

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE COUNTY OF ORANGE
AND
THE ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM
REGARDING THE COUNTY OF ORANGE-COUNTY REPLACEMENT BENEFITS
PLAN**

This Memorandum of Understanding (“MOU”) is entered into by and between the Orange County Employees Retirement System (“OCERS”) and the County of Orange (“County”) to be effective ~~beginning on January 1, 2005~~ upon execution of the MOU by all parties.

WHEREAS, OCERS administers retirement benefits for certain employees of the County and the Superior Court of California, County of Orange; and

WHEREAS, the amount of benefits that can be provided to OCERS members is limited by Section 415(b) of the Internal Revenue Code (“Section 415(b)” and “Code” respectively); and

WHEREAS, the County is required by California Government Code Sections 31899.4 through 31899.8 to establish a replacement benefit plan to the extent permissible under the Code; and

WHEREAS, the County has adopted the County of Orange-County Replacement Benefits Plan (the “Plan”), effective January 1, 2005; and

WHEREAS, the County has adopted the First Amendment to the Plan which added the Superior Court of California, County of Orange, to the Plan, effective beginning in the 2007 Plan Year; and

WHEREAS, the most efficient way for the County to operate the Plan is to enter into a memorandum of understanding with OCERS setting out the responsibilities of the County and OCERS with respect to the Plan; and

~~WHEREAS, it is mutually beneficial for~~ WHEREAS, the Plan document and amendment have been provided to OCERS and are attached hereto; and

WHEREAS, on January 1, 2005, OCERS and the County, entered into a memorandum of understanding (the “2005 MOU”) for OCERS to act as the paying agent of the County for purposes of paying benefits under the Plan to Participants and Eligible Survivors; and to maintain records

WHEREAS, OCERS and accounts the County agreed in accordance with the terms of 2020 that the County would begin paying Plan benefits directly to Plan Participants and Eligible Survivors effective beginning in the 2020 Plan Year; and

WHEREAS, OCERS and the County wish to enter into this MOU and as required by law; and, which will supersede and replace the 2005 MOU; memorialize the County having commenced paying Plan benefits directly to Plan Participants and Eligible Survivors effective beginning in the 2020 Plan Year; and set out the respective responsibilities of County and OCERS with respect to the Plan.

~~WHEREAS, the Plan document has been provided to OCERS and is attached hereto.~~

~~THEREFORE,~~ IT IS HEREBY AGREED BY AND BETWEEN THE COUNTY AND OCERS AS FOLLOWS:

1. Purpose of Agreement

~~This Memorandum of Understanding ("MOU") is entered into by the County and OCERS in order to facilitate the efficient operation by the County of the Orange County Replacement Benefits Plan ("Plan") that will provide~~ Plan, which provides benefits to Retired Members and Eligible Survivors (each as defined in the Plan document) whose OCERS retirement benefits are limited by Section 415(b) of the Code. This MOU supersedes and replaces the 2005 MOU in its entirety effective as of the date of the effective date of this MOU.

2. Definitions

Undefined terms used in this MOU shall have the same meaning as in the Plan.

3. Payment of Replacement Benefits

(a) In accordance with the Plan, the County shall pay to Retired Members of OCERS, and to their Eligible Survivors, the difference between the benefits that would be payable from OCERS without regard to the limits of Section 415(b) ~~of the Code~~ and the amount that may be paid by OCERS under the Code, to the extent that such benefits can be paid without violating Section 415(b). These benefits are ~~called~~ referred to as "Replacement Benefits".

(b) The County shall pay Replacement Benefits and all direct or indirect costs associated with administration of the Plan from legally available monies of the County. No assets of OCERS shall be used to pay Replacement Benefits and no assets of OCERS

shall be used to pay the cost of administration or any other costs regarding the operation of the Plan.

(c) OCERS shall notify the County of the amounts described in Section 4(a) below. OCERS shall also notify the County when affected Retired Members and Eligible Survivors will reach the Beginning Date, as defined under the Plan and under Section 4(d) below, to facilitate when payments should begin each Plan Year. Based upon such information and notification from OCERS, the County shall pay the Replacement Benefits payable under the Plan to affected Retired Members and Eligible Survivors.

4. Determination of Amount of Replacement Benefits

(a) In When a Retired Member or Eligible Survivor's OCERS benefit is limited by Section 415(b), and in accordance with ~~its~~ OCERS' responsibilities under Section 415(b), OCERS shall determine the retirement benefit amount of benefits for any affected Retired Member and Eligible Survivor that would have been paid from OCERS without the OCERS plan but for the application of the limits of Section 415(b), and shall determine the amount of the ~~benefits~~ retirement benefit that ~~can~~ will be paid to such persons in accordance with from the limits of OCERS plan as limited by Section 415(b). The difference between these two amounts (if any) is the amount of Replacement Benefits payable by the County under the Plan.

(b) OCERS shall make ~~this~~ the determination described in paragraph (a) of this Section 4 for the first year that the benefits of any affected Retired Member or Eligible Survivor are limited by Section 415(b) and for each year thereafter. Annual determination is needed because both the amount of the limits and the amount of OCERS benefits may change periodically.

(c) To the extent that the amount of benefits that are limited by Section 415(b) change during the year, and in accordance with its responsibilities if required under Section 415(b), OCERS shall ~~calculate~~ redetermine the ~~benefits payable by OCERS and the County under the Plan~~ amounts described in paragraph (a) of this Section 4.

(d) In any Plan Year, ~~benefits~~ the County shall only be paid under the ~~pay~~ Plan ~~benefits to a Participant~~ an affected Retired Member or Eligible Survivor after the date in the Plan Year that the benefits paid to such person from OCERS have reached the maximum annual benefit that OCERS can pay under Section 415(b) for that Plan Year. The day after the maximum annual benefit payment from OCERS is reached is the Beginning Date for the ~~Participant~~ affected Retired Member or Eligible Survivor for that Plan Year. The Beginning Date may change from Plan Year to Plan Year as the amount payable under ~~this~~ the Plan is redetermined.

(e) As provided in Section 6 below, OCERS shall communicate to the County the information determined under this Section 4 on a monthly basis.

(f) In accordance with the Plan, the County shall rely on the calculations and information provided by OCERS set out in paragraphs (a), (b), ~~and (c)~~ and (d) of this ~~section~~ Section 4 for purposes of determining the Replacement Benefits payable under the Plan.

~~(f) As provided in Section 6 of this MOU, OCERS shall communicate to the County the information determined under this Section 3.~~

5. OCERS to Act as County's Agent for Paying Replacement Benefits

~~Upon notification of the County of amounts to be paid to Participants and Eligible Survivors under the Plan, OCERS shall act as the agent for paying Replacement Benefits to Participants and Eligible Survivors. The County will maintain an account accessible to OCERS containing an amount necessary to fund the Plan for the Plan Year. OCERS shall charge County an administrative fee not to exceed the actual cost of calculating and paying Replacement Benefits and other required reporting, including tax reporting of benefits under the Plan. Such cost shall include personnel and overhead costs.~~

~~6.~~ Effect of on County Contributions to OCERS of Section 415(b) Limits

(a) In accordance with the recommendation of OCERS' actuary, County contributions to OCERS shall be adjusted, taking into account ~~Code Section 415(b)~~ benefit limitations. OCERS shall make available to the County all information considered by the OCERS' actuary in making recommendations to the OCERS in accordance with this ~~subparagraph~~ paragraph.

(b) County contributions to OCERS shall be adjusted, in accordance with Sections ~~53(c) and 4,~~ for each Plan Year in which Replacement Benefits are payable under the Plan. At the end of each Plan Year, OCERS shall determine and make the appropriate reduction in County contributions in ~~an~~ any amount equal to the Replacement Benefits payable under the Plan in accordance with ~~the recommendation of~~ OCERS' actuary.

6.

~~7.~~ Communications Between the County and OCERS

(a) OCERS shall communicate to the County, in writing and as soon as reasonably practicable, ~~all information known to that~~ OCERS that determines is necessary or appropriate for the efficient administration of the Plan. This communication ~~includes~~ may include, but is not limited to, the following: the names and identifying numbers of the Retired Members and Eligible ~~Survivor~~ Survivors whose OCERS benefits

are limited in any year; the amounts of their Replacement Benefits (if any) and the calculations that support ~~these~~ those amounts; the date as of which the Replacement Benefits will become payable ~~during~~ each year (if any); the direct deposit information of affected Retired Members and Eligible Survivors to facilitate payment; the amount by which the Replacement Benefits change during the year (if at all); the amount of reduction in the County's contribution to OCERS that will occur under ~~section~~ Section 5 hereof above (if any); and the date that any Replacement Benefits are no longer required under the Plan or this MOU (for example, on the death of the Retired Member).

(b) The County shall communicate to OCERS, in writing and as soon as reasonably practicable, all information that is necessary or appropriate for the efficient administration of the Plan.

7.

8. Communications With Members

Upon ~~receiving the needed information from OCERS with respect to~~ determining the amounts and timing of payment of Replacement Benefits, and in accordance with its responsibilities under Section 415(b), OCERS shall inform each affected Retired Member or Eligible Survivor ~~about how the Plan works with respect to~~ that his or her benefits are limited by Section 415(b), and will generally inform him or her; that the Plan will provide Replacement Benefits, including the amounts that will be paid under the Plan for the particular year, and the timing of such payments, any tax withholding elections available and all other information that is necessary or appropriate for operation of the Plan if known to OCERS.

8. 9. Reconciliation of Amounts

The County and OCERS shall take all reasonable steps to reconcile, after the end of each Plan ~~year~~ Year, the amounts of Replacement Benefits that have been identified as payable by ~~OCERS~~ County and the amounts of Replacement Benefits that have actually been paid. ~~Underpayments~~ Plan underpayments or overpayments of Replacement Benefits shall be corrected by the County ~~in accordance with the Plan~~ as required. The County shall not seek any recourse against OCERS related to such overpayments or underpayments except to the extent that OCERS is required to reduce County contributions as provided in Section 5(b) above.

109. Tax Reporting

OCERS and the County shall be separately responsible for their required reporting to the tax authorities. ~~OCERS shall separately report on the County's behalf payments made under the Plan.~~ County and OCERS shall cooperate in providing information needed for

accurate tax reporting, provided that OCERS shall have no obligation or liability with respect to any tax reporting for benefits paid by the Plan.

~~110.~~ Indemnification and Hold Harmless

To the extent ~~allowed~~ allowable by applicable law, and subject to Section 8 above, each party to this MOU shall indemnify and hold the other harmless for any costs, damages, or other liabilities incurred hereunder on account of its own negligence or willful misconduct.

~~111.~~ Dispute Resolution

Any dispute between the County and OCERS regarding this MOU shall be subject to binding arbitration conducted under the rules and procedures of the American Arbitration Association, or by any other procedure mutually agreed to by the County and OCERS.

~~112.~~ Termination

This MOU shall terminate automatically upon termination of the Plan, effective immediately. Either party may terminate this MOU upon ~~90 days~~ 90 days' notice. Termination shall be effective the first day of the immediately following Plan Year.

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13. Miscellaneous

(a) Integration.

This MOU and the documents referenced herein constitute the entire agreement of the parties with respect to the subject matter hereof and ~~supersedes~~ supersede all prior agreements and understandings, both written and oral.

(b) Amendment.

This MOU may only be amended pursuant to a written agreement executed by both parties hereto. Notwithstanding the immediately preceding sentence, the Plan Administrator for the Plan and OCERS may enter into such other agreements, policies and procedures, as determined to be necessary, consistent with the terms of the Plan and of this MOU, for the efficient operation and administration of the Plan.

IN WITNESS WHEREOF, THIS AGREEMENT HAS BEEN ENTERED INTO AS OF ~~THE 1ST DAY OF JANUARY, 2005.~~ _____, 2021.

COUNTY OF ORANGE, CALIFORNIA

~~Patti Gilbert, Assistant~~

Kim Derrick, Director
Employee Benefits, as Plan Administrator

APPROVED AS TO FORM
COUNTY COUNSEL

~~John H. Abbott, Senior~~

Deputy, Office of County Counsel
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ORANGE COUNTY EMPLOYEES RETIREMENT SYSTEM

~~Julie Wync, Interim~~

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APPROVED AS TO FORM
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