



Agenda Item No. (3)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of May 18, 2023

From: Alice Ng, Director of Fiscal Resources
Kellee J. Hopper, Deputy General Manager, Administration and Development
Joseph M. Wire, Auditor-Controller
Denis J. Mulligan, General Manager

Subject: **ADOPT A RESOLUTION FOR PARTICIPATION IN THE 401(A)
DEFINED CONTRIBUTION PLAN BY REPRESENTED EMPLOYEES IN
THE CALPERS 2% @ 60 PENSION PLAN**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors adopt a Resolution to provide for participation in the Golden Gate Bridge, Highway and Transportation District's (District) 401(a) Defined Contribution Plan by Represented employees in the California Public Employees' Pension 2% @ 60 Plan, on the same terms as Non-Represented employees in the 2% @ 60 Eligibility Group, subject to collective bargaining.

This matter will be presented to the Board of Directors at its May 19, 2023, meeting for appropriate action.

Background

On November 16, 2012, the Board of Directors adopted Resolution No. 2012-083 indicating the District's intention to amend the contract with CalPERS to implement a 2% @ 60 Retirement Benefit for newly hired employees in accordance with the labor agreement negotiated with the Union Coalition. This action constituted the first of two required actions required by applicable CalPERS rules and regulations. On December 10, 2012, the Board of Directors took the second required action when they approved Resolution No. 2012-096. This amended the District's March 1, 1944 contract with CalPERS to implement a 2% @ 60 retirement benefit for new hires.

Subsequently, the California Public Employees' Pension Reform Act of 2013 (PEPRA) implemented a 2% at 62 Retirement Benefit for newly hired employees, while PEPRA allowed new employees with CalPERS reciprocity to enroll in an agency's "Classic" Retirement Benefit. Since the District had implemented the 2% at 60 Retirement Benefit prior to the implementation of PEPRA, the 2% @ 60 Retirement Benefit became the District's Classic Retirement Benefit.

Many of the District's peer agencies stayed with the old Classic 2.5% @ 55 Plan for new hires with CalPERS reciprocity, which made it challenging for the District to recruit new employees

with CalPERS reciprocity. In response, to help with recruitment and retention, in August 2016, the Board authorized an amendment to the 401(a) Plan to add a new eligibility group (“2% @ 60 Group”), with participation by the new group in the 401(a) Plan intended to supplement the difference in pension benefits between the two classic CalPERS plans (2% @ 60 vs. 2.5% @ 55) for Non-Represented employees¹.

Following that Board action, staff notified the 401(a) Plan's third-party administrator of the new eligibility group for Non-Represented employees and of potential future eligibility of Represented employees in the 2% at 60 CalPERS Plan. In addition, the 401(a) Plan Adoption Agreement was amended to provide for participation by employees in the "2% at 60" group, either as designated by Board action or through collective bargaining.

Summary

Recruitment has continued to be difficult, especially in technical Represented positions such as in Engineering. Accordingly, staff is recommending that the Board authorize (subject to union bargaining) Represented employees who are in the CalPERS 2% @ 60 Pension Plan to participate in the already established 2% @ 60 401(a) Eligibility Group on the same terms as Non-Represented employees in that group, summarized below:

- **Eligibility** – To be a member of the 2% @ 60 Group, an employee must be in the CalPERS 2% @ 60 Plan.
- **Employee Contribution Rate** – A 2% @ 60 employee’s contributions to the 401(a) Plan will be mandatory once the eligibility requirement is fulfilled. The 2% @ 60 employee is required to contribute the difference between the CalPERS’ 2.5% @ 55 Plan’s employee contribution rate (currently at 8% as stipulated by CalPERS) on his/her PERSable wages, and the CalPERS’ 2% @ 60 Plan’s employee contribution rate (currently at 7% as stipulated by CalPERS). Eligible 2% @ 60 employees will have an enrollment period of 60 days during which they must complete enrollment for participation in the Mandatory Participation Contribution portion of the Plan, which will begin for each separate bargaining unit after participation is agreed upon in the applicable collective bargaining process. Participation in the Mandatory Participant Contribution portion of the Plan will begin the first of the month following the end of the administrative enrollment period.
- **Employer Contribution Rate** – Employer’s contribution will be mandatory and will match the 2% @ 60 employee’s contributions into the 401(a) Defined Contribution Plan.

¹ Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of August 25, 2016, Staff Report on “Authorize Amendment to the 401(a) Defined Contribution Plan to add a New Eligibility Group for Non-Represented Employees in the CalPERS 2% @ 60 Pension Plan”
[2016-0825-rulescomm-no4-amend-401a-plan-2-percent-at-60-nonrep1.pdf \(goldengate.org\)](https://www.goldengate.org/files/2016-0825-rulescomm-no4-amend-401a-plan-2-percent-at-60-nonrep1.pdf)

- **Frequency of Contributions** – Contributions will be made for each pay period in which the 2% @ 60 employee is in the CalPERS 2% @ 60 Plan.

By providing the benefits in the 2% @ 60 Group to Represented new hires with CalPERS reciprocity and those hired since December 11, 2012, who are in the CalPERS 2% @ 60 Plan, the 401(a) Plan will be both a recruitment and an employee retention tool.

As of April 26, 2023, there are 24 active employees who are in the 2% @ 60 CalPERS Pension Plan, of which 16 are Represented, with an aggregate annual salary of approximately \$1.9 million. In addition the District currently has 27 vacant Represented positions (with an aggregate budgeted annual salary of approximately \$3.2 million) that, if filled by a new hire with CalPERS reciprocity, may qualify for CalPERS 2% @ 60 Plan and the proposed 401(a) Plan 2% @ 60 eligibility group. 22% (or 6) of the 27 vacant Represented positions are in Engineering.

As currently applies to participating 2% @ 60 Non-Represented employees, the 2% @ 60 Represented employee will contribute the difference between the CalPERS' 2.5% @ 55 Plan's employee contribution rate (currently at 8% as stipulated by CalPERS) on his/her PERSable wages, and the CalPERS' 2% @ 60 Plan's employee contribution rate (currently at 7% as stipulated by CalPERS). The District will match the 2% @ 60 employee's contribution. Aside from the 2% @ 60 Group's specific eligibility and contribution rules, all other operations of the 401(a) Plan will remain unchanged and will continue to be administered by MissionSquare:

- As a defined-contribution plan, an individual account is maintained under the 401(a) Plan for each participant. When the participant becomes eligible to receive benefit payments – usually at retirement or termination of employment – the benefit is based on the total assets in his or her account.
- Annual contributions to the 401(a) Plan cannot exceed certain limits under the federal tax laws (i.e., \$66,000 for 2023). The District's 401(a) Plan is designed to comply with those limits.
- Participants direct the investment of their accounts under the 401(a) Plan among a menu of investment funds selected by the District. The District's current 401(a) Plan and 457(b) Deferred Compensation Plan share the same investment line up and its performance is reviewed annually by the District's 457(b) deferred compensation and defined contribution consultant, NFP Retirement Inc.
- Contributions and earnings under the 401(a) Plan are tax-deferred. These amounts are subject to tax only upon distribution to participants or beneficiaries. In order for the employees' contributions to be tax-deferred, the IRS requires that the District adopt a formal resolution, as attached. The mandatory employee contributions will be made through regular payroll deductions, and designated as pick-up contributions by the District in accordance with section 414(h)(2) of the Internal Revenue Code. Employees do not have the option to directly or indirectly receive the contributions instead of having them paid into the 401(a) Plan.

- Participants are always 100% vested in their contributions and earnings on those contributions. Participants gain ownership of the District's matching contributions (and associated earnings) after five years of service with the District (which is also the case with their CalPERS pension benefit based on District contributions).

Fiscal Impact

The District's 401(a) Defined Contribution Plan (along with the District's 457 Deferred Compensation Plan) are both administered by MissionSquare. All plan expenses are paid by the participants, and not the District.

The District's employer contributions into the 401(a) Plan for Represented employees in the existing 2% @ 60 eligibility group will be a 100% employee match. The District's contribution match for FY 23/24 for Represented employees is estimated to range between \$19,000 and \$51,500. The District's contribution match will be budgeted accordingly in future years.

Under PEPRRA, a public employee who receives an employer contribution to a defined contribution plan, such as the District's 401(a) Plan, does not have a vested right to continue to receive future employer matching contributions. This means that the District could stop (on a prospective basis) making employer matching contributions if the District's financial circumstances were to change in the future.

Attachment: Resolution

GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT

RESOLUTION NO. 2023-XXX

**RESOLUTION REGARDING PARTICIPATION BY REPRESENTED EMPLOYEES IN
THE 401(A) PLAN FOR 2% @ 60 GROUP AND
414(h)(2) PICK-UPS FOR MANDATORY CONTRIBUTIONS**

WHEREAS, the Golden Gate Bridge, Highway and Transportation District (the "District") maintains the Golden Gate Bridge, Highway and Transportation District 401(a) Defined Contribution Plan (the "401(a) Plan"), a tax-qualified defined contribution plan intended to meet the requirements of section 401(a) of the Internal Revenue Code (the "Code"), for the benefit of eligible employees;

WHEREAS, the District has determined to provide certain benefits under the 401(a) Plan for Represented employees who are in the CalPERS 2% @ 60 Plan (hired between December 11, 2012 and December 31, 2012, or on or after December 31, 2012, with reciprocity) and who are eligible to participate in the CalPERS 2% @ 60 Plan sponsored by the District (the "2% @ 60 Group");

WHEREAS, the District previously had determined to provide certain benefits under the 401(a) Plan for Non-Represented employees in the 2% @ 60 Group, and amended the terms of the 401(a) Plan Adoption Agreement to provide for participation by Non-Represented employees in the 2% @ 60 Group as designated by Board action, and by Represented employees in the 2% @ 60 Group pursuant to collective bargaining;

WHEREAS, the District adopts this resolution to authorize participation by Represented employees in the 2% @ 60 Group on the same terms as Non-Represented employees in the 2% @ 60 Group, subject to collective bargaining;

WHEREAS, the terms of the 401(a) Plan, as amended pursuant to direction from the District, provide that members of the 2% @ 60 Group must make mandatory employee contributions to the 401(a) Plan through payroll deduction in order to supplement retirement benefits;

WHEREAS, under section 414(h)(2) of the Code and related guidance from the Internal Revenue Service, such deductions from employees' compensation qualify for pre-tax treatment only if the District takes formal action to designate the deductions, for tax purposes, as contributions "picked-up" by the District;

WHEREAS, the District wishes to adopt this resolution in order to, in accordance with section 414(h)(2) of the Code, designate amounts deducted from Represented employees' compensation to fund benefits for the 2% @ 60 Group under the 401(a) Plan as pick-up contributions;

RESOLUTION NO. XXX
BOARD OF DIRECTORS MEETING OF MAY 19, 2023
PAGE 2

WHEREAS, the District will pick up all mandatory employee contributions made by the 2% @ 60 Group to the 401(a) Plan in accordance with section 414(h)(2) of the Code and all guidance issued thereunder; and

WHEREAS, the Rules, Policy and Industrial Relations Committee at its meeting of May 19, 2023 has so recommended; now, therefore, be it

RESOLVED, that that the Board of Directors of the Golden Gate Bridge, Highway and Transportation District (District) hereby approves the following:

1. Subject to union bargaining, Represented employees who are in the California Public Employees' Pension 2% @ 60 Plan, shall participate in the 2% @ 60 Eligibility Group of the Golden Gate Bridge, Highway and Transportation District's (District) 401(a) Defined Contribution Plan, on the same terms as the Non-Represented employees.
2. This resolution applies to all contributions that are required to be made by any eligible employees of the District in the 2% @ 60 Group as a participant of the 401(a) Plan, on a regular, payroll deduction basis and which are reported to the 401(a) Plan and credited to employee accounts.
3. Although designated as employee contributions and deducted from employees' compensation, these contributions made by employees in the 2% @ 60 Group shall, for tax purposes, be characterized as "picked up" by the District in accordance with Code section 414(h)(2), and shall be treated as paid by the District in lieu of contributions by the employee.
4. Employees in the 2% @ 60 Group shall not have the option of choosing, directly or indirectly, to receive the contributions instead of having them paid by the District to the 401(a) Plan.
5. The District shall pay to the 401(a) Plan the contributions designated as employee contributions made by employees in the 2% @ 60 Group from the same source of funds as used in paying salary.
6. Employee contributions that are picked up in accordance with this resolution shall result in the tax deferral of these contributions to the extent provided under the Code, Treasury Regulations and other guidance issued thereunder.
7. This resolution establishes and adopts the District's pick-up practices in accordance with Revenue Ruling 2006-43 for contributions made by employees in the 2% @ 60 Group and restates and reaffirms its prior decisions with respect to picking up all employee contributions to all tax qualified plans maintained by the District.
8. The District shall comply with all reporting, contribution, and other administrative requirements established by the 401(a) Plan with respect to all employees in the 2% @ 60 Group whose contributions are picked up in accordance with this resolution.

RESOLUTION NO. XXX
BOARD OF DIRECTORS MEETING OF MAY 19, 2023
PAGE 2

ADOPTED this 19th day of May, by the following vote of the Board of Directors:

AYES (0):
NOES (0):
ABSENT (0):

Michael Theriault
President, Board of Directors

ATTEST:

Amorette M. Ko-Wong
Secretary of the District

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