

**CONTRA COSTA COUNTY
REPLACEMENT
BENEFITS PLAN**

**(Adopted October 24, 2006)
(Amended and Restated December 11, 2012)**

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CONTRA COSTA COUNTY REPLACEMENT BENEFITS PLAN

Article 1. Establishment and Status of Plan

Article 1.1 Establishment

The County of Contra Costa, State of California, hereby establishes and adopts a retirement plan entitled the Contra Costa County Replacement Benefits Plan” (the “Plan”) to provide annual retirement benefits otherwise earned by and payable to certain members of the Contra Costa County Employees’ Retirement Association (“CCCERA”) but which are limited by the rules of Section 415(b) of the Internal Revenue Code of 1986, as amended (“Code”). CCCERA 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.

Article 1.2 Effective Date

This Plan shall be effective, and benefits shall be payable from this Plan, for periods beginning as of January 1, 2006 or as of such other date on which this plan is made effective by the Board of Supervisors for retired Members who were employees of the County, or for retired Members who were employees of a District, as provided herein. Benefits payable as of the Effective Date shall include amounts that were otherwise payable under Government Code sections 31899 et seq. for any prior period of time, without interest.

Article 1.3 Portion of CCCERA

This Plan shall be deemed a “portion” of CCCERA solely to the extent required by, and within the meaning of Section 415(m)(3) of the Code as in effect on January 1, 2006, and not for any other purpose.

Article 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 CCCERA, and to their eligible survivors, that part of the annual benefit otherwise payable under CCCERA 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 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.

Article 1.5 PEPRA Compliance

(a) In accordance with Government Code section 7522.43, this Plan and the benefits provided hereunder are not offered to any new employees of the County or to any new employees of a District as defined in the California Public Employees Pension Reform Act (“PEPRA.”) Each employee of the County who is not a new employee as defined in PEPRA is called a current employee or a former employee of the County. Each employee of a District who is not a new employee as defined in PEPRA is called a current or former employee of a District.

(b) In accordance with Government Code section 7522.43, the group to which this Plan and the benefits provided hereunder is offered (the “Group”) is every current and former employee of the County, and every former and current employee of a District, who is not a new employee as defined in PEPRA and whose benefits under CCCERA are now or may in the future be limited by Section 415 (b) for periods on and after the Effective Date and who is not prohibited from receiving benefits from a replacement benefits plan under the terms of PEPRA.

(c) The only persons who receive benefits under this Plan are those current and former employees of the County or of a District (and their Eligible Survivors) whose benefits payable by CCCERA are actually limited by Section 415 (b) now or in the future. This Plan calls such current and former employees of the County or of a District “Participants.” However, the broader group to which this Plan and the benefits provided hereunder are offered (the “Group”) includes every current and former employee of the County and every current and former employee of a District, who is not a new employee as defined in PEPRA. This distinction between “Participants” and the “Group” is required because precisely which members of the Group actually are Participants who receive benefits hereunder may vary year by year depending on multiple factors including federal tax rules.

Article 2. Definitions

Article 2.1 Plan Definitions

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

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

Board of Supervisors means the Board of Supervisors of the County of Contra Costa.

CCCERA means the Contra Costa County Employees' Retirement Association.

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 Article 3.2 hereof.

County means the County of Contra Costa, State of California.

District means any public agency other than the County which is included in CCCERA pursuant to the CERL and which is governed by the Board of Supervisors.

Effective Date means the first date with respect to which benefits are payable under this Plan as set out in Article 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 CCCERA on the death of the Member.

Member means a member, as defined in the CERL, of CCCERA who is a former or current employee of the County, or who is a former or current employee of a District, and who on and after January 1, 2013, is not a new employee as defined in PEPPRA and who is in the Group to which this Plan is offered as provided in Article 1.5.

Participant means a retired member who participates in this Plan pursuant to Article 3 hereof. An Eligible Survivor is not a Participant in this Plan, but is a beneficiary who receives benefits under this Plan with respect to a Participant or Member.

PEPPRA means the California Public Employees Pension Reform Act.

Plan means this Contra Costa County Replacement Benefits Plan.

Plan Administrator means the County of Contra Costa, State of California.

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

Section 415 means Section 415 of the Code.

Article 3. Participation

Article 3.1 CCCERA Members With Benefits Limited by Section 415(b)

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

Article 3.2 Commencement of Participation

A retired Member who is eligible under Article 3.1 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 CCCERA cannot be fully paid because of the limits of Section 415(b). This date is the Commencement Date.

Article 3.3 Cessation of Participation

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

Article 3.4 Recommencement of Participation

If a Participant has ceased participation in this Plan, would be eligible if his or her benefits were limited by Section 415(b) as provided in Article 3.1, and at a later date the full payment of his or her CCCERA benefits is again limited by Section 415(b), he or she shall again commence participation as provided in Article 3.2 hereof and shall cease participation as provided in Article 3.3 hereof.

Article 3.5 Eligible Survivors

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 CCCERA 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 CCCERA benefit is no longer limited by Section 415(b) and therefore can be fully paid by CCCERA. The Eligible Survivor's benefits paid under this Plan shall recommence at a later date if full payment of his or her CCCERA benefits is again limited by Section 415(b), and shall thereafter cease as of the next date that full payment of the CCCERA benefit is no longer limited by Section 415(b).

Article 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

Article 4.1 Member to Provide Notice and Information For Calculation of Benefits

(a) To receive benefits under this Plan in any Plan Year, a Participant or Eligible Survivor must:

(1) Notify the County, in writing at the time and in the manner specified by the Plan Administrator, with written supporting documentation from CCCERA reasonably acceptable to the Plan Administrator, that his or her benefits payable from CCCERA cannot be fully paid because of the limits of Section 415(b); and

(2) After giving such notice to the County, obtain from CCCERA and provide to the County all information necessary or appropriate, as determined by the Plan Administrator, for the County to fulfill its obligations under this Plan including but not limited to the determination and redetermination of CCCERA benefits and the form of payment of CCCERA benefits; and

(3) To the extent necessary or appropriate as determined by the Plan Administrator, each time his or her benefits from CCCERA change, comply with subsections (1) and (2) above; and

(4) To the extent he or she receives notice from CCCERA that the limits of Section 415(b) either no longer apply to the receipt of benefits or the amount of benefits payable by CCCERA on account of the limits of section 415(b) have changed, so notify the County in writing, at the time and in the manner specified by the Plan Administrator.

(5) The Plan will not pay interest on benefits, and there will be no actuarial adjustment of benefits if claims for benefits are made after the time specified by the Plan Administrator.

Article 4.2 Amount of Benefit – Initial Determination

(a) Upon receipt of the notice and information from the Participant required by Article 4.1, the Plan Administrator shall initially determine the benefit to be paid under this Plan in any Plan Year to a Participant at the Participant's Commencement Date under the following steps.

(1) Determine the Participant's benefits payable at the time of the Commencement Date under CCCERA without regard to the limits of Section 415(b) and after taking into account the form of CCCERA benefit selected by the Participant.

(2) Determine the amount of the Participant's CCCERA 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) to the extent provided by the Code, after taking into account the form of CCCERA 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 CCCERA under the then current benefit payment limits of Section 415(b), ignoring any benefits determined under (2) to the extent provided by the Code. 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 Participant in any year will be the sum of the benefit paid under this Plan and the benefit paid under CCCERA, 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 CCCERA is the sum of the amounts in (2), (4) and (5) above. However, this Plan and CCCERA shall be separate entities and shall be administered separately. In addition, separate checks will be paid for the benefits under this Plan and CCCERA; the Plan Administrator shall provide separate tax reporting for the benefits paid under this Plan; and no assets of CCCERA shall be used, directly or indirectly, to pay for benefits or administration or any other costs of this Plan.

Article 4.3 Amount of Benefit – Redetermination

(a) The Plan Administrator may rely on the determination by CCCERA, for purposes of administering CCCERA in accordance with Section 415(b) of the amounts set out under each of steps (1) through (5) in paragraph (a) of Article 4.2.

(b) 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 Article 4.2(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 CCCERA, and (ii) cost of living adjustments and other changes (if any) to the maximum benefit limits established by Section 415(b).

(c) At the Plan Administrator's discretion, the amount of every Participant's and Eligible Survivor's benefits may be redetermined as of 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 CCCERA benefits.

(d) The Plan Administrator may rely on the redetermination by CCCERA for purposes of administering CCCERA, in accordance with Section 415(b), of any amounts in this Article.

Article 4.4 Amount of Benefits – 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 CCCERA 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 Articles 4.1 or 4.2, as applicable, the amounts due to the Eligible Survivor for the amounts due to the Participant.

Article 4.5 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 CCCERA have reached the maximum annual benefit that CCCERA can pay under Section 415(b) for that Plan Year. The day after the maximum annual benefit payment from CCCERA is reached is the Beginning Date for the Participant or Eligible Survivor for that Plan Year. The Beginning Date may change from Plan Year to Plan Year as the amount payable under this Plan is redetermined.

(b) The amount of benefits provided under this Plan shall be paid annually, no later than the end of the Plan Year in which benefits are payable under this Plan to a Participant or to an Eligible Survivor.

(c) If a retired Participant is reemployed by the County or a District and on reemployment his or her CCCERA 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 CCCERA. At that time, a recalculation shall be made under Article 4.3 hereof, treating the first month for which CCCERA benefits resume as if it were a date of recalculation under Article 4.2. Similar rules shall apply if the benefits of an Eligible Survivor under CCCERA cease (or resume) under CCCERA for any reason, including without limitation ceasing to be an Eligible Survivor.

Article 4.6 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 CCCERA. For example, if the CCCERA benefit is paid as a 100% pension to the member and 50% survivor benefit to his or her surviving spouse, the same benefit form shall be paid under this Plan.

Article 4.7 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.

Article 4.8 Determination Solely by Plan Administrator

The Plan Administrator shall have the sole authority and discretion to determine the amount of benefits (if any), payable under this Plan.

Article 5. Exemption from Process; Assignments Prohibited

Article 5.1 Prohibition Against Assignment

(a) 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.

(b) Nothing in this Plan shall prohibit a Participant or Eligible Survivor from voluntarily agreeing to the assignment of benefits payable under this Plan. Such assignment shall be in accordance with rules established by the Plan Administrator and may be by payroll withholding or any other mechanism that is approved by the Plan Administrator, at its sole discretion.

Article 5.2 Payment Upon Marital Dissolution or Legal Separation

The provisions of Article 5.1 will not apply in the case of any property settlements upon marital (or registered domestic partner) 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 Article 5.1 will apply in the case of any property settlement upon marital (or registered domestic partner) dissolution or legal separation which is made in accordance with a domestic relations order that is not qualified in accordance with this Article.

When the County is served with a domestic relations order involving a Participant, the Plan Administrator shall:

(a) Notify the Participant (or Eligible Survivor) and the former spouse, registered domestic partner 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 Article, “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, registered domestic partner, former registered domestic partner, child, or other dependent of a Participant. A domestic relations order shall not be considered a qualified DRO with respect to this Plan if it is inconsistent with the Plan.

Article 6. Administration

Article 6.1 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. 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 or 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 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 her Eligible Survivor.

Article 6.2 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 CCCERA, Districts, Members, Participants and Eligible Survivors or other individuals acting on their behalf.

Article 6.3 Costs of Administration

The costs of administration of the Plan shall be paid by the County and the 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 CCCERA. Further, no assets of CCCERA shall be used, directly or indirectly, to pay for benefits or administration or any other costs (direct or indirect) of this Plan.

Article 6.4 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 will not pay interest on benefits, and there will be no actuarial adjustment of benefits, if the claim is made after the time specified 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 had made the claim. The decision of the Plan Administrator shall be final and binding on all parties.

Article 6.5 Correction of Errors

If an error or omission is discovered in the administration of the Plan, the Plan Administrator shall take such action as may be necessary or appropriate to correct the error. Any overpayment of benefits from this plan shall be returned to the Plan Administrator immediately on demand by the Plan Administrator with interest as calculated by the Plan Administrator. The Plan Administrator may take all necessary or appropriate action including but not limited to filing suit, to recover overpayments of benefits under the Plan and interest thereon.

Overpayments and interest thereon may be set off against subsequent benefit payments owed under the Plan. Additionally, any person who receives or holds any overpayments shall hold such amounts plus interest thereon in trust for the benefit of the Plan Administrator.

Article 6.6 Written Communications Mailed

All written notices or communications to Participants and 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 7 Source of Benefits

Article 7.1 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 the Districts, and shall have only general creditor status with respect to the County and the 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. The

County may require reimbursement from Districts for their proportionate share of all costs, charges and expenses relating to the Plan.

Article 7.2 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.

Article 7.3 No use of CCCERA Assets

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

Article 8 Miscellaneous

Article 8.1 Applicable Law

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

Article 8.2 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.

Article 8.3 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 CCCERA without regard to the limitations of Section 415 and what can be provided by CCCERA 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 CCCERA or under any other program maintained by the County or Districts.

Article 9 Amendment or Termination of Plan

Article 9.1 Right to Amend or Terminate

The County has the right to amend or terminate this Plan at any time and in any manner for any reason whatsoever and may do so in its sole discretion.

Article 9.2 No Vested Rights Created

No employee or retiree of the County or of a District shall have any vested right to continuance of the Plan or to continuance of benefits thereunder. The County reserves the right, without limitation, at any time to terminate or modify the Plan, and such termination or modification shall supersede and override any claim to “vested rights” that any person may otherwise have with respect to benefits under this Plan.

Executed on this _____ day of _____ 2012 pursuant to Resolution Number 2012/504 of the Board of Supervisors of the County of Contra Costa adopted on December 11, 2012.

Chair of the Board of Supervisors of Contra Costa County