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Refer To File # 503972-0005

July 15, 2024

Andrew Janz, Esq
City Attorney
Office of the City Attorney for the City of Fresno
2600 Fresno Street
Fresno, CA 93721

**Re: Demand for Immediate Payment of Employer and Employee Contributions
Due to the City of Fresno Police & Fire Retirement System and City of Fresno
Employees Retirement System**

Dear City Attorney Janz:

We write in our capacity as outside fiduciary and litigation counsel to the City of Fresno Fire & Police Retirement System (“F&PRS”) and City of Fresno Employees Retirement System (“ERS”) (collectively “CFRS”), and each of their Retirement Boards (“Board” or, collectively, “Boards”) on a topic of grave importance to CFRS and the Boards.

That is, the City of Fresno (“City”), through City Manager Georgeanne White (“City Manager”), has informed CFRS in unequivocal terms that the City is not and will not be implementing either the employer or employee contribution rate changes that each Board requires be paid to properly fund F&PRS and ERS, respectively, as detailed in the Board-adopted Actuarial Valuation Reports for each retirement system. Rather, the City states that it intends to pay contributions based on the rates that the Boards adopted for the prior fiscal year, which would result in a material underpayment of retired employer and employee contributions to CFRS.

As you should know, and as the law outlined below establishes, there is no basis under California law for the City’s refusal to timely pay these amounts. And, CFRS will pursue all available legal remedies, including without limitation suing the City and its City Council for immediate payments of all amounts due, plus interest at 10% per annum, and CFRS’ attorneys’ fees, should the City continue to refuse to make said required contributions to F&PRS and ERS.

Contrary to assertions in the June 12, 2024 letter from the City Manager to CFRS Retirement Administrator Robert Theller, California law *requires* that the City pay the actuarially determined contribution rates that the Boards determine are due. Further, there is no question that CFRS’ active, deferred, and retired members and their qualified beneficiaries have a vested right to have the City pay its own required contributions to CFRS. In addition, CFRS’ active members have a vested right to have the City deduct employee contributions they owe to the retirement systems and transmit those payments to CFRS, such that those members and their beneficiaries may receive the full benefit of the retirement benefits they have and will continue to earn for their

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pensionable services rendered to the City. These established rules of law are grounded in the California Constitution, and they have been recited in California case law for over fifty years. Moreover, certain of these rules were expressly affirmed in two published court of appeal decisions published just this year, as well as a recent Supreme Court precedent, as follows.

In *Los Angeles County Employees Retirement Association (LACERA) v. County of Los Angeles* (County) (June 24, 2024) (Case No. B326977) (“*LACERA*”), the Second District Court of Appeal ordered that LACERA’s petition for a writ against the County of Los Angeles be granted, stating therein that under Article XVI, Section 17 of the California Constitution, public retirement boards have the “plenary” and “sole and exclusive” authority to administer retirement systems, which includes, but is not limited to, the setting of actuarially-determined contribution rates that employers are *required* to pay. *Id.* at p. 33 (“Courts have interpreted ‘plenary authority’ and ‘plenary power’ to confer “complete, absolute, and unqualified power. [Citation omitted.]”) Further, the court concluded as to the fiduciary topic decided therein, that the County was *required* to comply with its “ministerial” obligation to implement fiduciary decisions made by the LACERA Boards. *Id.* at p. 78. That ministerial obligation is the same ministerial duty that *requires* the City to pay CFRS the actuarial-determined contributions the Boards have determined is due for this fiscal year to each retirement system. Moreover, the actuarial authority of the Boards to demand those payments under subdivision (e) of Article XVI, Section 17 of the California Constitution was expressed even in the Third District Court of Appeal decision, *Westly v. Board of Administration* (2003) 105 Cal.App.4th 1095, which *LACERA* determined overly-restricted the authority of public retirement boards to administer retirement systems in accordance with the fiduciary determinations of those boards. There is no question that California law *requires* the City to implement its “ministerial” obligation of implementing the Boards’ actuarial-determined contributions rates for the current fiscal year, as explained in both decisions.

In *Alameda Health System v. Alameda County Employees’ Retirement Association* (2024) 100 Cal.App.5th 1159 (“*AHS*”), the First District Court of Appeal affirmed the trial court’s conclusion that participating employer Alameda Health System (“*AHS*”) *must* pay employer contributions based on the actuarial methodology set by the Board of Retirement of Alameda County Employees’ Retirement Association (“*ACERA*”), and that *ACERA* was not required to have its actuary (Segal Company) conduct additional actuarial studies that the employer demanded it conduct. Notably, the Court also admonished *AHS* for arguing an erroneous interpretation of *O’Neal v. Stanislaus County Employees’ Retirement Association* similar to the one that the City Manager set forth in the June 12, 2024 letter to CFRS. *Id.*; see also *Mijares v. Orange County Employees Retirement System* (2019) 32 Cal.App.5th 316 (“*Mijares*”) (Office of Education of Orange County was *required* to pay the employer contributions that the Board of Retirement of the Orange County Employees Retirement System (OCERS) determined was due to OCERS). *AHS* and *Mijares* also establish definitively that the City has no authority to refuse to implement the current contribution rates the Board determined, in consultation with their retained actuary (Segal Company), are due to each of the retirement systems they govern.

With respect to vested rights, the California Supreme Court reaffirmed in *Alameda County Deputy Sheriff’s v. Alameda County Employees’ Retirement Association, et al.* (2020) 9 Cal.5th 1032, that the contract clause of the California Constitution (commonly referred to as “the California Rule” in the public pension context) entitles members of public retirement systems the

right to earn the vested benefits due to them by statute, and the City's current underfunding of those benefits by refusing to pay both the employer and employee contributions required by CFRS risks compromising those constitutionally-protected rights. *See also Board of Administration v. Wilson* (1997) 52 Cal.App.4th 1109 (delayed actuarial funding by the State of California to the California Public Employees' Retirement System violated members' vested rights).

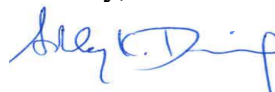
Finally, in addition to the constitutional authority that requires immediate payment of contributions to CFRS as set forth above, the City's own Charter, Sections 3-305 and 3-505, and the City Municipal Code, also provide that that the management and control of F&PRS and ERS reside in each of their Boards and that the actuarial funding of CFRS shall be determined by those Boards.

The City has expressed its intent to violate the foregoing legal principals, and the Boards will take all necessary steps to prevent that from occurring.

In the interest of providing the City Attorney's office with an opportunity to consider the foregoing authorities and to discuss them with the City Council, we will provide the City until August 9, 2024 to configure its payroll system to implement the 2024–2025 employer and employee contribution rates, and to make up the shortfall resulting from the delayed implementation of those rates.

Absent a timely and full correction of those underpayments of contributions, however, the CFRS Boards have authorized this firm to file a Petition for Writ of Mandate and Complaint for Declaratory Relief against the City and its City Council before the end of next month.

Sincerely,



Ashley K. Dunning
of Nossaman LLP

cc: Russ Richeda, Esq., Saltzman & Johnson, CFRS General Counsel