EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF FEBRUARY 27, 2013

REGULAR MEETING

TO: **Ron Briggs, Chair, and Members of the El Dorado County Local Agency Formation Commission**

FROM: **José C. Henríquez, Executive Officer**

AGENDA ITEM #9: **PUBLIC HEARING TO CONSIDER AND ADOPT A RESOLUTION OF INTENTION TO APPROVE A CONTRACT BETWEEN EL DORADO LAFCO AND THE CALIFORNIA PUBLIC RETIREMENT SYSTEM**

RECOMMENDATION

Staff recommends that the Commission consider and adopt, after public comment, the attached Resolution of Intention to Approve a Contract with the California Public Employees Retirement System and Resolution to Tax Defer Member Paid Contributions and direct staff to administer and implement the contract with CalPERS.

REASON FOR RECOMMENDED ACTION

El Dorado LAFCO does not have a contract of its own with CalPERS. As explained immediately below, LAFCO's previous method of offering retirement benefits to its employees is no longer available. The Commission had finalized the contract approval process in December; however CalPERS indicated that LAFCO must go through the process again because of a technical flaw in the December contract.

BACKGROUND

Recap of Events

When El Dorado LAFCO became independent, it either did not or could not pursue its own contract with the California Public Employees Retirement System. Instead, an arrangement was entered with the County of El Dorado and CalPERS whereby LAFCO sent its contributions to the retirement system under the County's employer code. Funds were differentiated from the County funds by LAFCO having its own "office code."

This arrangement worked fairly well, but it was not without its issues. Among them were delayed notifications from PERS to LAFCO and, for understandable reasons, a reluctance by the County to designate the LAFCO Executive Officer as a retirement administrator within the CalPERS automated system. Another drawback was that LAFCO was tied to the County's contract with PERS.

In the fall of 2011, CalPERS implemented a new reporting system called myCalPERS. This new system is intended to be 100% automated; however, myCalPERS also no longer recognized office codes. The LAFCO retirement funds were automatically deposited with the County funds, an arrangement neither agency wanted. Further, CalPERS also did away with its old manual reporting system when myCalPERS went live, so the only available option was for LAFCO to enter into its own contract.

At PERS' recommendation, LAFCO stopped making payments to the retirement system and both parties entered into negotiations in November 2011. The goal was that once the contract was approved, PERS would start the process of separating LAFCO's funds from the County and LAFCO can resume its retirement contributions at the end of each pay period. In the meantime, retirement funds were deposited into a separate account and have been diligently tracked by LAFCO's payroll agency, Terrie Prod'Hon's CPA Firm. LAFCO's auditor, Matson & Isom, is aware of the existence of the retirement funds and reviewed Terrie Prod'Hon's documentation as part of last year's audit.

Delays in the Process

There are four phases to contracting with CalPERS: Initiation, Negotiation, Adoption and Implementation. After many delays on the part of CalPERS in the initiation phase, LAFCO succeeded in getting through the negotiation phase rather quickly. A CalPERS contract has two components, the Actuarial Report and the Main Contract, which contains the legal language that binds the two agencies. The Actuarial Report is time sensitive since it is a snapshot in time. It was issued on June 1, 2012 with an expiration date of September 1, 2012. LAFCO notified CalPERS that it intended to hold a hearing to approve the Resolution of Intention on August 22, 2012.

On July 5, 2012 CalPERS staff notified LAFCO that the processing of new contracts was on hold pending new Internal Revenue Service rules. In addition, LAFCO was instructed to complete Circular Letter 200-013-12 in order to provide evidence that LAFCO was, indeed, a public agency. LAFCO's already scheduled hearings on this matter were cancelled. After escalating to CalPERS management, LAFCO was notified on September 19, 2012 that its contract was allowed to proceed. After other delays in receiving certain materials, the Commission was able to complete the adoption process on December 5, 2012. The materials LAFCO could execute on its own were sent to CalPERS in the same week.

Critical to the implementation of the contract is a "Reallocation Agreement," which is a contract between the County, LAFCO and CalPERS authorizing the latter party to move LAFCO's retirement funds from the County's account to LAFCO's own account. LAFCO received a copy of the Reallocation Agreement on October 9, 2012 and forwarded it to the County on October 26, 2012 where it has remained unapproved (LAFCO approved the Reallocation Agreement on December 5th). County staff has raised numerous concerns, one of which is that the Actuarial Report had expired by the time the Commission approved the contract, thus voiding the action.

While CalPERS admits it was their delay that allowed for this situation to occur, it is requiring LAFCO to go through the steps once again. A new Actuarial Report was issued on January 23, 2013. The details of the report are immediately below. Because the process must begin anew, it is recommended that the Commission adopt Resolutions L-2013-06 and L-2013-07.

There is a silver lining to going through the process one more time: The Actuarial Report for this contract contains a lower employer rate for LAFCO than the contract approved in December.

Contract Highlights

The full contract is attached to this memo as Exhibit A to Attachment B. The contract is practically the same as the December contract and essentially mirrors the County's contract as it was in 2011 (with minor modifications). As explained last October, the reason for using the

County's PERS contract as the starting point was because it was under that benefit package that the current set of employees were hired; however, upon its successful adoption and implementation the Commission can modify it for new employees consistent with California Public Employees' Pension Reform Act of 2013 (PEPRA).

The employer contribution rate is based on a contract to provide a retirement formula of 2% @ 55, with "One-Year Final Compensation," public service credit for California Senate Fellows, Assembly Fellowship, Executive Fellowship, or Judicial Administration Fellowship Programs and "Two Years Additional Service Credit" with 100% prior service for local miscellaneous members. For purposes of disclosure, the only person who may benefit from this provision is the Executive Officer as of this date. The contract also specifies that the employees will be covered under the 1959 Survivor's Benefits (Fourth Level) in case of an untimely death. This program is explained in detail below.

According to the actuarial report (refer to Attachment A), LAFCO's unfunded liability is significantly lower than the County's unfunded liability, resulting in a lower employer contribution rate. Upon adoption of the contract, LAFCO's Fiscal Year 2013-2014 employer rate will be 10.94%, almost 5 percentage points lower than the County's rate of 15.661% for the same time period and 3 percentage points lower than what it would have been under the December contract. According to CalPERS, the difference in rates between the new contract and the December contract is that LAFCO will not be transferred into the small agency pool until July 1st; consequently LAFCO will be paying the higher County rate until that time and is getting credit for that. For Fiscal Year 2014-2015, the employer rate will even somewhat, as it is projected to be 11.9%. This will generate some unanticipated budgetary savings as the Commission considers the budget for the next two years.

Process

Adoption of the contract is a three step process:

1. The first step is to approve the Resolution of Intention to Approve a Contract with CalPERS (please refer to Attachment B). As part of this step, a disclosure of the total contract cost must be made. The first component of the cost is 10.94% of total (currently projected) payroll, which is the employer share of retirement benefits. Under the Commission's Policies and Guidelines, the employee share of the current set of employees is also paid for by LAFCO and constitutes the second component. These costs will be included in the LAFCO budget for Fiscal Year 2013-2014 as shown below.

	County Contract	*December LAFCO Contract (voided by CalPERS)*	*New LAFCO Contract (to be effective 7/1/2013)*
Total Projected Payroll	$221,630	$221,630	$221,630
Employer Rate	15.661%	13.1%	10.94%
Employer Share	$34,710	$29,034	$24,247
Employee Share (7%)	$15,514	$15,514	$15,514
Total LAFCO Cost	$50,224	$44,548	$39,761

2. Contingent upon the Commission's approval in step 1 above, the second step is for the LAFCO employees to vote to accept the contract and the 1959 Survivor Benefits package. At least two votes will be required for the successful passage of both items.

3. Contingent upon successful approvals in steps 1 and 2, the originals are sent back to CalPERS and its staff will send the final resolution for the Commission to approve at the March 27, 2013 meeting. If the Commission approves the Final Resolution, the contract becomes effective April 7, 2013, which is the first day of the first full period after the Commission meeting.

Once CalPERS receives the entire package, its actuaries will move the existing retirement funds out of the County's account into LAFCO's own account, assuming the issues and concerns County staff has with the Reallocation Agreement are addressed and the Board of Supervisors adopts it.

<u>Miscellaneous</u>

Since the Commission's Policies and Guidelines calls for LAFCO to pay the employee share of PERS, CalPERS requires that the Commission also adopt L-2013-07 (please refer to Attachment C). This complies with Internal Revenue Code Section 414(h)(2), which allows public agencies to designate required employee contributions as being "picked up" by the employer and treated as employer contributions for tax purposes. The effect of the pick-up is to defer tax on employee contribution amounts until the member retires and receives retirement benefits, or separates from employment and takes a refund of contributions. If the Commission were not to approve L-2013-07, the pick-up would be considered taxable income to the employee at the time the contribution was made. Attachment D contains the two CalPERS Circulars explaining the Federal tax reporting requirements.

Part of this contract includes enrolling in the 1959 Survivor Benefits Program: Fourth Level. This program provides benefits to an employee's survivor(s) in case of death prior to retirement. This type of coverage is available to those employees who are not covered by Social Security. This benefit is payable in addition any pre-retirement death benefit paid by CalPERS. All of the assets in this program are pooled. The employer cost is $5.40 per month per employee for the next five years. After that, LAFCO will pay the net premium for the "Fourth Level" pool. The LAFCO cost to enroll in this program for a year is $194 assuming all three current employees elect to enroll. In addition, the employee cost will be $2.00 per month, for a total annual cost of $24 for each employee. Attachment E contains an explanation of this program.

Implementation of these agreements also includes CalPERS moving the already-paid LAFCO contributions from December 2004 to November 2011 out of the County of El Dorado's account into LAFCO's own account. As noted above, LAFCO staff transmitted the Reallocation Agreement to County staff on October 2012 where it has remained unapproved. With the assistance of Commissioner Briggs, the Reallocation Agreement is making its way through the process.

<u>This Contract and PEPRA</u>

As the Commission is aware, the Governor signed AB 340, instituting some pension reforms. Most of the provisions are channeled towards "new" employee members to CalPERS ("new" defined as brand new to the retirement system, not new contracts such as the matter considered here or employees who belonged to another retirement system with a reciprocity agreement in place prior to joining PERS). Consequently, this item is largely unaffected by the new law with the exception of one specific provision that could potentially apply to LAFCO. Staff is still conferring with Counsel to determine the extent of the impact and identify the options that are available to the Commission. Once these are determined, staff will return in a few months for discussion.

Attachments

Attachment A: LAFCO's Actuarial Report

Attachment B: LAFCO Resolution L-2013-06: Resolution of Intention to Approve a Contract Between the Board of Administration – California Public Employees Retirement System and the Commission – El Dorado Local Agency Formation Commission

Attachment C: LAFCO Resolution L-2013-07: Resolution to Tax Defer Member Paid Contributions - IRC 414(h)(2) Employer Pick-Up

Attachment D: CalPERS Circular Letters 200-049-08 and 200-019-10

Attachment E: Summary of Provisions, Fourth Level of 1959 Survivor Benefit Program: Government Code Section 21574