Attachment

SIDE LETTER OF AGREEMENT
BETWEEN
ORANGE COUNTY FIRE AUTHORITY
AND
ORANGE COUNTY PROFESSIONAL FIREFIGHTERS ASSOCIATION
IAFF-LOCAL 3631 FOR THE FIREFIGHTER UNIT

This Side Letter of Agreement ("Agreement") between the Orange County Fire Authority ("OCFA") and the Orange County Professional Firefighters Association, IAFF- Local 3631 ("Association"), (Collectively "Parties") is entered into with respect to the following:

WHEREAS, the Parties are subject to a Memorandum of Understanding ("MOU") in effect for the period of March 23, 2023, through March 22, 2027; and

WHEREAS, the Parties' MOU provides a Defined Contribution Plan (sometimes referred to as the HRA plan) for regular, limited-term, and probationary employees hired on or after January 1, 2007; and

WHEREAS, the Parties entered into a Side Letter of Agreement on October 29, 2024, which included the following provision:

> The Parties will explore transitioning maintenance of the Defined Contribution Plan from the Authority to the Association. Upon completion of research by both Parties in connection with such a transition, if the Parties agree, any proposed changes will be documented in a separate Side Letter Agreement which will be subject to review and approval by the OCFA Board of Directors prior to implementation.

WHEREAS, the Parties now reach the following agreement:

RECITALS

I. DEFINITIONS

A. **"Code"** means the Internal Revenue Code of 1986 and the underlying U.S. Treasury regulations, each as amended.

B. **"Designated Assets"** means the portion of the assets of the OCFA 115 Trust, determined as of the Valuation Date, that is attributable to Association Participants.

C. **"Effective Date"** means the date that Designated Assets of the OCFA 115 trust are transferred to the Association VEBA in accordance with this Agreement. This date will be mutually agreed upon by the Parties.

D. **"Final OCFA Recordkeeper Report"** means the final participant-level account report for Association Participants produced by the recordkeeper for the OCFA 115 Trust as of the Valuation Date.

E. **"Non-Association Participant"** means an individual who, at the close of business on the day before the Effective Date, had an account balance under the OCFA HRA and was not an Association Participant.

F. **"OCFA HRA"** means the defined contribution retiree health reimbursement arrangement sponsored by OCFA for the benefit of eligible participants (comprising current and former employees of OCFA) and beneficiaries.

G. **"OCFA 115 Trust"** means the trust sponsored by OCFA to fund benefits under the OCFA HRA, which trust is exempt from federal income taxes under section 115 of the Code.

H. **"ASSOCIATION HRA"** means the defined contribution retiree health reimbursement arrangement sponsored by the Association.

I. **"ASSOCIATION Participant"** means an individual who, at the close of business on the day before the Effective Date: (i) has an account balance under the OCFA HRA, and (ii) is either (A) a current OCFA employee represented by the Association, or (B) a former OCFA employee whose OCFA employment terminated before the Effective Date and who was represented by the Association as of that termination date.

J. **"ASSOCIATION VEBA"** means a trust established by the Association to fund benefits provided by the Association HRA. The trust is intended to qualify as a tax-exempt voluntary employees' beneficiary association under section 501(c)(9) of the Code.

K. **"Valuation Date"** means the close of business on the business day identified by the OCFA which must be within seven (7) business days before the Effective Date.

II. TRANSFER OF SPONSORSHIP OF ASSOCIATION PARTICIPANTS' HRA

A. Transfer of Sponsorship

As of the Effective Date, subject to the terms and conditions of this Agreement, the Association will replace OCFA as sole sponsor of the portion of the OCFA HRA covering Association Participants, upon which that portion will be known as the Association HRA.

B. Cessation of OCFA Role

As of the Effective Date:

1. OCFA will cease to be sponsor of the Association HRA.

2. OCFA will not be plan sponsor, fiduciary, administrator, or have any discretionary authority with respect to the Association HRA for any purpose. Accordingly, OCFA will have no settlor, fiduciary, administrative, or discretionary authority, responsibilities or duties in connection with the Association HRA, including any authority, responsibility or duty to establish, amend, interpret, administer, or operate the Association HRA, or to make investments, claims, or governance decisions.

3. OCFA's role with respect to the Association HRA will be limited solely to non-fiduciary, ministerial obligations expressly identified in this Agreement or in a separate written agreement between the Parties.

4. To the extent permitted by applicable law and contract terms, OCFA shall assign to the Association all agreements with MidAmerica (and any other third-party vendors) to the extent such agreements relate exclusively to the Association HRA, provided that (i) the Association obtains any required third-party consents; and (ii) no assignment will require OCFA to retain liability or obligations with respect to the Association Participants on and after the Effective Date. If a required consent is not obtained, or an assignment would leave OCFA with continuing liability for Association Participants, OCFA will have no obligation to assign the agreement, and the Association will be solely responsible for arranging replacement services and for all costs and expenses of transition, termination, and replacement services.

C. Continued Contributions After the Effective Date

On or after the Effective Date, contributions (which are deducted from Association bargaining unit members' pay) that were previously made to the OCFA 115 Trust (per the Parties' MOU) will be made to the Association VEBA, but only if (i) the VEBA remains a tax-exempt entity under Section 501(c)(9) of the Code[1], and (ii) the Association HRA and VEBA restricts the use of those contributions (and related earnings) to funding eligible medical expenses under Section 213(d) of the Code and related administrative expenses.

If at any time in the future the Association is aware that the conditions identified in the previous paragraph are not satisfied or are at risk of not being satisfied, the Association must immediately notify the OCFA in writing. If this occurs, the OCFA may, in its sole discretion immediately stop making contributions to the Association VEBA.

[1] The Association shall file Form 1024, Application for Recognition of Exemption under Section 501(a), with the Internal Revenue Service ("IRS") no later than 27 months after the end of the month in which the Association VEBA is created., which will be deemed compliance with this section until such form is accepted by the IRS.

III. ESTABLISHMENT AND GOVERNANCE OF THE ASSOCIATION HRA AND ASSOCIATION VEBA

A. Establishment and Oversight of Trust

The Association shall establish and maintain the Association VEBA to fund benefits under the Association HRA. Oversight of the VEBA will be vested in a board of trustees. Trustees shall be appointed solely by the Association. Upon transfer of the Designated Assets, the trustees will owe fiduciary duties to the Association Participants under applicable law.

B. Governing Documents

The Association HRA and the Association VEBA will be established, governed, and administered solely pursuant to such plan documents, trust documents, and related instruments as are adopted by Association in its sole discretion.

The Association will be solely responsible for establishing, operating, and maintaining the Association HRA and the Association VEBA in compliance with applicable law, including applicable requirements under sections 213(d) and 501(c)(9) of the Code.

C. No OCFA Involvement or Responsibility

OCFA will have no role whatsoever in the drafting, adoption, approval, amendment, interpretation, administration, or enforcement of any plan, trust, or other governing documents relating to the Association HRA or the Association VEBA. OCFA will not be a party to, signatory of, or otherwise bound by any such documents, and no action taken by the Association with respect to such documents will be attributed to OCFA for any purpose.

IV. TRANSFER OF ASSETS AND RECORDS

A. Transfer of Assets

Subject to the terms of this Agreement, the Designated Assets will be transferred from the OCFA 115 Trust to the Association VEBA on the Effective Date.

B. Limitation on Use of Designated Assets

The governing documents of the Association VEBA and Association HRA must expressly provide that:

1. The Designated Assets (and earnings thereon) must be used exclusively to fund benefits for Association Participants and to pay reasonable administrative expenses attributable to those benefits; and

2. Benefits under the Association HRA are limited to reimbursement of eligible medical expenses described in section 213(d) of the Code, and no portion of the Designated

Assets (or earnings thereon) may be used to provide any other type of benefit or payment.

C. OCFA Verification and Condition Precedent

At least 60 days before the Effective Date, the Association shall provide OCFA with documentation reasonably sufficient to enable OCFA to confirm compliance with Section IV.B. If OCFA reasonably and in good faith determines that these requirements have not been satisfied and the deficiency is not cured to OCFA's satisfaction at least 5 days before the Effective Date, OCFA may, by written notice to the Association, postpone the Effective Date. Any such termination or postponement will not constitute a breach by OCFA, and OCFA will have no liability for damages, costs, or expenses arising from or relating to postponement, except in the case of its own negligent or bad faith conduct..

D. OCFA Cooperation

OCFA will reasonably cooperate in the transition by providing existing plan documents, historical data, and executing documents reasonably necessary to effectuate the transfer, subject to applicable privacy and data-security laws and provided that such cooperation does not impose any continuing fiduciary or financial liability on OCFA after the Effective Date.

E. Preservation of Accrued Benefits

As a condition to OCFA's transfer of the Designated Assets, the Association will cause each Association Participant's account balance under the Association HRA, as established upon the transfer of records and assets, to equal the participant's account balance under the OCFA HRA immediately before the transfer, as reflected in the Final OCFA Recordkeeper Report.

V. MODIFICATION TO THE PARTIES' MOU

The Parties agree that upon approval of this Agreement by the Board of Directors, Article XIII, Section 3 of the Parties' MOU (which has been amended by Side Letter) is modified as shown by the track changes below:

Section 3. Mandatory Employee Contributions to Association VEBA~~Defined Contribution Plan for Retiree Medical Benefits~~

~~The Authority will provide only to regular, limited-term, and probationary employees hired on or after January 1, 2007, a "defined contribution plan."~~

A. All regular, limited-term, and probationary employees (except for the classifications of Firefighter Trainee and Handcrew Firefighter) hired on or after January 1, 2007, will be required to contribute three~~four~~ (3~~4~~) percent of base rate of pay to the Association VEBA. The Authority will deduct these contributions from employees as a payroll deduction. ~~Employees will not be permitted to contribute more than four (4) percent of base salary towards the Plan.~~ No employee

will be permitted to elect to receive these amounts in cash or other form in lieu of the contribution.

~~Effective November 1, 2024 (pay period #24), the required contribution to the Plan for all employees in the bargaining unit (except for the classifications of Firefighter Trainee and Handcrew Firefighter) will be reduced to three percent (3%) of base salary. These employees will not be permitted to contribute more than three percent (3%) of base salary towards the Plan.~~

~~Effective November 1, 2024 (pay period #24), employees in the classifications of Firefighter Trainee and Handcrew Firefighter will no longer be active participants in the Plan and their required contributions to the Plan will be eliminated. These employees will not be permitted to contribute towards the Plan. As for the contributions these employees have already made up to November 1, 2024, their accounts will remain in place until they eventually become eligible to use their funds for reimbursement of healthcare expenses upon separation from service with OCFA.~~

B. Employees hired before January 1, 2007, shall not be eligible to participate in the Association VEBA~~Plan~~. Eligibility for Association VEBA ~~plan~~ participation is based on the employees' most recent date of hire with the Authority.

VI. NON-ASSOCIATION PARTICIPANTS

Nothing in this MOU affects the portion of the OCFA HRA covering Non-Association Participants or the assets held under the OCFA 115 Trust to fund those benefits. OCFA will retain sponsorship of that portion of the OCFA HRA, and the related assets will remain in the OCFA 115 Trust.

VII. INDEMNIFICATION

On and after the Effective Date, the Association shall indemnify, defend (with counsel reasonably acceptable to OCFA), and hold harmless OCFA, its Board of Directors, officers, employees, and agents from any liability, claim, loss, cost, or expense (including attorneys' fees) associated with benefits for Association Participants under the Association HRA, provided, however, that for the two (2) year period following the Effective Date, this indemnity will not apply to the extent a claim is finally determined by a court of competent jurisdiction to have resulted from OCFA's gross negligence or willful misconduct. After the second anniversary of the Effective Date, this indemnity will apply without limitation to all claims and liabilities associated with the Association HRA, whether arising before, on, or after the Effective Date. . This Section VII will survive expiration or termination of this Agreement.

VIII. TERM AND MODIFICATION

This Agreement will become effective on the Effective Date and may be modified only by mutual written agreement of the Parties approved by OCFA's governing body as required by law.

IX. MISCELLANEOUS

A. This Agreement is for the benefit of the Parties only and does not create any rights in any other person.

B. California law governs this Agreement.

X. ENTIRE AGREEMENT AND EXECUTION

This Agreement constitutes the entire agreement between the Parties regarding the subject matter herein and supersedes all prior discussions or understandings. The Parties have caused this Agreement to be executed on the dates specified below.

ORANGE COUNTY FIRE AUTHORITY

Terry (TJ) McGovern
Interim Fire Chief

Robert Cortez
Deputy Chief, Administration & Support Bureau

Stephanie Holloman
Assistant Chief/Human Resources Director

October 5, 2024
Date

ORANGE COUNTY FIRE AUTHORITY PROFESSIONAL FIREFIGHTERS ASSOCIATION

Chris Hamm
OCPFA Local 3631 President

Justin Dillon
OCPFA Local 3631 Vice President

October 5, 2024
Date