EL DORADO LAFCO

LOCAL AGENCY FORMATION COMMISSION

AGENDA OF AUGUST 7, 2013

SPECIAL MEETING

TO:	**Don Mette, Chair, and Members of the El Dorado County Local Agency Formation Commission**
FROM:	**José C. Henríquez, Executive Officer**
AGENDA ITEM #6:	**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 the next steps in the contract approval process.

REASON FOR RECOMMENDED ACTION

El Dorado LAFCO does not have a contract of its own with CalPERS. The Resolution of Intention starts a sequence of events, culminating with LAFCO restoring retirement benefits to its employees.

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."

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. When CalPERS was asked to advise LAFCO on the situation, the response was for LAFCO to enter into its own contract with CalPERS. In addition, LAFCO was instructed to stop making payments into the system. This service gap existed until the end of June 2013 when the County, LAFCO and PERS implemented “the exception,” which bridged the service gap between 2011 and 2013. The LAFCO retirement account is current through June 30, 2013.

On the contract front, the story of 2012 was of administrative delays on the part of CalPERS in processing the LAFCO contract. Despite applying for a retirement contract with CalPERS before the end of 2011, a contract was not presented to LAFCO until October 2012. While the Commission acted in a timely fashion to complete the adoption process in December 2012, CalPERS voided the contract in January 2013.

Since then, the work has been to resolve the issues with the County over the Reallocation Agreement, and to a somewhat lesser extent, the contract itself. CalPERS insists that the LAFCO contract will include service accrued as of the date in which it became independent from the County. As a result, the contract process requires a Reallocation Agreement "reallocating" such service (including assets and liabilities) from the County's contract to LAFCO's contract. The Reallocation Agreement must be signed by the County, LAFCO and CalPERS for the LAFCO contract to be implemented.

Since October, County staff indicated their issues with certain aspects of the LAFCO contract:

1. Some language contained in the Reallocation Agreement is objectionable;
2. There is a potential that the County will be charged with penalties and charges associated with the implementation of a retroactive contract; and
3. Staff was concerned that having LAFCO stop making payments into the CalPERS system put the County in jeopardy of being in breach of contract with CalPERS.

The implementation of the exception and last month’s adoption of the Indemnity Agreement by LAFCO and the Board of Supervisors alleviated issues #2 and 3 above. Regarding issue #1, last March LAFCO asked CalPERS to consider rewriting the language to remove the language the County finds objectionable. CalPERS has agreed to make some changes.

Summary of Contract

The action for this meeting is to set a process in motion, not to adopt the contract. However, some aspects are discussed here so that the Commission is comfortable with starting the process. This contract offers the retirement formulas of 2% @ 55 for existing employees and 2% @ 62 for new employees [“new” as defined by the 2012 Public Employees Pension Reform Act (PEPRA)]. It offers the 1959 Survivor’s Benefit Program, Fourth Level. In addition, the contract has one year final compensation for existing employees and three-year final compensation for new employees. It also offers the opportunity for alumni of the Capital Fellowship Program to purchase their service credit, at their own expense, as an optional benefit. These documents are appended to this staff report so that the Commission can review the documents in detail. Attachment A contains the new actuarial report and Attachment B is the contract. The following is a brief explanation of each benefit.

<u>Benefit Formula</u>

All of LAFCO’s current employees were hired between November 2005 and January 2006. At the time, the County’s retirement formula for miscellaneous employees was 2% @ 55 and LAFCO’s practice at the time had been to mirror the County’s benefits.

Federal and State labor laws prohibit an employer from unilaterally removing or denying a benefit once it is granted. The LAFCO PERS contract accomplishes this by reinstating an already promised retirement formula as well as the final compensation package to existing employees. But the contract also implements PEPRA by including the retirement formula of 2% @ 62 and three year final compensation for new employees.

Is the 2% @ 55 formula for existing employees out of line, given PEPRA and the County's current retirement formula, adopted prior to PEPRA? Attachment C contains a comparison of the proposed LAFCO contract with both the County and other LAFCOs. As demonstrated, most LAFCOs offer this benefit formula to employees of comparable tenure. As noted earlier, the County also offers this formula to all employees hired before 2010.

1945 Survivor Benefits – Fourth Level

At the February meeting, a question was raised by Commissioner Frentzen whether there were any implications for LAFCO employees since the new CalPERS contract specifies that LAFCO would use the 1959 Survivor Benefits – Fourth Level when the County's CalPERS contract utilizes the 1959 Survivor Benefits – Third Level.

At the time the contract was negotiated, CalPERS only offered two choices to LAFCO: the 1959 Survivor Benefits and the 1959 Survivor Benefits – Fourth Level (for a comparison of the two benefits, please refer to Attachments D and E). Third Level benefits have been closed to new contracts for some time, so that program is not an option. Consequently, there was no opportunity for LAFCO to participate in Third Level benefits. Fourth Level was chosen because it was the most cost effective option: It provides the most benefit to the employees at a comparable cost.

Optional Benefit – Capital Fellowship Program Service Credit

The Capital Fellowship service credit is in the contract because of LAFCO's unique circumstance. LAFCO is a statute-driven agency, meaning the Legislature is constantly amending the Cortese-Knox-Hertzberg Act (CKH). In addition, some LAFCOs lobby both the Legislature and CALAFCO to make changes to CKH that may inadvertently affect this LAFCO's operations and practices. Since LAFCO cannot afford its own lobbyist, it needs staff members fluent with the legislative process, who can understand the repercussions of slight changes to statutory language and, just as important, have connections with legislative personnel. Combined, this skill set ensures that this Commission has its views effectively represented and advocated.

Due to its size, LAFCO cannot offer the same wide range in salary, benefits and advancement opportunities of larger agencies. Consequently, LAFCO must rely on other employment incentives to attract candidates to work for this agency. It was for this reason that in 2008 your Executive Officer advocated that the Commission offer the Family and Medical Leave Act (FMLA) and California Family Rights Act (CFRA) benefits even though LAFCO was not required to do so under State and Federal statutes.

The fellowship service credit would serve a similar function as FMLA and CFRA benefits. Alumni of the Capital Fellowship Programs can offer this LAFCO hands-on knowledge of the legislative process and contacts within the Legislature and/or State government. This is why, coupled with sufficient experience, effective judgment and necessary temperament, former fellows are more valuable to this agency than for any other entity in the county.

The Commission has the discretion to remove this optional benefit from the contract if so inclined. However, please note the cost for purchasing the 10-11 month service credit is fully borne by the employee. It costs nothing, and will cost nothing, to LAFCO to retain this provision. In your Executive Officer's assessment, the fellowship service credit in the CalPERS contract is potentially a greater benefit to the Commission than to any individual employee.

In the interest of full disclosure, the Executive Officer is an alumnus of the Capital Fellowship Program. Should the Commission retain this benefit, the EO voluntarily offers to amend his contract, either to permanently bar him from participating in the service credit program or to require that he return with cost estimates prior to applying for service credit. On the latter aspect, it will be reiterated that he will bear the full cost (current and future) of buying the service credit should he choose to participate in the program. If it is the will of the Commission, a contract amendment will be presented at the next LAFCO meeting.

Why Is LAFCO Covering the Employee Share?

Part of the Commission's action at the meeting is to inform CalPERS that LAFCO will cover the employee share of the retirement contribution for *existing* employees. This is to comply with IRS regulations and to ensure this benefit does not become taxable income for current staff. The Commission's Personnel Policies and Procedures grandfathers a previous benefit of LAFCO paying the employee share of the retirement contribution for any employee hired prior to January 1, 2009 and whose tenure with this agency is longer than two years (refer to Attachment F). Again, the goal is to make the existing employees whole by reinstating an already promised benefit. Please note the following:

- This benefit is not available to any employee hired after January 1, 2009; and
- Upon the contract's implementation, staff will confer with counsel to ensure this benefit is consistent with PEPRA. If it is found that the benefit is not consistent with PEPRA, then staff will recommend the formation of an ad hoc committee after the contract is adopted to study how to reconcile the two. For what it is worth, CalPERS staff does not believe this benefit runs counter to PEPRA.

Estimates on Cost and Impact to LAFCO

The CalPERS Actuarial Report is included in this staff memo as Attachment A. As it can be seen in page 1 of 4, LAFCO will start with an initial asset base of $573,066. Its liability is calculated to be $322,381. As required by CalPERS, the costs of the contract must be disclosed. There are two components to ongoing retirement costs. The first component is the employer rate, which will initially be 8.692% in Fiscal Year 2013-14. The rate goes to 9.5% for Fiscal Year 2014-15. As noted immediately above, under the Commission's Policies and Guidelines, LAFCO pays the employee share for the current set of employees and these constitute the second component.

	County Contract	*December 2012 LAFCO Contract (voided by CalPERS)*	*New LAFCO Contract (to be effective 7/1/2013)*
Total Projected Payroll	$221,555	$221,555	$221,555
Employer Rate	15.661%	13.1%	8.692%
Employer Share	$34,698	$29,023	$19,258
Employee Share (7%)	$12,567	$12,567	$12,567
Total LAFCO Cost	$47,265	$41,590	$31,825

Estimates on Cost and Impact to the County

Please keep in mind that when the myCalPERS system went live, the LAFCO retirement funds were comingled with the County's retirement funds in the County's account. Consequently, the impact to the County will be the transfer of the already deposited LAFCO funds plus any investment income and/or interest from the County's account into a LAFCO-specific account. In addition, any LAFCO-specific liability will be transferred from the County to LAFCO as of the contract's effective date. According to the Actuarial Report, the County's assets will be reduced by $573,066. The County will have a corresponding reduction of liability of $322,381. The employer rate is unaffected by the LAFCO contract's implementation and remains at 15.661%.

The Commission should also take note that part of the Indemnity Agreement was to assume responsibilities for any charges or penalties for anyone working for LAFCO from January 1, 2001 to current. So even though the CalPERS contract is effective on February 15, 2005, the Commission has assumed responsibilities for four additional years beyond that date.

Process

As stated earlier, the discussion above is to introduce the elements of the contract so that the Commission is aware of these benefits. However, the Commission is not adopting the contract at this time. The adoption of the contract is a three step process, with this meeting serving as the kick-off for the process:

1. The first step is to approve the Resolution of Intention to Approve a Contract with CalPERS (please refer to Attachment G). As part of this step, a disclosure of the total contract cost must be made. This requirement was met with the disclosures included in the chart immediately above. In addition, part of the Commission's action at the meeting is to inform CalPERS that LAFCO will cover the employee share of the retirement contribution for *existing* employees through the adoption of Resolution L-2013-10 (refer to Attachments H and I).

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 Fourth Level 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 September 25, 2013 meeting. If the Commission approves the Final Resolution, the contract becomes effective October 6, 2013, which is the first day of the first full period after the Commission meeting.

This Contract and California's New Pension Reform

As the Commission is aware, effective January 2013 AB 340, also known as PEPRA, instituted 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 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.

Epilogue – Military Service Credit

The contract does not need to list military service credit as a specified benefit because LAFCO, as a small agency, is already mandated to provide military service credit under Government Code §§21024 and 21027 (refer to Attachments J and K).

<u>Attachments</u>

Attachment A: LAFCO's Actuarial Report

Attachment B: LAFCO's CalPERS contract

Attachment C: Comparison Chart of Retirement Benefits

Attachment D: CalPERS Plans New to the 1959 Survivor Benefit Program: Indexed Level

Attachment E: CalPERS Plans New to the 1959 Survivor Benefit Program: Fourth Level

Attachment F: LAFCO Retirement Policy, as Adopted and as Subsequently Amended

Attachment G: LAFCO Resolution L-2013-09: 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 H: LAFCO Resolution L-2013-10: Resolution to Tax Defer Member Paid Contributions - IRC 414(h)(2) Employer Pick-Up

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

Attachment J: E-mail from Cynthia Brown dated February 4, 2013

Attachment K: California Government Code Sections 21024 and 21027