

#12



Memorandum

Date: September 12, 2008
To: Clerk of the Board
From: Jeri Muth, Assistant HR Director
Subject: 09-16-08 Board Agenda Item D-12
cc: Dawn Fargas, CEO/HR

REPLACEMENT # 1
DATE 9/12/08 TIME 11:30 am

Attached is a corrected version of Attachment C plus to the September 16, 2008 Board Agenda Item # D-12 – Adoption of a 401(h) Plan for the Purpose of Funding a Retiree Medical Program for Eligible Retired County Participants. In addition to the original, 12 copies are also attached.

Please replace Attachment C of the referenced Agenda Item with the corrected version. Thank you for your assistance. If you have any questions, you can reach me at extension 2816.

RESOLUTION OF THE BOARD OF SUPERVISORS
COUNTY OF SANTA BARBARA, STATE OF CALIFORNIA

A RESOLUTION PROVIDING FOR THE)
FUNDING OF A 401(h) ACCOUNT UNDER) Resolution No. _____
I.R.C. 401(h))

WHEREAS, it is in the best interest of employees and retirees of the County of Santa Barbara ("County"), and the beneficiaries of those employees and retirees that the Santa Barbara County Employees' Retirement System ("System") be maintained as a qualified pension plan under Internal Revenue Code ("Code") Section 401(a);

WHEREAS, the County must report on its financial statements its liabilities for other post-employment benefits, such as medical care, pursuant to Governmental Accounting Standards Board Statement 45, which requires actuarial analysis to determine the County's liability and the annual required contribution for that liability;

WHEREAS, the County has determined that certain Eligible Retired Participants will receive a health plan subsidy from the System, which subsidy constitutes an "other post-employment benefit;"

WHEREAS, the County has studied various options and has consulted with the System, legal counsel, actuaries, tax counsel, and others regarding the plan design and funding for that health plan subsidy;

WHEREAS, the System, as a qualified plan, may pay medical benefits on a tax-preferred basis to retirees, and their spouses and dependents, through the establishment of a 401(h) account within the Trust Fund for the System;

WHEREAS, the Board of Supervisors has been authorized by state law to establish a health plan for retirees, and their spouses and dependents, and may provide for the funding of that health plan through a contribution of funds into a Post Employment Benefits Trust Account;

WHEREAS, the Board of Supervisors has not previously formally approved the provision of the current level of medical benefits to current retirees, and it now wishes to provide such benefits through the vehicle of a 401(h) Account in the System;

WHEREAS, upon the action of the Board of Supervisors to provide for funding of a Post-Employment Benefits Trust Account, the Board of Retirement of the System may establish an account within the Santa Barbara County Retirement System under Internal Revenue Code Section 401(h);

WHEREAS, the Board of Supervisors wishes to use the attached 401(h) Regulations for the purposes specified in Sections 31694 and 31694.1 of the County Employees Retirement Law of 1937 ("CERL"), to establish the Post-Employment Benefits Trust Account as a 401(h) account, and to constitute the written agreement described therein;

WHEREAS, the establishment of a 401(h) account is governed by the provisions of Code Section 401(h) and Treasury Regulation Section 1.401-14 ("Applicable Treasury Regulations");

WHEREAS, the 401(h) Account can only be funded by the County's employer contributions, designated for this purpose; and

WHEREAS, the Board of Supervisors further has determined that, in connection with adoption of a 401(h) Account, it is appropriate to entered into the document attached hereto as Exhibit A regarding the conduct of pending litigation between the County and SBCERS.

NOW, THEREFORE, IT IS HEREBY RESOLVED AS FOLLOWS:

A. Action Pursuant to California Government Code Section 31694(a)

The Board of Supervisors by this Resolution is acting pursuant to California Government Code Section 31694(a). The Board of Supervisors intends to operate under CERL 31694 and 31694.1 in connection with the establishment of the 401(h) account.

The Board of Supervisors may amend or rescind this resolution at any time. 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 County intends simply to provide a tax-compliant means for the provision of supplemental retiree health benefits.

B. Adoption of Regulations Establishing the 401(h) Account

The Agreement and Regulations Governing Payment of Retiree Health Benefits from a 401(h) Account ("401(h) Regulations") are hereby approved pursuant to Government Code Sections 31694 and 31694.1. The 401(h) Regulations are part of the System's plan document for purposes of Internal Revenue Code Sections 401(a) and 401(h) and the Applicable Treasury Regulations. The 401(h) Regulations also provide terms of the Board of Retirement's Administration of the 401(h) Account, and shall constitute the Agreement of the Board of Supervisors and the Board of Retirement.

C. County Contribution to the 401(h) Account for FY 2008-09

1. In accordance with Code Section 401(h) and Applicable Treasury Regulations, provided that the Board of Retirement timely agrees to the 401(h) Regulations, the County shall contribute to the 401(h) account for the fiscal year FY 2008-09 an amount determined by the County's actuary that will not exceed the lesser of the following:
 - a. the annual required contribution for the health benefits for Eligible Retired Participants (as defined in the 401(h) Regulations); or
 - b. 25% of the total contributions to the System, excluding past service costs as defined in the 401(h) Regulations.

2. This contribution shall be made at the same time that County contributions are made to the System, or following agreement by the Board of Retirement to the 401(h) Regulations, whichever is later.
3. At the time any contribution is made to the 401(h) Account, the Auditor-Controller shall designate in writing to the Board of Retirement of the System that such contribution is being made only to the 401(h) Account.
4. This contribution is only for FY 2008-09. Future contributions shall be determined by the Board of Supervisors on an annual basis.

D. Execution of Agreement

The Board of Supervisors hereby authorizes the Chair of the Board of Supervisors to execute an agreement substantially in the form and substance as that which is attached hereto as Exhibit A, and made a part hereof by this reference.

PASSED AND ADOPTED by the Board of Supervisors of the County of Santa Barbara, State of California, this _____ day of _____, 2008 by the following vote:

AYES:

NOES:

ABSENT:

SALUD CARBAJAL
CHAIR, BOARD OF SUPERVISORS

MICHAEL F. BROWN
CLERK OF THE BOARD

By: _____ (SEAL)
Deputy

APPROVED AS TO FORM:
DENNIS MARSHALL
COUNTY COUNSEL

By: _____
Deputy County Counsel