



**To: First 5 Alameda County Commission**

**From: Patricia Zapanta, Acting Director, Finance & Administration**

**Date: May 28, 2009**

**Subject: ACERA 401(h) Account Authorization**

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#### **ACTION REQUESTED**

To review and approve the resolution to fund the ACERA 401(h) account with the purpose of providing tax free health benefits to retirees.

#### **BACKGROUND**

In order for the Alameda County Employees Retirement Association (ACERA) to provide tax-free health benefits to its retirees, it is required that participating agencies such as First 5 Alameda County establish and pay post retirement benefits through a 401(h) account. In 2007-08, the Commission authorized the establishment of such an account.

The 401(h) account, also called the Advance Reserve Account, is funded by a portion of regular First 5 retirement contributions. First 5 contributions are then supplemented by the Supplemental Retiree Benefits Reserve (SRBR) in the amount of the 401(h) contribution. The effect is a no-cost transaction.

For 2009-10 (and every year), it is required that the participating member agencies of ACERA authorize the required contributions to the account. The required contribution is determined by ACERA's actuary, The Segal Company, and is calculated based on the number of retirees receiving benefits in 2009-10. First 5 Alameda County currently has one retiree receiving benefits. Based on the actuary, First 5's contribution for 2009-10 is \$8,206.83. The contribution per pay period is \$315.65.

**RESOLUTION**

**ALAMEDA COUNTY CHILDREN'S AND FAMILIES COMMISSION  
RESOLUTION APPROVING 401(h) ACCOUNT  
PURSUANT TO SECTION 31592**

**WHEREAS**, in 1996, the Alameda County Employee's Retirement Association ("ACERA") Board of Retirement informed the Board of Supervisors that by adoption of Resolution No. 96-111, the Board of Retirement had established a health benefits account intended to satisfy the requirements of Internal Revenue Code ("IRC") Section 401(h) and the regulations thereunder (the "401(h) Account") in order to provide non-vested, tax-free health benefits to eligible County and Participating Employer retirees (collectively, the "Retirees"); and

**WHEREAS**, in 1996, this Board of Supervisors adopted Resolution No. R-96-634, which provided that ACERA could offer such non-taxable benefits if the County designated a portion of its contribution to ACERA for a fiscal year as a contribution to the 401(h) Account, and

**WHEREAS**, under Section 31592.4 and Article 5.5 of the County Employees Retirement Law of 1937 ("CERL"), assets in the Supplemental Retiree Benefit Reserves (the "SRBR") at the end of a fiscal year of ACERA may, in the immediately succeeding fiscal year, be transferred to the Advance Reserves of the Participating Employers, and treated as a contribution to ACERA by the County and as applicable by other Participating Employers to the extent that in the immediately succeeding fiscal year the County and other Participating Employers make contributions to ACERA's 401(h) Account in order to pay for retiree health benefits; and

**WHEREAS**, Section 31592.4 and Article 5.5 of the CERL thus permit the Participating Employers to contribute to a 401(h) Account and pay for retiree health benefits for a fiscal year without increasing the First 5 Alameda County's total contributions to ACERA for that fiscal year; and

**WHEREAS**, commencing with the 1996-1997 fiscal year, and for each fiscal year thereafter, the County has directed that a specified portion of its fiscal year contribution to ACERA for that year be contributed to the 401(h) Account; and

**WHEREAS**, in 2007 First 5 Alameda County authorized ACERA to establish and manage a 401(h) sub-account on its behalf to provide tax free health care for its retirees.

**NOW THEREFORE, IT IS RESOLVED AS FOLLOWS:**

1. In fiscal year July 1, 2009 – June 30, 2010, First 5 Alameda County shall contribute to ACERA \$8,206.83 to be used only for the paying of retiree medical health benefits. This contribution shall be made on the terms and conditions set forth in the Agreement between First 5 Alameda County and ACERA concerning such contributions, executed on June 28, 2007.
2. This contribution shall be designated, in writing, as being only for First 5 Alameda County’s IRC § 401(h) Account, and such designation shall be made at the time of contribution.
3. Such contribution is contingent on the Board of Retirement immediately transferring, in accordance with Government Code §31592.4, an amount equal to such contribution from ACERA’s SRBR account to First 5 Alameda County’s advance reserve account. Such amount shall be treated as a contribution for pension and therefore shall be applied to reduce the pension contribution otherwise required by First 5 Alameda County for the fiscal year beginning July 1, 2009.
4. No party, including any existing or future First 5 Alameda County employee, retiree, spouse or dependent, shall have any vested rights, contractual rights or other rights in or to any retiree medical benefits or payment or subsidy for any such benefits nor shall any such person or ACERA have any such rights to have First 5 Alameda County contribute towards paying or subsidizing the cost of any retiree medical benefits provided by ACERA under the 401(h) Account or otherwise. First 5 Alameda County may modify or terminate, at any time and without any limitation, its decision to contribute to First 5’s 401(h) Account. This modification or termination may occur even if it may affect any employee first hired prior to the date of such modification, any person who retired prior to such date, and/or any person who became a spouse or dependent of an employee or retiree prior to such date.
5. All contributions by First 5 Alameda County to its 401(h) sub-account shall be governed by requirements of the Internal Revenue Code and all administrative and other applicable rules established by ACERA governing such sub-account and ACERA’s 401(h) Account.

**FISCAL IMPACT**

There is no fiscal impact.

Submitted by:

Reviewed by:

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Patricia Zapanta, Acting Director,  
Finance & Administration

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Mark Friedman, Chief Executive Officer