BOARD OF RETIREMENT
FRESNO COUNTY EMPLOYEES’ RETIREMENT ASSOCIATION

December 19, 2007

Trustees Present:

Alan Cade, Jr.  Michael Cardenas  Nick Cornacchia
Vicki Crow     Eulalio Gomez     Steve Jolly
Phil Larson    Stephanie Savrnoch John Souza

Others Present:

Ronald S. Frye, Alternate Trustee
Paul Angelo, The Segal Company
Andy Yeung, The Segal Company
Jeffrey Rieger, Reed Smith – via tele-conference
John Endara, Active FCERA Member
Roger Greening, Retired FCERA Member

1. Call to Order

Chair Jolly called the meeting to order at 8:35 AM.

2. Pledge of Allegiance

Recited.

3. Presentation of Plaque to Stephanie Savrnoch for three years of service as Trustee for the Board of Retirement of the Fresno County Employees’ Retirement Association.

Roberto L. Peña, Retirement Administrator, the Retirement Board, and Jon Endara, Active FCERA Member, thanked Trustee Savrnoch for her service and dedication to the Board and General Members.

4. Public Presentations

None.

Roberto L. Peña, Retirement Administrator, stated that Administration had neglected to include the Investment Management Agreement as part of the language for Agenda Item 19. Robert Landen, Deputy County Counsel, advised the Board that in the event it is determined that the agreement is material, the Investment Management Agreement could be added with a 2/3 vote of the Board.

After a brief discussion the Board determined that the Investment Management Agreement is material to the discussion.
A motion was made by Chair Jolly, seconded by Trustee Crow, to include the Investment Management Agreement as part of Agenda Item 19. VOTE: Unanimous

Chair Jolly recommended that the Board re-visit the FCERA Investment Policy at a future Board meeting.

Trustee Cardenas joined the Board at 8:42 AM.

Consent Agenda/Opportunity for Public Comment

Trustee Cade pulled Consent Agenda Item 13 for discussion.

A motion was made by Trustee Souza, seconded by Trustee Larson, to Approve Consent Agenda Items 5-12 and 14. VOTE: Unanimous

*5. Approve the November 7, 2007 Retirement Board Regular Meeting Minutes

RECEIVED AND FILED; APPROVED


RECEIVED AND FILED

*7. Public Records Requests and/or Retirement Related Information Requests from Roger J. Pickler, City of San Jose Retirement Services; Amy Hatcher, SEIU Local 521; Rich Goss, CALAPRS; Rita Deubner, Active FCERA Member; and Suzanne Jenike, Orange County Retirement System

RECEIVED AND FILED

*8. Update of Board of Retirement directives to FCERA Administration

RECEIVED AND FILED

*9. Correspondence to be included with the FCERA Retirees December benefit payments regarding the Health Insurance Premiums and the new benefit payments provider, State Street Bank

RECEIVED AND FILED

*10. Final Compensation Update

RECEIVED AND FILED
*11. Amicus Brief regarding Toby Block v. Orange County Employees’ Retirement System and subsequent Court order permitting it to be filed

RECEIVED AND FILED

*12. Approve final Resolution “recognizing” Fresno County Retired Employees Association as the “official” retirees’ organization by FCERA’s Board of Retirement as agreed on December 5, 2007

RECEIVED AND FILED; APPROVED

*13. Approve Adoption of General Tier III Rates as approved “in-concept” on December 5, 2007

Trustee Cade expressed his concern that an actuarial study had not bee completed prior to the County adopting the Tier III retirement plan although required by Government Code Section 7507. Trustee Cade requested that Administration agendize a discussion regarding the potential need for an actuarial study on the future cost of Tier III.

Roberto L. Peña, Retirement Administrator, stated that Administration had communicated with the County and recommended that an actuarial study be completed prior to adopting the Tier III retirement benefit. However Mr. Peña noted that, as part of FCERA’s responsibilities in implementing Tier III, an actuarial study was completed in order to provide the County with the necessary contribution rates.

Discussions, questions, and comments followed regarding the Board’s obligation, if any, to request an actuarial study.

A motion was made by Trustee Savrnoch, seconded by Trustee Crow, to Approve the General Tier III rates as presented. ROLL CALL VOTE: Yes – Cade, Cardenas, Cornacchia, Crow, Gomez, Savrnoch, Souza. No – Jolly. Abstain – Larson.

The Board directed Administration to agendize for discussion the feasibility of requesting a more comprehensive actuarial study on the cost of the General Tier III retirement plan based on Government Code Section 7507.

RECEIVED AND FILED; APPROVED

Roger Greening, Retired FCERA Member, raised concerns as to the legality of Trustee Larson abstaining from the vote due to his duties as a member of the Board of Supervisors. Chair Jolly directed Robert Landen, Deputy County Counsel, to research legalities, as they relate to proposition 162, of abstaining and whether a Trustee must communicate the reason for abstaining.

*14. Approve the Actuarial Services Contract with The Segal Company

RECEIVED AND FILED; APPROVED
15. Discussion and appropriate action on Request to implement an optional provision of the Pension Protection Act 2006

Becky Van Wyk, Assistant Retirement Administrator, opened discussions by advising the Board that the Pension Protection Act of 2006 (PPA) permits retirement systems to offer a direct trustee to trustee transfer of eligible retirement contributions distributed to nonspouse beneficiary who is the designated beneficiary for distributions made after December 31, 2006. Internal Revenue Bulletin 2007-5 issued January 29, 2007 clarifies that plans are not required to offer a direct rollover of a distribution to a nonspouse beneficiary.

Jeffrey Rieger, Reed Smith, stated that the benefits afforded by the PPA option are clear and FCERA Administration supports the offering of trustee to trustee transfers of future distributions of death benefits for nonspouse beneficiaries. However, Reed Smith does not believe that FCERA should pursue the retroactive implementation of an optional benefit as the IRS will not permit the plan to reverse the death benefit transaction payment made to the beneficiary as it would not be a plan correction because if was not an error to pay the beneficiary directly as it was within its plan document.

At the request of Trustee Savrnoch, Mr. Rieger clarified that his interpretation of the law states that the Internal Revenue Service (IRS) will not permit the system to retroactively reverse a death benefit payment already made to a beneficiary.

Robert Bergstrom, Counsel for Claire Dias [Executor for named beneficiary Charles Francone], stated that the Board cost his client $35,000 by not offering the Trustee to Trustee transfer and requested that the Board implement the benefit retroactively. Attorney Bergstrom opined that PPA 2006 - Section 1107 allows the Plan to make retroactive amendments until the Plan year 2011.

Attorney Bergstrom noted the Board’s fiduciary responsibility is to its members and they have an active duty to protect and benefit those for whom they are serving and to exercise its discretion in favor of the participants and beneficiaries.

Attorney Bergstrom requested that the Board take corrective action and take back the payment and re-issue as a Trustee to Trustee non-taxable transfer.

Discussions, questions, and comments followed regarding the legalities of taking back the payment as part of a “plan correction”. Attorney Rieger noted that taking back the payment is not considered a plan correction in that FCERA did not make any error when it paid the beneficiary directly. FCERA followed its plan document.

In response to a question from Trustee Souza regarding whether it is legal to take back the payment, Attorney Rieger stated that it is his best judgment not to allow the return of the money.
A motion was made by Trustee Crow, seconded by Trustee Jolly, to Amend the Plan to allow Trustee to Trustee Transfer for Nonspousal Beneficiaries prospectively with direction for Administration to continue working with Counsel in determining whether the Board can adopt the provision retroactively.

After further discussion, the Board tabled the Item and the motion and went into Closed Session at this time to discuss the legalities of this issue with Attorney Jeffrey Rieger.

21. Closed Session

   B. Conference with Legal Counsel – Threatened Litigation – pursuant to G.C. §54956.9(b) (one case)

22. Report from Closed Session

   21.B. Conference with Legal Counsel – Threatened Litigation – pursuant to G.C. §54956.9(b) (one case)

A motion was made by Trustee Savrnoch, seconded by Trustee Souza, to accept the money from the applicant before December 31, 2007. ROLL CALL VOTE: Yes – Cardenas, Cornacchia, Gomez, Larson, Savrnoch, Souza. No – Cade, Crow Jolly.

The Board continued Agenda Item 15 discussions at the time.

15. Discussion and appropriate action on Request to implement an optional provision of the Pension Protection Act 2006

A motion was made by Trustee Crow, seconded by Trustee Souza, to Amend the Plan to allow for the Trustee to Trustee Transfer for a Nonspousal beneficiaries provision retroactively to January 1, 2007 for payments not yet made and prospectively with direction for Administration to continue working with Counsel in determining whether the Board can adopt the provision retroactively for payments that have been made. Vote: Yes – Cade, Cardenas, Cornacchia, Crow, Gomez, Larson, Savrnoch, Souza. No – Jolly.


Actuary Paul Angelo of The Segal Company presented the economic actuarial assumptions which included his recommendations for changes. Discussion followed regarding Mr. Angelo’s presentation.
Mr. Angelo’s economic actuarial assumptions recommendations include:

- Reducing the current 8.16% investment return rate assumption to 8.00% per annum.
- Reducing the current 4.00% inflation assumption to 3.75% per annum.
- Reducing the current inflationary salary increase assumption from 4.00% to 3.75% per annum consistent with the recommended general inflation assumption and introduce a real “across the board” salary assumption of 0.25%. Meaning that the combined inflationary and real “across the board” salary increases will remain 4.00% per annum.

Discussions, questions, and comments followed regarding the methodologies used in determining the recommended assumptions. It was noted that by implementing the suggested recommendations, the combined employer and employee total contribution increase is approximately 4.5% of pay (0.7% employee and 3.8% employer).

Discussions ensued regarding the impact to employer/employee contribution rates in the event the current 8.16% investment return rate assumption was reduced to 8.00%.

Trustee Cornacchia departed at 11:48 AM.

A motion was made by Chair Jolly, seconded by Trustee Cade, to adopt the Economic Actuarial Assumptions as recommended. ROLL CALL VOTE: Yes – Cade, Cardenas, Crow, Larson, Jolly. No – Gomez, Savrnoch, Souza. Absent – Cornacchia.

RECEIVED AND FILED; APPROVED

Mr. Angelo presented the experience analysis for the three-year period ending June 30, 2006 which included his recommendations for changes to the demographic assumptions. Discussion followed regarding Mr. Angelo’s presentation.

Mr. Angelo’s demographic actuarial assumptions recommendations include:

- Slightly increasing retirement rates for General Tier I and decreasing the retirement rates for Safety members.
- Decreasing the Mortality Tables by two years for Safety members to reflect decreased mortality rates and reducing the disabled member mortality rates for General and Safety members.
- Increasing the termination assumptions in most cases due to a higher proportion of members expected to elect a refund of member contributions instead of a deferred vested benefit.
- Increasing disability rates to reflect recent experience.
- Increasing the merit and promotional rates at most ages to reflect recent years’ experience.
- Reducing the current Annual Leave assumption to reflect a decrease in accumulated annual leave.
Discussions, questions, and comments followed regarding the methodologies used in determining the recommended assumptions.

Trustee Crow departed at 12:22 PM.

Andy Yeung, The Segal Company, and Mr. Angelo reviewed in detail, the current, actual, and proposed rates as follows:

- Retirement Rates
- Mortality Rates
- Termination Rates
- Disability Incidence Rates
- Merit and Promotional Salary Increases
- Annual Leave Conversion

A motion was made by Trustee Souza, seconded by Trustee Cade, to adopt the Demographic Actuarial Assumptions as recommended. VOTE: Unanimous

Absent – Cornacchia, Crow.

17. Discussion and appropriate action on the Audited Financial Statements as of June 30, 2007 presented by Connie Perez, Audit Manager – Brown Armstrong

Connie Perez, Audit Manager - Brown Armstrong, summarized the purpose of an audit and gave a brief overview of the audit process and responsibilities. Ms. Perez noted that audit tests are designed to identify high risk areas such as investments and employer and employee contributions that have potential for material errors, irregularities, and fraud.

Ms. Perez stated that FCERA's financial statements are fairly presented in accordance with generally accepted accounting principles and offered an unqualified (“clean”) opinion. Ms. Perez noted that the opinion is the highest opinion that an independent audit firm can issue and congratulated the FCERA team.

Ms. Perez stated that the “findings” from the prior year audit had been addressed and there were no new findings to report. Ms. Perez stated that findings and recommendations are intended to improve the internal control structure or result in other efficiencies.

Ms. Perez thanked the FCERA staff for their diligence in collecting and supplying information timely when requested.

Discussions, questions, and comments followed regarding the possibility of conducting a separate audit of the Internal Controls.

Mr. Peña expressed his appreciation for the knowledge gained through the audit process and thanked the Brown Armstrong firm and congratulated the FCERA accounting staff Conor Hinds, Pam Fine, Kay Vang, and Becky Van Wyk for their efforts.
A motion was made by Trustee Savrnoch, seconded by Chair Jolly, to Approve Agenda Item 10 as presented. VOTE: Unanimous

RECEIVED AND FILED; APPROVED

18. Discussion and appropriate action on continuing negotiations for an agreement with Real Estate Agent, Fortune Associates, due to the failure of Fortune Associates to carry Professional Liability Insurance coverage called for in the Request for Proposal; and discussion and appropriate action on selection of other responsive Real Estate Agent for contract negotiations if a decision is made to not continue to negotiate with Fortune Associates

Becky Van Wyk, Assistant Retirement Administrator, opened discussions by reminding the Board of its decision to negotiate a contract with Fortune Associates to represent FCERA in the possible sale of the Fresno Station Business Center.

Ms. Van Wyk noted that during negotiations it was determined that Fortune Associates does not carry professional Liability Insurance which was included as a requirement in the proposed terms of the contract included with the Request for Proposal.

Ms. Van Wyk noted that Colliers Tingey and Sperry Van Ness had made presentations to the Board at a previous meeting and both carry Errors and Omissions which is comparable to Professional Liability insurance and both indicated a willingness to pursue contract negotiations with FCERA in the event the Board determines that this particular insurance is material.

Trustee Cardenas departed at 12:54 PM.

Discussions ensued and the Board determined that Professional Liability insurance is material.

A motion was made by Trustee Savrnoch, seconded by Trustee Larson, to cease negotiations with Fortune Associates due to the lack of Professional Liability Insurance. VOTE: Unanimous. Absent – Cardenas, Cornacchia, Crow.


RECEIVED AND FILED; APPROVED

Trustee Souza noted that he abstained from the vote due to his absence during the initial presentations.
19. Discussion and appropriate action on the Custodian/Paying Agent Services Contract and Securities Lending Agreement with State Street

Roberto L. Peña, Retirement Administrator, opened discussions by noting that the securities lending, investment manager, and the custody agreements have been reviewed by Attorney Alan Cabral, Seyfarth Shaw, and reflect the negotiated changes. Mr. Peña recommended approval of the agreements as presented.

A motion was made by Chair Jolly, seconded by Trustee Larson, to Approve the agreements as recommended. VOTE: Unanimous. Absent – Cardenas, Cornacchia, Crow.

RECEIVE AND FILE; APPROVE

Trustee Savrnoch departed at 1:00 PM.

20. Discussion and appropriate action on salary adjustments for unrepresented excluding Senior Management (3.5%) and unrepresented confidential classifications (3.5% plus 2.0% disparity increase and the addition of a 6 \textsuperscript{th} step) and the Senior Management Compensation Plan (2.74% maximum), effective December 17, 2007

Trustee Crow joined the Board at 1:01 PM.

Roberto L. Peña, Retirement Administrator, opened discussions by referring to Salary Resolution Amendments approved by the Board of Supervisors on December 18, 2007. Mr. Peña requested that the Board approve the same salary adjustments for FCERA’s unrepresented and senior management staff.

A motion was made by Trustee Larson, seconded by Chair Jolly, to approve the Salary Adjustments. VOTE: Unanimous. Absent – Cardenas, Cornacchia, Savrnoch.

RECEIVED AND FILED; APPROVED

Roberto L. Peña, Retirement Adminstrator, pulled Closed Session Agenda Item 21.A.1., as there was nothing to discuss.

21. Closed Session:

A. Conference with Legal Counsel – Actual Litigation - pursuant to G.C. §54956.9(a)

1. Fresno County Employees’ Retirement Association v. Public Pension Professionals

B. Conference with Legal Counsel – Threatened Litigation – pursuant to G.C. §54956.9(b) (one case)
C. Conference with Legal Counsel – Potential Litigation – pursuant G.C. §54956.9(c)

D. Disability Retirement Applications – Personnel Exceptions (G.C. §54957):
   1. Eric Boggs

16. Report from Closed Session

21.B. Please see Item following Agenda Item 15.
21.C. Direction was given to Counsel to initiate legal action.

17. Report from FCERA Administration

Roberto L. Peña, Retirement Administrator, reported on the following items:

   1. The Segal Company will present the Actuarial Valuation on January 23, 2008.
   2. Mr. Peña requested that Administration be able to agendize for discussion the feasibility of requesting an actuarial study on the cost of the General Tier III retirement plan based on Government Code Section 7507 at the January 23, 2008 Regular Board Meeting. The Board agreed.

18. Report from County Counsel


19. Board Member Announcements or Reports

   1. Trustee Souza reminded the Trustees to complete and return the Trustee Evaluation forms and noted that the Personnel Committee will be meeting January 4, 2008.

There being no further business, the meeting adjourned at 1:25 PM.

Roberto L. Peña
Secretary to the Board