

## **SETTLEMENT AGREEMENT AND RELEASE**

### **RECITALS**

This Settlement Agreement and Release is entered into with reference to the following facts:

A. This Settlement Agreement and Release (hereinafter "Agreement") is made and entered into by and between the Alameda County Employees' Retirement Association ("ACERA"), on the one hand, and Joe F. Dutra ("MEMBER"). ACERA and MEMBER are referred to at times hereinafter collectively as "the Parties".

B. Whereas MEMBER submitted an administrative appeal to the ACERA Board of Retirement ("BOARD") regarding MEMBER's demand for retroactive benefits from the Medicare Part B Reimbursement Plan ("MBRP") in the amount of \$8,819.00 ("MBRP Claim"), in response to ACERA's denial of the MBRP Claim.

C. Whereas, the BOARD heard the MBRP Claim on August 18, 2022, considered the positions of the parties, and authorized settlement thereof between ACERA and the MEMBER on the terms set forth below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT AND SUFFICIENCY OF WHICH IS HEREBY ACKNOWLEDGED, ACERA AND MEMBER AGREE AS FOLLOWS:

### **AGREEMENT**

1. **Recitals.** The foregoing Recitals are incorporated into this Agreement by this reference.
2. **Actions by ACERA.** Upon execution of the final signature required by this Agreement, ACERA will, within thirty (30) days, make a settlement

payment in the amount of Four Thousand Two Hundred Dollars (\$4,200.00) to the same account in which MEMBER receives his retirement benefit from ACERA ("ACERA Payment"). In addition, ACERA will file with the Internal Revenue Service ("IRS") and California Franchise Tax Board, and submit to MEMBER, Forms 1099 as required to report the ACERA Payment. As an express condition of making the ACERA Payment, ACERA makes no representations to MEMBER regarding the tax treatment of the ACERA Payment or required tax withholdings on such amount, and MEMBER agrees to release ACERA from, and to defend, hold harmless, and indemnify ACERA against, any expenses or losses (including without limitation fines, penalties, and interest, imposed by any taxing authority) arising from, relating to, or in connection with, the tax reporting of the ACERA Payment. MEMBER acknowledges that he has consulted with an advisor of his choice regarding the tax treatment of the ACERA Payment or, having been advised to seek counsel and having had the opportunity to do so, has not so consulted.

3. Release of Claims By MEMBER. Subject to ACERA's actions as set forth in paragraph 2, and the full-execution of this Agreement by all Parties hereto, MEMBER agrees to release and forever discharge ACERA, and all of each of their divisions, their present or former trustees, employees, officers, elected and appointed officials, agents, attorneys, successors, and assigns of and from any and all claims and demands arising from or related to the payment of the MBRP prior to the date of this Agreement and this Agreement.

4. No Admissions. It is understood that this Agreement is not an admission of liability, and ACERA specifically denies liability relating to the MBRP Claim, and intends merely to avoid further disputes and any litigation and further expense

by entering into this Agreement. The Parties agree that it is their mutual intention that neither this Agreement, nor any terms hereof, shall be offered to establish liability in any other or future proceedings against any of the Parties, except in a proceeding to enforce this Agreement.

5. Modifications. This Agreement may be amended only by written instrument executed by all Parties hereto.

6. Interpretation and Construction of Agreement. The headings set forth in this Agreement are for convenience only and shall not be used in interpreting this Agreement. The Parties acknowledge they have had an opportunity to review and discuss each term of this Agreement with legal counsel and, therefore, the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

7. Entire Agreement. This Agreement constitutes the entire agreement between the Parties on the subjects covered by it, and supersedes any prior written or oral communications on the same subjects made by anyone.

8. Advice of Counsel. The Parties acknowledge and agree that they have been represented in the negotiation, preparation and review of this Agreement by counsel of their own choosing or have had the opportunity to be so represented, that they have read this Agreement, that they understand this Agreement, and that they are fully aware of the contents and legal effect of this Agreement.

9. No Additional Inducement. The Parties represent and warrant that no promise, inducement or representation has been made to them except as expressly set forth herein, and that this Agreement is executed without reliance on any promise,

inducement or representation except as expressly set forth herein. This Agreement is fully and voluntarily entered into by the Parties.

10. Governing Law. California Law, as it is applied to domiciliaries thereof, shall govern this Agreement and its interpretation.

11. Consent to Jurisdiction and Venue. The Parties mutually agree that the California courts shall have jurisdiction regarding this Agreement, and further agree that venue for any action arising out of, or relating to, this Agreement, shall be in Alameda County.

12. Time of the Essence. Time is expressly declared to be of the essence in this Agreement.

13. Authority to Bind Entities. Each person executing this Agreement on behalf of an entity represents and warrants that he or she has the full authority to enter into this Agreement on behalf of the entity and that this Agreement when fully executed shall constitute a binding obligation on behalf of the entity.

14. Counterparts and Electronic Signatures. This Agreement may be executed in counterparts and with electronic signatures, which, taken together, shall constitute one and the same Agreement.


15. Severability of Parts. If any portion, provision or part of this Agreement is held, determined or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of such remaining portions, provisions or parts.

16. Acknowledgement. The Parties have carefully read this Agreement, have consulted with each of their attorneys concerning this Agreement, and understand the final and binding effect of the Agreement.

**IN WITNESS WHEREOF**, the Parties execute this Agreement on the date indicated opposite his/her signature below.

Dated: October 12, 2022

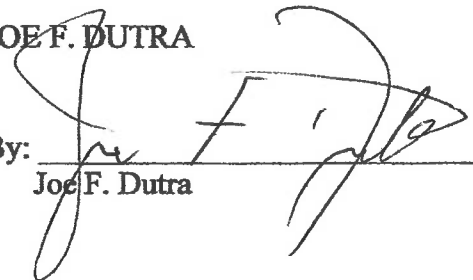
ALAMEDA COUNTY EMPLOYEES'  
RETIREMENT ASSOCIATION

By:   
Dave Nelsen

Its: Chief Executive Officer

Dated: October 13, 2022

JOE F. DUTRA

By:   
Joe F. Dutra