

EMERGENCY  
BUSINESS  
PASSED

IN THE BOARD OF COUNTY COMMISSIONERS  
OF LANE COUNTY, OREGON

ORDER NO. 04-2-18-6

) IN THE MATTER OF APPROVING A  
) SETTLEMENT AGREEMENT WITH THE  
) PUBLIC EMPLOYEES RETIREMENT  
) BOARD (PERB)

WHEREAS, Lane County joined with Multnomah County, the Cities of Eugene, Portland, Roseburg and Huntington, Canby Utility Board and Rogue River Valley Irrigation District (Petitioners) in challenging rate orders issued the State of Oregon Public Employees Retirement Board (PERB) regarding PERB's practices in administering the Public Employees Retirement System (PERS), and

WHEREAS, the matters went to trial, with a Marion Court decision in favor of of Petitioners, which decision is now on appeal, and

WHEREAS, the 2003 Legislature enacted significant legislation reforming PERS, which addressed some of the issues in the litigation, and

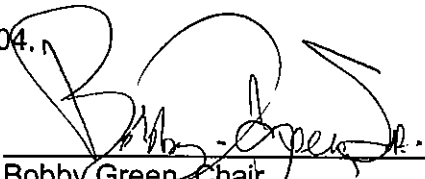
WHEREAS, the Petitioners and PERB have negotiated a settlement that will implement significant elements of the relief desired by Petitioners, and permit the parties to focus their attention on the reform legislation, and

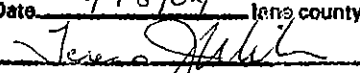
WHEREAS, the Lane County Board of Commissioners is supportive of the settlement agreement,

NOW, THEREFORE IT IS HEREBY ORDERED the Lane County approves the settlement agreement in the above-described litigation with PERB, and it is further

ORDERED that the County Administrator or his designate is hereby authorized to execute such documents as necessary to effectuate the settlement.

DATED this 18<sup>th</sup> day of February, 2004.

  
\_\_\_\_\_  
Bobby Green, Chair  
Lane County Board of Commissioners

APPROVED AS TO FORM  
Date 2/18/04 Lane County  
  
\_\_\_\_\_  
OFFICE OF LEGAL COUNSEL

## SETTLEMENT AGREEMENT

This Settlement Agreement (hereafter the "Agreement") is hereby entered into by and between The City Of Eugene, Lane County, Multnomah County, City Of Portland, City Of Roseburg, City Of Huntington, Canby Utility Board And Rogue River Valley Irrigation District (Collectively "Petitioners"), on the one hand, and the Public Employees Retirement Board ("PERB" or "Board") on the other (Collectively the "Parties" or individually a "Party").

### RECITALS:

- A. Petitioners filed petitions for judicial review in Marion County Circuit Court (Case Nos. 99C12794; 99C12838; and 00C16173). The cases, which were consolidated for trial, sought review of various petitioners' 1998 and 2000 employer contribution rate orders (a total of 12 separate rate orders) and of the March, 2000 earnings allocation order. PERB was named as a defendant. A group of individuals representing the interests of Public Employee Retirement System ("PERS") members and retirees intervened in the actions (collectively "Intervenors"). The consolidated cases are commonly referred to as *City of Eugene v. State of Oregon, Public Employees Retirement Board* (hereafter the "*City of Eugene*" case).
- B. The Eugene Water and Electric Board ("EWEB") also filed petitions for judicial review of its 1998 and 2000 employer contribution rate orders (Case No. 99C20235). Prior to trial, the Court dismissed EWEB's petitions on the ground that EWEB was already represented in the proceedings by the City of Eugene.
- C. After trial, the Marion Circuit Court issued a judgment in favor of Petitioners, which is attached to this Agreement as Attachment 1 and incorporated herein by reference. In that judgment the Court reversed each of the challenged orders and remanded them to PERB for issuance of new orders consistent with the Court's findings. The Court found that PERB had made several errors in administering PERS that had resulted in improper costs being included in the Petitioners' employer contribution rates. The Court also found that PERB acted improperly in allocating the PERS earnings for 1999. The Court also ruled in favor of the Intervenors on their challenge to the implementation of the "employer-in-variable" rule. PERB was ordered to pay Petitioners' reasonable costs and attorney fees for the litigation. PERB, EWEB and Intervenors filed notices of appeal of the judgment to the Oregon Court of Appeals. After the appeal was filed, PERB moved to stay enforcement of the judgment. That motion was denied both by the circuit court and by the Court of Appeals. PERB is under a present obligation to implement the judgment entered in *City of Eugene* case.
- D. After the circuit court decision, the 2003 Legislative Assembly enacted legislation reforming PERS ("reform legislation"). HB 2001, et seq. 72nd Or. Legislative Assembly Reg. Sess. (2003). The reform legislation addresses some of the issues addressed in the *City of Eugene* case. The reform legislation also granted immediate jurisdiction to the Oregon Supreme Court to adjudicate the appeals in the *City of Eugene* case. Those appeals are currently pending before the Oregon Supreme Court.

E. The Parties desire to settle this matter on the following terms.

THEREFORE, and in consideration of the mutual promises and agreements between the parties as set forth in this Settlement Agreement (the "Agreement"), the parties do hereby agree as follows:

#### AGREEMENTS:

1. PERB will implement the judgment entered in *City of Eugene v. State of Oregon, Public Employees Retirement Board* ("the judgment") as follows, except in the event of a supervening change in law (such as by a legislative enactment or further court order):
  - 1.1. No later than July 1, 2004, PERB will adopt a rule governing the calculation of money match benefits for members participating in the variable account program that conforms to July 2001 Court order in the *City of Eugene*. The Court ruled that the correct way to calculate a member's "variable account" money match option is through a three-step process. First, determine the member's account balance as if it had been invested solely in the regular account. Second, the "money match" option requires the member's regular account to be doubled and then annuitized. Third, the member's variable account balance is then to be compared to the member's regular account balance and the difference (whether positive or negative) is to be then annuitized and added or subtracted from the initial money match result. PERB will apply its money match calculation rule to retirements occurring on or after the earlier of the date that the rule is adopted or July 1, 2004.
  - 1.2. PERB will implement the judgment upholding Intervenors' challenge to the "employer-in-variable" rule by transferring from employer accounts to the contingency reserve established by ORS 238.670(1) the amount determined by the PERS actuary to have been improperly credited to employer accounts according to the judgment. This transfer will be accomplished by means of a new order allocating 1999 earnings. The new 1999 earnings allocation order will be entered no later than March 31, 2004.
  - 1.3. The new 1999 earnings allocation order described in paragraph 1.2 above will provide that the appropriate earnings allocation to Tier 1 regular member accounts is 11.33%, that 7.5% of the 1999 earnings should have been allocated to the contingency reserve established by ORS 238.670(1), and that the gain-loss reserve created by ORS 238.670(3) should have been funded to the full extent of the former PERB's policy to maintain a gain-loss reserve sufficient to credit the assumed interest rate to Tier 1 regular member accounts during a period of 30 months of 0% earnings. However, except as provided in paragraph 1.2 above, the order shall also provide that member accounts, the contingency reserve and the gain-loss reserve will not be adjusted to reflect the reallocation described in this paragraph so long as PERB follows the income allocation provisions of 2003 Or. Laws c. 67, sections 5 and 10. The order shall provide that if sections 5 or 10 of 2003 Or. Laws c. 67 are declared to be invalid or unconstitutional by a final

judgment entered by a court of competent jurisdiction or are repealed, or if a court of competent jurisdiction rules that PERB otherwise has failed to implement those provisions, then PERB will, within 30 days, adjust member accounts, the contingency reserve and the gain-loss reserve as described in this paragraph.

- 1.4. PERB will henceforth comply with existing statutory directives concerning reserving practices and mortality tables, as interpreted in the *City of Eugene* judgment and as amended by the reform legislation, except to the extent that such legislation is subsequently modified or repealed, or except to the extent that PERB is ordered to do otherwise by a court of competent jurisdiction.
  - 1.5. PERB will direct its actuary to recalculate employer contribution rates for Petitioners City of Eugene (including EWEB) and Lane County for 1998, 2000 and 2003, and for all other Petitioners for 2000 and 2003. The actuary will be directed to calculate those contribution rates as if PERB's practices and actuarial assumptions with respect to employer match of variable accounts, actuarial equivalency factors, reserving practices and the "employer-in-variable" rule had been consistent with the law as interpreted in the judgment and as if PERB had, for 1999, originally allocated earnings of 11.33% to Tier 1 regular member accounts, allocated 7.5% of earnings to the contingency reserve and had fully funded the gain-loss reserve pursuant to its policy described above in paragraph 1.3. PERB will issue new contribution rate orders for the City of Eugene (including EWEB) and Lane County for 1998, 2000 and 2003, and for all other Petitioners for 2000 and 2003, consistent with the actuary's recalculations. Before PERB adopts new contribution rate orders, it will afford Petitioners a reasonable opportunity to review the PERS actuary's calculations and to comment thereon. PERB will treat the difference between the Petitioners' contributions made pursuant to the former contribution rate orders and the corrected contribution rate orders as excess employer contributions. Each Petitioner may apply the excess contributions to reduce its unfunded actuarial liability or to reduce future contribution rates. PERB will enter the revised employer contribution rate orders no later than July 1, 2004. PERB will use funds available in the contingency reserve established by ORS 238.670(1) to cover all of the costs that PERS incurs with respect to Petitioners' current and retired employees that are not covered by Petitioners' recalculated rates.
  - 1.6. PERB will issue new employer contribution rate orders for all participating employers for 2003, no later than July 1, 2004, calculated to implement paragraphs 1.1, 1.2, 1.3 and 1.4 above.
  - 1.7. Within ten (10) business days of the effective date of this Agreement, PERB will pay Petitioners \$750,000.00 as partial reimbursement of the attorney fees Petitioners paid to litigate the *City of Eugene v. State of Oregon, Public Employees Retirement Board* cases.
2. As soon as practicable following the effective date of this Agreement, PERB will dismiss its appeal of the judgment in *City of Eugene v. State of Oregon, Public Employees*

*Retirement Board.* Petitioners will cooperate to the extent necessary to perfect the dismissal of the appeal. If Intervenors' appeal of the judgment is not dismissed, Petitioners will defend that appeal at their own expense.

3. As soon as practicable following the effective date of this Agreement, Petitioners will dismiss their petitions for judicial review of PERB's 2003 contribution rate orders.
4. **Venue and Jurisdiction.** Each party hereby consents and agrees to the venue and jurisdiction of the circuit court in Marion County in the state of Oregon and agrees that such court shall be the exclusive jurisdiction for any actions, proceedings or other matters arising directly or indirectly hereunder and expressly consent that any service of process may be made by personal service upon such parties wherever they can be located or by certified or registered mail directed to their respective address for notice purposes pursuant to this Agreement.
5. **Modification.** Any modification of this Agreement must be in a formal written instrument executed by Petitioners and PERB. This Agreement and any of its terms may only be changed, waived, discharged or terminated by a formal written instrument executed by the party against whom enforcement of the change, waiver, discharge or termination is sought.
6. **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, personal representatives, successors, and assigns.
7. **Waiver.** Failure of either party at any time to require performance of any provision of this Agreement shall not limit the party's right to enforce the provision. Waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.
8. **Counterparts.** This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.
9. **Legal Effect.** THIS IS A LEGALLY BINDING CONTRACT. All parties are entering into this Agreement with the advice of counsel, and counsel for both parties have cooperated in the preparation of this Agreement. Hence, the Agreement shall not be interpreted or construed against or in favor of any party by virtue of the identity, interest or affiliation of its preparer.
10. **Authority.** The person executing this Agreement on behalf of each party warrants that he or she has the authority to execute this Agreement and to so bind that party as provided herein.
11. **Acknowledgements.** The parties acknowledge that they have been represented by independent counsel throughout the negotiation of this Agreement; that each has authority to enter into this Agreement; that they understand the terms of this Agreement; and that they have entered into this Agreement voluntarily. The parties further



ROGUE RIVER VALLEY IRRIGATION  
DISTRICT

By: \_\_\_\_\_

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

Orrick, Herrington & Sutcliffe LLP

Harrang Long Gary Rudnick P.C.

By: \_\_\_\_\_  
James Baker

By: \_\_\_\_\_  
William F. Gary

Date: \_\_\_\_\_  
Attorneys for Oregon Public Employees  
Retirement Board

Date: \_\_\_\_\_  
Attorneys for Petitioners

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