



September 23, 2008

To: SBCERS' Members

From: Michael F. Brown, County Executive Officer  
Oscar Peters, SBCERS Administrator

**Re: Supplemental Retiree Benefits**

On behalf of the County and the Retirement System, we are pleased to jointly advise you of recent positive developments with respect to supplemental retiree benefits. We also are pleased to report that litigation between the County and SBCERS over the provision of such benefits and other issues related to the administration of the pension plan has been suspended.

These developments are described in much greater detail in an Agreement between SBCERS and the County and related documents which are posted on SBCERS' website at [www.countyofsb.org/sbcers/aboutus.asp](http://www.countyofsb.org/sbcers/aboutus.asp). We encourage you to review those documents for a complete understanding of our agreement.

- For some time, qualified retirees have been receiving from SBCERS one of two types of supplemental benefits: (i) a \$15 per month per credited year of service benefit to defray the cost of premiums for participating in a County-sponsored health plan (the "\$15 Benefit"); or (ii) a \$4 per month per credited year of service benefit to retirees who have elected not to participate in a County-sponsored health plan (the "\$4 Benefit"). Up to now, however, the \$15 Benefit has been provided in a fashion that raised questions under federal tax laws and could have resulted in adverse tax consequences to you.
- To satisfy those tax questions and assure proper funding, the County has adopted, and SBCERS has agreed to administer, a tax qualified "401(h) Account." Starting October 1, the County will begin funding the \$15 Benefit through the 401(h) Account at SBCERS. Payment of the \$4 Benefit through the 401(h) Account will be phased in later this year.
- The reserves previously set aside by SBCERS for the \$15 Benefit and \$4 Benefit are not being transferred to the County; rather, these funds will be reserved as assets of the Retirement System.
- For those members who have been receiving (or will receive) the \$15 Benefit, you will notice no change, but there will be an important indirect benefit to you – the assurance that payments through the 401(h) Account will be tax compliant.
- For those members who have been receiving (or will receive) the \$4 Benefit, there will be two changes for you. First, once the \$4 Benefit is provided through the 401(h) Account, it will be worth more to you because it will be provided on a pre-tax basis for the first time. Second, in order to make it non-taxable, the \$4 Benefit

will need to be treated as a reimbursement of covered medical expenses. This means that you will be required to submit documentation to show that you have incurred covered medical expenses in an amount equal to or greater than the reimbursement. You will receive further information on the process soon. We expect to be able to provide the \$4 Benefit on a pre-tax basis through the 401(h) Account starting about January 1, 2009. Until then, the \$4 Benefit will continue as before, paid by the Retirement System on a taxable basis.

- Should there be any changes in the \$15 Benefit or the \$4 Benefit after they are in place through the 401(h) Account – either as to amounts or eligibility – the County has committed to give SBCERS notice and an opportunity to be heard on any proposed changes, and to give SBCERS a reasonable time in which to take whatever actions it believes appropriate in light of the proposed changes.
- For those of you who are employees or retirees of the courts and special districts, the Retirement System will be working with your employers to provide a similar transition.

The County and SBCERS have worked together cooperatively and effectively to resolve these issues and to put in place a tax-compliant means for supplemental retiree health benefits to be provided. We will continue to work together in the best interests of the members and the public we serve. We sincerely hope that you are as pleased with these developments as we are.

For the County,



Michael F. Brown  
County Executive Officer

For SBCERS,



Oscar Peters  
Administrator



**RESOLUTION OF THE BOARD OF RETIREMENT  
SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM  
COUNTY OF SANTA BARBARA, CALIFORNIA**

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|                                      |                                    |
|--------------------------------------|------------------------------------|
| ADOPTION OF RETIREE MEDICAL HEALTH ) |                                    |
| TRUST ACCOUNT FOR THE COUNTY OF )    | Resolution No. 08-04               |
| SANTA BARBARA AND PARTICIPATING )    | Adopted by the Board of Retirement |
| EMPLOYERS )                          |                                    |

**BOARD OF RETIREMENT  
SANTA BARBARA COUNTY EMPLOYEES' RETIREMENT SYSTEM**

**Subject: Adoption of Retiree Medical Health Trust Account for the County of Santa Barbara and Participating Employers**

WHEREAS, Pursuant to the provisions of Article 8.6 of the County Employees Retirement Law of 1937, California Government Code Sections 31694 et seq. ("Article 8.6"), a county retirement system is authorized to provide for and administer a trust account on the books of the retirement system in order to facilitate a participating County's, district's or court's funding of health and welfare benefits for eligible retired employees of the County, district or court and their eligible survivors and dependents (the "401(h) Account").

WHEREAS, The County of Santa Barbara ("County") and other participating employers in SBCERS provide a Retiree Health Plan ("Health Plan") for their eligible retired employees and their eligible survivors and dependents.

WHEREAS, County and other participating employers have requested that the Santa Barbara County Employees' Retirement System ("SBCERS") agree to provide for and administer a 401(h) Account at SBCERS for eligible retired employees and their eligible survivors and dependents who are participating in their Health Plans.

WHEREAS, SBCERS is willing to provide for and administer a 401(h) Account as requested by the County and the employers, subject to satisfying all applicable provisions of state and federal law, including applicable requirements of the Internal Revenue Code.

**RESOLVED, Resolution 08-04 is adopted to read as follows:**

1. The Board of Retirement hereby adopts the provisions and requirements of Article 8.6 as to providing, administering and investing a 401(h) Account on behalf of the County's and participating districts' eligible retired employees and their eligible survivors and dependents under their Health Plans, as detailed in the Regulations Governing Payment of Retiree Health Benefits From a 401(h) Account and

accompanying Administrative Agreement, attached hereto as Exhibit A, effective as of the Effective Date as defined in that certain "Agreement" between the County and SBCERS attached hereto as Exhibit B.

2. Effective as of the Effective Date, the Board of Retirement hereby establishes within SBCERS a 401(h) Account ("Account") for the sole purpose of providing for the payment of medical benefits to eligible retirees who are entitled to benefits under Exhibit A.

a) The benefits that will be available and the provisions for determining the amounts that will be paid from the Account are set forth in the County's and participating employers' Health Plans as they may be amended or terminated from time to time, as provided for under Exhibit A.

b) Benefits paid from the Account, when added to any life insurance protection that may be provided by SBCERS, shall be subordinate to retirement benefits, such that the aggregate actual contributions for medical benefits, when added to the actual contributions for life insurance protection provided by the retirement system, do not exceed 25% of the County's and other participating employers' total actual contributions to SBCERS (excluding contributions to fund past service credits) after the date that the Account is established.

c) The County and any other participating employers shall, at the time they each make a contribution or contributions to the retirement system, designate the portion of such contribution(s), if any, allocable to funding the Account. Such contribution(s) shall be reasonable and ascertainable.

d) At no time prior to the satisfaction of all liabilities under the Account or termination of the Account shall any assets of the Account be used for, or diverted to any purpose other than providing medical benefits under the Health Plans. Assets in the Account may not be used for retirement, disability or death benefits or any other purpose for which other assets are held in the employees' retirement fund administered by this Board. However, payment of necessary or appropriate investment and administrative expenses applicable to the Account may be paid therefrom.

e) Upon satisfaction of all Account liabilities, as provided by the Health Plans, any remaining assets credited to the Account shall be paid to the County or the other participating employers, as applicable.

f) Any forfeitures of amounts credited to the Account shall be applied as soon as possible to reduce future employer contributions to the Account.

g) The assets allocated to the Account shall be accounted for separately from all other assets of the employees' retirement fund administered by this Board not held in the Account. However, Account assets may be co-invested with the other assets of the employees' retirement fund for investment purposes only.

h) All assets held in the Account, including contributions received, all property rights acquired or purchased with such amounts and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants pursuant to Exhibit A.

3. Nothing in this Resolution is intended to create, establish or confirm the existence of any vested rights or to take away or diminish any vested rights that may exist. Rather, in adopting this resolution, the Board of Retirement intends simply to enable a tax-compliant means for the provision of supplemental retiree health benefits.

4. Effective as of the Effective Date, pursuant to the provisions of Section 401(h) of the federal Internal Revenue Code, the Board of Retirement hereby adopts the "Regulations Governing Payment of Retiree Health Benefits From a 401(h) Account" and the accompanying Administrative Agreement which are attached hereto as Exhibit A and made a part hereof by this reference.

5. Effective as of the Effective Date, the Board of Retirement hereby authorizes its Chair to execute the Agreement substantially in form and substance as that which is attached hereto as Exhibit B and made a part hereof by this reference.

PASSED AND ADOPTED by the Board of Retirement of the Santa Barbara County Employees' Retirement System, this 19<sup>TH</sup> day of September, 2008, by the following vote:

Ayes:

Noes:

Absent:

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Chair of the Board of Retirement

**ATTEST:**

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Clerk of the Board of Retirement

APPROVED AS TO FORM:

\_\_\_\_\_  
Board Counsel

APPROVED AS TO CONTENT:

\_\_\_\_\_  
Retirement Administrator

## **AGREEMENT**

This Agreement ("Agreement") is entered into by and between the County of Santa Barbara, California ("County") and the Santa Barbara County Employees' Retirement System ("SBCERS" or the "Retirement System") and shall become effective on the Effective Date as defined below. County and SBCERS are sometimes referred to herein each singularly as a "Party" and together as the "Parties."

### **RECITALS**

A. Prior to the Effective Date of this Agreement, as defined herein, SBCERS has been providing for the funding of certain supplemental benefits to retired members of SBCERS, commonly referred to as the \$15 per month per credited year of service benefit ("\$15 Benefit") and the \$4 per month per credited year of service benefit ("\$4 Benefit.")

B. Disputes have arisen between the Parties over a variety of issues, including: (i) the \$15 Benefit and the \$4 Benefit; (ii) SBCERS's interpretation and use of undistributed earnings; and (iii) SBCERS's classification of certain assets as non-valuation assets, including the Contingency Reserve. The County has indicated its desire to commence providing for the funding of the \$15 Benefit and the \$4 Benefit directly from its own funds, through the vehicle of a tax-qualified account on the books of the Retirement System pursuant to Section 401(h) of the Internal Revenue Code (the "401(h) Account") and seeks to have SBCERS cease providing the funding of those benefits out of other funds of the Retirement System. SBCERS has indicated its willingness to cease providing the funding for those benefits provide the County commences funding those benefits through the 401(h) Account.

C. On or about June 13, 2008, the County filed a lawsuit against SBCERS in Santa Barbara County Superior Court, as Civil Action No. 1300995 (the "Action"), which is at issue.

D. The Parties wish to provide for the continued funding of the \$15 Benefit and the \$4 Benefit, to suspend the Action, and to provide a mechanism by which each shall give notice to the other of any future attempts to change the Status Quo, as defined herein.

### **AGREEMENT**

The County and SBCERS agree as follows:

1. **Authorizing Actions.** Each Party shall take such action as necessary to authorize them to enter into this Agreement, to create a 401(h) Account on the books of the Retirement System and to adopt the 401(h) Regulations and Administrative Agreement attached hereto as Attachment A and incorporated herein by this reference. The Parties shall take such actions on or before September 30, 2008. The "Effective Date" of this Agreement shall be the later of the effective dates of the actions taken by the County and SBCERS, respectively. If the Effective Date shall not have occurred on or before September 30, 2008, this Agreement shall be null

and void and of no further effect, unless that date is extended by writing executed by both Parties.

2. **Agreement to Maintain Status Quo.** On and after the Effective Date, the Parties agree to maintain the "Status Quo," unless "Notice and an Opportunity to be Heard" regarding a proposed "Change in the Status Quo" is provided in accordance with the terms of this Agreement. This Agreement is not intended to limit or expand the authority of either the County or SBCERS; nor shall it be read as reflecting admissions, express or implied, as to the authority of either the County or SBCERS; nor shall it be read as creating any vested rights for SBCERS' members or diminishing any such rights that already may exist. Rather, the purpose of this Agreement is to define the "Status Quo" and the circumstances under, and manner by, which either Party will be obligated to provide notice to the other Party of a proposed Change in the Status Quo.
3. **Status Quo.** For purposes of this Agreement, the "Status Quo" means:
  - a. **401(h) Benefits/Supplemental Benefits.** Commencing on and after the Effective Date, the County will take over funding of the \$15 Benefit for qualified retired County employees solely through the 401(h) Account at SBCERS. Commencing on and after an initial phase-in period as described in Paragraph 3(c) below, the County will take over funding of the \$4 Benefit for qualified retired County employees, solely through the 401(h) Account at SBCERS. Upon the County's assumption of funding each benefit, SBCERS will cease funding that benefit out of pension assets, and SBCERS will not provide any new health or other supplemental benefits to retired County employees without complying with the notice provisions of this Agreement.
  - b. **Valuation Assets.** Once the 401(h) Account is fully operative, all assets of the Retirement System will be treated as valuation assets for purposes of calculating the System's actuarial accrued liability ("AAL") and consequent employer/employee contribution rates, with the exception of: (i) assets attributable to the 401(h) Account; (ii) the assets segregated for the purpose described in Paragraph 3(c); and (iii) assets not to exceed \$21,620,214 attributed to the Contingency Reserve on the books of the Retirement System.
  - c. **Phase-In Of \$4 Benefit.** The Parties acknowledge and agree that it will take a period of time to put in place a claims administration procedure for handling the \$4 Benefit. Accordingly, the Parties acknowledge and agree that SBCERS will continue to exclude from valuation assets such assets as are necessary to ensure that the \$4 Benefit is paid to qualifying members of the Retirement System through December 31, 2008, as well as assets necessary to fund the \$15 Benefit during the 2007/2008 fiscal year and for the July 1, August 1, and September 1, 2008 retiree payrolls. Following the phase-in period, any residual funds no longer necessary for SBCERS to fund the \$4 Benefit shall be treated as valuation assets.

- d. **Supplemental Benefit Reserve Accounts.** SBCERS reserves the right to separately identify funds formerly included in its Health Care Reserves in order to reflect the source of such funds, but shall not reserve such funds, or any other funds, for the specified purpose of providing health or supplemental benefits to retirees without compliance with the notice procedures herein.
  - e. **Contribution Rates.** The foregoing modifications to valuation assets shall be made as of June 30, 2007, to allow employer contribution rates to SBCERS for fiscal year 2008/2009 to be adjusted in accordance with this Agreement.
4. **Change in the Status Quo.** For purposes of this Agreement, a proposed “Change in the Status Quo” means:
- a. In the case of the County: either (i) a decrease or a discontinuance of either the \$15 Benefit or the \$4 Benefit for current or future qualified retired County employees; or (ii) a change in the eligibility requirements for receiving either benefit.
  - b. In the case of SBCERS: (i) the provision of any health or supplemental benefit from funds of the Retirement System other than those attributable to the 401(h) Account, including but not limited to the provision of any cash subsidies in lieu of health premiums (under Government Code section 31691.1), or the creation of any reserve for that purpose; (ii) the establishment of any non-valuation reserve or any increase in non-valuation assets (including any increase in the Contingency Reserve above \$21,620,214); and (iii) any change in the manner in which valuation assets are allocated in accordance with Paragraphs 3(b), 3(d) and 3(e) above.
5. **Notice and Opportunity to be Heard.** For purposes of this Agreement, “Notice and Opportunity to be Heard” regarding a proposed “Change in the Status Quo” means:
- a. Prior to either Party proposing to take action to change the Status Quo, that Party shall deliver to the other Party written notice of the action being considered not less than 30 days prior to the date on which such action will be considered by the governing body of that Party, and shall afford the receiving Party an opportunity to appear, speak and submit materials relevant to the proposed action at the time the action is considered.
  - b. Following the taking of any such action, the action shall not become effective for another 30 days, to afford the receiving Party the opportunity to seek legal relief if that Party so desires. If legal action is initiated within that 30 day period, the proposed Change In The Status Quo shall be suspended for an additional 15 days following the initiation of legal action, to afford the receiving Party the opportunity to move for preliminary injunctive relief to enjoin the proposed Change In The Status Quo, and the proposed action shall remain suspended until such time as the motion is resolved by the trial court (or, if injunctive relief is granted, on such terms as the Court may direct); provided, however, that the

contemplated by this Agreement, including any actions contemplated in paragraph 7 below, all activities in the Action shall be suspended.

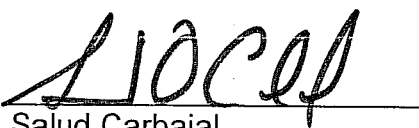
7. **Contingency Reserve.** Nothing herein shall prohibit (i) the County from continuing to pursue a ruling or rulings pertaining to SBCERS' non-valuation asset accounting for the Contingency Reserve (and all issues reasonably associated therewith), through the Action or otherwise, or (ii) SBCERS from defending itself in any such proceedings, even if the Status Quo is fully maintained.
8. **Joint Statement.** Following the Effective Date, the Parties shall use their best efforts to agree upon and issue a joint statement to members of the Retirement System advising them of the terms of this Agreement.


COUNTY OF SANTA BARBARA

SANTA BARBARA COUNTY  
EMPLOYEES RETIREMENT SYSTEM

Dated: September 16, 2008

Dated: September 16, 2008

By:   
Salud Carbajal  
Chair, Board of Supervisors

By:   
Bernice James  
Chair, Board of Retirement

**REGULATIONS GOVERNING PAYMENT OF RETIREE  
HEALTH BENEFITS FROM A 401(h) ACCOUNT**

**ADOPTED BY THE SANTA BARBARA COUNTY BOARD OF SUPERVISORS**

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**REGULATIONS GOVERNING PAYMENT OF  
RETIREE HEALTH BENEFITS FROM A 401(h)ACCOUNT  
IN THE SANTA BARBARA COUNTY EMPLOYEE'S RETIREMENT SYSTEM**

**ARTICLE I  
RECITALS**

1. The County Board of Supervisors has by resolution adopted the provisions of Section 31694 of the County Employees Retirement Law of 1937 ("CERL") and has by resolution provided for the contribution of funds by the County and various districts into a Post-Employment Benefits Trust Account pursuant to CERL Section 31694.
2. Pursuant to CERL Section 31694, a Post-Employment Benefits Trust Account, which is a "401(h) Account," will be established as part of the retirement fund of the System Trust Fund.
3. The County Board of Supervisors has by resolution adopted these Regulations, which is also known as the "401(h) Regulations," to establish the respective roles and responsibilities of the Board of Retirement and the County with respect to the administration and investment of the 401(h) Account.
4. These Regulations include the following items as provided for in CERL Section 31694.1: funding, distribution, expenditure, actuarial, accounting, and reporting considerations, and any applicable investment provisions.
5. The County is the settlor for the 401(h) Account.
6. The County Board of Supervisors has provided for the funding of the 401(h) Account and for the payment of a subsidy to Eligible Retired Participants from the 401(h) Account.
7. The Board of Retirement is the fiduciary of the System, including the 401(h) Account.
8. The County and the Board of Retirement will provide each other with the information necessary to determine who are the Eligible Retired Participants under the 401(h) Regulations.
9. The Board of Retirement under the Regulation may charge reasonable expenses for investing and administering the 401(h) Account to that Account.
10. The County, through the Board of Supervisors, reserves the right to modify or terminate the Health Plan.

## ARTICLE II DEFINITIONS

**2.01 Definitions.** When the initial letter of a word or phrase is capitalized herein, the meaning of such word or phrase shall be as follows:

(a) "401(h) Account" means the account established under Article III as part of the System Trust Fund.

(b) "401(h) Regulations" means this document.

(c) "Board of Retirement" means the Board of Retirement of the System.

(d) "Board of Supervisors" means the County Board of Supervisors.

(e) "CERL" means the County Employees Retirement Law of 1937, as amended from time to time.

(f) "County" means the County of Santa Barbara, California.

(g) "Dependent" means a dependent as defined in Internal Revenue Code Section 152, determined without regard to Code Section 105(b)(1), (b)(2), and 105(d)(1)(B). The term only includes a dependent of an Eligible Retired Participant.

(h) "Eligible Retired Participant" means a retired member of the System who is a retiree (including a terminated vested retiree), of the County designated to receive benefits under the Health Plan. The term also includes the Eligible Retired Participant's Spouse and Dependents. Each Participating Employer other than the County shall determine the definition of Eligible Retired Participant for its retirees (including a terminated vested retiree) designated to receive benefits under the Health Plan.

(i) "Internal Revenue Code" or "Code" means the Internal Revenue Code of 1986, as amended from time to time and as applicable to governmental plans and governmental employers, as well as applicable regulations, decisional law, and administrative guidance interpreting and applying the Code.

(j) "Health Plan" means the health plan or plans maintained by the County in which retired employees of the County and participating Employers other than the County may participate in order to obtain Medical Care.

(k) "Medical Care" means Medical Care as defined by Internal Revenue Code Section 213(d).

(l) "Participating Employer" means the County, any district or court of the County, and any other entity of the County that is permitted to participate in the 401(h) Account by action of the Board of Supervisors.

(m) "Pension Assets" means certain assets of the System Trust Fund as defined under Article IV.

(n) "Pension Plan Document" means (i) the sections of the County Employees Retirement Law of 1937, found in California Government Code, Title 3, Division 4, Part 3, Chapter 3 and 3.9, Sections 31450-31899.10 as amended from time to time, which are applicable to the System; (ii) resolutions of the Board of Supervisors applicable to the System; (iii) regulations adopted by the Board of Retirement; (iv) resolutions of the board of any district of the County applicable to the System; and (v) Article XVI, Section 17 of the California Constitution.

(o) "Plan Administrator" means Retirement Administrator of the System or any other persons so designated by the Board of Retirement.

(p) "Section" means a section of the Plan, when not preceded by the word CERL, the word Code, or the phrase Internal Revenue Code.

(q) "Spouse" means the individual to whom an Eligible Retired Participant is married, and any qualified registered domestic partner as determined under California law.

(r) "System" means the Santa Barbara County Employees' Retirement System.

(s) "System Trust Fund" means the separate trust fund that holds the assets of the System. The System Trust Fund includes the 401(h) Account established pursuant to the 401(h) Regulations and the Pension Assets.

(t) "Trust" means the trust established pursuant to the 401(h) Regulations, which constitutes a valid trust under the laws of California.

**2.02 Rules of Construction.** Words used in the masculine gender shall be construed to include the feminine gender where appropriate, and words used the singular or plural shall be construed as being in the plural or singular where appropriate.

### **ARTICLE III** **ESTABLISHMENT OF 401(h) ACCOUNT**

**3.01 Authority of the Board of Supervisors.** The Board of Supervisors is authorized by the California law to develop and maintain a Health Plan that complies with the requirements specified under California law and the Internal Revenue Code, as applicable to governmental plans. The Board of Supervisors has retained the right to amend the Health Plan from time to time. Pursuant to CERL Section 31694, the Board of Supervisors is also authorized, in agreement with the Board of Retirement, to establish a 401(h) Account within the System Trust Fund, to provide Medical Care subsidies for Eligible Retired Participants. To this end, these 401(h) Regulations establish a 401(h) Account within the System Trust Fund. The 401(h) Regulations will be considered part of the Pension Plan Document. The Board of Supervisors acknowledges that in order to effectuate the 401(h) Account within the System Trust Fund, the Board of Retirement must agree to assume administrative and fiduciary responsibility, pursuant to CERL Section 31694(a).

**3.02 Authority Reserved to the Participating Employers.**

(a) Each governing body of each Participating Employer is the only body that has the power or duty to do the following with respect to its employees, retirees, and survivors:

- (1) determine the terms of the Health Plan;
- (2) define the class of employees, retirees, and survivors who may participate in the Health Plan and receive subsidies from the 401(h) Account;
- (3) determine the amount of the subsidies from the 401(h) Account; and
- (4) determine the amount of the employer contribution to the 401(h) Account in accordance with accounting, actuarial, and legal requirements.

(b) The Board of Supervisors is the governing body of the County with authority to act under this section.

(c) The governing body of any other Participating Employer shall, for purposes of this Section, be determined under California or local law.

**ARTICLE IV**  
**SEPARATE ACCOUNT**

**4.01 Establishment of the Account.**

(a) There is hereby created a 401(h) Account, which shall be a separate account within the System Trust Fund and which is established pursuant to Internal Revenue Code Section 401(h). Any assets of System Trust Fund not held under the 401(h) Account shall be held in other funds and accounts, referred to as the "Pension Assets." The System shall separately account for the funds contributed to the 401(h) Account by each Participating Employer and the earnings and expenses related to the investment and administration of those funds. The System may but shall not be obligated to commingle the 401(h) Account assets for investment purposes with the Pension Assets to the extent allowed by the Internal Revenue Code. The investment earnings and investment expenses attributable to the investment activity of the 401(h) Account shall be accounted for separately from the investment earnings and expenses of the Pension Assets.

(b) Under CERL Section 31694.1(c), the funds in and investment earnings of the 401(h) Account shall be used to pay the reasonable costs related to investment expense and administration of the 401(h) Account, to the extent allowed by federal tax law. Those expenses shall not be deemed to be an investment or administrative expense of the Pension Assets.

**4.02 Employer Contributions.** In compliance with the Code, the 401(h) Account shall be credited with the contributions made by the Participating Employers and designated for that purpose, and investments, receipts, disbursements, and other transactions under the 401(h) Account; which amounts shall be used solely for the payment of benefits, expenses and other charges properly allocable to the 401(h) Account and shall not be used for the payment of

benefits, expenses or other charges properly allocable to any other purpose. Contributions to the 401(h) Account shall be reasonable and ascertainable. The County Board of Supervisors shall establish a funding policy for the County contributions.

**4.03 Subordinate Contributions.** Participating Employers shall designate by Resolution the amount of contributions to be made (if any) to the 401(h) Account. If contributions are made to the 401(h) Account, they must be subordinate to the contributions to the System for retirement benefits. Accordingly, at all times, the aggregate contributions by a Participating Employer (made after the date the 401(h) Account is established) to fund the 401(h) Account and to furnish any life insurance protection shall not exceed twenty-five percent (25%) of the total aggregate actual contributions made by that Participating Employer (made after the date the 401(h) Account is established) to the System Trust Fund, excluding contributions to fund past service credits. For these purposes: (1) life insurance protection includes any benefit paid under the System on behalf of a member as a result of such member's death to the extent the payment exceeds the amount of the reserve to provide the retirement benefits for the member existing at his death; and (2) contributions made by a Participating Employer to the System Trust Fund include contributions that have been properly picked up under Code Section 414(h). The Plan Administrator shall annually determine whether the twenty-five percent (25%) test has been met. If at any time the 401(h) Account contributions of a Participating Employer would exceed the twenty-five percent (25%) test, that Participating Employer shall be notified immediately and the excess amount of the contribution shall not be accepted. Any affected Participating Employer shall immediately give the Plan Administrator direction as to the disposition of the excess amount of contributions.

**4.04 Forfeitures.** In the event an individual's interest in the 401(h) Account is forfeited prior to termination of the System, the forfeiture shall be applied to reduce the contributions of the appropriate Participating Employer to fund the 401(h) Account.

**4.05 Limitations on Transfers to or from the 401(h) Account.**

(a) Under CERL Section 31694(d)(1) and (d)(2), the Pension Assets may not be used, directly or indirectly, to pay the cost of any benefits provided through the 401(h) Account or to pay any direct or indirect cost of administering the 401(h) Account.

(b) As required by the Code, no assets may be transferred from the Pension Assets to the 401(h) Account except as authorized under Code Section 420.

(c) As required by the Code, no assets may be transferred from the 401(h) Account to the Pension Assets.

(d) Benefits provided through the 401(h) Account are payable only to the extent there are funds in the 401(h) Account to pay them. To the extent, there are no funds in the 401(h) Account, benefits will not be paid, except as otherwise permitted by law.

**ARTICLE V**  
**NON-DIVERSION RULE; REVERSION RULE**

**5.01 Exclusive Benefit: State Law and Federal Law.**

(a) Under CERL Section 31694(d)(2), funds in the 401(h) Account may not be used, directly or indirectly, to pay the cost of any other benefit provided under CERL.

(b) At no time prior to the satisfaction of all liabilities under the 401(h) Account or termination of the 401(h) Account shall any assets in the 401(h) Account be used for, or diverted to, any purpose other than the providing of permissible benefits under the 401(h) Regulations and the payment of administrative and investment expenses. Assets in the 401(h) Account may not be used for retirement or disability benefits or any other purpose for which the Pension Assets are used.

**5.02 Satisfaction of All Liability.** Any amounts remaining in the 401(h) Account with regard to a Participating Employer upon the satisfaction of all liabilities of such Participating Employer to provide benefits funded by the 401(h) Account shall be returned to that Participating Employer in accordance with Code Section 401(h)(5).

**ARTICLE VI**  
**TRUST**

**6.01 Trust Status.** All assets held in connection with the System, including all contributions received pursuant to the 401(h) Regulations, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights shall be held in trust for the exclusive benefit of members and their beneficiaries and to pay reasonable expenses.

**6.02 Trust Fund.**

(a) To the extent required by Code Section 401(h), all contributions received pursuant to the 401(h) Regulations, all property and rights acquired or purchased with such amounts and all income attributable to such amounts, property or rights held as part of the 401(h) Account shall be held, managed, invested and distributed as part of the System Trust Fund in accordance with the provisions of the 401(h) Regulations.

(b) The Board of Supervisors shall determine annually the amount of County contributions made to the 401(h) Account (if any). Each Participating Employer, other than the County, shall also determine the amount of its contributions made to the 401(h) Account. Each Participating Employer's determination shall be based on periodic actuarial valuations.

If more than one employer participates in the 401(h) Account, the System shall account for each employer's contributions separately.

(c) The subsidy paid toward the cost of purchasing coverage for Eligible Retired Participants, their Spouses and Dependents under the Health Plan or payments made for other

Medical Care expenses as described in Article VII shall be distributed solely from the 401(h) Account in the System Trust Fund pursuant to the 401(h) Regulations.

(d) No transfers shall be made to the 401(h) Account from Pension Assets, and no transfers shall be made to Pension Assets from the 401(h) Account, except as otherwise permitted by federal law.

**6.03 Trustee Standard.** The Board of Retirement is the 401(h) Account trustee. The Board of Retirement shall discharge its duties with respect to the 401(h) Account consistent with CERL Sections 31594 and 31595, and as provided for in Section 17 of Article XVI of the California Constitution.

**6.04 Investment Policy.**

(a) As provided for in CERL Section 31694.1(d), the Board of Retirement may establish rules and procedures governing the investments of the 401(h) Account. Solely for investment purposes, the Board may, but shall not be required to, co-invest the assets in the 401(h) Account with the Pension Assets and subject to the same policies and guidelines applicable to such Pension Assets. To the extent co-invested with Pension Assets, the Board shall have no obligation to identify specific investments held by the 401(h) Account. To the extent not co-invested with Pension Assets, the Board shall establish policies and guidelines suitable and appropriate to the use of the funds held in the 401(h) Account. County agrees that such policies and guidelines are within the sole judgment and discretion of the Board of Retirement.

(b) Under the Code, earnings, losses and expenses must be allocated in a reasonable manner to the 401(h) Account. Pursuant to these 401(h) Regulations and in compliance with CERL Section 31694.1(d), the Board shall account for all investment gains and losses attributable to the 401(h) Account and shall fairly allocate expenses of investment and administration to the 401(h) Account in the same manner and at the same time as it does for the Pension Assets.

**6.05 Duties, Powers and Authority of the Board of Retirement.**

(a) The Board of Retirement, as administrator of the Trust, shall have such power and authority (including discretion with respect to the exercise of that power and authority) as may be necessary, advisable, desirable or convenient to the Board of Retirement as a fiduciary and an administrator, in its discretion, subject to the provisions of these Regulations and applicable law, in order to carry out their responsibilities:

- (1) To serve as trustee and fiduciary of the 401(h) Account;
- (2) To adopt, amend, or rescind rules, regulations and bylaws relating to the 401(h) Account governing its operations and procedures;
- (3) To establish and keep all accounting records with respect to the 401(h) Account in accordance with applicable accounting principles;

- (4) To contract with public or private entities for the provision of goods and services;
- (5) To provide for and promulgate all rules, regulations, and forms deemed necessary or desirable for subsidizing Health Plan benefits from the 401(h) Account and for maintaining proper records and accounts;
- (6) To establish a procedure for verifying that all payments made from the 401(h) Account are made for Medical Care;
- (7) To communicate with Eligible Retired Participants as to their benefits and obligations. The System shall exercise care in that all communications it makes to all employees, participants, and beneficiaries pursuant to these 401(h) Regulations reflect solely the Medical Care benefits approved by the Board of Supervisors;
- (8) To provide periodic reports (not less frequently than annually) to the County regarding its actions under this Regulation;
- (9) To delegate duties and powers to the Plan Administrator and System staff;
- (10) To employ insurance companies, banks, trust companies, investment brokers, investment consultants and managers, third party administrators, or others as agents for the receipt, investment, and disbursement of funds held in trust for Eligible Retired Participants and to administer the Medical Care program;
- (11) Subject to and consistent with the Code, to construe and interpret the 401(h) Regulations and to correct any defect, supply any omissions, or reconcile any inconsistency in the 401(h) Regulations;
- (12) To contract for, purchase or otherwise procure insurance and investment products;
- (13) To consult with and rely on the advice of counsel, actuaries, and other professionals;
- (14) To make, execute, acknowledge and deliver any and all instruments necessary or appropriate to carry out the powers herein granted;
- (15) To contract with one or more service providers or professionals, including attorneys, accountants, actuaries, investment advisors, and consultants, to advise the Board of Retirement in any manner necessary;
- (16) To take all actions consistent with the 401(h) Regulations necessary or appropriate to administer or carry out the purposes of the 401(h) Account; provided, however, the Board of Retirement need not take any action unless in their opinion there are sufficient Trust assets available for the expense thereof and the Board of Retirement may not exercise any authority that has been reserved to the County Board of Supervisors; and

(17) To charge expenses of investment and administration to the 401(h) Account.

(b) The Board of Retirement may not exercise any authority reserved to the Board of Supervisors in Article III or take any action contrary to the 401(h) Regulations.

**6.06 County Powers and Responsibilities.** Subject to these 401(h) Account Regulations, the County as settlor shall do the following:

(a) Make payments to the 401(h) Account of County contributions, but only to the extent that those payments are authorized by the Board of Supervisors.

(b) Provide on a timely basis to SBCERS all necessary and appropriate information regarding those Eligible Retired Participants who participate in the County-sponsored health insurance plan.

**6.07 Limitations on Responsibility.** The Board of Retirement and the Board of Supervisors (collectively for purposes of this section the "Boards") responsibilities and liabilities shall be subject to the following limitations:

(a) The Boards shall have no duties other than those expressly set forth in these 401(h) Regulations or the Health Plan and those imposed on the Boards by applicable laws.

(b) The Board of Retirement shall be responsible only for money and property actually received by the Board of Retirement, and then to the extent described in these 401(h) Regulations.

(c) The County shall indemnify and hold the System harmless for any costs, claims, damages, or other liabilities incurred by the System, including attorneys fees and costs of defense, except to the extent they were proximately caused by the System's own wrongful acts or omissions, for which it is otherwise liable under law.

(d) The System shall indemnify and hold the County harmless for any costs, claims, damages, or other liabilities incurred by the County, including attorneys fees and costs of defense, to the extent that they were proximately caused by the System's own wrongful acts or omissions, for which it is otherwise liable under law.

**6.08 Other Participating Employer's Powers and Responsibilities.** Subject to the 401(h) Account Regulations, any Participating Employer other than the County shall do the following:

(a) Make payments to SBCERS for the 401(h) Account for the Participating Employer's contributions, to the extent payments are authorized by the district.

(b) Provide on a timely basis to SBCERS all necessary and appropriate information regarding those Eligible Retired Participants of the Participating Employer who participate in the Health Plan.

(c) SBCERS shall communicate with and collect contributions directly from any Participating Employer providing benefits under the 401(h) Account.

**6.09 Supplementary Provisions.** The trust and investment provisions of the 401(h) Regulations are supplementary to the trust and investment provisions that govern the Pension Assets.

**ARTICLE VII**  
**BENEFITS PAYABLE FROM THE 401(h) ACCOUNT**

**7.01 Use of 401(h) Account.**

(a) Pursuant to the Health Plan, the Board of Supervisors has determined to provide a monthly insurance premium subsidy for Eligible Retired Participants participating in a County sponsored health insurance plan from the 401(h) Account in the amount of \$15 x years of credited service.

(1) The monthly insurance premium subsidy shall be applied directly by the System to pay the premium and shall not be paid to the retiree or other party.

(2) For purposes of this section, "years of credited service" means years of service by the retiree that are counted toward his/her retirement benefits paid by the System provided, however, that "years of service" shall not include any credit that has been purchased under CERL Section 31658 of the Government Code for "additional retirement credit" and does not include any credit in any other retirement systems.

(3) The maximum amount paid in any month shall not exceed the premium cost of the health insurance plan in which the retiree enrolled.

(b) If the amount of subsidy under this section is greater than the cost of the premium, any amount in excess of the premium shall be forfeited.

(c) If an Eligible Retired Participant does not participate in a County-sponsored health insurance plan, then the System shall reimburse the Eligible Retired Participant for other Medical Care expenses. Reimbursements shall first be applied to payment of premiums for Medicare benefits, Medicare supplemental plans, and other health insurance plans. Only after all reimbursements for such premiums have been paid shall any other Medical Care expenses be reimbursed. The maximum amount paid under this subsection (c) shall be \$4 per year of credited service by the retiree rather than the \$15 per year of credited service under subsection (a). No payment shall be made under this subsection unless and until sufficient proof of payment for qualifying Medical Care expenses is provided to the System or its designee at the time and in the manner determined by the Plan Administrator.

(d) Survivors of Eligible Retired Participants (Spouses and Dependents) continue to receive a subsidy proportionate to their percentage of the retiree's pension benefit (if any).

(e) The Board of Supervisors reserves the right to amend or eliminate this section 7.01 of the 401(h) Regulations, including but not limited to the amount of the subsidy, at any

time in its sole discretion. Upon adoption of these 401(h) Regulations, the System shall cease making payments for Medical Care pursuant to Government Code section 31691.

(f) The Retired Employees of Santa Barbara County Association may make written requests to the Board of Supervisors for changes to the benefits provided under the 401(h) Regulations for consideration by the Board of Supervisors; however, the Board of Supervisors is not required to make any such changes.

**7.02 Substantiation.** In order for an Eligible Retired Participant to receive benefits under this Article, the Board of Retirement must maintain records that substantiate the subsidy paid under Section 7.01(a) and the reimbursement paid under Section 7.01(c). A certification of coverage by the County is required before payments may be made directly to the County's insurance provider.

### **ARTICLE VIII** **PROTECTION OF BENEFITS**

The rights of Eligible Retired Participants or their Spouses or Dependents under the Health Plan and the 401(h) Regulations shall not be subject to the claims of their creditors, and shall be exempt from execution, attachment, prior assignment or any other judicial relief or order for the benefit of creditors or other third person, including a domestic relations order. However, the Plan Administrator shall recognize qualified medical child support orders pursuant to California law.

### **ARTICLE IX** **DISPUTE PROCEDURE**

The Retirement Administrator, as appointed by the Board of Retirement, shall review and determine any disputed claim by an Eligible Retired Participant submitted under the 401(h) Regulations. The decision shall be communicated in writing to the claimant. Within sixty (60) days after receipt of the written decision of the Retirement Administrator, the claimant may appeal a determination to the Board of Retirement. The Board of Retirement in its sole discretion may hear the appeal and render its decision in writing to the claimant. The decision of the Board of Retirement shall be the final administrative step in resolving any disputed claim.

### **ARTICLE X** **CONFIDENTIALITY**

Records under the Health Plan and the 401(h) Account shall be maintained as required by the State of California and federal law.

### **ARTICLE XI** **PLAN AMENDMENT AND TERMINATION**

#### **11.01 Amendments.**

(a) Subject to the provisions of any applicable law, a majority of the Board of Supervisors may at any time amend or modify the Health Plan without the consent of the Board

of Retirement, the Eligible Retired Participants and their Spouses and Dependents. Any modification, alteration, or amendment of the Health Plan made in accordance with this Section, may be made retroactively if deemed necessary or appropriate by the Board of Supervisors. A certified copy of the resolution of the Board of Supervisors making such amendment shall be delivered to the Board of Retirement, Plan Administrator, and the Health Plan shall be amended in the manner and effective as of the date set forth in such resolution. The Board of Retirement, the County, Eligible Retired Participants, and their Spouses and Dependents, and all others having any interest under the 401(h) Account shall be bound thereby.

(b) The Board of Supervisors may amend or modify the 401(h) Regulations, subject to applicable law and to the Board of Retirement's duties and powers in Sections 6.04, 6.05 and 6.07 of these Regulations. In any event, the Plan Administrator shall nonetheless substantiate and pay claims submitted prior to the amendment or modifications in accordance with this Article.

**11.02 Amendment for Qualification of Plan.** It is the intent of the Board of Supervisors that the System Trust Fund shall be and remain qualified under Code Section 401(a). The Board of Supervisors may make any modifications, alterations, or amendments to the 401(h) Regulations necessary to obtain and retain approval of the Secretary of the Treasury or the Secretary's delegate of the Plan as qualified under the provisions of the Code or other federal legislation, as now in effect or hereafter enacted, and the regulations issued thereunder. A certified copy of the action of the Board of Supervisors making such amendment shall be delivered to the Board of Retirement and the Plan Administrator, and the 401(h) Regulations shall be amended in the manner and effective as of the date set forth in such resolution. The Board of Retirement and the County and the Eligible Retired Participants, and their Spouses and Dependents, and all others having any interest under the 401(h) Regulations shall be bound thereby.

**11.03 Termination by the Participating Employer.** As provided in CERL Section 31694.1(g), a Participating Employer may elect to terminate participation in the 401(h) Account, with 60 days' written notice to the Board of Retirement.

**11.04 Termination by the Board of Retirement.** As provided in CERL Section 31694.1(g), the Board of Retirement may terminate the participation of any Participating Employer in the 401(h) Account with 60 days' written notice. In such an event, the Participating Employer shall have 60 days to cure the reasons for the termination.

## **ARTICLE XII** **MISCELLANEOUS**

**12.01 Federal Taxes.** The Board of Supervisors does not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in the Health Plan.

**12.02 Entire Agreement.** The Health Plan and the 401(h) Regulations, including any properly adopted or executed amendments thereof, shall constitute the total agreement regarding

the Health Plan and the 401(h) Regulations. No oral statement regarding the Health Plan and the 401(h) Regulations may be relied upon by any Eligible Retired Participant or other person.

**12.03 Conflicts.** In resolving any conflict between provisions of the Health Plan and 401(h) Regulations and in resolving any other uncertainty as to the meaning or intention of any provision of the 401(h) Regulations, the interpretation that:

(a) causes the 401(h) Account to comply in all respects with the provisions of Code Section 401(h),

(b) causes the System Trust Fund to remain in compliance with all applicable requirements of the Code, and

(c) causes the 401(h) Account to comply with all applicable State statutes and rules, shall prevail over any different interpretation.

**12.04 Limitation on Rights.**

(a) Neither the establishment or maintenance of the Health Plan or the 401(h) Account, nor any amendment thereof nor any act or omission under the Health Plan (or resulting from the operation of the Plan) or the 401(h) Account shall be construed:

(1) As creating any responsibility or liability of the County for the validity or effect of the Health Plan or 401(h) Account;

(2) As a contract between the County and any other person.

**12.05 USERRA Compliance.** Notwithstanding any provision of the 401(h) Regulations to the contrary, contributions, benefits, and service credit with respect to qualified military service shall be provided in accordance with Code Section 414(u), and as required by the Uniformed Services Employment and Reemployment Rights Act ("USERRA").

**12.06 Erroneous Payments.** If the Board of Retirement or Plan Administrator makes any payment that according to the terms of the Health Plan or the 401(h) Regulations and the benefits provided hereunder should not have been made, the Board of Retirement or Plan Administrator may recover that incorrect payment, by whatever means necessary, whether or not it was made due to the error of the Board of Retirement or Plan Administrator from the person to whom it was made or from any other appropriate party.

**12.07 Release.** Any payment made with respect to any Eligible Retired Participant, or his/her Spouse or Dependents shall, to the extent thereof, be in full satisfaction of the claim of such Eligible Retired Participant being paid thereby and the Board of Retirement may condition payment thereof on the delivery of the duly executed receipt and release in such form as may be determined by the Board of Retirement.

**12.08 Liability.** The Board of Retirement or Plan Administrator shall not incur any liability in acting upon any notice, request, signed letter, telegram or other paper or document or

electronic transmission believed by the Board of Retirement or Plan Administrator to be genuine or to be executed or sent by an authorized person.

**12.09 Governing Laws.** Except to the extent pre-empted by federal law, the laws of the State of California shall apply in determining the construction and validity of these 401(h) Regulations.

**12.10 Severability.** If any provision of the 401(h) Regulations shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the 401(h) Regulations shall continue to be fully effective to the extent practicable.

**12.11 Supersession.** The terms of these 401(h) Regulations shall supersede any previous agreement between the parties pertaining to the 401(h) Account.

## EXHIBIT A

### ADMINISTRATIVE AGREEMENT

As provided in Section 31694 of the County Employees Retirement Law of 1937, the Board of Retirement and the Board of Supervisors hereby agree to administer the terms of the Agreement and Regulations Governing Payment of Retiree Health Benefits from a 401(h) Account.

Pursuant to CERL Section 31694.1(f), the Board of Retirement and the County Board of Supervisors specifically agree as follows:

(a) The Board of Retirement shall establish and keep all accounting records with respect to the 401(h) Account in accordance with generally accepted accounting principles. However, the County has the right to audit and review all such documents and records at any time during regular business hours or upon reasonable notice;

(b) The Board of Retirement may communicate with Eligible Retired Participants as to their benefits and obligations. However, any communication relating to Medical Care benefits provided pursuant to these 401(h) Regulations must clearly state that the County reserves the right to alter or repeal the benefits;

(c) The System shall provide periodic reports (not less frequently than annually) to the County regarding its actions under these 401(h) Regulations;

(d) The System understands and agrees that the terms of these 401(h) Regulations themselves, and the benefits approved by the Board of Supervisors thereunder, shall control, and may not be modified, altered, amended, augmented or superseded by any communications from the System to employees, participants, and beneficiaries concerning the Medical Care benefits provided pursuant to these 401(h) Regulations;

(e) To the extent not already treated as valuation assets, all remaining assets previously segregated in any accounts reserved for the \$15 per month per credited year of service benefits heretofore paid by SBCERS shall be treated as valuation assets backstopping the basic pension benefit; further, any such reserve account or accounts shall be closed.

(f) Upon the adoption of these 401(h) regulations, all remaining assets previously segregated in any accounts reserved for the \$4 per month per credited year of service benefits heretofore paid by SBCERS shall be treated as valuation assets backstopping the basic pension benefit, with the exception of such limited assets as are necessary to ensure payment of that benefit through December 31, 2008. At that time, or at such time as the County begins paying the \$4 benefit specified in Section 7.01(c), whichever comes first: (i) any remaining assets withheld in accordance with the provision set forth immediately above shall thereafter be treated as valuation assets backstopping the basic pension benefit, and (ii) any such reserve account or accounts shall be closed.

Pursuant to Resolution No. \_\_\_\_\_, these Regulations constitute a written agreement for purposes of Sections 31694 and 31694.1 of the County Employees Retirement Law of 1937 and are executed and become part of the System's plan document as of the effective date.