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**MEMORANDUM OF UNDERSTANDING  
BETWEEN THE COUNTY OF FRESNO AND THE FRESNO COUNTY  
EMPLOYEES' RETIREMENT ASSOCIATION REGARDING THE FRESNO  
COUNTY REPLACEMENT BENEFITS PLAN**

WHEREAS, the Fresno County Employees' Retirement Association ("FCERA") provides retirement benefits to employees of the County of Fresno and to participating districts, and

WHEREAS, the amount of benefits that can be provided to FCERA members is limited by Section 415(b) of the Internal Revenue Code ("Code"), and

WHEREAS, it is the County's responsibility under California vested rights rules to ensure that all retirement benefits that are earned by County employees are in fact paid, and

WHEREAS, the Code also provides that a County can establish a replacement benefits plan to pay the full benefits earned by FCERA members whose benefits are limited by Section 415(b), and

WHEREAS, such a replacement benefits plan is used by many other entities, in both the private and public sector, to replace benefits limited by section 415(b), and

WHEREAS, it is contemplated by the County Employees Retirement Law ("CERL") that each affected County will take action to replace the benefits that are limited by Section 415(b), and

WHEREAS, FCERA's actuary has advised FCERA that there is no net increase in the total cost of retirement benefits to the County of providing such a replacement benefits plan, and

WHEREAS, it would be to the benefit of FCERA to ensure that all of its members receive the entire retirement benefits which they would earn under FCERA but for the limits of the Code, and

WHEREAS, the most efficient way for the County to operate a replacement benefits plan is to enter into a memorandum of understanding with FCERA setting out the responsibilities of the County and FCERA with respect to such a plan, and

WHEREAS, some Districts located within the County also participate in FCERA and the most efficient way for Districts to provide replacement benefits is to participate in a replacement benefits plan that is established by the County, sharing the cost thereof, and

WHEREAS, the County has provided to FCERA the County's Replacement Benefits Plan, a copy of which is attached to hereto

THEREFORE, IT IS HEREBY AGREED BY AND BETWEEN THE COUNTY OF FRESNO ("COUNTY") AND THE FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION ("FCERA") AS FOLLOWS

1 Purpose of Agreement

This memorandum of understanding ("MOU") is entered into by the County and FCERA in order to facilitate the efficient operation by the County of a replacement benefits plan ("Plan") that will provide benefits to retired FCERA members whose benefits are limited by Section 415(b) of the Internal Revenue Code ("Code")

2 Payment of Replacement Benefits

(a) In accordance with the Plan, the County shall pay to affected retired members of FCERA, and to their surviving beneficiaries (if any), the difference between the benefits that would be payable from FCERA without regard to the limits of Section 415(b) of the Code and the benefits that can be paid by FCERA without violating Section 415(b). These benefits are called "replacement benefits"

(b) The County shall pay replacement benefits from its general assets. No assets of FCERA shall be used to pay replacement benefits and no assets of FCERA shall be used to pay the cost of administration or any other costs regarding the operation of the Plan

3 Determination of Amount of Replacement Benefits

(a) In accordance with its responsibilities under Section 415(b), FCERA shall determine the amount of benefits for any affected retired member and surviving beneficiaries that would be paid from FCERA without the limits of Section 415(b), and shall determine the amount of the benefits that can be paid to such persons in accordance with the limits of Section 415(b). The difference between these two amounts (if any) is the amount of replacement benefits payable by the County under the Plan

(b) FCERA shall make this determination for the first year that the benefits of any affected retired member or surviving beneficiary are limited by Section 415(b) and for each relevant year thereafter. This is needed because both the amount of the limits and the amount of FCERA benefits may change annually

(c) To the extent that the amount of benefits that are limited by Section 415(b) change during the year, and in accordance with its responsibilities under Section 415(b), FCERA shall recalculate the benefits payable by the County under the Plan

(d) In accordance with the Plan document, the County shall rely on the calculations by FCERA set out in paragraphs (a), (b), and (c) of this section for purposes of determining the replacement benefits payable under the Plan

#### 4 Effect on County Contributions To FCERA of Section 415(b) Limits

(a) In accordance with the recommendation of FCERA's actuary, County contributions to FCERA shall be adjusted to take into account the fact that FCERA cannot pay benefits that are greater than the limits provided by Section 415(b) of the Code

(b) County contributions to FCERA shall be adjusted when, in fact, replacement benefits are payable under the Plan. At that time, FCERA shall reduce County contributions in an amount equal to the replacement benefits payable under the Plan. If this were not done, then FCERA would be collecting contributions from the County for benefits that are not due to FCERA.

#### 5 Communications Between the County and FCERA

(a) FCERA shall communicate to the County, in writing and as soon as reasonably practicable, all information that is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the retired members and surviving beneficiaries whose benefits are limited in any year, the amounts of their replacement benefits (if any) and the calculations that support these amounts, the date as of which the replacement benefits will become payable during each year (if any), the amount by which the replacement benefits change during the year (if at all), the amount of reduction in the County's contribution to FCERA that will occur under section 4 hereof, and the date that any replacement benefits must cease (for example, on the death of the retired member).

(b) The County shall communicate to FCERA, in writing and as soon as reasonably practicable, all information that is necessary or appropriate for the efficient administration of the Plan. This communication includes but is not limited to the following: the names and identifying numbers of the Plan participants and eligible surviving beneficiaries who are paid replacement benefits, the amount of such payments, and the dates on which such payments occurred during the year.

#### 6 Communications With Members

(a) In accordance with its responsibilities under Section 415(b), FCERA shall inform members, generally, that if their FCERA benefits are limited by Section 415(b), the limited benefits will be replaced by the County in accordance with the Plan.

(b) In accordance with its responsibilities under Section 415(b), FCERA shall be responsible for testing member benefits with respect to the Section 415(b) limits and if the benefits of a member or surviving beneficiary are limited by Section 415(b), FCERA will so inform the affected individual in writing, and will inform him or her about the Plan and generally how it works.

(c) Upon receiving the needed information from FCERA with respect to the amounts and timing of payment of replacement benefits, the County shall inform each affected

individual about how the Plan works with respect to him or her, including the amounts that will be paid under the Plan for the particular year, the timing of such payments, any tax withholding elections available and all other information that is necessary or appropriate for operation of the Plan

## 7 Districts

The Plan provides that Districts that participate in FCERA may participate in the Plan, upon meeting the terms and conditions thereof. In such a case, the County will administer the Plan on behalf of and as agent of the District. For purposes of replacement benefit determinations, FCERA shall treat retired District members (and their surviving beneficiaries) who participate in the Plan in the same manner as if they had been County employees under this MOU. However, for purposes of Section 4 of this MOU, regarding adjustment of contributions, FCERA shall treat each District separately and shall adjust the contributions of each District as recommended by FCERA's actuary.

## 8 Reconciliation of Amounts

The County and FCERA shall take all reasonable steps to reconcile, after the end of each year, the amounts of replacement benefits that have been identified as payable by FCERA and the amounts of replacement benefits that have actually been paid. Underpayments or overpayments shall be corrected by the County in accordance with the Plan.

## 9 Tax Reporting

FCERA and the County shall be separately responsible for their required reporting to the tax authorities, and neither shall be responsible for the other's reporting.

## 10 Indemnification and Hold Harmless

Each party to this MOU shall indemnify and hold the other harmless for any costs, damages, or other liabilities incurred hereunder on account of its own negligence or willful misconduct.

## 11 Miscellaneous

### (a) Integration

This Memorandum of Understanding and the documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof and supercede all prior agreements and understandings, both written and oral.

### (b) Amendment

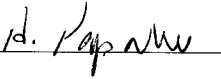
This Memorandum of Understanding may only be amended pursuant to a written agreement executed by both parties hereto.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN ENTERED INTO AS OF  
THE FIRST DAY OF JANUARY, 2002

COUNTY OF FRESNO

FRESNO COUNTY EMPLOYEES' RETIREMENT  
ASSOCIATION

By 

By 

Its CHAIRMAN

Its Chairperson

AUGUST 20, 2002

August 7, 2002, 2002



# Agenda Item 16

DATE August 20, 2002  
TO Board of Supervisors  
FROM Gary W Peterson, Auditor-Controller/Treasurer-Tax Collector  
SUBJECT Replacement Benefits Plan

### RECOMMENDED ACTION

1. It is recommended that your Board adopt resolution approving a Replacement Benefits Plan to provide earned retirement benefits to retirees that are in excess of the limits established by section 415 of the Internal Revenue Code.
2. It is recommended that your Board approve and authorize the chairman to execute Memorandum of Understanding with the Fresno County Employees' Retirement Association.

### FISCAL IMPACT

There is no increase in cost related to the 415 Replacement Benefits plan, which will be financed with diverted County retirement fund contributions. Additional operating costs will be incurred for issuing replacement benefit plan payments to the participants and for tax reporting. These costs are anticipated to be minimal.

### DISCUSSION

Federal tax law limits the annual amount of benefits that can be paid to any retiree by a tax qualified retirement plan such as the Fresno County Employees' Retirement Association ("FCERA"). These are called the "section 415 limits". If FCERA were to pay benefits above these limits, the FCERA could lose its tax-qualified status. In that event, the IRS could tax all of FCERA's income, thereby reducing FCERA's assets and substantially

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ADMINISTRATIVE OFFICE REVIEW \_\_\_\_\_ Page 1 of 3  
 BOARD ACTION DATE August 20, 2002 APPROVED AS RECOMMENDED XX OTHER \_\_\_\_\_



UNANIMOUS XX ANDERSON \_\_\_\_\_ ARAMBULA \_\_\_\_\_ CASE \_\_\_\_\_ WATERSTON \_\_\_\_\_

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increasing the County's required contributions to FCERA. Also, the IRS could currently tax all members of FCERA on their vested interests in the system, even though they may not be paid these amounts for many years.

The section 415 limits did not affect most public sector retirement systems until the 1980's, when the amounts authorized to be paid by retirement systems were reduced. In 1988, however, the Congress enacted a "grandfather" exception for public sector retirement systems. With grandfathering, most of the section 415-limit problems were resolved for public sector retirement systems, including FCERA. However, grandfathering only protected benefits under formulas that were in effect on October 14, 1987. Under the Ventura Settlement Agreement approved in December 2000, Fresno County's formulas used to calculate retirement benefits were changed. As a result, Fresno County's benefits are no longer subject to grandfathering.

Federal and state tax law specifically allows the County to establish a replacement benefits plan to pay the difference between what FCERA can pay and the full benefits earned by the retirees. Because of the tax laws, the County and not FCERA must establish a replacement benefits plan.

For the most part, employees who are affected by the limits have longer service and retire before age 62. For example, the section 415 limit for some employees who retire at age 50 is a retirement benefit of about \$5,700/month, and the limit is about \$7,900/month at age 55. The limits also affect surviving beneficiaries.

#### Replacement Benefits Plan

The County of Fresno, along with several other California Counties, retained the law firm of Hanson Bridgett to design a Replacement Benefits Plan. The Replacement Benefits Plan (Plan) allows retirees to receive their full retirement benefits by establishing a separate process under the control of the County to issue retirement benefits that are in excess of the 415 limit. Under the Plan, FCERA will calculate the replacement benefits and determine the effective date, and forward that information to the County of Fresno. The County of Fresno will then obtain the required tax documents and set the retiree up for payment. The County will redirect retirement contributions to the retiree from the current County payroll that would normally be due to the FCERA.

The Memorandum of Understanding between the County of Fresno and the FCERA establishes the Replacement Benefits Plan and identifies the responsibilities of each party. The Memorandum of Understanding and Replacement Benefits Plan were approved by the Board of Retirement on August 7, 2002.

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The law firm of Hanson and Bridgett has advised that failure to establish a 415-replacement plan would result in some retirees not receiving their full retirement benefits. This ultimately could result in retirees filing "vested rights" claims against the County and ensuing litigation.



File No 17441  
August 20, 2002  
Agreement No. 02-506

**FRESNO COUNTY  
REPLACEMENT BENEFITS PLAN**

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**FRESNO COUNTY  
REPLACEMENT BENEFITS PLAN**

**Article 1 — Establishment and Status of Plan**

1 1 Establishment

The County of Fresno, State of California, hereby establishes and adopts a retirement plan entitled the "Fresno County Replacement Benefits Plan" (the "Plan") to provide the annual retirement benefits otherwise earned by and payable to members of the Fresno County Employees' Retirement Association ("FCERA") but which are limited by the rules of Section 415(b) of the Internal Revenue Code of 1986, as amended ("Code") FCERA is a tax qualified retirement plan under Section 401(a) of the Code and is a governmental plan as defined in Section 414(d) of the Code

1 2 Effective Date

This Plan shall be effective, and benefits shall be payable from this Plan, for periods beginning as of January 1, 2002 or as of the date that this plan is adopted by a District, as provided herein, if later

1 3 "Portion of FCERA"

This Plan shall be deemed a "portion" of FCERA solely to the extent required by, and within the meaning of, Section 415(m)(3) of the Code as in effect on January 1, 2002, and not for any other purpose

1 4 Purpose and Tax Status of this Plan

(a) In accordance with Section 415(m) of the Code, this Plan is solely for the purpose of providing to retired Members of FCERA, and to their Eligible Survivors, that part of the annual benefit otherwise payable under FCERA that exceeds the limitations on benefits imposed by Section 415(b) of the Code

(b) It is intended that this Plan be treated as an "exempt governmental deferred compensation plan" described in Section 3121(v)(3) of the Code, therefore payments under this Plan are not included as wages subject to Social Security and Medicare taxes

(c) No assets directly or indirectly relating to this Plan shall be held in trust, or otherwise held or set aside for the exclusive benefit of participants and their beneficiaries This Plan shall be unfunded within the meaning of the federal income tax laws

# FRESNO COUNTY REPLACEMENT BENEFITS PLAN

## Article 2 — Definitions

### 2 1 Plan Definitions

Terms used in this Plan shall have the meaning set out below

*Board of Supervisors* means the Board of Supervisors of the County of Fresno

*CERL* means the County Employees Retirement Law of 1937 as set out in the California Government Code

*Code* means the Internal Revenue Code of 1986, as amended, and any rules and regulations issued thereunder

*Commencement Date* means the date of commencement of participation in this Plan as set out in Section 3 2 hereof

*County* means the County of Fresno, State of California

*District* means any agency other than the County which is included in FCERA pursuant to the CERL and which has entered into an agreement with the County to participate in and be a sponsoring employer of this Plan in accordance with Article 5 hereof

*Effective Date* means the first date with respect to which benefits are payable under this Plan as set out in Section 1 2 hereof

*Eligible Survivor* means the surviving spouse, surviving child or children, surviving parent or parents, or surviving beneficiary designated by the Member, to whom benefits are payable from FCERA on the death of the Member

*Member* means a member, as defined in the CERL, of FCERA who is a current or former employee of the County, or who is a current or former employee of a District

*Participant* means a retired Member who participates in this Plan pursuant to Article 3 hereof

*Payment Date* means the first date during a Plan Year with respect to which payment begins under this Plan

*Plan* means this Fresno County Replacement Benefits Plan

*Plan Administrator* means the County of Fresno, State of California

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

*Plan Year* means the 12-month period beginning on January 1 and ending on December 31

*Section 415* means Section 415 of the Code

*FCERA* means the Fresno County Employees' Retirement Association

### Article 3 — Participation

#### 3 1 FCERA Members With Benefits Limited by Section 415(b)

(a) Participation in this Plan is limited solely to retired Members whose benefits payable by FCERA are limited by Section 415(b) for periods on and after the Effective Date

(b) No person who is a Member and who is a current or former employee of a District shall be a Participant in this Plan, and no person who is an Eligible Survivor of such a Member, shall receive benefits under this Plan, unless and until that District participates in this Plan in accordance with all of the conditions in Article 5 herein

#### 3 2 Commencement of Participation

A retired Member shall commence participation in this Plan on the first date, on or after the Effective Date, with respect to which his or her benefits payable from FCERA cannot be fully paid because of the limits of Section 415(b) This date is the Commencement Date.

#### 3 3 Cessation of Participation

(a) Participation in this Plan shall cease as of the first date for which benefits payable to the retired Member from FCERA are no longer limited by Section 415(b) and therefore can be fully paid by FCERA Participation shall also cease on the retired Member's death or when the retired Member's FCERA benefits cease

(b) If a District withdraws from this Plan (on a voluntary or mandatory basis), then any person who is a Member and who is a current or former employee of that District and who is a Participant in this Plan shall immediately cease such Participation and shall be entitled to no benefits under this Plan and no benefits shall be paid or due to such Participant on or after the date of such withdrawal On the withdrawal of a District from this Plan, the District shall have sole and complete responsibility and liability for paying any benefits that may otherwise be

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

due under this Plan to any person and the County shall have no responsibility or liability for any such benefits

### 3 4 Resumption of Participation

If a Participant has ceased participation in this Plan but at a later date the full payment of his or her FCERA benefits is again limited by Section 415(b), he or she shall again commence participation as provided in Section 3 2 hereof and shall cease participation as provided in Section 3 3 hereof

### 3 5 Eligible Survivors

(a) Any Eligible Survivor of a Member shall receive benefits under this Plan as of the first date (on or after the Effective Date) on which benefits payable to him or her from FCERA cannot be fully paid because of the limits of Section 415(b) The Eligible Survivor's benefits paid under this Plan shall cease as of the first date for which his or her FCERA benefit is no longer limited by Section 415(b) and therefore can be fully paid by FCERA The Eligible Survivor's benefits paid under this Plan shall commence at a later date if full payment of his or her FCERA benefits is again limited by Section 415(b), and shall thereafter cease as of the next date that full payment of the FCERA benefit is no longer limited by Section 415(b)

(b) If a District withdraws from the Plan (on a voluntary or mandatory basis), no benefits shall be paid or due under this Plan on or after the date of such withdrawal to the Eligible Survivor of any person who was a current or former employee of that District On the withdrawal of a District from this Plan, the District shall have sole and complete responsibility and liability for paying any benefits that may otherwise be due under this Plan to any person and the County shall have no responsibility or liability for any such benefits

### 3 6 No One Else Shall Receive Benefits

No one other than a person described in this Article shall receive any benefits under this Plan, except as required by qualified domestic relations orders or applicable law

## Article 4 — Retirement Benefits Payable

### 4 1 Amount of Benefit – Initial Determination

(a) The benefit paid under this Plan in any Plan Year shall be initially determined for each Participant at the Participant's Commencement Date under the following steps

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

- (1) Determine the Participant's benefits payable at the time of the Commencement Date under FCERA without regard to the limits of Section 415(b) and after taking into account the form of FCERA benefit selected by the Participant
  - (2) Determine the amount of the Participant's FCERA benefits (if any) attributable, at the Commencement Date, to after-tax Member contributions, rollovers and direct transfers which are excluded from the limits of Section 415(b), after taking into account the form of FCERA benefit selected by the Participant
  - (3) Subtract the amount determined in (2) from the amount determined under (1), this is the amount subject to the Section 415(b) limits for the Participant
  - (4) Determine the maximum benefits payable to the Participant from FCERA under the then current benefit payment limits of Section 415(b), ignoring any benefits determined under (2) The determination under this step (4) shall take into account items such as the applicable dollar limits, the form of benefit payment chosen, the date that the Participant first became a Member, and whether he or she qualifies for special limits under Section 415(b) such as those for certain safety members
  - (5) Subtract the amount determined under (4) from the amount determined under (3) If the amount in (3) is greater than that in (4), the difference is the initial benefit paid under this Plan If the amount in (4) is equal to or greater than the amount in (3), then no benefits are payable under this Plan
- (b) The total retirement benefit that will be paid to a Participant in any year will be the sum of the benefit paid under this Plan and the benefit paid under FCERA, including amounts attributable to both County and after tax Member contributions Therefore, the total retirement benefit that will be paid to a Participant under this Plan and FCERA is the sum of the amounts in (2), (4) and (5) above However, this Plan and FCERA shall be separate entities and shall be administered separately In addition, separate checks will be paid for the benefits under this Plan and FCERA, the Plan Administrator shall provide separate tax reporting for the benefits paid under this Plan, and no assets of FCERA shall be used, directly or indirectly, to pay for benefits or administration or any other costs of this Plan
- (c) The Plan Administrator shall rely on the determination by FCERA, for purposes of administering FCERA in accordance with Section 415(b), of the amounts set out under each of steps (1) through (5) in paragraph (a) of this Section

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

### 4 2 Amount of Benefit – Redeterminations

(a) As of each January 1 following the Participant's Commencement Date (or the date of commencement of benefits under this Plan for any Eligible Survivor), the Participant's, or Eligible Survivor's, benefit under this Plan shall be redetermined by following each of steps (1) through (5) of Section 4 1(a), but using the then current amounts determined by applying (i) cost of living adjustments and other changes (if any) to the benefits provided under FCERA, and (ii) cost of living adjustments, and other changes (if any) to the maximum benefit limits established by Section 415(b)

(b) At the Plan Administrator's discretion, the amount of every Participant's and Eligible Survivor's benefits may be redetermined at a date other than January 1 for administrative convenience or if there is a material change in the rules governing the maximum benefit limits established under Section 415(b) or a material change in FCERA benefits

(c) The Plan Administrator shall rely on the redetermination by FCERA, for purposes of administering FCERA in accordance with Section 415(b), of any amounts in this Section

### 4 3 Amount of Benefit – Eligible Survivors

Eligible Survivors shall be entitled to benefits under this Plan as follows

(a) Eligible Survivors shall be entitled to benefits under this Plan only if they are entitled to benefits that are limited by Section 415(b) under FCERA after the death of a Member or Participant

(b) The benefit paid to an Eligible Survivor under this Plan shall be determined as if he or she were the Participant, substituting in the calculations under Sections 4 1 or 4 2, as applicable, the amounts due to the Eligible Survivor for the amounts due to the Participant

### 4 4 Timing of Payments

(a) In any Plan Year, benefits shall only be paid under this Plan to a Participant or Eligible Survivor after the date in the Plan Year that the benefits paid to such person from FCERA have reached the maximum annual benefit that FCERA can pay under Section 415(b) for that Plan Year The day after the maximum annual benefit payment from FCERA is reached is the Payment Date for the Participant or Eligible Survivor for that Plan Year The Payment Date may change from Plan Year to Plan Year as the amount payable under this Plan is redetermined



## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

(b) The amount of benefits provided under this Plan shall be paid monthly starting as of the Payment Date and continuing through the end of the Plan Year, or (if earlier) the date that Participation ceases (or, for an Eligible Survivor, the date that they would cease if an Eligible Survivor were treated as a Participant)

(c) If a retired Participant is reemployed by the County or a District and on reemployment his or her FCERA benefits cease, then his or her benefits under this Plan shall cease at the same time. Benefits shall resume (if at all) under this Plan when the Member again starts to receive benefits under FCERA. At that time, a recalculation shall be made under Section 4.2 hereof, treating the first month for which FCERA benefits resume as if it were a date of recalculation under Section 4.2. Similar rules shall apply if the benefits of an Eligible Survivor under FCERA cease (or resume) under FCERA for any reason, including without limitation ceasing to be an Eligible Survivor.

### 4.5 Form of Benefit Paid

The benefit paid to a Participant or Eligible Survivor under this Plan shall be paid in the same form as benefits are paid to him or her under FCERA.

### 4.6 Taxes

The Plan Administrator shall have full authority to withhold any and all taxes that are or may be due from any and all amounts paid under the Plan (including but not limited to income and payroll taxes), to pay them to the appropriate government agency, and to file and distribute necessary or appropriate tax reports and forms.

### 4.7 District Retirees and Eligible Survivors

No benefits shall be owed, or be paid, under this Plan to any Participant (or his or her Eligible Survivor) who is a former employee of a District unless and until the District has first paid to the County the amount that the County has invoiced the District for the benefits payable to such person, as provided in Article 5 hereof.

### 4.8 Determination Solely By Plan Administrator

Subject to Sections 4.1 and 4.2 hereof, the Plan Administrator shall have sole authority and discretion to determine the amount of benefits (if any) payable under this Plan.

## **Article 5 -- Participation in Plan by Districts**

### 5.1 Districts May Participate in this Plan

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

- (a) Each District that is included in FCERA pursuant to the CERL may, subject to the approval of the County, participate in and be a sponsoring employer of this Plan in order to provide benefits under this Plan for its employees or former employees whose benefits from FCERA are limited by Section 415(b)
- (b) Each District that participates in, and is a sponsoring employer of, this Plan shall be listed on Appendix 1 to this Plan

### 5 2 Actions Required for District to Participate in this Plan

A District may participate in and be a sponsoring employer of this Plan upon completion of the following actions

- (a) The County's Board of Supervisors adopts a resolution, by majority vote, that approves the District's participation in the Plan and approves the memorandum of understanding with respect to participation between the County and the District
- (b) The governing body of the District adopts a resolution, by majority vote, that provides that it will do the following participate in and be a sponsor of this Plan, agree to be bound by all of the terms and conditions of this Plan including the administration of this Plan solely by the County, agree to promptly provide to the County as Plan Administrator all necessary and appropriate information and data for Plan administration, and agree to promptly pay to the County all amounts that the County invoices the District, including invoices for benefits payable hereunder, costs of administration, taxes, and any other reasonable and appropriate items
- (c) The governing body of the District enters into a memorandum of understanding with the County, as Plan Administrator, covering such issues that the County deems to be necessary or appropriate for the administration of this Plan, the payment of any amounts fixed and determined by the County for the payment of benefits under this Plan to former District employees, costs of administration, taxes, indemnification of the County for claims by current and former District employees, and any other reasonable and appropriate items
- (d) The District designates the County, as Plan Administrator, as its agent to hold and pay out any amounts received by the County from the District to pay benefits to former District employees and their Eligible Survivors No such funds shall be held by the County in any manner on behalf of any Participant(s) or Eligible Survivor(s) but shall be held as general assets of the County in its capacity as agent of the District If any funds paid to the County by a District are not paid by the County as benefits under this Plan or to provide for the cost of

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administration, for taxes or for other reasonable and appropriate items, such funds shall be returned to the District

(e) The District designates the County, as Plan Administrator, as the agent of the District for purposes of paying taxes and filing such forms and returns as are required by the Internal Revenue Service and any other tax agency. The District executes and files such forms and other documents as are deemed necessary or appropriate by the Plan Administrator in connection with this designation.

(f) The District promptly pays all amounts fixed and determined by the County, as Plan Administrator, for benefits payable under this Plan to former employees of the District and their Eligible Survivors, costs of administration, taxes and other reasonable and appropriate items. Payment shall be at the time and in the manner that is fixed by the County.

### 5.3 Termination of District Participation in the Plan

#### (a) Voluntary Withdrawal

Any District that participates in and is a sponsor of this Plan may cease such participation and sponsorship by taking the following actions, if it has participated in and been a sponsor of this Plan for at least 5 years:

(i) The governing body of the District adopts a resolution, by majority vote, that provides that it withdraws from participation in and sponsorship of this Plan.

(ii) The District immediately pays to the County, as Plan Administrator, all amounts fixed and determined by the County for benefits payable under this Plan to former employees of the District and their Eligible Survivors, costs of administration, taxes and other reasonable and appropriate items. Payment shall be at the time and in the manner as is fixed by the County.

(iii) The District enters into a written agreement that it will indemnify and hold harmless the County and all other Districts that participate in and sponsor this Plan from and against any and all direct or indirect liabilities, demands, claims, losses, costs and expenses including (without limitation) reasonable attorneys fees, arising out of (directly or indirectly) or resulting from the District's withdrawal from this Plan. The County shall determine the form and content of such agreement.

(iv) At the sole discretion of the County, the District provides security, that the County deems sufficient, to provide for the payment of any and all direct or indirect liabilities, demands, claims, losses, costs and expenses including (without limitation) reasonable attorneys fees, that may be suffered by the County and all other Districts that participate in this arising out of (directly or indirectly) or

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

resulting from the District's withdrawal from this Plan

(b) Mandatory Withdrawal

(i) Any District that participates in and is a sponsor of this Plan shall cease such participation and sponsorship and be required to withdraw from this Plan if it fails, for 30 days after demand by the Plan Administrator to do any of the following pay any amount that has been fixed and determined by such Plan Administrator as due and owing from the District under this Plan, provide such information or data that is requested by the Plan Administrator for purposes of administering this Plan (including but not limited to filing reports with the Internal Revenue Service), otherwise fails to comply with any material provision of a memorandum of understanding or other written agreement that governs its participation in and sponsorship of this Plan

(ii) In the case of a cessation of participation under clause (i) of this subsection (b), the District shall be deemed to have entered into a written agreement to indemnify and hold harmless the County and all other Districts that participate in and sponsor this Plan from any and all direct or indirect liabilities, demands, claims, losses, costs and expenses including (without limitation) reasonable attorneys fees, that may be suffered by the County and all other Districts that participate in this Plan that arise out of (directly or indirectly) or result from the District's withdrawal from this Plan

(iii) In the case of a cessation of participation under clause (i) of this subsection (b), the District shall immediately pay to the County an administrative fee equal to the total direct and indirect cost to the County resulting from such cessation, as determined by the County in its sole discretion

(c) Responsibility Of Districts For Benefits After Withdrawal

See Article 3 of this Plan with respect to the following effects of the withdrawal from this Plan by a District (on a voluntary or involuntary basis) (i) the cessation of Participation in this Plan by, and the cessation of benefits payable under this Plan to, persons who are current or former employees of such a District that withdraws from this Plan, (ii) the cessation of benefits payable under this Plan to persons who are Eligible Survivors of persons who are current or former employees of such District, and (iii) the sole responsibility and liability of such District for paying any benefits that would be due and payable to any such person under this Plan

### Article 6 — Exemption from Process; Assignments Prohibited

6 1 Prohibition Against Assignment

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

No benefit payable from the Plan to any Participant or Eligible Survivor or any other person shall be subject in any manner to anticipation, alienation, sale, transfer, assignment, pledge, encumbrance, or charge, and any attempt to anticipate, alienate, sell, transfer, assign, pledge, encumber, or charge the same shall be void. No such benefit shall in any manner be liable for, or subject to, the debts, contracts, liabilities, engagements, or torts of any such person, nor shall it be subject to execution, attachment or any process whatsoever for or against such person, except to such extent as may be permitted by Section 704.110 of the Code of Civil Procedure or as required by law.

### 6.2 Payment Upon Marital Dissolution or Legal Separation

The provisions of Section 6.1 will not apply in the case of any property settlements upon marital dissolution or legal separation which are made in accordance with a domestic relations order (DRO) issued in accordance with state domestic relations law. The provisions of Section 6.1 will apply in the case of any property settlement upon marital dissolution or legal separation which is made in accordance with a domestic relations order that is not qualified in accordance with this Section.

When the Plan Administrator receives a domestic relations order, the Plan Administrator shall

- (a) Notify the Participant (or Eligible Survivor) and the former spouse or dependent covered by the domestic relations order of the receipt of the order with a notice which explains the procedures for determining the qualified status of domestic relations orders, and
- (b) Under procedures established by the Plan Administrator, determine the qualified status of the domestic relations order.

For purposes of this Section, "domestic relations order" means any judgment, decree, or order made in accordance with state domestic relations law which relates to the provision of child support, spousal maintenance, or marital property rights of any spouse, former spouse, child, or other dependent of a Participant. A domestic relations order shall not be considered a DRO with respect to this Plan if it is inconsistent with the Plan.

To the extent practicable, the rules under the CERL governing the treatment of a qualified domestic relations order shall equally govern payment of benefits under this Plan.

## Article 7 — Administration

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

### 7.1 Powers of the Plan Administrator

The County shall administer the Plan, and in such capacity shall be the Plan Administrator. In addition to the powers of the Plan Administrator specified elsewhere in the Plan, the Plan Administrator shall be responsible for the general administration and interpretation of the Plan and for carrying out its provisions, and shall have such powers as may be necessary or appropriate to discharge its duties hereunder, including, without limitation, the following:

- (a) The Plan Administrator may adopt such Plan regulations, interpretations and procedures as it deems are necessary or appropriate for the effective operation of the Plan,
- (b) The Plan Administrator shall have the right to delegate administrative duties with regard to the management and operation of the Plan (except that no employee or agent of the Plan Administrator shall have the authority to modify this Plan or to make representations, warranties, or inducements that may provide benefits or any other payment other than as set forth in this Plan and the applicable Plan regulations. Any such representations, warranties, or inducements shall be null and void.
- (c) The Plan Administrator shall act with respect to this Plan separately and apart from any duties that he or she may have with respect to any other retirement plan.
- (d) The Plan Administrator shall determine all issues relating to the rights of Participants and Eligible Survivors and any other persons, and any legal representatives thereof, under the terms of the Plan, including but not limited to eligibility, the amount and time of payment of the benefit (if any) and the calculation of any benefit under the Plan,
- (e) The Plan Administrator shall determine any factual questions arising in connection with the Plan's operation or administration after such investigation or hearing as the Plan Administrator deems necessary and appropriate,
- (f) The Plan Administrator may engage legal, administrative, actuarial, investment, accounting, consulting or other services as the Plan Administrator deems necessary or appropriate, and
- (g) The Plan Administrator may request and receive from Districts, Members and Participants and any other appropriate persons such information as necessary or appropriate for the proper administration of the Plan, including, without limitation, information to determine each Participant's eligibility to participate in the Plan and the benefits payable to each Participant or his or

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

her Eligible Survivor

7 2 Absolute Discretion of the Administrator The Plan Administrator (or any individual acting on its behalf) shall, in its sole and absolute discretion, construe and interpret the terms and conditions of the Plan, and any issue arising out of, relating to, or resulting from the administration and operation of the Plan, which interpretation or construction shall be final and binding on all parties, including, without limitation, any District, Member, Participant or Eligible Survivor. When making a determination or calculation, the Plan Administrator shall, in its sole and absolute discretion, be entitled to rely upon information furnished by Districts, Members, Participants and Eligible Survivors or other individuals acting on their behalf.

### 7 3 Costs of Administration

The costs of administration of the Plan shall be paid by the County and Districts. Such expenses shall include, but are not limited to, expenses for professional, legal, accounting, and other services and other necessary or appropriate costs of administration. No costs or expenses of administering this Plan shall be paid, directly or indirectly, by FCERA. Further, no assets of FCERA shall be used, directly or indirectly, to pay for benefits or administration or any other costs (direct or indirect) of this Plan.

### 7 4 Claims Review Procedure

Any person who has a claim for benefits under this Plan and who does not receive such benefits must make a written claim for benefits with the Plan Administrator at the time and in the form and manner determined by the Plan Administrator. The Plan Administrator shall provide notice in writing to any person whose claim for benefits under the Plan is denied, and the Plan Administrator shall provide such person a review of its decision with respect to such claim, if requested in writing by the person who has made the claim.

### 7 5 Correction of Errors

If an error or omission is discovered in the administration of the Plan, the Plan Administrator shall take such necessary or appropriate and equitable action as may be necessary or appropriate to correct the error. Such action shall include but not be limited to taking all reasonable or necessary action to recover overpayments of benefits under the Plan.

### 7 6 Written Communications Mailed

All written notices or communications to Participants and other Recipients

## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

Eligible Survivors and any other person who may be entitled to benefits under this Plan shall be effective when sent by first class United States mail to the individual's last known address. Any notice or document required to be given to or filed with the Plan Administrator shall be properly given or filed if delivered or sent by first class United States mail, postage prepaid, to the County's Auditor-Controller.

### Article 8 — Source of Benefits

#### 8.1 Unfunded Plan

(a) The Plan shall be unfunded within the meaning of the federal tax laws. Ownership of any assets, whether cash or other investments which might be used to pay any amount under the Plan, shall at all times remain solely in the County or in the Districts (with the County acting as their agent). Participants and Eligible Survivors and any other persons who might be entitled to amounts under this Plan shall not have any property interest, preferred claims, liens or any other beneficial interest whatsoever in any assets of the County or Districts, and shall have only general creditor status with respect to the County and Districts. Any rights created under this Plan shall be mere unsecured contractual rights against the County, or the District, by which the Participant was formerly employed.

(b) Benefits due under this Plan shall be paid by the County from its general assets, which are subject to the claims of the County's general creditors, with respect to benefits due to former employees of the Districts (or their Eligible Survivors), the County shall pay benefits from its general funds after receiving money from the Districts to pay these benefits, any amounts received from a District shall be held as general assets of the County, which are subject to the claims of the County's general creditors. The County shall also pay all costs, charges and expenses relating to this Plan from the same asset sources.

#### 8.2 No Employee Deferrals

No employee contributions or deferrals shall be made or allowed under the Plan at any time. In accordance with Section 415(m), no election to defer compensation under this Plan shall be provided, at any time or in any manner, to any person.

#### 8.3 No Use of FCERA Assets

County and District assets used to provide benefits under this Plan shall not be commingled with the monies of FCERA or any other qualified plans, nor shall this Plan ever receive or use any assets of FCERA.



## FRESNO COUNTY REPLACEMENT BENEFITS PLAN

### Article 9 — Miscellaneous

#### 9 1 Applicable Law

This Plan shall be governed by the laws of the State of California and applicable federal law

#### 9 2 No Service Rights

Nothing in this Plan or in any resolution or regulation concerning this Plan shall be construed as giving to a Participant any right to be retained in the service of the County or any District

#### 9 3 Unclaimed Benefits and Accumulations

In any situation where benefits are payable under this Plan, a reasonable search, including mailing of a registered letter to the last known address, shall be made to ascertain the whereabouts of the Participant or Eligible Survivor

If the person or persons entitled thereafter come forward and request payment and establish such entitlement, the amounts then due, including appropriate retroactive payments from the Commencement Date [but without payment of any interest thereon], shall be paid accordingly

#### 9 4 Benefit Limits

(a) Nothing in this Plan shall be construed as creating an entitlement to any benefits greater than the difference between the amount of benefits that can be paid by FCERA without regard to the limitations of Section 415 and what can be provided by FCERA taking into account the limitations of Section 415

(b) Payment of a benefit under this Plan does not create any eligibility for any additional benefits provided by this Plan, by FCERA or under any other program maintained by the County or Districts

### Article 10 — Amendment or Termination of Plan

#### 10 1 Right to Amend

The County has the right to amend this Plan at any time and in any manner for any reason whatsoever and may do so in its sole discretion. However, any amendment to this Plan that affects benefits paid shall be commensurate with the purposes of this Plan to provide Participants and Eligible Survivors with

## **FRESNO COUNTY REPLACEMENT BENEFITS PLAN**

retirement benefits that are otherwise earned by and payable to member of FCERA but which are limited by the rules of Section 415 of the Code

### **10 2 Preservation of FCERA Tax Status**

This Plan shall not in any way jeopardize the tax qualified status of FCERA. To maintain this qualified status, the County shall take all necessary or appropriate action, including but not limited to amending this Plan and the rules governing this Plan, solely for the purpose of complying with applicable federal tax laws and regulations

### **10 3 Preservation of Section 415(m) Status**

The County shall have the authority to make appropriate amendments to the Plan in order to accommodate changes in the Internal Revenue Code and United States Treasury Regulations in a manner that will preserve the status of the Plan under Section 415(m) of the Internal Revenue Code

**FRESNO COUNTY REPLACEMENT BENEFITS PLAN**

**APPENDIX 1 – PARTICIPATING DISTRICTS**

NAME OF DISTRICT	FIRST DATE OF PARTICIPATION IN THE REPLACEMENT BENEFITS PLAN	DATE SIGNED MOU WITH COUNTY

**BOARD OF SUPERVISORS  
COUNTY OF FRESNO**

1  
2  
3  
4 WHEREAS, the Fresno County Employees' Retirement Association ("FCERA")  
5 provides retirement benefits to employees of the County of Fresno and of  
6 participating Districts, and

7  
8 WHEREAS, the amount of benefits that can be provided to FCERA members is  
9 limited by Section 415(b) of the Internal Revenue Code ("Code"), and

10  
11 WHEREAS, it is the County's responsibility under California vested rights rules to  
12 ensure that all retirement benefits that are earned by County employees are in fact  
13 paid, and

14  
15 WHEREAS, the Code also provides that a County can establish a replacement  
16 benefits plan to pay the full benefits earned by FCERA members whose benefits  
17 cannot be paid by FCERA under Section 415(b), and

18  
19 WHEREAS, such a replacement benefits plan is used by many other entities, in both  
20 the private and public sector, to replace benefits limited by section 415(b), and

21  
22 WHEREAS, it is contemplated by the County Employees Retirement Law ("CERL")  
23 that each affected County will take action to replace the benefits that are limited by  
24 Section 415(b), and

25  
26 WHEREAS, there is no net increase in the cost of retirement benefits to the County  
27 of providing such a replacement benefits plan, and  
28

1 WHEREAS, the most efficient way for the County to operate a replacement benefits  
2 plan is to enter into a memorandum of understanding with FCERA setting out the  
3 responsibilities of the County and FCERA with respect to such a plan, and  
4

5 WHEREAS, some Districts located within the County also participate in FCERA and  
6 the most efficient way for Districts to provide replacement benefits is to participate in  
7 a replacement benefits plan that is established by the County, sharing the cost  
8 thereof,  
9

10 **BE IT THEREFORE RESOLVED**, that the Board of Supervisors of the County of  
11 Fresno hereby takes the following action  
12

13 1 Adopts the Fresno County Replacement Benefits Plan ("Plan") as presented to  
14 the Board and attached to this Resolution  
15

16 2 Delegates the administration of the Plan to the County's Auditor-Controller  
17

18 3 Approves the memorandum of understanding (MOU) between the County and  
19 the Fresno County Employees' Retirement Association as presented to the Board  
20 and attached to this Resolution, and authorizes and directs the County  
21 Administrative Officer to enter into the MOU  
22

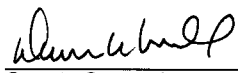
23 4 Authorizes the County Administrative Officer to enter into a memorandum of  
24 understanding (MOU) with any District that participates in FCERA and that takes  
25 actions as required under the Plan to participate therein, which MOU shall have  
26 terms and conditions as provided in the Plan and substantially as provided in the  
27 MOU presented to the Board and attached to this Resolution  
28


1 **BE IT FURTHER RESOLVED**, that the Board of Supervisors of the County of  
2 Fresno approves the effective date of this Resolution to be August 20, 2002  
3 and approves the effective date of the Plan to be January 1, 2002  
4

5 IN WITNESS WHEREOF, the Board of Supervisors of the COUNTY OF  
6 FRESNO has caused this Agreement and agree to abide by the terms and  
7 conditions herein  
8

9 APPROVED AS TO LEGAL FORM COUNTY OF FRESNO

10 PHILLIP S CRONIN

11   
12 \_\_\_\_\_  
13 County Counsel

11 BY   
12 \_\_\_\_\_  
13 Chair  
14 BOARD OF SUPERVISORS

15 ATTEST

16  
17   
18 \_\_\_\_\_  
19 Clerk of the Board of Supervisors

20 REVIEWED & RECOMMENDED  
21 FOR APPROVAL

22 APPROVED AS TO ACCOUNTING  
23 FORM

24 GARY W PETERSON  
25 AUDITOR-CONTROLLER/  
26 TREASURER-TAX COLLECTOR

27   
28 \_\_\_\_\_  
Auditor-Controller/Treasurer-Tax Collector

By   
\_\_\_\_\_

IN WITNESS WHEREOF, THIS RESOLUTION HAS BEEN ENTERED INTO AS OF THE FIRST DAY OF JANUARY, 2002

COUNTY OF FRESNO

FRESNO COUNTY EMPLOYEES' RETIREMENT ASSOCIATION

By *[Signature]*

By *A. Paparho*

Its CHAIRPERSON

Its Chairperson

AUGUST 20, 2002

August 7, 2002

ATTEST:

BERNICE E. SEIDEL, Clerk  
Board of Supervisors

By *Arma Ortega*  
Deputy