

**KERN COUNTY
REPLACEMENT BENEFITS PLAN**

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KERN COUNTY REPLACEMENT BENEFITS PLAN

Article 1 — Establishment and Status of Plan

1.1 Establishment

The County of Kern, State of California, hereby establishes and adopts a retirement plan entitled the "Kern County Replacement Benefits Plan" (the "Plan") to provide the annual retirement benefits otherwise earned by and payable to, or with respect to, Members of the Kern County Employees' Retirement Association ("KCERA") but which are limited by the rules of Section 415(b) of the Internal Revenue Code of 1986, as amended ("Code"). KCERA 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, 2003 or as of the date that this plan is adopted by a District, as provided herein, if later.

1.3 "Portion of KCERA"

This Plan shall be deemed a "portion" of KCERA solely to the extent required by, and within the meaning of, Section 415(m)(3) of the Code as in effect on January 1, 2003, 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 KCERA, and to their Eligible Survivors, that part of the annual benefit otherwise payable under KCERA 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.

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Article 2 — Definitions

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 Kern.

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 Kern, State of California.

District means any agency other than the County which is included in KCERA 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 KCERA on the death of the Member.

KCERA means the Kern County Employees' Retirement Association.

Member means a member, as defined in the CERL, of KCERA 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. 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.

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Plan means this Kern County Replacement Benefits Plan.

Plan Administrator means the County of Kern, 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

3.1 KCERA Members With Benefits Limited by Section 415(b)

(a) Participation in this Plan is limited solely to retired Members whose benefits payable by KCERA 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 KCERA 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 KCERA are no longer limited by Section 415(b) and therefore can be fully paid by KCERA. Participation shall also cease on the retired Member's death or when the retired Member's KCERA 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

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

3.4 Recommencement of Participation

If a Participant has ceased participation in this Plan but at a later date the full payment of his or her KCERA 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 KCERA 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 KCERA benefit is no longer limited by Section 415(b) and therefore can be fully paid by KCERA. The Eligible Survivor's benefits paid under this Plan shall recommence at a later date if full payment of his or her KCERA benefits is again limited by Section 415(b), and shall thereafter cease as of the next date that full payment of the KCERA 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 provided in section 6.2 of the Plan or as otherwise required by law.

Article 4 — Retirement Benefits Payable

4.1 Amount of Benefit – Initial Determination

(a) The initial benefit paid under this Plan to any Participant shall be the difference between the benefit payable to the Participant under KCERA if it were not limited by section 415(b) of the Code, and the benefit actually payable to the Participant by KCERA after reduction in accordance with section 415 (b) of the

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Code. The amount of this benefit shall be determined by KCERA and shall be determined as of the Commencement Date.

(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 KCERA, including amounts attributable to both County and after tax Member contributions. However, this Plan and KCERA shall be separate entities and shall be administered separately. In addition, separate checks will be paid for the benefits under this Plan and KCERA; the Plan Administrator shall provide separate tax reporting for the benefits paid under this Plan; and no assets of KCERA 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 benefit calculations performed by KCERA for purposes of administering KCERA in accordance with Section 415(b).

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 may be redetermined by KCERA as it deems necessary for the administration of the KCERA in accordance with Section 415(b). Redeterminations may also be performed as necessary due to (i) cost of living adjustments and other changes (if any) to the benefits provided under KCERA, and (ii) cost of living adjustments, and other changes (if any) to the maximum benefit limits established by Section 415(b).

(b) The amount of every Participant's and Eligible Survivor's benefits may be redetermined at a date or dates 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 KCERA benefits.

(c) The Plan Administrator shall rely on the redetermination performed by KCERA for purposes of administering KCERA 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 KCERA after the death of a Member or Participant.

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(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 KCERA have reached the maximum annual benefit that KCERA can pay under Section 415(b) for that Plan Year. The day after the maximum annual benefit payment from KCERA 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 monthly starting as of the Beginning 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 KCERA 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 KCERA. At that time, a recalculation shall be made under Section 4.2 hereof, treating the first month for which KCERA 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 KCERA cease (or resume) under KCERA 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 KCERA. For example, if the KCERA 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.

4.6 Taxes

The Plan Administrator shall have full authority to withhold any and all taxes that

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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.

Article 5 -- Participation in Plan by Districts

5.1 Districts May Participate in this Plan

(a) Each District that is included in KCERA pursuant to the CERL and uses the County payroll system 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 and their Eligible Survivors whose benefits from KCERA 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.

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(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 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

A District may cease participation in this Plan at any time with the written agreement of the County. Additionally, 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, which provides that it withdraws from participation in and sponsorship of this Plan.

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(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 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. District shall also cease participation in and sponsorship of this Plan and be required to withdraw from this Plan if it ceases to be included in KCERA or ceases to use the County payroll system.

(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.

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(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

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.

Nothing in this Plan shall prohibit a Participant or Eligible Survivor from voluntarily agreeing to the alienation or assignment of benefits payable under this Plan. Such alienation or 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.

6.2 Payment Upon Marital Dissolution or Legal Separation

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The provisions of Section 6.1 will not apply in the case of any property settlements upon marital dissolution or legal separation that 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

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:

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- (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 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.

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

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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 KCERA. Further, no assets of KCERA 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 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

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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 fund 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 KCERA Assets

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

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.

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

Article 10 — Amendment or Termination of Plan

10.1 Right to Amend

Except as provided in its Memorandum of Understanding with the KCERA, 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 retirement benefits that are otherwise earned by and payable to member of KCERA but which are limited by the rules of Section 415 of the Code.

10.2 Preservation of KCERA Tax Status

This Plan shall not in any way jeopardize the tax-qualified status of KCERA. 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.

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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.

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APPENDIX 1 – PARTICIPATING DISTRICTS

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