

CITY OF YUBA CITY  
STAFF REPORT

**Date:** September 3, 2019  
**To:** Honorable Mayor and Members of the City Council  
**From:** Human Resources Department  
**Presentation By:** Natalie Springer, Human Resources Director

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**Summary**

**Subject:** The Yuba City Firefighters Local 3793 Side Letter  
**Recommendation:** Adopt a Resolution approving a Side Letter with Local 3793 regarding current allocation of accrued but unused leave upon separation.  
**Fiscal Impact:** None.

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**Purpose:**

To approve a Side Letter for Local 3793 that identifies how accrued leave will be allocated upon separation of employment.

**Background:**

The existing MOU for Local 3793 provides, among a variety of other terms, for the allocation of various forms of accrued leave upon retirement or termination of employment. The proposed side letter clarifies the process for allocation, memorializes the allocation for accrued and unused sick leave for conversion to additional CalPERS service credit and resolves concerns associated with the constructive receipt doctrine.

Local 3793 members contributes 3% of earnings to the Retiree Health Savings (RHS) plan on an ongoing basis. The proposed side letter does not affect this ongoing 3% contribution to the RHS plan. At this time, the City does not contribute to RHS on behalf of employees.

**Analysis:**

Under current policy, Local 3793 members contribute 100% of accrued but unused sick leave, subject to applicable limits under the MOU, remaining after conversion to additional CalPERS service credit (if applicable), and 100% of other types of accrued but unused leave, to the RHS plan upon separation of employment. The proposed side letter changes the percentage allocation to the RHS plan to 50%. The remaining leave, subject to applicable limits under the MOU, will be allocated to a 457(b) plan or paid as taxable compensation as determined exclusively under the terms of the side letter.

The side letter also memorializes the process for the allocation of accrued and unused sick leave to be converted to additional CalPERS service credit and resolves concerns associated with the constructive receipt doctrine.

**Fiscal Impact:**

None.

**Alternatives:**

Do not approve the Local 3793 Side Letter and provide direction to staff.

**Recommendation:**

Adopt a Resolution approving a Side Letter with Local 3793 regarding current allocation of accrued but unused leave upon separation.

Attachments:

1. Local 3793 Side Letter resolution
2. Local 3793 Side Letter
3. RHS Plan 803499 Amendment

Prepared By:

*/s/ Natalie Springer*  
Natalie Springer  
Human Resources Director

Submitted By:

*/s/ Michael Rock*  
Michael Rock  
City Manager

Reviewed By:

Finance  
BB&K, Special Counsel

RB  
BB&K/IS by email

# ATTACHMENT 1

RESOLUTION NO. \_\_\_\_\_

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY  
APPROVING THE YUBA CITY FIREFIGHTERS LOCAL 3793 SIDE LETTER  
JULY 1, 2017 – JUNE 30, 2019**

**WHEREAS**, Local 3793 have requested changes to the current allocation of accrued but unused leave upon separation; and

**WHEREAS**, a Side Letter and RHS plan amendment change has been prepared in response to this request.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Yuba City as follows:

1. That the Local 3793 Side Letter and RHS plan amendment document, in the form attached hereto as Exhibit A and Exhibit B, respectively, are hereby approved.
2. That staff are authorized to make any necessary changes to the Local 3793 Side Letter as long as the changes do not modify the Side Letter's substantive terms or past practice.

The foregoing Resolution of the City Council of the City of Yuba City was duly introduced, passed and adopted at a regular meeting thereof held on the 3rd day of September 2019.

AYES:

NOES:

ABSENT:

ATTEST:

\_\_\_\_\_  
Patricia Buckland, City Clerk

\_\_\_\_\_  
Shon Harris, Mayor

Approved as to form:

\_\_\_\_\_  
Isabel Safie  
BB&K, Special Counsel

# ATTACHMENT 2

**SIDE LETTER TO THE  
MEMORANDUM OF UNDERSTANDING**

**Between**

**The City of Yuba City**

**And**

**The Yuba City Firefighters Local 3793**

**July 1, 2017 through June 30, 2019**

The purpose of this side letter is to amend the language pertaining to how unused leave is allocated, including to the Retirement Health Savings (RHS Plan #803499).

Both parties have agreed to the below language:

**1. New Terms for the Allocation of Specified Accrued but Unused Leave:**

The Employer will make mandatory contributions of accrued leave as follows:

One time only, at time of separation from employment ONLY.

The City agrees to provide the PERS Sick Leave Conversion benefit which allows employees to convert their remaining sick leave accrual balance to additional PERS retirement service credit.

Upon retirement from City service, an employee's unused sick leave balance shall be converted to CalPERS service credit in accordance with PERS policy and subject to the following terms:

- The amount of eligible sick leave balance shall be determined in accordance with applicable MOU and City Rules and Regulations.
- Classic Members: If the conversion of a classic member's eligible unused sick leave to CalPERS service credit would result in service credit in excess of the 90% ceiling for local safety members, only the amount of unused sick leave needed to reach the 90% ceiling will be certified to CalPERS.
- PEPRA Members: The amount of unused sick leave balance converted to CalPERS service credit for each PEPRA member shall be limited to the lesser of: (i) his or her balance of unused sick leave, or (ii) the equivalent of one year of CalPERS service credit.

After the allocation to CalPERS service credit or, in the case of an employee that does not retire from City service, upon separation from employment, 50% of the eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) shall be converted into a contribution to the City's RHS plan. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS Plan shall be contributed on a mandatory basis for the benefit of the employee to the City's 457(b) plan by the City subject to the annual limitations on contributions to such plan, including catch up contribution limits if applicable. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS plan and the 457(b) plan, shall be paid out to the employee in taxable compensation; provided that the total amount allocated to the RHS plan, 457(b) plan and paid as taxable compensation does not exceed the applicable limits as set forth in the MOU.

All other leave including vacation time, administrative leave and/or comp time ("Other Leave") is ineligible for conversion to CalPERS service credit. Upon separation from employment, including retirement, 50% of eligible Other Leave (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) shall be converted into a contribution to the City's RHS plan. The eligible and remaining Other Leave (determined in

accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS Plan shall be contributed on a mandatory basis for the benefit of the employee to the City's 457(b) plan by the City subject to the annual limitations on contributions to such plan, including catch up contribution limits if applicable. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS plan and the 457(b) plan, shall be paid out to the employee in taxable compensation; provided that the total amount allocated to the RHS plan, 457(b) and paid as taxable compensation does not exceed the applicable limits as set forth in the MOU.

**Example 1:** An employee classified as a "classic member" has 2200 hours of accrued sick leave and 300 hours of accrued vacation hours and needs only one year of CalPERS service credit (2000 hours) to reach the 90% ceiling for local safety members. In this case, 2000 hours will be certified to CalPERS by the City for conversion to CalPERS service credit. This would leave 200 hours from the original balance. If the employee is subject to the **50%** limit of total accrued sick leave based on their MOU and length of service, the employee would only have 1100 sick leave hours eligible for allocation subject to a lesser amount remaining after the mandatory conversion to CalPERS service credit. In this case, the lesser figure is the 200 sick leave hours remaining after the mandatory conversion to CalPERS service credit. As such, only 200 sick leave hours are considered "eligible and remaining". Of these 200 sick leave hours, 50% or 100 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 100 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

The 300 hours of remaining vacation would also be subject to this provision. The employee is eligible for 100% of their vacation hours. Their "eligible and remaining" vacation time for distribution would be 300 hours. 50% or 150 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 150 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

**Example 2:** An employee classified as a "classic member" has 4000 hours of accrued sick leave and 300 hours of accrued vacation hours and needs only one year of CalPERS service credit (2000 hours) to reach the 90% ceiling for local safety members. In this case, 2000 hours will be certified to CalPERS by the City for conversion to CalPERS service credit. This would leave 2000 hours from the original balance. If the employee is subject to the **30%** limit of total accrued sick leave based on their MOU and length of service, the employee would only have 1200 sick leave hours eligible for allocation subject to a lesser amount remaining after the mandatory conversion to CalPERS service credit. In this case, the lesser figure is the 1200 sick leave hours resulting from application of the 30% limit. As such, only 1200 sick leave hours are considered "eligible and remaining". Of these 1200 sick leave hours, 50% or 600 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 600 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

The 300 hours of remaining vacation would also be subject to this provision. The employee is eligible for 100% of their vacation hours. Their "eligible and remaining" vacation time for distribution would be 300 hours. 50% or 150 hours would be subject to a mandatory allocation



to the employee's account with the City's RHS plan. The remaining 150 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

**Example 3:** An employee classified as a "classic member" has 2000 hours of accrued sick leave and 300 hours of accrued vacation hours and needs only one year of CalPERS service credit (2000 hours) to reach the 90% ceiling for local safety members. In this case, 2000 hours will be certified to CalPERS by the City for conversion to CalPERS service credit. Since all accrued sick leave has been used, no further allocations are made.

The 300 hours of remaining vacation would also be subject to this provision. The employee is eligible for 100% of their vacation hours. Their "eligible and remaining" vacation time for distribution would be 300 hours. 50% or 150 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 150 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

**Example 4:** An employee (classic or PEPRA) has 2500 hours of accrued sick leave and 300 hours of accrued vacation hours but is separating from service to work for another agency rather than retiring from City service. This employee is not eligible for the sick leave conversion benefit because he or she is not retiring from City service. If the employee is subject to the **50%** limit of total accrued sick leave based on their MOU and length of service, the employee would only have 1250 sick leave hours eligible for allocation. As such, only 1250 sick leave hours are considered "eligible and remaining". Of these 1250 sick leave hours, 50% or 625 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 625 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

The 300 hours of remaining vacation would also be subject to this provision. The employee is eligible for 100% of their vacation hours. Their "eligible and remaining" vacation time for distribution would be 300 hours. 50% or 150 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 150 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

**Example 5:** An employee classified as a "PEPRA member" has 2500 hours of accrued sick leave and 300 hours of accrued vacation hours. In this case, 2000 hours (the equivalent of one year of service credit) will be certified to CalPERS by the City for conversion to CalPERS service credit. This would leave 500 hours from the original balance. If the employee is subject to the **30%** limit of total accrued sick leave based on their MOU and length of service, the employee would only have 750 sick leave hours eligible for allocation subject to a lesser amount remaining after the mandatory conversion to CalPERS service credit. In this case, the lesser figure is the 500 sick leave hours remaining after the allocation to CalPERS service credit. As such, only 500 sick leave hours are considered "eligible and remaining". Of these 500 sick leave hours, 50% or 250 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 250 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

The 300 hours of remaining vacation would also be subject to this provision. The employee is eligible for 100% of their vacation hours. Their "eligible and remaining" vacation time for distribution would be 300 hours. 50% or 150 hours would be subject to a mandatory allocation to the employee's account with the City's RHS plan. The remaining 150 hours would be contributed to the City's 457(b) plan, subject to the applicable contribution limits, and any remaining hours would be paid out as taxable compensation.

**2. This Side Letter shall be effective as of August 17, 2019.**

**3. Remainder of Contract Not Affected.**

All other provisions of the current Memorandum of Understanding between the City and the Yuba City Firefighters Local 3793 shall remain unchanged.

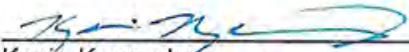
Date: \_\_\_\_\_

Date: 8/26/2019

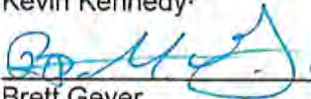
**CITY OF YUBA CITY**

**LOCAL 3793**

\_\_\_\_\_  
Michael Rock, City Manager

  
\_\_\_\_\_  
Kevin Kennedy

\_\_\_\_\_  
Robin Bertagna, Director of Finance

  
\_\_\_\_\_  
Brett Geyer

\_\_\_\_\_  
Natalie Springer, Director of Human Resources

  
\_\_\_\_\_  
Dustin Nelson

\_\_\_\_\_  
Martin Zavala

\_\_\_\_\_  
John Coburn, Chief Negotiator

# ATTACHMENT 3



## VantageCare Retirement Health Savings (RHS) PLAN AMENDMENT PACKET

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To amend your existing RHS Plan, please complete the entire Adoption Agreement, including items that are not being amended. When you send your amendment to ICMA-RC, please summarize the changes in your cover letter.

Please note that ICMA-RC does not require the use of a resolution to amend the plan. Should you require legislative action, you may use the Suggested Resolution for Amendment on the following page. If you do not require legislative action, you may complete the Suggested Affirmative Statement for Amendment which follows.

When amending the RHS Plan, you should consider nondiscrimination rules. Please review the information in Nondiscrimination Requirements document included in this packet.

Once the amendment is completed, retain a copy for your records and send the original with the cover letter and either the resolution or the affirmative statement to ICMA-RC as follows:

**Via Mail**

ICMA-RC  
Attn – Plan Adoption Services  
Suite 600  
777 North Capitol Street, NE  
Washington, DC 20002-4240

**Via Facsimile**

202-962-4601  
Attn – Plan Adoption Services

**Via Email**

PlanAdoptionServices@icmarc.org  
Attn - Plan Adoption Services

You will receive notification that your amendment has been received and accepted.



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**EMPLOYER VANTAGECARE  
RETIREMENT HEALTH SAVINGS (RHS)  
ADOPTION AGREEMENT**

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**VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS)  
ADOPTION AGREEMENT**

Plan Number: 8 03499

Select as applicable:  Standalone RHS  Integrated RHS  Amendment to Existing Plan

I. Employer Name: City of Yuba City State: CA

II. The Employer hereby attests that it is a unit of a state or local government or an agency or instrumentality of one or more units of a state or local government.

III. Plan Dates:

A. Plan Effective Date July 1, 2019

B. Plan Year: Enter the annual accounting period for the RHS program. 1/1 to 12/31

IV. The Employer intends to utilize the Trust to fund only welfare benefits pursuant to the following welfare benefit plan(s) established by the Employer: Yuba City 2014 Retiree Welfare

V. Eligible Groups, Participation and Participant Eligibility Requirements

A. Eligible Groups

The following group or groups of Employees are eligible to participate in the Employer's welfare benefits plan identified in Section IV. (check all applicable boxes):

- All Employees
- All Full-Time Employees
- Non-Union Employees
- Public Safety Employees – Police
- Public Safety Employees – Firefighters
- General Employees
- Collectively-Bargained Employees (Specify unit(s)) See attached
- Other (specify group(s)) See attached

The Employee group(s) specified must correspond to a group(s) of the same designation that is defined in the statutes, ordinances, rules, regulations, personnel manuals or other documents or provisions in effect in the state or locality of the Employer.

B. Participation

**Mandatory Participation:** All Employees in the covered group(s) are required to participate in the Plan and shall receive contributions pursuant to Section VI.

If the Employer's underlying welfare benefit plan is in whole or part a non-collectively bargained plan that allows reimbursement for medical expenses other than insurance premiums, the nondiscrimination requirements of Internal Revenue Code (IRC) Section 105(h) will apply. These rules may impose taxation on the benefits received by highly compensated individuals if the Plan discriminates in favor of highly compensated individuals in terms of eligibility or benefits. The Employer should discuss these rules with appropriate counsel.

**C. Participant Eligibility Requirements**

1. Minimum service: The minimum period of service required for participation is N/A (write N/A if no minimum service is required).
2. Minimum age: The minimum age required for eligibility to participate is N/A (write N/A if no minimum age is required).

**VI. Contribution Sources and Amounts**

**A. Definition of Earnings**

The definition of Earnings will apply to all RHS Contribution Features that reference "Earnings", including Direct Employer Contributions (Section VI.B.1.) and Mandatory Employee Compensation Contributions (Section VI.B.2.).

Definition of earnings: Base Salary including overtime and FLSA pay

**B. Direct Employer Contributions and Mandatory Contributions**

1. Direct Employer Contributions

The Employer shall contribute on behalf of each Participant

- \_\_\_\_\_ % of Earnings\*
- \$ \_\_\_\_\_ each Plan Year
- A discretionary amount to be determined each Plan Year
- Other (describe): \_\_\_\_\_

2. Mandatory Employee Compensation Contributions

The Employer will make mandatory contributions of Employee compensation as follows:

- Reduction in Salary - \_\_\_\_\_ % of Earnings or \$ See att will be contributed for the Plan Year.
- Decreased Merit or Pay Plan Adjustment - All or a portion of the Employees' annual merit or pay plan adjustment will be contributed as follows:

An Employee shall not have the right to discontinue or vary the rate of Mandatory Contributions of Employee Compensation.

3. Mandatory Employee Leave Contributions

The Employer will make mandatory contributions of accrued leave as follows (provide formula for determining Mandatory Employee Leave contributions):

- Accrued Sick Leave see attached
- Accrued Vacation Leave see attached
- Other (specify type of leave) Accrued \_\_\_\_\_ Leave see attached

An Employee shall not have the right to discontinue or vary the rate of mandatory leave contributions.

*\* Non-collectively bargained plans that reimburse medical expenses other than insurance premiums should consult their benefits counsel regarding welfare plan nondiscrimination rules if the employer elects to make contributions based on a percentage of earnings.*

**C. Limits on Total Contributions** (check one box)

The total contribution by the Employer on behalf of each Participant (including Direct Employer and Mandatory Employee Contributions) for each Plan Year shall not exceed the following limit(s) below. Limits on individual contribution types are defined within the appropriate section above.

- There is no Plan-defined limit on the percentage or dollar amount of earnings that may be contributed.
- \_\_\_\_ % of earnings  
Definition of earnings:       Same as Section VI.A.       Other
- \$ \_\_\_\_ for the Plan year.

**VII. Vesting for Direct Employer Contributions**

**A. Vesting Schedule** (check one box)

- The account is 100% vested at all times.
- The following vesting schedule shall apply to Direct Employer Contributions as outlined in Section VI.B.1.:

| Years of Service Completed | Vesting Percentage |
|----------------------------|--------------------|
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |
| _____                      | _____ %            |

**B. The account will become 100% vested upon the death, disability, retirement\*, or attainment of benefit eligibility (as outlined in Section IX) by a Participant.**

\*Definition of retirement includes a separation from service component and is further defined by (check one):

- The primary retirement plan of the Employer
- Separation from service
- Other \_\_\_\_\_

**C. Any period of service by a Participant prior to a rehire of the Participant by the Employer shall not count toward the vesting schedule outlined in A above.**

**VIII. Forfeiture Provisions**

If a Participant separates from service prior to full vesting, non-vested funds in the Participant's account shall be forfeited in accordance with the box checked under this section.

Upon the death of a participant, surviving spouse, and all surviving eligible dependents (as outlined in Section XI), funds remaining in the Participant's account shall be revert to the Trust in accordance with the box checked under this section.



If a Participant permanently opts out and waives future reimbursements, as allowed under IRS Notice 2013-54, all funds in the Participant's account at the time of waiver shall be forfeited in accordance with the box checked under this section.\*

- Remain in the Trust to be reallocated among all Plan Participants with a balance as Direct Employer Contributions for the next and succeeding contribution cycle(s).\*\*
- Remain in the Trust to be reallocated on an equal dollar basis among all Plan Participants with a balance.\*\*
- Remain in the Trust to be reallocated among all Plan Participants based upon Participant account balances.\*\*

**IX. Eligibility Requirements to Receive Medical Benefit Payments from the VantageCare Retirement Health Savings Program**

**A. A Participant is eligible to receive benefits:**

- At retirement only (also complete Section B.)  
Definition of retirement:
  - Same as Section VII.B.
  - Other \_\_\_\_\_
- At separation from service with the following restrictions
  - No restrictions
  - Other \_\_\_\_\_

**B. Termination prior to general benefit eligibility:** In case where the general benefit eligibility as outlined in Section IX.A includes a retirement component, a Participant who separates from service of the Employer prior to retirement will be eligible to receive benefits:

- Immediately upon separation from service
- Other \_\_\_\_\_

**C. A Participant that becomes totally and permanently disabled**

- as defined by the Social Security Administration
- as defined by the Employer's primary retirement plan
- other \_\_\_\_\_

will become immediately eligible to receive medical benefit payments from his/her account under the Employer's welfare benefits plan.

**D. Upon the death of the Participant, benefits shall become payable as outlined in Section XI.**

*\* If the Employer's RHS Program does not limit eligibility to participants who have separated from service, the employer will be required to provide further direction to ICMA-RC regarding the treatment of possible contributions that are required to be made following the participant's waiver.*

*\*\* If the forfeited balance is small whereby the reallocation amount to each Plan Participant with a balance is minimal, the assets will revert to employer's forfeiture account for further direction from the employer. If there are participants without a balance who should receive forfeiture assets, please provide alternative instructions to ICMA-RC on the forfeiture reallocation notice.*

## X. Permissible Medical Benefit Payments

Benefits eligible for reimbursement consist of:

- All Medical Expenses eligible under IRC Section 213 other than (i) direct long-term care expenses, and (ii) expenses for medicines or drugs which are not prescribed drugs (other than insulin).
- The following Medical Expenses eligible under IRC Section 213 other than (i) direct long-term care expenses, and (ii) expenses for medicines or drugs which are not prescribed drugs (other than insulin). Select only the expenses you wish to cover under the Employer's welfare benefits plan:
  - Medical Insurance Premiums
  - Medical Out-of-Pocket Expenses\*
  - Medicare Part B Insurance Premiums
  - Medicare Part D Insurance Premiums
  - Medicare Supplemental Insurance Premiums
  - Prescription Drug Insurance Premiums
  - COBRA Insurance Premiums
  - Dental Insurance Premiums
  - Dental Out-of-Pocket Expenses\*
  - Vision Insurance Premiums
  - Vision Out-of-Pocket Expenses\*
  - Qualified Long-Term Care Insurance Premiums
  - Non-Prescription medications allowed under IRS guidance\*
  - Other qualifying medical expenses (describe)\*

*\* Non-collectively bargained plans that reimburse medical expenses other than insurance premiums should consult their benefits counsel regarding welfare plan nondiscrimination rules if the employer elects to make contributions based on a percentage of earnings.*

## XI. Benefits After the Death of the Participant

In the event of a Participant's death, the following shall apply:

### A. Surviving Spouse and/or Surviving Dependents

Upon the death of a participant, the surviving spouse and/or surviving eligible dependents (as defined in Section XII.D.) of the deceased Participant are immediately eligible to maintain the Participant's RHS account and utilizing the remaining balance to fund eligible medical benefits specified in Section X above. The account balance may be reallocated\* by the surviving spouse or dependents.

*\* Before investing, please read the applicable fund disclosure materials carefully for a complete summary of all fees, expenses, investment objectives and strategies, and risks. This information is available when you log in at [www.icmarc.org/login](http://www.icmarc.org/login), or upon request by calling (800) 326-7272.*

If a Participant's account balance has not been fully utilized upon the death of the eligible spouse, the account balance may continue to be utilized to pay benefits of eligible dependents. Upon the death of all eligible dependents, the account will revert in accordance with the Employer's election under Section VIII of the *VantageCare RHS Adoption Agreement*.

**B. No Surviving Spouse or Surviving Dependents**

If there are no living spouse or dependents at the time of death of the Participant, the account will revert in accordance with the Employer's election under Section VIII of the *VantageCare RFS Adoption Agreement*.

**XII. The Plan will operate according to the following provisions:**

**A. Employer Responsibilities**

1. The Employer will submit all VantageCare Retirement Health Savings Plan contribution data via electronic submission.
2. The Employer will submit all VantageCare Retirement Health Savings Plan Participant status updates or personal information updates via electronic submission. This includes but is not limited to termination notification, benefit eligibility, and vesting notification.

**B.** Participant account administration and asset-based fees will be paid through the redemption of Participant account shares, unless agreed upon otherwise in the Administrative Services Agreement.

**C.** Assignment of benefits is not permitted. Benefits will be paid only to the Participant, his/her Survivors, the Employer, or an insurance provider (as allowed by the claims administrator). Payments to a third-party payee (e.g., medical service provider) are not permitted with the exception of reimbursement to the Employer or insurance provider (as allowed by the claims administrator).

**D.** An eligible dependent is (a) the Participant's lawful spouse, (b) the Participant's child under the age of 27, as defined by IRC Section 152(f)(1) and Internal Revenue Service Notice 2010-38, or (c) any other individual who is a person described in IRC Section 152(a), as clarified by Internal Revenue Service Notice 2004-79.

**E.** The Employer will be responsible for withholding, reporting and remitting any applicable taxes for payments which are deemed to be discriminatory under IRC Section 105(h), as outlined in the *VantageCare Retirement Health Savings Employer Manual*.

**XIII. Employer Acknowledgements**

**A.** The Employer hereby acknowledges it understands that failure to properly fill out this *VantageCare Retirement Health Savings Adoption Agreement* may result in the loss of tax exemption of the Trust and/or loss of tax-deferred status for Employer contributions.

**B.**  Check this box if you are including supporting documents that include plan provisions.

**EMPLOYER SIGNATURE**

**By:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Attest:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**Title:** \_\_\_\_\_



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**SUGGESTED RESOLUTION FOR AMENDMENT**

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AND

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**SUGGESTED AFFIRMATIVE STATEMENT FOR AMENDMENT**

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**SUGGESTED RESOLUTION FOR AMENDMENT OF THE  
VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PROGRAM**

Plan Number: \_\_\_\_\_

Name of Employer: \_\_\_\_\_ State: \_\_\_\_\_

Resolution of the above-named Employer (the "Employer"):

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the amendment of its existing retiree health savings plan for such employees serves the interests of the Employer and Employees.

NOW, THEREFORE BE IT RESOLVED, that the Employer hereby amends the Plan in the form of the ICMA Retirement Corporation's VantageCare Retirement Health Savings program.

I, \_\_\_\_\_, Clerk of the \_\_\_\_\_ of \_\_\_\_\_, do hereby certify that the foregoing resolution, proposed by \_\_\_\_\_, was duly passed and adopted in the \_\_\_\_\_ of the \_\_\_\_\_ of \_\_\_\_\_, at a regular meeting thereof assembled this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by the following vote:

AYES:

NAYS:

ABSENT:

(Seal)

Clerk's Signature: \_\_\_\_\_

Clerk's Title: \_\_\_\_\_

Date: \_\_\_\_\_

**SUGGESTED AFFIRMATIVE STATEMENT FOR AMENDMENT OF THE  
VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PROGRAM**

Plan Number: \_\_\_\_\_

Name of Employer: \_\_\_\_\_ State: \_\_\_\_\_

Affirmative Statement of the above-named Employer (the "Employer"):

WHEREAS, the Employer has employees rendering valuable services; and

WHEREAS, the amendment of its existing retiree health savings plan serves the interests of the Employer and its Employees; and

NOW THEREFORE, as a duly authorized agent of the Employer, I hereby:

AMEND the Employer's Plan in the form of the ICMA Retirement Corporation's VantageCare Retirement Health Savings program.

DATE: \_\_\_\_\_

\_\_\_\_\_  
Title of Designated Agent

\_\_\_\_\_  
Signature

## Retiree Health Program Nondiscrimination Requirements

### Important Information on Welfare Plan Nondiscrimination Rules

**AN EMPLOYER'S RETIREE HEALTH PROGRAM (I.E., VANTAGECARE RETIREMENT HEALTH SAVINGS (RHS) PLAN/401(H) RETIREE HEALTH ACCOUNT)** will generally be covered by nondiscrimination requirements that are already applicable to the employer's other health and welfare plans (under Internal Revenue Code Section 105(h)).

**However, please note that nondiscrimination requirements will not adversely impact your Retiree Health Program (Program) in the following scenarios:**

- A. If the Program is limited to one or more collective bargaining groups that bargained regarding health benefits and the Program provides for fixed dollar contributions for all employees.
- B. If the Program limits reimbursements to insurance premiums only (health insurance premiums, Medicare supplemental insurance premiums, Medicare Part B insurance premiums COBRA insurance premiums, long-term care insurance premiums).

Premium-Only Programs are currently excluded from nondiscrimination testing. However, under the Affordable Care Act, Premium-Only Programs will likely be subject to nondiscrimination testing upon future IRS guidance.

If the Program does not fall into one of the two scenarios above, health and welfare nondiscrimination requirements may adversely impact your Plan.

Generally speaking, if your program does not fall under one of the two scenarios above, the following requirements apply:

1. An IRS-approved proportion of your employees must be covered. For instance, coverage must be extended to at least 70 percent of employees

(excluding part-time and seasonal employees, employees under age 25, employees with less than three years of service, and collectively bargained employees). Once the employer identifies the applicable coverage group, up to 30 percent of that group can be excluded.<sup>1</sup>

2. Benefits must be provided on a substantially equal basis to all covered employees. What this means, in practical terms, is that contributions must be substantially equal for each participant, and thus cannot be determined as a percentage of compensation or based on age or years of service. A fixed dollar contribution would comply.

Please note that "failure" to meet the nondiscrimination requirements does not result in "disqualification" of the Program. The ramifications of not meeting the requirements are that "excess benefits" paid to "highly compensated individuals" that participate in the RHS plan are taxable as W-2 income to the participant.

An excess benefit is generally equal to the amount of the benefit made available to the highly compensated individuals but not made available to other employees. Highly compensated individuals will generally consist of the highest paid 25 percent of all employees.

#### What does all this mean?

Employers need to consider nondiscrimination requirements when developing their Program. The employer may want to consider talking to benefits counsel to determine if these rules will impact its participants. Should an employer establish a program that does not fall under scenario A or B above and does not meet the nondiscrimination requirements, the out-of-pocket expenses paid to highly compensated employees may be taxable.

You are encouraged to discuss the results with a tax or benefits advisor because the IRS rules are complex.

<sup>1</sup> There may be additional ways that your program would satisfy the nondiscrimination requirements of IRC § 105(h).

# ATTACHMENT



## CITY OF YUBA CITY RHS PLAN ATTACHMENT 803499

### Yuba City Fire Management:

**Reduction in salary:** 2% of earnings will be contributed for the Plan Year.

**Mandatory Employee Leave contributions:** One time only at separation from employment only, the Employer will contribute a maximum of 50% of accrued vacation time, administrative leave time and/or compensatory time and 100% of eligible amount of sick leave payoff remaining in total accrued sick leave as outlined in the Yuba City Rules and Regulations based upon length of service, and after contribution of sick leave for PERS service credit.

### Yuba City Firefighters Local 3793:

**Reduction in salary:** 3% of earnings will be contributed for the Plan Year.

**Mandatory Employee Leave contributions:** The Employer will make mandatory contributions of accrued leave as follows: Upon separation from service 50% of eligible sick leave balance and 50% of other leave will be contributed to the RHS Plan, subject to the terms set forth in the side letter agreement included at the end of this attachment.\*

### Department Heads hired prior to July 1, 2006:

Upon a regular, non-medical retirement, 100% of sick leave payout, 100% of administrative leave, and 100% of vacation leave will be contributed to the Plan.

#### ***\*Yuba City Firefighters Local 3793 Side Letter Agreement:***

*One time only, at time of separation from employment ONLY.*

*The City agrees to provide the PERS Sick Leave Conversion benefit which allows employees to convert their remaining sick leave accrual balance to additional PERS retirement service credit.*

*Upon retirement from City service, an employee's unused sick leave balance shall be converted to CalPERS service credit in accordance with PERS policy and subject to the following terms:*

- The amount of eligible sick leave balance shall be determined in accordance with applicable MOU and City Rules and Regulations.*
- Classic Members: If the conversion of a classic member's eligible unused sick leave to CalPERS service credit would result in service credit in excess of the 90% ceiling for local safety members, only the amount of unused sick leave needed to reach the 90% ceiling will be certified to CalPERS.*

- *PEPRA Members: The amount of unused sick leave balance converted to CalPERS service credit for each PEPRA member shall be limited to the lesser of: (i) his or her balance of unused sick leave, or (ii) the equivalent of one year of CalPERS service credit.*

*After the allocation to CalPERS service credit or, in the case of an employee that does not retire from City service, upon separation from employment, **50% of the eligible and remaining sick leave balance** (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) **shall be converted into a contribution to the City's RHS plan**. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS Plan shall be contributed on a mandatory basis for the benefit of the employee to the City's 457(b) plan by the City subject to the annual limitations on contributions to such plan, including catch up contribution limits if applicable. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS plan and the 457(b) plan, shall be paid out to the employee in taxable compensation; provided that the total amount allocated to the RHS plan, 457(b) plan and paid as taxable compensation does not exceed the applicable limits as set forth in the MOU.*

*All other leave including vacation time, administrative leave and/or comp time ("Other Leave") is ineligible for conversion to CalPERS service credit. Upon separation from employment, including retirement, **50% of eligible Other Leave** (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) **shall be converted into a contribution to the City's RHS plan**. The eligible and remaining Other Leave (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS Plan shall be contributed on a mandatory basis for the benefit of the employee to the City's 457(b) plan by the City subject to the annual limitations on contributions to such plan, including catch up contribution limits if applicable. The eligible and remaining sick leave balance (determined in accordance with City Rules and Regulations, applicable MOU and based upon length of service) after the mandatory allocation to the RHS plan and the 457(b) plan, shall be paid out to the employee in taxable compensation; provided that the total amount allocated to the RHS plan, 457(b) and paid as taxable compensation does not exceed the applicable limits as set forth in the MOU.*