



SACHI A. HAMAI  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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*"To Enrich Lives Through Effective And Caring Service"*

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May 31, 2016

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, California 90012

Dear Supervisors:

# ADOPTED

BOARD OF SUPERVISORS  
COUNTY OF LOS ANGELES

20 May 31, 2016

LORI GLASGOW  
EXECUTIVE OFFICER

### **FIRST AMENDMENT TO THE TRUST AND INVESTMENT SERVICES AGREEMENT RETIREE HEALTH PROGRAM (ALL DISTRICTS - 3 VOTES)**

#### **SUBJECT**

On May 15, 2012, the Board approved the establishment of a Trust and Investment Services Agreement ("County Trust Agreement") between the County and the Los Angeles County Employees Retirement Association (LACERA) for the Retiree Health Program. The Superior Court now wishes to enter into its own, virtually identical, trust with LACERA. In order to permit co-investment of the County's trust with the Court's newly-formed trust, and to otherwise conform the language of the trust agreements, the existing County trust agreement must be slightly modified.

#### **IT IS RECOMMENDED THAT THE BOARD:**

1. Approve the first amendment to the Trust and Investment Services Agreement for the County of Los Angeles Other Post-Employment Benefits (OPEB) Program.
2. Authorize the Chief Executive Officer (CEO) to execute such agreement on behalf of the County.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

When the Board approved the establishment of an OPEB Trust fund between the County and LACERA to begin prefunding retiree healthcare benefits, the Superior Court did not establish its own trust fund even though eligible Court employees receive LACERA retiree healthcare benefits upon retirement. The Court is now in the process of establishing a trust. In order to permit co-investment of the County's trust with the Court's newly-formed trust, and to otherwise conform the language of

the County Trust Agreement with the language of the Court's trust agreement, the County Trust Agreement must be slightly modified. The modifications include: (1) allowing the pooling of County and Court trust assets solely for investment purposes, (2) updating the conflict of interest indemnity and fiduciary duty provisions due to the addition of the Court's trust agreement, and (3) allowing LACERA to rely on the advice of counsel.

By way of background, the County's OPEB trust was established as a first step for the County to begin to prefund retiree healthcare benefits and reduce the County's OPEB unfunded liability, which was a significant step in alleviating the County's unfunded liability over the long term. The County Trust Agreement permitted (but did not require) commingling of OPEB trust assets with the LACERA retirement fund for investment purposes.

The Los Angeles Superior Court is now following the County's lead by establishing a similar OPEB Trust Fund. The Court Trust was approved by LACERA's Board of Investments (BOI) on April 13, 2016, and by the State Judicial Council on April 15, 2016. The Court and LACERA anticipate funding to begin prior to June 30, 2016.

As noted above, to permit co-investment of the County's trust with the Court's newly-formed trust (in addition to already-permitted co-investment with the retirement fund), and to otherwise conform the language of County Trust Agreement with the language of the Court's trust agreement, the County Trust Agreement requires some minor amendments. Accordingly, we are requesting that the Board of Supervisors amend the County's Trust Agreement so that administrative details may be finalized prior to the Court's desired funding deadline of June 30, 2016.

The attached recommended amendments do not significantly alter the County Trust Agreement. Specifically, the amendment does the following: (1) provides for the County and Courts to pool trust assets for investment purposes; (2) updates the conflict of interest provision to provide a waiver, by the Board, of investment-related conflicts associated with LACERA's BOI duties to the retirement fund and the Court's trust (including an acknowledgement that the BOI has no obligation to pursue the same investment or divestment opportunities among the trust funds); (3) updates the indemnity and fiduciary duty provisions to provide BOI protection pursuant to the revised conflict of interest provision; and (4) adds language to permit the BOI to rely upon the advice of counsel. The original County Trust Agreement only provided for consulting with counsel.

Given the existence of separate OPEB trusts established by multiple employers, the County, the Court, and LACERA, over the next 24 months, will work on the administrative details of transitioning from the current "cost sharing plan" approach to an "agent plan" approach for valuing and reporting OPEB liabilities and funding levels under the rules of the Governmental Account Standards Board ("GASB"). Under a cost-sharing method, OPEB obligations of multiple employers are combined and assets are pooled for all participating employers that are used to pay all liabilities. Under an agent plan, pre-funding assets may be pooled for investment purposes, but separate accounts are maintained for each individual employer so that each employer's share of the pooled assets is available to pay the benefits and administrative costs of only its employees. The County's and Court's prefunding model is consistent with the GASB "agent plan" approach. Our office, in consultation with the Auditor-Controller, Treasurer and Tax Collector, legal counsel, and our consulting actuary, believe that the agent plan is the best approach for managing multiple OPEB Trusts.

**Implementation of Strategic Plan Goals**

The recommended action supports the Countywide Strategic Plan Goal of Operational Effectiveness/Fiscal Sustainability. The County's program to prefund retiree health benefits will reduce over time the significant unfunded liability, thereby reducing the overall cost to the County.

**FISCAL IMPACT/FINANCING**

There is no fiscal impact to the County to amend the trust agreement.

**FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The amendments to the trust fund have been discussed with the Coalition of County Unions and Service Employees International Union (SEIU), Local 721. The LACERA BOI approved the proposed amendment on April 13, 2016, and the State Judicial Council approved it on April 15, 2016. Approval of this agreement is permitted under the County Employees Retirement Law of 1937 (CERL) Section 31694.3, and will allow the County's OPEB trust fund to be commingled for investment purposes with a newly-formed Court OPEB trust fund and will conform the terms of the County Trust Agreement with the trust agreement for the Court's trust.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

Implementation of these recommendations will not impact an existing County services or projects.

**CONCLUSION**

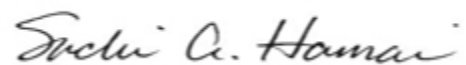
Under the terms of the Court Trust agreement and this first amendment to the County's Trust and Investment Services Agreement, said agreements are consistent and in harmony with each other, particularly with respect to commingling and co-investment, conflicts of interest, indemnity, fiduciary duties, and relying on advice of counsel.

The Honorable Board of Supervisors

5/31/2016

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Respectfully submitted,

A handwritten signature in cursive script that reads "Sachie A. Hamai".

SACHI A. HAMAI

Chief Executive Officer

SAH:JJ:SK

MTK:SM:mst

Enclosures

c: Executive Office, Board of Supervisors  
County Counsel  
Coalition of County Unions  
SEIU Local 721  
LACERA

**FIRST AMENDMENT TO THE  
TRUST AND INVESTMENT SERVICES AGREEMENT  
FOR THE COUNTY OF LOS ANGELES  
OTHER POST-EMPLOYMENT BENEFITS (OPEB) PROGRAM**

This First Amendment to the Trust and Investment Services Agreement for the County of Los Angeles OPEB Program (the "Amendment") is entered into this [\_\_\_\_\_] day of [\_\_\_\_\_] , 2016, by and between the Board of Supervisors for the County of Los Angeles ("Employer") and the Board of Investments for LACERA ("Trustee") with reference to the following:

**WHEREAS**, the Employer and Trustee entered into that certain Trust and Investment Services Agreement for the County of Los Angeles OPEB Program dated May 15, 2012, (the "Agreement") pursuant to which Trustee agreed to provide certain trustee and related services for the trust that is a part of the Employer's OPEB Program;

**WHEREAS**, Trustee is entering into a similar services agreement with the Executive Committee of the Superior Court of California, County of Los Angeles (the "Court") to provide similar trustee and related services for the trust that is a part of the Court's OPEB Program (the "Court Agreement"); and

**WHEREAS**, the Employer and Trustee wish to make certain changes to the Agreement, consistent with the Court Agreement.

**NOW, THEREFORE**, the Employer and the Trustee hereby agree as follows:

1. Sections 2(u) and 2(v) are hereby added to the Agreement to read as follows:

(u) Superior Court. Means the Superior Court of California, County of Los Angeles, acting through its Executive Committee.

(v) Court OPEB Program. Means the retiree health program and the death benefit program established by the Superior Court.

2. Section 3(b) is amended in its entirety to read as follows:

**Trust Assets.** The assets of the Trust shall consist of all money and property contributed by Contributing Employers to the Trust, together with any income on or increment in such assets, less any loss or diminution in value of such assets. The Trustee shall hold the assets of the Trust separately, but without distinction between principal and income; provided, however, that the Trustee may commingle the assets of the Trust with the assets of the Retirement Fund and the assets of a trust established for the Court OPEB Program for the purposes of co-investments in accordance with Section 5 of this Agreement; provided further, the Trustee will keep records distinguishing the assets of the Trust from those of the Retirement Fund and the Court OPEB Program.

3. Section 5(a)(xiii) is amended in its entirety to read as follows:

(xiii) Without limiting the generality of any of the foregoing, to co-invest all or any portion of the Trust assets with the Retirement Fund assets and the Court OPEB Program assets (including through a group trust under Revenue Rulings 81-100 and 2011-1), but without any obligation to do so.

4. The following sentence is hereby added to Section 6(b):

The parties agree that the Trustee's fiduciary duties as set forth in this Section 6(b) are subject to the other terms of the Agreement, including but not limited to Sections 6(c) and (d).

5. Section 6(c)(i) is amended in its entirety to read as follows:

(i) The Employer shall indemnify, defend, and hold the Trustee harmless against any loss, liability, claims, causes of action, suits, or expense (including reasonable attorney's fees and defense costs, lien fees, judgments, fines, penalties, expert witness fees, appeals, and claims for damages of any nature whatsoever) not charged to the Trust or covered by insurance and imposed upon the Trustee as a result of, arising out of, related to or in connection with (1) the performance of its duties or responsibilities under this Agreement, except to the extent that such loss, liability, suit or expense results or arises from the Trustee's own negligence, willful misconduct, material breach of this Agreement or breach of its fiduciary obligations, (2) without limiting the scope of Section 6(c)(i)(1) of this Agreement, any conflicts of interest or other acts or omissions within the scope of Section 6(d) of this Agreement or (3) any acts taken or transactions effected in accordance with written directions from the Employer or any of its agents or any failure of the Trustee to act in the absence of such written directions to the extent the Trustee is authorized to act only at the direction of the Employer.

6. Section 6(d) is amended in its entirety to read as follows:

(d) Conflicts of Interest and Investment/Divestment Opportunities. The Board of Supervisors acknowledges and agrees that the Trustee has a potential conflict of interest between and among performance of its duties as Trustee of the Trust, its duties as Trustee of the Court OPEB Program, and its duties as the Board of Investments for the Retirement Fund. Conditioned upon the Court giving an equivalent waiver, the Board of Supervisors expressly waives any such potential conflict or any conflict that actually arises and agrees that any action that is required to fulfill the Trustee's lawful duties to the Retirement Fund or to the Court OPEB Program (as reasonably determined by the Trustee in its sole and absolute discretion) will not constitute a breach of Section 6(b) of this Agreement or any fiduciary duties otherwise owed by the Trustee to the County OPEB Program or its participants. Furthermore, the Board of Supervisors acknowledges and agrees that, notwithstanding anything to the contrary in this Agreement, if such a conflict of interest actually arises and cannot be eliminated, the Trustee may put the interests of

the Retirement Fund above the interests of the Trust in performing its duties and obligations under this Agreement. Conditioned upon the Court entering into an equivalent agreement with the Trustee, the Board of Supervisors further acknowledges and agrees that the Trustee has no obligation to pursue for the Trust any investment or divestment opportunity which the Trustee may pursue for the Retirement Fund or for the Court OPEB Program.


7. Section 6(e) is amended in its entirety to read as follows:

(e) Advice of Counsel. The Trustee may consult with and rely upon qualified legal counsel, including without limitation LACERA in-house counsel, with respect to the meaning and construction of this Agreement, of any provision hereof, or concerning its powers or obligations, including but not limited to its fiduciary duties, hereunder.

**IN WITNESS WHEREOF**, the Trustee has executed this Amendment, or caused it to be duly executed, and the Employer, by order of its Board of Supervisors, has caused this Amendment to be executed on its behalf by its Chief Executive Officer and attested by the Executive Officer- Clerk of the Board of Supervisors thereof, the day and year first above written.


TRUSTEE

By:

  
\_\_\_\_\_  
Gregg Rademacher  
Chief Executive Officer, LACERA

EMPLOYER

By:

  
\_\_\_\_\_  
Sachi A. Hamai  
Chief Executive Officer, County of Los Angeles

ATTEST:

LORI GLASGOW  
Executive Officer  
Board of Supervisors

By: \_\_\_\_\_

APPROVED AS TO FORM:

MARY C. WICKHAM  
County Counsel

By:   
RICHARD D. BLOOM  
Principal Deputy County Counsel