Section 401(a)(9) of the Code, including the incidental death benefits under Section 401(a)(9)(G) and the regulations thereunder. The required beginning date of benefit payments that represent the entire interest of the Participant shall be as follows:

(b) A Participant shall have the option of commencing distributions by (i) April 1 following (A) age 70½, if the Participant was born before July 1, 1949, or (B) age 72 if the Participant was born after June 30, 1949, or (ii) deferring payment until actual retirement. For avoidance of doubt, a Participant is not required to receive a distribution while an Employee (in 2009 or any other year).

(c) Time and Manner of Distribution.

(i) Required Beginning Date. The Participant's entire interest will be distributed to the Participant no later than the Participant's Required Beginning Date.

(ii) Death of Participant Before Distributions Begin. If the Participant dies before distributions begin, the Participant's entire interest will be distributed no later than December 31 of the calendar year immediately following the calendar year in which the Participant died.

(iii) Forms of Distribution. The Participant's interest shall be distributed in the form of a single sum on or before the Required Beginning Date.

(iv) Required Beginning Date. The April 1 of the calendar year following the calendar year in which the Participant attains (A) age 70½, if the Participant was born before July 1, 1949, or (B) age 72 if the Participant was born after June 30, 1949, or, if the Participant opts to defer payment until retirement, the April 1 of the calendar year following the calendar year in which the Participant actually retires.

(d) Notwithstanding any contrary provision in this Section 6.1, in accordance with section 2203 of the CARES Act, any distribution that is required in 2020 by Section 6.1(c) (which implements the minimum distribution requirements of Section 401(a)(9) of the Code) will not be made. In addition, notwithstanding Section 6.7 of the Plan, and solely for purposes of applying the direct rollover provisions of the Plan, any amount that would otherwise be a minimum distribution under Code section 401(a)(9) in 2020 will be treated as an eligible rollover distribution.

2. All other terms and conditions under the Plan shall remain in full force and effect.

**IN WITNESS WHEREOF**, this amendment is hereby adopted effective as of the date executed below.

**CITY OF BERKELEY**

By: \_\_\_\_\_  
Ravinder Rangi

Title: Employee Relations Officer

Dated: \_\_\_\_\_

**AMENDMENT TO THE  
CITY OF BERKELEY  
PARS ALTERNATE RETIREMENT SYSTEM**

**WHEREAS**, the City of Berkeley (the “Employer”) has adopted the City of Berkeley PARS Alternate Retirement System (the “Plan”), amended and restated effective January 1, 2021; and

**WHEREAS**, the Employer wishes to amend the Plan to include Participant arbitration provisions; and

**WHEREAS**, the Employer reserves the right to amend the Plan from time to time pursuant to Section 8.3 of the Plan.

**NOW THEREFORE, BE IT RESOLVED**, the Plan is hereby amended as follows:

1. Article VIII, Section 8.4, **Arbitration of Disputes**, is hereby added to the Plan, as follows:

**8.4 Arbitration of Disputes**

(a) Any claim, dispute or breach arising out of or in any way related to the Plan, including any claim, dispute or breach asserted by a Participant on behalf of the Plan, shall be settled by binding arbitration conducted in Berkeley (or such other major city that is nearest to the location where the Participant was last employed by the Employer before a single neutral arbitrator at JAMS pursuant to the JAMS Employment Arbitration Rules and Procedures in effect at the time of the dispute (information available at [www.jamsadr.com](http://www.jamsadr.com)). As a precondition to commencing any arbitration, the claims procedure set forth in Section 8.4 hereof must be fully exhausted.

(b) To the extent permitted by applicable law, the arbitration shall be determined based solely on the record established for the appeal described in Section 8.4 hereof.

(c) In any such arbitration, the arbitrator shall issue a written award/opinion. A judgment upon the award/opinion rendered by the arbitrator may be entered in any court of competent jurisdiction.

(d) From the commencement of the arbitration through the issuance of the arbitrator’s award/opinion, the Employer will pay the arbitrator’s fee and the arbitration forum’s fees.

(e) The Participant must bring any dispute in arbitration on an individual basis only, and not on a class, collective or representative basis. The Participant must, and by accruing and/or accepting benefits under the Plan does, waive the right to commence, be a party to, or be an actual or putative class member of any class, collective or representative action arising out of or relating to the Plan, including but not limited to any claims asserted by a Participant on behalf of the Plan (“Class Action Waiver”). However, if this Class Action Waiver is found to be unenforceable by a court of competent jurisdiction, then any claim asserted on a class, collective or

representative basis shall be filed and adjudicated in a court of competent jurisdiction, and not in arbitration. Except as provided in the preceding sentence, this Section 8.4 is intended to make mandatory individual arbitration apply, as described above, to the maximum extent permissible under applicable law. If any feature of this arbitration requirement is found to be impermissible under applicable law, arbitration as described above shall remain required with the minimum change necessary to allow the arbitration requirement to be permissible under applicable law.

2. All other terms and conditions under the Plan shall remain in full force and effect.

**IN WITNESS WHEREOF**, this amendment is hereby adopted effective as of the date executed below.

**CITY OF BERKELEY**

By: \_\_\_\_\_  
Ravinder Rangi

Title: Employee Relations Officer

Date: \_\_\_\_\_

