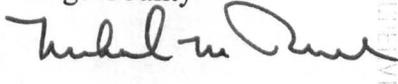


**Agenda Item No. 1
August 1, 2007 Meeting**

DATE: August 1, 2007

TO: Children and Families Commission of Orange County

FROM: Michael M. Ruane, Executive Director 

SUBJECT: **Approve FY 2007-08 Retirement Employer and Employee Rates and Participation Agreement with County of Orange for Retiree Medical Plan**

CLERK OF THE BOARD
ORANGE COUNTY
BOARD OF SUPERVISORS
07 JUL 25 PM 1:15
RECEIVED

SUMMARY:

FY 2007-08 Retirement Rates

Historically, the Orange County Board of Supervisors approved the retirement contribution rates for County agencies and departments, and all special districts, including the Children & Families Commission, as recommended by the Orange County Employees Retirement System (OCERS).

Last year, the Commission adopted employer and employee retirement contribution rates as required by AB 538, Harman (effective January 1, 2006). AB 538 requires special districts, boards, and commissions that participate in OCERS, but are not governed by the Board of Supervisors, to make the same adjustments to employer and employee contribution rates for their respective organizations.

On July 17, 2006, the OCERS Board of Retirement adopted new employer and employee retirement contribution rates for FY 2007-2008. These rates are based on a comprehensive actuarial study of the Retirement System performed by The Segal Company. The "Actuarial Valuation and Review as of December 31, 2005," summarizes the actuarial data used in the valuation, and establishes the funding requirements for FY 2007-08.

Attachment 1 presents the employer and employee contribution rates as recommended by OCERS for FY 2007-08. The rates consist of two components, the Normal retirement rate (which covers retirement costs going forward), and the Unfunded Accrued Actuarial Liability (UAAL) rate (which covers retroactive retirement costs). The FY 2007-08 employer rate of 16.86% a slight increase over the FY 2006-07 of 16.80%. The FY 2007-08 employee rate of 2.13% is lower than the prior year rate of 2.19%.

Commission approval is recommended to adopt the employer and employee retirement contribution rates as recommended by OCERS for FY 2007-08, as shown in Attachment 1. The employer rate represents the maximum rate for FY 2007-08, and may be adjusted downward based on new information from OCERS, if available.

Participation Agreement – County Retiree Medical Plan

In September 2006, the Board of Supervisors approved a restructuring of the retiree medical plan in order to reduce long-term unfunded liability. The County requires that all special districts, boards, and commissions participating in the County's benefits programs have the same benefits and levels of contribution as the County and its employees.

In December 2006, the Commission approved continued participation in the County's Retiree Medical Plan, including funding for the Retiree Medical Plan up to 3.5% of salaries effective January 1, 2007, as was required of all County agencies and departments. The Commission's approved FY 2007-08 Budget includes continued funding at the same level.

At the June 19, 2007 meeting, the Board of Supervisors approved documents to implement the Restated Retiree Medical Plan (the "Plan"), and establish an irrevocable tax-exempt trust called the Retiree Medical Trust (the "Trust") effective July 1, 2007. The Trust will receive, hold, and invest contributions from all participating agencies separate and apart from the County, and will pay out benefits to those eligible under the Plan. The Orange County Employees Retirement System will provide investment management and administration services for the Trust.

The County is requesting that all special districts, boards, and commissions enter into a Participation Agreement (the "Agreement") with the County and the Retiree Medical Trust. A copy of the Agreement is presented in Attachment 2.

General Counsel has reviewed and evaluated the changes to the County's Retiree Medical Plan, the Commission's obligations under the amended Retiree Medical Plan and the proposed Participation Agreement, and the Commission's options related to continued participation in the Retiree Medical Plan and other services provided by the County.

The Agreement is not limited to participation in the Retiree Medical Plan, but also covers the County's provision of payroll and human resources services to the Commission and Commission employees' continued participation in any other health, disability, retirement, and other employee benefit plans administered by the County. The County has represented to staff and General Counsel that the Commission must enter into the Participation Agreement in order to continue to take advantage of any of the County's employee benefit services. At the same time, the Agreement affords the Commission participation in the employee benefit services provided by the County under the same terms and conditions as employees of the County.

The term of the Agreement runs from July 2, 2007 through December 31, 2012, unless otherwise extended by written agreement of the Commission and County. Either party may terminate the Agreement at any time upon 180 days written notice. However, it is important to note that upon termination of the Commission's participation in the Retiree Medical Plan for any reason, any and all Plan benefits whether payable or otherwise under the Plan are immediately forfeited, and neither the Commission, nor its employees, retirees, dependents, or beneficiaries would have any right to any benefits under the Plan.

County staff has also taken the position that execution of the Participation Agreement is a condition to continued Commission utilization of County payroll and human resources services and to continued participation in other County health and retirement plans.

If the Participation Agreement is not executed, the Commission would be confronted by the immediate need to obtain payroll and human resources services from other sources and arrange for separate employee health, disability, retirement, and other benefit plans. This option would be cost prohibitive, and inconsistent with the Commission's organization and staffing models. Therefore, it is recommended that the Commission adopt the attached Resolution (Attachment 3) authorizing Commission Counsel and Executive Director to execute the Participation Agreement with the County.

STRATEGIC PLAN & FISCAL SUMMARY:

The FY 2007-08 Retirement Rates and the Participation Agreement proposed for adoption by the Commission, have been reviewed in relation to the Commission's Strategic Plan, and are consistent with the Quality Service Program goal area, and other outcome goals of the Strategic Plan. Sufficient funds are included in the approved FY 2007-08 Budget within the Staffing budget category.

RECOMMENDED ACTION:

1. Approve and adopt implementation of FY 2007-08 employer and employee retirement contribution rates as established by OCERS, effective July 6, 2007.
2. Authorize Commission Counsel and Executive Director to execute the Participation Agreement County of Orange Retiree Medical Plan and County of Orange Retiree Medical Trust.

ATTACHMENTS:

1. Employer and Employee Retirement Contribution Rates for FY 2007-08

Contact: Steve Kozak, Chief Operations Officer



Children & Families
Commission of Orange County

Employer and Employee Retirement Contribution Rates
For
FY 2007-08

	<u>Employer Rate</u>	<u>Employee Rate</u>	<u>Total Rate</u>
Normal Rate	9.33%	2.13%	11.46%
UAAL	7.53%	0.00%	7.53%
Totals	16.86%	2.13%	18.99%

Note: The **Employee Rate** represents the employee's additional retirement contribution (Reverse Pickup) associated with the employer normal 2.7 Benefit cost/rate to be paid by the employee

**Participation Agreement
County of Orange Retiree Medical Plan
And
County of Orange Retiree Medical Trust**

This Participation Agreement County of Orange Retiree Medical Plan and County of Orange Retiree Medical Trust (this "Agreement") is by and among the County of Orange, California, a political subdivision of the State of California (the "County"), Robert Franz, County Chief Financial Officer, in his capacity as trustee (the "Trustee") of the County of Orange Retiree Medical Trust (the "Trust") and the Children & Families Commission of Orange County, a public agency of the State of California (the "Commission").

RECITALS

WHEREAS, the COMMISSION is a legal entity separate and apart from the County and the Trust with its own employees and retirees; and

WHEREAS, the COMMISSION, for the purposes of economies of scale and other public benefits to the COMMISSION, contracts with the County for the Services (as defined herein); and

WHEREAS, in order for the employees and retirees of the Library to participate in the Services, the COMMISSION and such employees and retirees must participate on the same terms and conditions as County employees and retirees; and

WHEREAS, the County maintains its Retiree Medical Plan, as amended and restated on January 1, 2007 (the "Plan"), in which employees and retirees of the COMMISSION participate; and

WHEREAS, effective July 2, 2007, the County has irrevocably established the County of Orange Retiree Medical Trust (the "Trust"), a grantor trust intended to be tax-exempt in accordance with Internal Revenue Code section 115 for the purpose of funding all or a portion of the benefits payable pursuant to the Plan; and

WHEREAS, contributions to the Trust are irrevocable and for the exclusive purpose of providing benefits to eligible participants of the Plan; and

WHEREAS, in furtherance of funding benefits under the Plan, the County, the Trust and the Orange County Employees Retirement System ("OCERS") have entered into, the Orange County Retiree Medical Trust Third-Party Administrative Services and Investment Management Agreement (the "Administrative and Investment Agreement") and the Participation Agreement for the Funding of Retiree Medical Trust Account (the "401(h) Participation Agreement"); and

WHEREAS, the COMMISSION desires the County to continue to provide the Services, including, but not limited to participation in the Plan and the Trust; and

WHEREAS, it is desirable and in the best interests of the County, the Trust and the COMMISSION to enter into a written agreement concerning certain matters with respect to the provision of County Services and the operation of the Plan and the Trust, including, but not limited to Plan contributions, Plan Benefits, Trust Administration and Trust assets investment; and

WHEREAS, in order to continue its participation in the Services and the Plan and to provide for the ongoing financing and operation of the Plan and the Trust, the COMMISSION desires to enter into this Agreement, providing, among other things, to 1. Adopt and participate in the Plan and accept all Plan terms and conditions, 2. Participate in the Trust and accept the terms and conditions of the Trust, 3. Pay contributions to the Trust from time-to-time, equal as a percentage of non-safety payroll to the contribution(s) made by the County and 4. Acknowledge and agree to certain matters relating to the County and Trust's agreements with OCERS concerning the 401(h) Account, Trust investments and third-party administration;

NOW THEREFORE, for good and valuable consideration, the existence and sufficiency of which the County, the Trust and the COMMISSION acknowledge, IT IS HEREBY AGREED AS FOLLOWS:

AGREEMENT

1. Definitions.

"401(h) Participation Agreement" means the Participation Agreement for the Funding of Retiree Medical Trust Account, between the County and OCERS and incorporated herein as Attachment C.

"401(h) Procedures" means the Rules and Procedures Governing the Payment of Medical Benefits to Eligible Retired Employees of the County and Their Eligible Survivors and Beneficiaries, established by OCERS and incorporated herein as Attachment E.

"Account" means the County Retiree Medical Trust Account established and maintained at OCERS in accordance with Code section 401(h), CERL, the 401(h) Participation Agreement and the 401(h) Procedures.

"Administrative and Investment Agreement" means the Orange County Retiree Medical Trust Third-Party Administrative Services and Investment Management Agreement, among the County, the Trust and OCERS, incorporated herein as Attachment D.

"Agreement" means this Participation Agreement County of Orange Retiree Medical Plan and County of Orange Retiree Medical Trust, as it may be amended from time-to-time.

“CERL” means the County Employees Retirement Law of 1937, as amended, California Government Code Sections 31450 et seq.

“Code” means the Internal Revenue Code, including all regulations, rulings and judicial interpretations.

“County” means the County of Orange, California, a political subdivision of the state of California.

“County Resolution” means County Board of Supervisors Resolutions No. 07-090.

“OCERS” means the Orange County Employees’ Retirement System, a public employees retirement system organized and existing pursuant to CERL.

“OCERS Resolution” means OCERS Board of Retirement Resolution 07-002.

“Plan” means the County of Orange Retiree Medical Plan, as amended and restated effective January 1, 2007 and any subsequent amendments thereto, incorporated herein as Attachment A.

“Services” means, as appropriate and without limitation, the County’s provision of payroll and human resources, COMMISSION employee and retiree (as applicable) participation in County sponsored Health plans, 401(a) Plan (Executive Management employees Only), 3121 and 457 Defined Contribution Plans, Dependent Care Reimbursement Account (DCRA), Health Care Reimbursement Program (HCRA), Employee Assistance Program (EAP), Dental Plan (Management Employees Only), Salary Continuance, Short Term Disability (STD) (Management Employees Only), Long Term Disability (LTD) (Management Employees Only), Life Insurance (Management Employees Only), AD&D (Management Employees Only), Optional Benefit Plan (OBP) (Management Employees Only) and the Plan.

“Trust” means the County of Orange Retiree Medical Trust attached hereto as Attachment B.

“Trustee” means the Chief Financial Officer of the County.

2. Participation in the County of Orange Retiree Medical Plan.

a) The COMMISSION hereby agrees to participate in the Plan and agrees to its terms and conditions. The COMMISSION understands that the County Human Resources Director or his designee will act as the Plan Administrator for the Plan.

b) The Plan Administrator will be responsible for the administration of the Plan, including, but not limited to, determining eligibility, the level and amount of benefits available to participants, establishing and administering claims procedures and all determining all other rights and obligations under the Plan.

c) The County reserves the right to amend, modify or terminate the Plan in its sole and absolute discretion.

d) The COMMISSION acknowledges and agrees that benefits under the Plan are not vested.

3. County of Orange Retiree Medical Trust.

a) The COMMISSION agrees to participate in the Trust according to the terms and conditions thereof. The COMMISSION acknowledges and agrees that all contributions to the Trust, including but not limited to the Initial Trust Deposit, the Trust Assets (as defined in this Section 3), the Account (as defined in Section 4) and subsequent contributions are irrevocable and for the exclusive purpose of funding Plan benefits.

b) The Trustee will have the sole authority to administer the Trust in accordance with its provisions.

c) Initial Trust Deposit, Trust Contributions and Flow of Funds.

i) As soon as practicable, the County will transfer monies from County Fund 295 representing the initial Trust deposit (the "Initial Trust Deposit"). Monies representing the Initial Trust Deposit will be deposited and invested in the following order: First, an amount determined by the Plan Administrator to be required for short-term Plan Lump Sum payments and the administrative costs and expenses of the Plan and Trust will be held in the name of the Trust in a County trust fund and invested in the County treasury. Second, to the extent legally permissible, the balance of the Initial Trust Deposit will be invested in the Account. Third, any remaining balance of the Initial Trust Deposit will be invested as Trust Assets.

ii) Following the Initial Trust Deposit, the COMMISSION agrees to make additional contributions to the Trust from time-to-time equal in amount, as a percentage of County non-Safety Payroll and at the same time(s) as the County. All such contributions must be employer contributions. All Trust contributions must be made through the County payroll system.

iii) The failure of the COMMISSION to make all contributions to the Trust when, as and in the amount(s) required by the County will, following written notice and a 30 day cure period, result in the immediate termination of the COMMISSION's participation in the Services, the Plan and the Trust and the forfeiture of any and all Plan benefits and Trust assets. Delinquent contributions must be paid with interest equal to the greater of 1) interest that would have been earned on such delinquent contribution(s) for the period of delinquency applying the Trust's rate of return for the immediately preceding month or 2) five percent (5%).

iv) In addition, each of the Trustee and Plan Administrator may make such rules and procedures governing contributions to the Trust as each deems necessary and appropriate for the proper operation of the Plan/Trust.

d) The COMMISSION understands and agrees that in accordance with the Administrative and Investment Agreement:

i) Investment of Trust Assets. The County and Trustee have engaged OCERS to invest, and manage the investment of, such assets of the Trust as are placed into OCERS custody, possession and control by the Trustee of the Trust ("Trust Assets"). OCERS has established policies and guidelines for the investment of assets of the retirement system, and such policies and guidelines shall be applicable as well to OCERS' investment of the Trust Assets, unless otherwise agreed to in writing among the County, the Trust and OCERS. OCERS shall account for all investment gains and losses attributable to the Trust Assets and shall fairly allocate expenses of investment and administration to the Trust in the same manner and at the same time as it does for the assets held in the retirement system intended to pay retirement, disability and death benefits. Notwithstanding the foregoing, OCERS shall have no obligation to identify specific investments held by the Trust or to unitize any of the investment of assets of the Trust. Under no circumstances shall Trust Assets be used to pay for retirement, disability or death benefits or for any other purpose for which assets of the retirement system are used.

Trust Assets, other than those which comprise the Account, as defined in Section 4 below, will not be commingled for investment or any other purpose with any other assets of OCERS.

ii) Full Discretionary Authority. OCERS has been granted the sole and absolute discretionary authority to manage the investment and reinvestment of Trust Assets as OCERS deems appropriate, in conformity with the investment policies and

guidelines for the investment of the assets of the retirement system. The County and the Trust have appointed OCERS as agent and attorney-in-fact with full power and authority for and on behalf of the Trust through any of its Board members, officers or employees or their designated agents, representatives, custodians, brokers, dealers, or other service providers, to (i) purchase, sell, sell short, exchange, exercise or otherwise trade for the Trust any and all interests, securities, instruments and obligations of every description, including without limitation all stocks, bonds, mutual fund shares, notes, commercial paper, trade acceptances, loans, deposits and options or other rights to acquire any of the foregoing issued or incurred by any corporation, mutual fund, trust, partnership, limited liability company, association, firm, institution or governmental body, (ii) enter any grantor trust, partnership or other investment entity on behalf of the Trust, (iii) transfer Trust Assets at the direction of the Trustee of the Trust into the Account; and (iv) take such other actions or direct such Board members, officers or employees or their designated agents, representatives, custodians, brokers, dealers, or other service providers as OCERS may from time to time select to take such other actions, as any Board member, officer or employee of OCERS may deem necessary or desirable to carry out the purpose and intent of the foregoing, provided that such actions and transactions are consistent with OCERS' publicly adopted policies and guidelines for the investment of the assets of the retirement system.

iii) Interest Crediting. OCERS will credit interest to the Trust Assets invested by OCERS in the following manner: OCERS shall credit interest to the Trust Assets on a monthly basis. The interest amount to be credited shall be determined by applying the time weighted rate of return actually experienced by OCERS to the adjusted beginning balance of the Trust Assets for the month. The "adjusted beginning balance" shall be determined by subtracting any outflows during the quarter from, and adding any inflows during the quarter to, the monthly balance prorated based on the date made or received. The "time weighted rate of return" shall be determined by OCERS' Chief Investment Officer in a manner consistent with industry standards. OCERS shall notify County and the Trust within thirty (30) calendar days after the end of each month, or as soon as practicable thereafter, as to the amount of interest so credited to the Trust Assets. No assets or earnings held by OCERS for the payment of retirement, disability or death benefits shall be used to credit interest to the Trust Assets.

iv) Administration of Trust Assets. OCERS has agreed to:

(a) Perform periodic accounting of Trust Assets, payments and investment activity, based upon information received from COUNTY and/or the Trustee, and make such

accounting available for COUNTY's and the Trustee of the Trust's inspection upon reasonable request during normal business hours.

b) Coordinate the processing of reimbursement and/or health care premium payments due under the Plan from the Trust Assets pursuant to authorized direction by COUNTY and in accordance with those administrative procedures established from time to time by, and acceptable to, both COUNTY and OCERS.

(c) Coordinate actions with the Trustee of the Trust as directed by COUNTY within the scope of this Agreement.

(d) Provide periodic reports to COUNTY and the Trustee regarding the status of the Trust Assets, payments and investment activity.

(e) Provide such information reasonably requested by COUNTY and/or the Trustee and required for purposes of the preparation of annual financial statements by COUNTY, the performance of actuarial valuations of the Plan and/or Trust, the conducting of audits of the Trust, the provision of required information to state or federal regulatory and/or taxing agencies, and similar purposes.

v) Title to Trust Assets to Remain in Name of Trustee. Title to all Trust Assets shall at all times be held in the name of the Trustee of the Trust. The Trustee has agreed to execute such documents and take such actions as are necessary for OCERS to invest and administer the Trust Assets pursuant to the Administrative and Investment Agreement.

vi) Payment of Investment and Administration Expenses. OCERS may charge the Trust Assets with all expenses of investment and administration reasonably attributable to the Trust. OCERS shall regularly report to COUNTY and the Trustee of the Trust the nature and amount of such charges.

4. County Retiree Medical Trust Account (401(h)).

a) Establishment of Account in OCERS. In accordance with the 401(h) Participation Agreement, OCERS has agreed with the County to create on the books of the retirement system a County Retiree Medical Trust Account ("Account"), pursuant to Article 8.6 of CERL and Section 401(h) of the Code, for the exclusive purpose of funding benefits provided by the Plan. OCERS will account for the assets and liabilities of the Account separate and apart from the assets and liabilities of the retirement system, except for investment purposes as expressly provided for in the 401(h) Participation Agreement. Assets in the

Account may not be used for retirement, disability or death benefits or any other purpose for which assets of the retirement system are used or to make any lump sum payment under the Plan.

b) Purpose and Administration of the Account. The purpose of the Account is to provide funding for the payment of benefits provided to eligible participants under the Plan. The OCERS Board of Retirement (“OCERS Board”) shall have plenary authority and fiduciary responsibility for administering the Account, investing the assets of the Account and making Plan Grant (as defined in the Plan) payments to County Health Plans and County Retiree Health Plans (as defined in the Plan), subject to the terms and conditions of the 401(h) Participation Agreement. The OCERS Board, in its sole and absolute discretion, may delegate some or all of its authority and responsibilities to third parties. The OCERS Board has established and published the 401(h) Procedures respecting the administration and investment of the Account and the payment of County Health Plans and County Retiree Health Plans.

c) Funding of the Account. The County, the COMMISSION and the other districts and public entities adopting the Plan and not OCERS (except to the extent OCERS adopts and makes contributions to fund benefits under the Plan) are responsible for contributing funds to the Account. Funds contributed to the Account shall consist solely of employer funds. The amounts to be contributed to fund Plan benefits for retirees from the Account shall be reasonable and ascertainable and shall be determined under reasonable and consistently applied actuarial methods and assumptions and within the limits established under Code section 401(h) and the regulations issued thereunder.

d) Investment of Assets of the Account. OCERS will establish policies and guidelines for investment of the assets of the Account. Solely for investment purposes, OCERS may co-invest the assets in the Account with the assets held in the retirement system to pay retirement, disability and death benefits, subject to the same policies and guidelines applicable to such other assets. OCERS shall account for all investment gains and losses attributable to the Account and shall fairly allocate expenses of investment and administration to the Account in the same manner and at the same time as it does for the assets held in the retirement system to pay retirement, disability and death benefits. Notwithstanding the foregoing, OCERS shall have no obligation to identify specific investments held by the Account or to unitize any of the investment of assets of the Account.

e) Interest Crediting. OCERS will credit interest to the Account on a monthly basis. The interest amount to be credited shall be determined by applying the time weighted rate of return actually experienced by OCERS to the adjusted beginning balance of the Account for the month. The “adjusted beginning balance” shall be determined by subtracting any outflows during the month from, and adding any inflows during the month to, the monthly balance,

prorated on the date made or received. The "time weighted rate of return" shall be determined by OCERS' Chief Investment Officer in a manner consistent with industry standards. OCERS will notify COUNTY within thirty (30) calendar days after the end of each quarter or as soon as practicable thereafter, as to the amount of interest so credited to the Account. No assets or earnings held by OCERS for retirement, disability or death benefits shall be used to credit interest to the Account.

f) Expenses of Investment and Administration; Reporting. OCERS may charge the Account with all expenses of investment and administration reasonably attributable to the Account. OCERS will regularly report to COUNTY and Trust the nature and amount of such charges.

5. Assumption of Risks and Suitability of Investments.

The COMMISSION acknowledges and agrees that:

a) Trusts/OCERS' investment of assets of the Trust, including without limitation, Trust Assets and the Account, could carry significant risk. An investment by and through the Trust/OCERS involves risks that may not be associated with other investment vehicles or types. Trust/OCERS will follow investment policies that, if unsuccessful, could involve substantial losses. Trust/OCERS' portfolio may be subject to wide swings in value. Although Trust/OCERS has the flexibility to react to changing market conditions, changes in market conditions or a particular investment's situation could involve losses. Trust/OCERS hopes to manage this risk of loss through a careful selection of investments. However, no guarantee or representation is made that Trusts/OCERS' investment strategy will be successful, or that Trust/OCERS will achieve its investment objective. To the fullest extent permitted by applicable law, Trust/OCERS shall not be liable for any error in judgment and/or for any investment losses to the trust assets, in the absence of fraud, willful misconduct or such negligence for which it is otherwise liable under law.

b) The potential risks associated with this Agreement and the investment of Trust assets include, but are not limited to, risks associated with reliance upon OCERS as the sole investment manager of the Trust assets, the success of OCERS' investment selections, changes in OCERS' investment strategies, policies and guidelines, the performance of OCERS' investment managers, the lack of regulatory oversight, limited or no access to information respecting certain investments, the valuation of certain assets, concentration of certain investments, general investment and market risks, limited or no liquidity of certain investments, ability or inability to acquire certain investments, changes in external factors affecting investments, contingent liabilities, potential mandatory redemptions, involuntary termination of this agreement, changes in applicable laws, rules or regulations, indemnification obligations under this agreement, regulatory risks, tax risks and conflicting fiduciary duties and the consequences thereof. This list is not exhaustive of all risks associated with OCERS' investment of Trust assets. The COMMISSION assumes all risks of investment losses in the absence of Trust/OCERS' fraud, willful misconduct or such negligence for which it is otherwise liable under law.

c) OCERS' investment of Trust Assets is subject to all applicable investment policies and guidelines established from time to time for the investment of the assets held in the retirement system to pay retirement, disability and death benefits. The COMMISSION has requested and received from OCERS all information that they, after due inquiry, deemed relevant to their decision to enter into this Agreement. The COMMISSION have independently reviewed this information, including but not limited to OCERS' investment policies and guidelines, and are now and will continue to be completely familiar with the terms and conditions thereof. Such policies and guidelines are and shall at all times be considered suitable and appropriate for the investment of the Trust Assets.

6. Participation in County Services.

The COMMISSION agrees to participate in the Services, as and if provided by the County, and, as applicable, under the same terms and conditions as employees of the County. The COMMISSION agrees that the County's sole and exclusive role in the provision of the Services (including, but not limited to benefits under the Plan), is that of a service provider on behalf of the COMMISSION and that the County is not an insurer, guarantor, obligor or acting in any respect as an insurer, guarantor or obligor with respect to any of the benefits offered by the COMMISSION and provided as Services by the County. In addition, the COMMISSION agrees that, other than as the provider of the Services to the COMMISSION, its employees and retirees, the County is in no way fiscally or legally responsible to the COMMISSION, its employees, retirees, beneficiaries or dependents for the provision or continued provision of the Services.

The COMMISSION understands and agrees that the Services are offered to the COMMISSION upon the same terms and conditions as they are offered to County employees and that the failure of the COMMISSION to accept such Services on the same terms and conditions will result in the immediate termination of this Agreement and all Services.

7. Furnishing of Information

The COMMISSION shall furnish the County on a timely basis such information as is necessary for the County to carry out its responsibilities under this Agreement. The County and the Trust shall be entitled to rely upon the accuracy of any information that is furnished to it by a responsible official of the COMMISSION, or any information relating to an individual participant, spouse or dependent that is furnished by such participant, spouse or dependent, and the County and the Trust shall not be responsible for any error or omission arising from its reliance on such information.

8. Exclusive County Control of Plan.

Notwithstanding any provision to the contrary in this Agreement, the County maintains the sole and absolute discretion to amend, modify or terminate the Plan and any benefits which may be or become payable under the Plan, the method, source and timing of Plan contributions or Plan funding, and to amend, modify and/or terminate any

of the County's health plans, including, but not limited to the premiums, coverage, benefits, exclusions, co-pays, deductibles, and employee and/or retiree eligibility (collectively, "Program Changes"). The COMMISSION acknowledges the County's rights hereunder and agrees, unless the COMMISSION acts to terminate this Agreement, as herein provided, to accept all such Program Changes and, to the extent applicable, amend this Agreement to conform to all applicable Program Changes.

The COMMISSION understands and agrees that its sole and exclusive remedy for any Program Changes is the right to terminate this Agreement. The COMMISSION waives any and all additional remedies it may have at law or in equity.

9. Transfer of Trust/Account Assets Upon Termination; Transfer Amount; Forfeiture.

In the event the COMMISSION terminates participation in the Plan, the Trust, the Account or this Agreement, or the Plan, the Trust, the Account or this Agreement is terminated by the County for any reason, all benefits under the Plan and all assets of the Trust attributable to contributions made by the COMMISSION shall be **forfeited to the Trust**, unless the COMMISSION meets the requirements of the Trust and/or the Account with respect to the transfer of assets equal to the Transfer Amount (as defined below) to a properly formed and maintained tax-exempt trust for the provision of retiree medical benefits.

The Transfer Amount will be determined by the Plan Administrator, as follows:

- i) If the COMMISSION participated in the Plan and Trust at the time of the Initial Trust Deposit, on the date the deposit is made to the Trust, the COMMISSION will be credited with a pro rata share of the Initial Trust Deposit equal to the COMMISSION's percentage of the total of a) 1% contributions made by employees for current medical expenses from August 1, 1993 through December 31, 2006, b) less Plan Lump Sum payments, c) plus employer contributions at the rate of 3.5% made from January 1, 2007 (beginning September 22, 2006 for the County) to the date of the Initial Trust Deposit and d) less Plan Lump Sum and Grant payments made from January 1, 2007 to the date of the Initial Trust Deposit (the "Base Amount").
- ii) The Base Amount will thereafter be adjusted to reflect the COMMISSION's contributions to the Trust, actual investment gains/losses and all Plan Grant and Lump Sum Payments.
- iii) The Transfer Amount will be allocated between the Trust and the Account on a pro rata basis. The requirements for transfer of such amounts may differ. In no event will the Transfer Amount be retained in the Trust. In no event will the Transfer Amount be returned to the COMMISSION.

Upon termination of the COMMISSION's Plan participation for any reason, any and all Plan benefits whether payable or otherwise under the Plan are immediately forfeited. Neither the COMMISSION, nor its employees, retirees, dependents or beneficiaries will have any right to any benefits under the Plan.

10. Representations and Warranties of COUNTY and the Trust.

The County and the Trust each represents and warrants:

- a) The County is a political subdivision validly existing under the Constitution and laws of the state of California, and duly authorized to provide the Retiree Medical Plan.
- b) The Trust has been duly formed, under the laws of the state of California and the United States, and is duly authorized to carry out its lawful purpose.
- c) The execution, delivery and performance by the County and the Trust of this Agreement are within their respective powers, have been duly authorized by all necessary action of the governing body of the County and the Trustee of the Trust, and do not (i) violate any applicable law, rule or regulation or the organizational documents of County or the Trust, or (ii) violate, conflict with or result in (now or with notice or lapse of time or both) a breach or default under any indenture, agreement or other instrument binding upon County or the Trust.
- d) The Retiree Medical Plan and the Trust have been duly authorized by all necessary action of the governing body of the County, and do not (i) violate any applicable law, rule or regulation or the organizational documents of the County or (ii) violate, conflict with or result in (now or with notice or lapse of time or both) a breach or default under any indenture, agreement or other instrument binding upon the County.
- e) The County shall observe and comply with federal, state and local laws in effect as of the Effective Date, or which may come into effect during the term of this Agreement, regarding the administration of the Plan and the Trust.
- f) No authorization or approval or other action by, and no notice to or registration or filing with, any State of California governmental authority or any employee or retiree organization, is required to be obtained by the County or the Trust as a condition to the execution, delivery and performance by the County and the Trust of this Agreement.
- g) This Agreement, when effective, shall have been duly authorized, executed and delivered by the County and the Trust and constitutes the legal,

valid and binding obligation of the County and the Trust, enforceable against the County and the Trust in accordance with its terms.

h) The County and the Trust have each consulted with its own legal, accounting, tax, investment and other advisers in connection with this Agreement, to the extent that it has deemed necessary.

i) The County's and the Trust's representations and warranties are material inducements to the COMMISSION in entering into this Agreement.

11. Representations and Warranties of the COMMISSION.

The COMMISSION represents and warrants:

a) It is a public agency validly existing under the laws of the state of California, and duly authorized to provide the services described in this Agreement.

b) The execution, delivery and performance by the COMMISSION of this Agreement is within the COMMISSION's powers, has been duly authorized by all necessary action of the governing body of the COMMISSION, and does not (i) violate any applicable law, rule or regulation or the organizational documents of the COMMISSION, or (ii) violate, conflict with or result in (now or with notice or lapse of time or both) a breach or default under any indenture, agreement or other instrument binding upon County or the Trust.

c) The adoption of the Retiree Medical Plan and participation in the Trust and the Account have been duly authorized by all necessary action of the governing body of the COMMISSION, and do not (i) violate any applicable law, rule or regulation or the organizational documents of the COMMISSION or (ii) violate, conflict with or result in (now or with notice or lapse of time or both) a breach or default under any indenture, agreement or other instrument binding upon the COMMISSION.

d) No authorization or approval or other action by, and no notice to or registration or filing with, any State of California governmental authority or any employee or retiree organization, is required to be obtained by the COMMISSION as a condition to the execution, delivery and performance by the COMMISSION of this Agreement.

e) This Agreement, when effective, shall have been duly authorized, executed and delivered by the COMMISSION and constitutes the legal, valid and binding obligation of the COMMISSION, enforceable against the COMMISSION in accordance with its terms.

f) The COMMISSION has consulted with its own legal, accounting, tax, investment and other advisers in connection with this Agreement, to the extent that it has deemed necessary.

g) The COMMISSION's representations and warranties are material inducements to the County and the Trust in entering into this Agreement.

12. Agreement Term/Termination.

The Term of this Agreement commences on July 2, 2007 and will terminate on December 31, 2012 (the "Expiration Date"), unless otherwise extended upon the written agreement of the County, the Trust and the COMMISSION. Except for termination under Section 6, any party may terminate this Agreement prior to the Expiration Date by providing the other parties with not less than one hundred eighty (180) days written notice of the elected date of termination. In addition, this Agreement shall terminate upon termination of the Plan or the Trust by the County and if participation in the Plan, Trust, Account or any other Services is terminated by the COMMISSION.

13. Entire Agreement.

This Agreement, contains the entire contract between the County, the Trust and the COMMISSION with respect to the matters herein and there are no exceptions, alternatives, substitutions, revisions, understandings, agreements, restrictions, promises, warranties or undertakings, whether oral or written, other than those set forth herein or referred to herein.

14. Amendments.

No amendment, alteration or variation of the terms of this Agreement shall be valid unless made in writing and signed by the County, the Trustee and the COMMISSION. Notwithstanding the immediately preceding sentence, the County, the Trust and the COMMISSION agree to amend this Agreement to conform to all applicable Program Changes.

15. Governing Law and Venue.

This Agreement has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California, without reference to conflict of laws provisions. In the event of any legal action to enforce or interpret this Agreement, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the County, the Trust and the COMMISSION hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure section 394. Furthermore, the County, the Trust and the COMMISSION specifically agree to waive any and all rights to request that an action be transferred for trial to another venue.

16. Independent Entity.

The COMMISSION is a legal entity separate and apart from the County and the Trust and neither the COMMISSION, its employees, nor anyone working under, for, or on behalf of the COMMISSION shall be considered an agent or an employee of County or Trust. Other than by agreement for the County to provide the COMMISSION certain employee benefits services, neither the COMMISSION, its employees nor anyone working under, for or on behalf of the COMMISSION, shall qualify for workers' compensation or other fringe benefits of any kind from the County.

17. Notices.

Any and all notices between the County and the COMMISSION provided for or permitted under this Agreement or by law shall be in writing and shall be deemed duly given when personally delivered to one of the parties or in lieu of such personal service, when deposited in the United States mail, postage prepaid, addressed to such party at the following address:

If to the County:

County of Orange, California
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Attention: County Executive Officer

If to Trust:

County of Orange Retiree Medical Trust
333 W. Santa Ana Blvd., 3rd Floor
Santa Ana, CA 92701
Attention: Chief Financial Officer

If to the COMMISSION:

Children & Families Commission of Orange County
17320 Redhill Avenue, Suite 200
Irvine, CA 92614
Attention: Executive Director

18. Severability.

If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired or invalidated thereby.

19. Interpretation.

This Agreement has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Agreement. In addition, each of the County, the Trust and the COMMISSION have been represented by experienced and knowledgeable independent legal counsel of their own choosing, or has knowingly declined to seek such counsel despite being encouraged and given the opportunity to do so. Each of the County, the Trust and the COMMISSION further acknowledges that they have not been influenced to any extent whatsoever in executing this Agreement by any other party hereto or by any person representing them, or both. Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it is not applicable and is waived. The provisions of this Agreement shall be interpreted in a reasonable manner to affect the purpose of the County, the Trust and the COMMISSION and this Agreement.

20. Counterparts.

This Agreement may be executed in any number of counterparts, each counterpart shall for all purposes be deemed to be an original, and all such counterparts shall together constitute but one and the same Agreement.

IN WITNESS WHEREOF, the County, the Trustee and the COMMISSION have caused this Agreement to be executed as of the dates and year written below.

COUNTY OF ORANGE, CALIFORNIA

By: Thomas G. Mauk, County Executive Officer

APPROVED AS TO FORM,
County Counsel

By: John H. Abbott, Senior Deputy County Counsel

ORANGE COUNTY RETIREE MEDICAL TRUST

By: Robert Franz, Chief Financial Officer
Trustee

CHILDREN & FAMILIES COMMISSION OF ORANGE COUNTY

By: Executive Director