



**The Educational Employees' Supplementary
Retirement System of Fairfax County**

Benefit Restoration Plan

Adopted September 12, 2006
Amended June 19, 2008



Benefit Restoration Plan

**The Educational Employees' Supplementary Retirement System
of Fairfax County (ERFC)**

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WITNESSETH:

WHEREAS, pursuant to Title 51.1, Chapter 13, Section 51.1-1302 of the Code of Virginia (1950), the Educational Employees' Supplementary Retirement System of Fairfax County Benefit Restoration Plan (the "Plan") is hereby adopted effective July 1, 2006.

The Board of Trustees intends to maintain the Plan as an excess benefit plan within the meaning of Section 415(m) of the Internal Revenue Code (the "Code"). The purpose of the Plan is to restore, through a non-qualified arrangement, the benefits lost by application of the limitation on annual benefits under Section 415(b) of the Code as applicable to governmental plans.

The Plan shall exist in addition to all other retirement, pension or other benefits available to the Participants, including the benefits established pursuant to the Virginia Retirement Act, Section 51.1-124.1 et seq. of the Code of Virginia (1950) as amended.

NOW, THEREFORE, in consideration of the premises herein, the Board of Trustees agrees as follows:

ARTICLE I
Definition of Terms

The following words and terms as used in this Plan shall have the meaning set forth below, unless a different meaning is clearly required by the context.

1.1 **"Beneficiary"**: The person or persons entitled under the Retirement Plan to receive any benefits payable thereunder after the Participant's death.

1.2 **"Board of Trustees"**: The body of officials having purview over the operation of the System pursuant to the Enabling Statute and Enabling Ordinance.

1.3 **"Benefit Allowance"**: The amount of the Participant's retirement allowance or his Beneficiary's death benefit under the Retirement Plan, determined without regard to the limitations imposed by Section 415 of the Code

1.4 **"Code"**: The Internal Revenue Code of 1986, as the same may be amended from time to time, or the corresponding section of any subsequent Internal Revenue Code, and, to the extent not inconsistent therewith, regulations issued thereunder.

1.5 **"Death Benefit"**: Any form of benefit payable following the death of the Participant under the Retirement Plan, determined without regard to the limitations imposed by Section 415 of the Code.

1.6 **"Effective Date"**: The effective date of the Plan is July 1, 2006.

1.7 **"Eligible Employee"**: An Employee or former Employee who is a member of the Retirement Plan and whose benefits thereunder are reduced or would be reduced by application of the limitation on annual benefits under Section 415(b) of the Code as applicable to governmental plans.

1.8 **"Employee"**: A natural person, whether appointed or elected, who is employed by the Employer as a common law employee.

1.9 **"Employer"**: The School Board of Fairfax County, Virginia.

1.10 **"Enabling Ordinance"**: Sections 3-4-1 through 3-4-7 of the Fairfax County Code, as it may be amended from time to time.

1.11 **"Enabling Statute"**: Title 51.1, Chapter 13, Section 51.1-1302 of the Code of Virginia (1950) as amended.

1.12 **"Grantor Trust"**: A trust fund described in paragraph 6.2 and established or maintained for the Plan.

1.13 **"Limitation Year"**: The twelve (12) month period beginning on the first day of January and ending on the last day of December.

1.14 **"Participant"**: An Eligible Employee qualified to participate in the Plan, for so long as he is considered a Participant, as provided in Article II hereof.

1.15 **"Plan"**: This document as contained herein or duly amended. This plan shall be known as the "Educational Employees' Supplementary Retirement System of Fairfax County Benefit Restoration Plan."

1.16 **"Plan Sponsor"**: The Board of Trustees.

1.17 **"Restoration Benefit"**: The amount due a Participant or his Beneficiary under the Plan, as determined pursuant to Article III hereof.

1.18 **"Retirement Plan"**: The Educational Employees of Fairfax County Defined Benefit Plan.

1.19 **"Section 415 Benefit Allowance"**: The maximum retirement allowance or death benefit under the Retirement Plan after the limitations imposed by Section 415 of the Code have been applied

1.20 **"System"**: The Educational Employees Supplementary Retirement System of Fairfax County. It includes the Retirement Plan and this Plan.

1.21 **"Trustee"**: A member of the Board of Trustees.

ARTICLE II
Eligibility and Participation

2.1 **Eligibility and Date of Participation.** Each Eligible Employee whose Effective Retirement Date under the Retirement Plan is on or after July 1, 2006 shall be a Participant in the Plan commencing with the date he first becomes, or again becomes, an Eligible Employee.

2.2 **Length of Participation.** Each Eligible Employee who becomes a Participant shall be or remain a Participant for so long as he is entitled to future benefits under the terms of the Plan.

ARTICLE III
Restoration Benefit

3.1 **Restoration Benefit.** Subject to the terms and conditions set forth herein, a Participant or Beneficiary shall be entitled to a Restoration Benefit for any Limitation Year in which the amount of the Participant's retirement allowance or the Beneficiary's Death Benefit under the Retirement Plan, determined without regard to the limitations imposed by Section 415 of the Code ("Benefit Allowance"), exceeds the maximum benefit under the Retirement Plan after the limitations imposed by Section 415 of the Code have been applied ("Section 415 Benefit Allowance").

The amount of the Restoration Benefit for any Limitation Year will be the excess of the Benefit Allowance over the Section 415 Benefit Allowance and will be paid monthly during the Limitation Year commencing with the month that the benefits paid under the Retirement Plan equal the Section 415 Benefit Allowance for that Limitation Year.

ARTICLE IV
Vesting

4.1 **Vesting Generally.** A Participant's right to a Restoration Benefit shall be vested as of the Participant's Effective Retirement Date under the Retirement Plan. A Beneficiary's right to a Restoration Benefit shall be vested as of the date of the Participant's death. Notwithstanding the foregoing sentence, if the Retirement Plan is terminated and the Employer is making no further contributions to the Retirement Plan, no further Restoration Benefits shall be payable after the date that the Employer's contributions to the Retirement Plan cease unless the Employer exercises its right under paragraph 8.2 to establish another plan to serve the same purpose or to make other arrangements for payment of those benefit amounts.

ARTICLE V
Payment of Benefits

5.1 **Time and Manner for Payment of Benefits.** A Restoration Benefit shall be payable at the time provided in paragraph 3.1 in the same manner as the Participant's retirement allowance or Beneficiary's Death Benefit is paid under the Retirement Plan, whether as elected by the Participant or otherwise payable.

5.2 **Discretionary Use of Other Methods of Payment.** Monthly payment amounts of less than \$100, or such amount as the Board of Trustees may from time to time determine in

regulations adopted by the Board of Trustees under the Retirement Plan, may be paid on an annual or semi-annual basis, in arrears and without interest.

5.3 **Benefit Determination and Payment Procedure.** The Board of Trustees shall make all determinations concerning eligibility for benefits under the Plan, the time or terms of payment, and the form or manner of payment. The Board of Trustees shall promptly notify the Employer and, where payments are to be made from a Grantor Trust, the trustee thereof, of each such determination that benefit payments are due and provide to the Employer or trustee all other information necessary to allow the Employer or trustee to carry out said determination, whereupon the Employer or trustee shall pay such benefits in accordance with the Board of Trustees' determination.

5.4 **Distribution of Benefit When Distributee Cannot Be Located.** If, after reasonable effort, the Board of Trustees is unable to locate a Participant or his Beneficiary entitled to benefits under the Plan, all of the Participant's or Beneficiary's rights under the Plan shall be forfeited. If the Board of Trustees is subsequently contacted by the Participant or Beneficiary, the Participant or Beneficiary will receive the monthly benefit amounts payable for months following the date of application, without any payment for prior months.

ARTICLE VI **Funding**

6.1 **Funding.** The undertaking to pay the benefits hereunder shall be an unfunded obligation payable solely from the general assets of the Employer and subject to the claims of the Employer's creditors. Except as provided in the Grantor Trust established as permitted in paragraph 6.2, nothing contained in the Plan and no action taken pursuant to the provisions of the Plan shall create or be construed to create a trust or any kind of a fiduciary relationship between the Employer and the Participant or his Beneficiary or any other person or to give any Participant or Beneficiary any right, title or interest in any specific asset or assets of the Employer. To the extent that any person acquires a right to receive payments from the Employer under the Plan, such rights shall be no greater than the right of any unsecured general creditor of the Employer.

6.2 **Use of Grantor Trust Permitted.** Notwithstanding any provision herein to the contrary, the Plan Sponsor may in its sole discretion elect to establish and fund a Grantor Trust for the purpose of providing benefits under the Plan.

ARTICLE VII **Administration of the Plan**

7.1 **Trustees.** The general administration and proper operation of the System, including the implementation of the provisions of the Plan, as it may be amended, is hereby vested in the Board of Trustees. The Board of Trustees may, in its sole discretion, delegate any or all of its duties to the Executive Director of the System.

7.2 **Trustees' Right to Administer and Interpret the Plan.** The Board of Trustees shall have the discretionary power and authority to administer and to interpret the Plan, including but not limited to the power to establish policies, practices, rules and regulations, determine questions of eligibility or entitlement to benefits, recoup benefits from those who have been overpaid, compromise claims regarding payments or assets, employ administrative and clerical staff, expend System funds to administer the Plan, enter into contracts and take such other action as

may be necessary to administer the System and the Plan efficiently. The Board of Trustees may adopt such rules and regulations as, in its sole discretion, are necessary or advisable to implement, administer, and interpret the Plan, or to transact its business. Such rules and regulations as are adopted by the Board of Trustees shall be binding upon any persons having an interest in or under the Plan.

7.3 **Protection of the Trustees.** The Board of Trustees shall be fully protected in acting upon any instrument, certificate, or paper believed by them to be genuine and to be signed or presented by the proper person or persons. The Board of Trustees shall be under no duty to investigate any such writing, but may accept it as true and accurate.

7.4 **Trustees not Under Duty to Investigate Mailing Addresses.** The Board of Trustees shall not be required to make any investigation to determine the addresses of persons entitled to benefits but shall be entitled to rely upon addresses provided to them by the Employer, the Participant or the Beneficiary. A notice or check shall be deemed to have been sent if enclosed in a securely sealed postpaid envelope and deposited in a United States Post Office or letter box addressed to the person to whom it is to be mailed at such address as was last furnished to the Board of Trustees.

7.5 **Trustees' Power to Require Further Evidence.** The Board of Trustees, in their sole and absolute discretion, may require such further or additional evidence of the genuineness, truth, or accuracy of any instrument as to them may seem reasonable.

7.6 **Court Action at Discretion of Trustees.** The Board of Trustees may, if they desire, require any fact or question to be adjudicated in court before taking any action.

7.7 **Successor Trustees Not Responsible for Prior Actions of Trustees.** No successor Trustee shall be in any way liable or responsible for anything done or omitted in the administration of the Retirement Plan or this Plan prior to the date he or she became a Trustee.

7.8 **Trustee's Participation.** A Trustee may be a member of the System, and such participation will not result in any limitation of powers or other disqualification to act in the capacity of Trustee.

ARTICLE VIII **Amendment and** **Discontinuance of the Plan**

8.1 **Power to Amend or Discontinue Plan.** While the Plan is intended to be permanent, the Employer reserves the right, at any time, and from time to time, to terminate in whole or in part, any and all provisions of this Plan. The Board of Trustees reserves the right, at any time, and from time to time, to amend in whole or in part, any and all provisions of this Plan.

8.2 **Effect of Termination on Future Benefits.** Notwithstanding any other provision of this Plan, no further benefits will be payable under the Plan if the Employer terminates the Plan and there are no further employer contributions to the Retirement Plan. The Employer reserves the right, upon termination of this Plan, to establish another plan to serve the same purpose or to make other arrangements to pay benefit amounts that would have been payable had the Plan continued.

ARTICLE IX
Miscellaneous

9.1 **Right to Employment.** Nothing contained in the Plan or the creation of any fund or account for the payment of any benefit shall be construed to give any employee, Participant, or Beneficiary any right to employment or continued employment by the Employer or any legal or equitable rights against the Employer, any agent or employee of the Employer, or against the Board of Trustees or their agents or employees, except as herein provided.

9.2 **Incapacity and Minors.** If a Participant or Beneficiary entitled to receive any benefits hereunder is a minor or is adjudged to be legally incapable of giving valid receipt and discharge for such benefits, or is deemed so by the Board of Trustees, benefits will be paid to such person as the Board of Trustees may designate for the benefit of such Participant or Beneficiary. Such payments shall be considered a payment to such Participant or Beneficiary and shall, to the extent made, be deemed a complete discharge of any liability for such payments under the Plan.

9.3 **Assignment.** The right of any Participant or Beneficiary to any benefit or any other right under the provisions of this Plan shall not be subject to alienation or assignment; nor, except as required by federal or state law, shall monies covered by this Plan be subject to attachment, execution, garnishment, sequestration, operation of bankruptcy law or other legal or equitable process. In the event that any such attempt to alienate or attach monies is made, the Board of Trustees may hold the Restoration Benefit for, or apply it to the benefit of, the Participant or Beneficiary in such proportions as the Board of Trustees deem proper. Any appointment made hereunder may be revoked by the Board of Trustees at any time, and a further appointment made by them.

The preceding paragraph shall not preclude the Plan from paying Restoration Benefits directly to the Participant's spouse or former spouse when such direct payments are required by a domestic relations order that complies with the applicable requirements of the Internal Revenue Code, or the Code of Virginia, and of any uniform and non-discriminatory regulations that the Board of Trustees may adopt. In addition, the preceding paragraph shall not preclude the Plan from complying with administrative actions pursuant to Chapter 19 of Title 63.2 of the Code of Virginia, or with court process to enforce a child or child and spousal support obligation, consistent with uniform and non-discriminatory regulations adopted by the Board of Trustees.

9.4 **Gender and Pronoun.** The masculine pronoun, wherever used, shall include the feminine pronoun, and the singular number shall include the plural number, unless the context requires otherwise.

9.5 **Liability.** No liability shall attach to or be incurred by the Board of Trustees or employees of the Employer by reason of the terms or conditions contained in this Plan. The employees of the Employer and the Board of Trustees shall be entitled to rely upon any and all certificates and reports or opinions given by any duly appointed accountant, actuary, investment advisor, or legal counsel (who may be counsel for the Employer), and shall be fully protected against any action taken in good faith in reliance upon such tables, valuations, certificates, reports, or opinions.

9.6 **Governing Law.** The Plan shall be construed, administered and enforced in accordance with the laws of the Commonwealth of Virginia. All references to provisions of the

Virginia Code, the Fairfax Code, or the Internal Revenue Code shall be construed to include any subsequently adopted amendments to, or renumbering of, such provisions, unless the Board of Trustees determines that such an interpretation would change the meaning or intent of the Plan.

9.7 **Appeals.** Any Participant, Beneficiary, or other individual who claims a benefit under the Plan, and is denied that benefit in whole or in part, may appeal to the Board of Trustees. Appeals shall be submitted in writing, addressed to the Chairperson, and accompanied by any documents relevant to the appeal. If the individual is dissatisfied with the Board of Trustees' response to the written appeal, and wishes to pursue it further, the individual shall make an oral presentation to the Board of Trustees. The filing of an appeal satisfying the requirements of this paragraph shall be a prerequisite to the filing of any further claims or actions in any court or other forum.

9.8 **Time Limits for Legal Action.** Any action at law or in equity relating to the Plan must be commenced within two years after the cause of action accrues. If the challenged decision relates to eligibility for or the amount of Restoration Benefits, the cause of action accrues when the application for benefits is denied or when the first payment of benefits is made.

9.9 **Construction.** The Plan is intended to be an "excess benefit plan" within the meaning of Section 415(m) of the Code maintained by a state, political subdivision of a state or any agency or instrumentality of a state or political subdivision of a state, and the provisions of the Plan shall be interpreted and administered as such. Additionally, the Plan is established and maintained with the intent that the Plan conform to the applicable requirements of the Enabling Statute or Enabling Ordinance. The provisions of the Plan shall be interpreted whenever possible to state provisions that conform to the applicable requirements of the Enabling Statute or Enabling Ordinance. When the Enabling Statute or Enabling Ordinance is amended or interpreted through subsequent legislation or regulations or an attorney general opinion, the Plan should be construed as stating provisions consistent with such amendment or interpretation of the applicable law.