

**Reimbursement Agreement
by and between the County of Fresno and the
Fresno County Retirement Association
Regarding Board of Retirement Elections**

This Reimbursement Agreement by and between the County of Fresno and the Fresno County Retirement Association Regarding Board of Retirement Elections ("Agreement") is made and entered into this 26th day of September, 2017 by and between the COUNTY OF FRESNO ("COUNTY") and the FRESNO COUNTY RETIREMENT ASSOCIATION ("ASSOCIATION"). COUNTY and ASSOCIATION are each a "Party" to this Agreement, and together are "Parties" to this Agreement.

RECITALS

WHEREAS, on November 25, 1969, the Board of Supervisors of the COUNTY adopted, and thereafter from time to time amended, the Board of Retirement Elections Procedures, pursuant to the County Employees' Retirement Law of 1937 ("1937 Act") for the elections of active member trustees and retired member trustees, including the alternate retired member trustee, to the Board of Retirement of the ASSOCIATION ("Board of Retirement"); and

WHEREAS, the Board of Retirement Elections Procedures in effect as of the Effective Date (as defined in Section 6, herein) are provided by the resolution of the Board of Supervisors of the COUNTY, adopted on December 8, 2015, as Resolution No. 15-586; and

WHEREAS Section I of the Board of Retirement Elections Procedures states that pursuant to an agreement entered into between the COUNTY and the ASSOCIATION, the Fresno County Clerk/Registrar of Voters ("Registrar of Voters") shall be reimbursed for all of its election costs by the ASSOCIATION within forty-five (45) calendar days after any Board of Retirement election referred to therein; and

WHEREAS, the COUNTY and the ASSOCIATION desire to enter into this Agreement to memorialize the terms and conditions by which the ASSOCIATION shall reimburse the Registrar of Voters for all of its election costs related to any Board of Retirement elections referred to in the Board of Retirement Election Procedures.

NOW, THEREFORE, in consideration of their mutual promises, covenants and agreements, the receipt and adequacy of which are hereby acknowledged by the Parties, the Parties agree as follows:

1. BOARD OF RETIREMENT ELECTIONS PROCEDURES.

1.1 This Agreement provides the terms and conditions by which the ASSOCIATION shall reimburse the Registrar of Voters for all of its election costs related

to any Board of Retirement elections referred to in the Board of Retirement Election Procedures.

1.2 Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall alter or amend any of the Parties' respective rights or obligations under the Board of Retirement Elections Procedures or the 1937 Act.

1.3 If further amendments to the Board of Retirement Elections Procedures adopted by the Board of Supervisors of the COUNTY, or new Board of Retirement Elections Procedures adopted by the Board of Supervisors of the COUNTY, require that this Agreement shall be amended, or that there shall be a subsequent agreement to this Agreement regarding the subject matter of this Agreement, the Parties will pursue such amendments to this Agreement or such subsequent agreement, subject to their respective rights to negotiate for terms and conditions that are mutually agreeable by the Parties.

2. ASSOCIATION'S AUTHORITY AND DUTIES UNDER BOARD OF RETIREMENT ELECTIONS PROCEDURES AND THE 1937 ACT.

The COUNTY acknowledges that the ASSOCIATION, acting through its Board of Retirement and its personnel, will have such authority and perform those duties of the ASSOCIATION, including its Board of Retirement, referred to in the Board of Retirement Elections Procedures. The provisions of this Section 2 are declaratory of the ASSOCIATION's, including its Board of Retirement's, authority and duties under the Board of Retirement Elections Procedures and the 1937 Act, in effect as of the Effective Date and as they may be amended from time to time, with respect to such functions, and neither limit nor expand such authority or duties.

3. COUNTY'S AUTHORITY AND DUTIES UNDER BOARD OF RETIREMENT ELECTIONS PROCEDURES AND THE 1937 ACT.

The ASSOCIATION acknowledges that the Registrar of Voters will have such authority and perform those elections services for the ASSOCIATION in relation to any Board of Retirement elections referred to in the Board of Retirement Election Procedures. In performing such elections services for the ASSOCIATION thereunder, the Registrar of Voters, including its personnel, shall exercise the same degree of care that they would in performing the same or similar tasks for the COUNTY, consistent with the COUNTY's general employment policies and practices. The provisions of this Section 3 are declaratory of the COUNTY's, including the Board of Supervisors' of the COUNTY and the Registrar of Voters', authority and duties under the Board of Retirement Elections Procedures and the 1937 Act, in effect as of the Effective Date and as they may be amended from time to time, with respect to such functions, and neither limit nor expand such authority or duties.

4. REIMBURSEMENT.

4.1 The ASSOCIATION shall reimburse the Registrar of Voters for all of its election costs incurred, which are related to any Board of Retirement elections referred to in the Board of Retirement Election Procedures.

4.1.1 For elections services performed for the ASSOCIATION, the Registrar of Voters shall be reimbursed by the ASSOCIATION at the COUNTY's then-current fee rates, which include all of Registrar of Voters' actual costs for salaries paid and COUNTY benefits provided to Registrar of Voters' personnel performing such services. Such fee rates will vary depending on the Registrar of Voters' personnel providing the elections services. Such fee rates will be in accordance with the COUNTY's Master Schedule of Fees, as adopted, changed, supplemented, or increased from time to time by the Board of Supervisors of the COUNTY. The ASSOCIATION acknowledges that the COUNTY may adopt any new fees for its Master Schedule of Fee, or change, supplement, or increase any of its fee rates for its Master Schedule of Fees, from time to time without being required to give the ASSOCIATION prior notice of such adoption, change, supplement, or increase.

4.1.2 In addition, the Registrar of Voters' election costs may include the actual costs of any and all expenses incidental to the Registrar of Voters' performance of elections services referred to herein, including, but not limited to, office overhead, equipment, postage, ballots and ballot materials, supplies, and any other direct or indirect costs and expenses.

4.2 The ASSOCIATION's reimbursement to the Registrar of Voters for any services performed or any expenses incurred shall include any applicable taxes, provided however, nothing herein shall be interpreted to mean that the ASSOCIATION shall pay the COUNTY for any charge, cost, fee, tax, payment or expense from which the ASSOCIATION would be exempt under the law.

4.3 The ASSOCIATION's obligations under this Section 4 for services performed or expenses incurred by the Registrar of Voters during the Initial Term of this Agreement, or for services performed or expenses incurred by the Registrar of Voters during any Renewal Term of this Agreement, respectively, shall survive the termination of this Agreement.

5. Request for Reimbursement and Payment.

5.1 Within thirty (30) calendar days following the relevant Board of Retirement election, the Registrar of Voters shall transmit, via email, to the ASSOCIATION's Retirement Administrator, a request for the reimbursement of the Registrar of Voters' election costs, which request will be through any means of payment processing then-currently available to both the ASSOCIATION and COUNTY, including, but not limited to, electronic funds transfer, such as a journal voucher, or paper invoice. The Registrar of Voter's requests for payment shall be itemized to include the name or initials of the

key Registrar of Voters personnel performing the elections service, the work performed, the date the work was performed, the fee rate of payment, and any expenses incidental to the performance of services herein.

5.2 Payment of the amount requested by the Registrar of Voters under Section 5.1, herein, shall be made by the ASSOCIATION to the COUNTY pursuant to the means of payment processing that may be used by the Registrar of Voters under Section 5.1, herein within fifteen (15) calendar days of the ASSOCIATION's receipt of the Registrar of Voter's properly completed request for payment.

5.3 The ASSOCIATION's obligations under this Section 5 shall survive the termination of this Agreement.

6. TERM.

This Agreement shall become effective as of September 26, 2017 ("Effective Date"), and shall continue in full force and effect until September 25, 2023 ("Initial Term"), unless sooner terminated, or renewed, as provided herein. This Agreement shall automatically renew for two (2) successive one- (1) year terms after the Initial Term (each, a "Renewal Term"), unless sooner terminated as provided herein.

7. TERMINATION.

7.1 The terms and conditions of this Agreement, and the elections services to be provided in relation to this Agreement, are contingent upon the approval of funds by the applicable appropriating government agency. Should sufficient funds not be allocated, this Agreement may be terminated at any time by either Party giving the other Party at least sixty (60) calendar days advance written notice of such non-allocation of funds.

7.2 If either Party materially breaches any covenants, terms or conditions of this Agreement in any manner, the breaching Party shall have a period of sixty (60) calendar days in which to cure the breach after written notice thereof is given by the aggrieved Party to the breaching Party specifying the nature of the breach and requesting that it be cured. In the event the breach remains uncured at the end of such sixty (60) calendar day period, this Agreement may be terminated by the aggrieved Party giving an additional thirty (30) calendar days written notice of termination to the breaching Party.

7.3 Either party may terminate this Agreement at any time without cause by giving at least ninety (90) calendar days advance written notice of such termination to the other Party.

7.4 This Agreement may be terminated at any time by the mutual agreement of the Parties.

7.5 Notwithstanding anything to the contrary herein, any notice of termination of this Agreement pursuant to Section 7.1 or 7.3, herein, may not be given (a) later than ninety (90) calendar days prior to any scheduled election of the Board of Retirement set forth in the Board of Retirement Election Procedures, or (b) while a special election of the Board of Retirement has been called, or is pending, or being conducted.

7.6 Notwithstanding anything to the contrary herein, the Registrar of Voters shall be reimbursed by the ASSOCIATION for all election costs incurred by the Registrar of Voters, as provided herein, up to the termination date of this Agreement.

8. INDEPENDENT CONTRACTOR.

In the Registrar of Voters' performance of the elections services referred to in this Agreement, it is mutually understood and agreed that the COUNTY's, including any and all of the COUNTY's officers, agents, and employees will at all times be acting and performing through the Registrar of Voters as an independent contractor, and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venture, partner, or associate of the ASSOCIATION. The COUNTY and the ASSOCIATION shall comply with all applicable provisions of law and the rules and regulations, if any, of governmental authorities having jurisdiction over matters of the subject thereof. Because of its status as an independent contractor, the COUNTY shall have absolutely no right to employment rights and benefits available to the ASSOCIATION employees. The COUNTY shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits in relation to this Agreement. In addition, the COUNTY shall be solely responsible and save the ASSOCIATION harmless from all matters related to payment of the COUNTY's employees in relation to this Agreement, including compliance with social security, withholding, and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, the COUNTY, acting and performing through the Registrar of Voters, may be providing elections services to others unrelated to the ASSOCIATION or to this Agreement.

9. ASSIGNMENT AND DELEGATION.

This Agreement shall be binding upon and inure to the benefit of each of the Parties and their respective permitted successors and assigns. Neither Party shall in any manner assign or transfer this Agreement, or any part hereof, or subcontract or otherwise delegate any of its obligations under this Agreement, without the prior written consent of the other Party.

10. MODIFICATION.

Any matters of this Agreement may be modified from time to time without, in any way, affecting the remainder, but only by the written consent of the Parties.

11. PARTIAL INVALIDITY.

Should any part, term, portion, or provision of this Agreement be finally decided to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the Parties intended to enter into in the first place.

12. NO WAIVER.

No waiver by a Party of a breach of any provision of this Agreement shall constitute a waiver by such Party of any other breach, or such provision. Failure of a Party to enforce, at any time, or from time to time, any provision of this Agreement, shall not be construed as a waiver thereof. The remedies herein specified shall be cumulative and additional to any other remedies in law or equity.

13. SIGNATURE AUTHORITY.

13.1 The ASSOCIATION represents and warrants to the COUNTY that the ASSOCIATION is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and that the individual signing this Agreement on behalf of the ASSOCIATION has been duly authorized to execute this Agreement on behalf of the ASSOCIATION, and will, by signing this Agreement on the ASSOCIATION's behalf, legally bind the ASSOCIATION to the terms and conditions of this Agreement.

13.2 The COUNTY represents and warrants to the ASSOCIATION that the COUNTY is duly authorized and empowered to execute, enter into, and perform its obligations set forth in this Agreement, and that the individual signing this Agreement on behalf of the COUNTY has been duly authorized to execute this Agreement on behalf of the COUNTY, and will, by signing this Agreement on the COUNTY's behalf, legally bind the COUNTY to the terms and conditions of this Agreement.

14. AUDITS AND INSPECTIONS.

14.1 At any time during normal business hours, upon reasonable notice, and as often as either Party or any appropriate state agency, or duly authorized representative thereof may deem necessary, either Party shall make available to the other Party for examination all of its records and data with respect to all matters covered by this Agreement. Either Party shall, upon request by the other Party, permit the other Party to audit and inspect all such records and data necessary to ensure the other Party's compliance with the terms and conditions of this Agreement.

14.2 If this Agreement exceeds Ten Thousand and no/100 (\$10,000.00), the Parties shall be subject to the examination and audit of the State Auditor General for a

period of three (3) years after final payment under contract. (Government Code section 8546.7)

14.3 Such records shall be retained and access to the facilities and premises of either of the Parties shall be made available during the period of performance of this Agreement, and for three (3) years after the ASSOCIATION makes final payment under this Agreement.

15. NOTICES.

15.1 The persons having authority to give and receive notices under this Agreement include the following:

COUNTY:

County Clerk/Registrar of Voters
2221 Kern Street
Fresno, CA 93721

ASSOCIATION:

Retirement Administrator
Fresno County Retirement Association
7772 N Palm Ave
Fresno, CA 93711

15.2 Any and all notices between the COUNTY and the ASSOCIATION provided for or permitted under this Agreement shall be in writing and shall be deemed duly served when personally delivered to one of the Parties at the above addresses, or in lieu of such personal service, when deposited in the United States Postal Service, postage prepaid, addressed to such party, provided however, notices of termination of this Agreement that are provided via United States Postal Service shall be deemed to have been served when the Party to such notice is the addressee of the notice actually receives the notice.

16. VENUE/GOVERNING LAW.

Venue for any action arising out of or relating to this Agreement shall only be in Fresno County, California. The rights and obligations of the Parties and all interpretation and performance of this Agreement shall be governed in all respects by the laws of the State of California. Any references in this Agreement to such laws shall mean the laws of the State of California, which are in effect on the Effective Date, and thereafter amended and supplemented from time to time.

17. NO THIRD PARTY BENEFICIARIES.

Notwithstanding anything to the contrary in this Agreement, it is understood between the Parties that the Registrar of Voters is providing elections services referred to herein only to and for the benefit of the ASSOCIATION and that there shall not be any intended third party beneficiaries of this Agreement.

18. NO PERSONAL LIABILITY.

18.1 The personnel of the COUNTY, including its Board of Supervisors and the Registrar of Voters, and their personnel, shall not be personally liable hereunder to the ASSOCIATION, including its Board of Retirement, for performing or failing to perform those elections services for the ASSOCIATION referred to herein.

18.2 The personnel of the ASSOCIATION, including its Board of Retirement and its personnel, shall not be personally liable hereunder to the COUNTY for performing or failing to perform those duties of the ASSOCIATION, including its Board of Retirement and its personnel referred to herein.

19. ENTIRE AGREEMENT.

This Agreement constitutes the entire agreement between the ASSOCIATION and the COUNTY with respect to the subject matter of this Agreement and supersedes all previous agreements, agreement negotiations, proposals, commitments, writings, advertisements, publications, and understandings of any nature whatsoever unless expressly included in this Agreement.

20. CLAIMS.

For all claims arising from or related to this Agreement, nothing in this Agreement establishes, waives, or modifies any claims presentation requirements or procedures provided by law, including but not limited to the Government Claims Act (Division 3.6 of Title 1 of the Government Code, beginning with section 810).

21. INTERPRETATION.

This Agreement is the result of the Parties' combined efforts. If anything in this Agreement is found by a court of competent jurisdiction to be ambiguous, that ambiguity is to be resolved by construing the terms of this Agreement according to their generally accepted meaning, and not by construing the terms of this Agreement for or against either party.

22. COUNTERPARTS.

This Agreement may be executed by the Parties in one or more original counterparts, all of which together will constitute one and the same agreement.

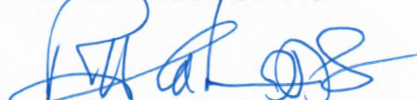
Signatures on the following page(s)

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first hereinabove written.

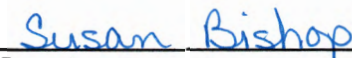
COUNTY OF FRESNO

By: 
Brian Pacheco
Chairman, Board of Supervisors

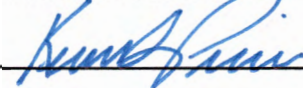
FRESNO COUNTY
RETIREMENT ASSOCIATION

By: 
Rod Coburn
Chair, Board of Retirement

ATTEST:
BERNICE SEIDEL, Clerk,
Board of Supervisors

By: 
Deputy

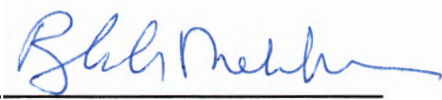
REVIEWED AS TO LEGAL FORM
Kenneth J. Price
BAKER MANOCK & JENSEN, PC

By: 

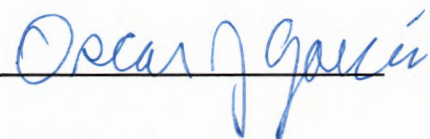
REVIEWED AND RECOMMENDED
FOR APPROVAL

By: 
Brandi Orth,
Clerk/Registrar of Voters

APPROVED AS TO LEGAL FORM
DANIEL C. CEDERBORG
COUNTY COUNSEL

By: 
Deputy

APPROVED AS TO ACCOUNTING FORM
OSCAR J. GARCIA, CPA,
AUDITOR-CONTROLLER/
TREASURER-TAX COLLECTOR

By: 

Fund	0001
Account	4892
Subclass	10000
Org.	28500100

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