

**PROPOSED AMENDMENT TO ITEM #15-6279  
(Finance Committee 11-13-15)**

**Sponsored by:** BRIDGET GAINER, LARRY SUFFREDIN, and JOHN A. FRITCHEY, County Commissioners

**INTERGOVERNMENTAL AGREEMENT  
MEMORANDUM OF UNDERSTANDING BETWEEN COOK COUNTY AND THE  
COUNTY OFFICERS' AND EMPLOYEES ANNUITY AND BENEFIT FUND**

This Memorandum of Understanding Intergovernmental Agreement MOU (“MOU Agreement”) is made by and between the County of Cook, a body of politic and corporate and home-rule unit of government under the Constitution and laws of the State of Illinois, having its principal offices at 118 N. Clark Street, Chicago, Illinois 60602 (the “County”), by and through the President of the Cook County Board of Commissioners and the Cook County Board of Commissioners, and the County Officers’ and Employees’ Annuity and Benefit Fund of Cook County (the “Pension Fund”), a body politic and corporate established pursuant to 40 ILCS 5/9-101, having its principal offices at 33 North Dearborn, Suite 1000, Chicago, Illinois 60602, by and through the President of the Pension Fund’s Board of Trustees (collectively, ~~the County and the Pension Fund~~ are referred to herein as the “Parties”).

**I. RECITALS**

**WHEREAS**, Article VII, Section 10 of the Illinois Constitution, ~~the Illinois Intergovernmental Cooperation Act, 5 ILCS 22011 et seq.~~, and other applicable law permit and encourage ~~units of governmental entities to contract cooperate with and support~~ each other and other public and private entities in the exercise of their governmental authority and the performance of their governmental functions and responsibilities; and

**WHEREAS**, the Pension Fund is governed by the Illinois Pension Code, 40 ILCS 5/1-101, *et seq.* and Section 9-196 of the Illinois Pension Code gives its Board of Trustees exclusive and original jurisdiction in all matters relating to the Pension Fund; and

**WHEREAS**, the President of the Cook County Board of Commissioners, and the Cook County Board of Commissioners, and the Board of Trustees of the Pension Fund are desirous of the promoting the long-term fiscal sustainability of the Cook County Pension Fund; and

**WHEREAS**, as of December 31, 2014, the Pension Fund’s actuarially projected shortfalls associated with pension liabilities were determined to exceed \$5 billion dollars thereby rendering the Pension Fund insolvent by 2039 under the current statutory finance-and-benefit framework; and

**WHEREAS**, the President of the Cook County Board of Commissioners and the Cook County Board of Commissioners, beginning with as part of the 2016 budget recommendations and the Cook County FY 2016 Appropriation Bill and each succeeding fiscal year thereafter, desire to make a payments to the Pension Fund that are in addition to the payment required under Section

9-169 of the Illinois Pension Code and the Pension Fund agrees to accept such payments (“Additional Funds”); and

**WHEREAS**, the Forest Preserve District of Cook County (“Forest Preserve”) is a body politic separate and apart from the County and is required to make contributions to the Forest Preserve District Employee’s Annuity and Benefit Fund (“Forest Fund”) pursuant to Section 10-107 of the Illinois Pension Code through its own authority to levy an annual tax; and

**WHEREAS**, the Board of Trustees of the Pension Fund is statutorily authorized to act on behalf of the Forest Fund, but insofar as the Cook County Board of Commissioners has no authority to act on behalf of the Forest Preserve or the Forest Fund, this ~~Agreement~~ MOU shall apply only to the Pension Fund.

**NOW, THEREFORE**, in consideration of the promises, covenants, term and conditions set forth in this ~~Agreement~~ MOU, the parties agree as follows:

**1. Incorporation of Recitals.** The above recitals are incorporated into this ~~Agreement~~ MOU as if fully set forth herein.

**2. Purpose.** The purpose of this ~~Agreement~~ MOU is to promote the long-term fiscal sustainability of the Pension Fund by establishing a mechanism by which the County can disburse to the Pension Fund ~~from~~ revenues received by the County from its 2015 1% increase in its Retailers Occupation Tax and Service Occupation Tax and the Pension Fund can receive from the County, independent and in addition to such sum as is provided for in Section 9-169 of the Illinois Pension Code (40 LCS 5/9-169), beginning with the sum of \$270,526,000.00 in 2016 and not less than the minimum required amount to amortize the Pension Fund’s accrued liability on a 30-year basis starting in 2017 and each year thereafter as calculated by its independent actuary and submitted by the Pension Fund so long as the amount does not exceed 90% of the total revenue received by the County from its 2015 Retailers Occupation and Service Occupation 1% tax increase (the “Additional Funds”). These funds shall be disbursed no later than November 30, 2016 and not later than November 30 each succeeding fiscal year thereafter, in the manner as is set forth herein, and as otherwise feasible, practicable, and permissible under relevant law and to the degree permitted by the County’s annual FY 2016 aAppropriations bBill.

**3. Scope.** This ~~Agreement~~ MOU does not suggest or imply, nor shall it be construed as suggesting or implying, that it entails or implicates any undertakings, responsibilities, or obligations on the part of the parties except as set forth herein. ~~This Agreement MOU does not constitute a waiver of any existing rights or obligations, and does not supersede or revise by implication or otherwise, any law applicable relative to the Parties or any prior agreement between or among the parties or any third party.~~ It is the express intent of the Parties that no third-party shall have any rights under this ~~Agreement~~ MOU, including the right to enforce the terms of this Agreement MOU.

**4. Presentation of Information to County Board President and Commissioners.**

In accordance with the President of the Cook County Board's 2016 budget recommendation to appropriate additional funding in excess of the statutory basis contained in Section 9-169 of the Illinois Pension Code, the Pension Fund agrees to provide the County Board President and Commissioners, on or before June 15, 2016, and on or before June 15 of each succeeding fiscal year, with a written report containing information as is associated with the Pension Fund's fiscal position, the annual cost and trends associated with benefit payments, investment return performance relative to benchmarks for similarly situated public pension funds and such other information designated by the Pension Fund.

**5. Disbursement of Additional Funds to Pension Fund.** Following adoption of the County's FY 2016 Appropriation Bill and each annual appropriation bill thereafter, the County shall take such steps ~~as are necessary and practical~~ upon receipt of the revenues received by the County from the Retailers' Occupation and Service Occupation Tax to disburse, independent of and in addition to such sum as is provided for in Section 9-169 of the Illinois Pension code (40 ILCS 5/9-169), and Additional Funds to the Pension Fund no later than November 30, 2016 and November 30 of each succeeding fiscal year; ~~to the degree permitted by the County's 2016 Appropriation Bill.~~

**5.1 Timing of Disbursement of Additional Funds.** Subject to subsection 5.2 of this MOU, the Chief Financial Officer shall disburse the Additional Funds to the Pension Fund on a monthly basis beginning on April 29, 2016 in the amount of \$25,668,000.00. Subsequent disbursements of the Additional Funds shall be made as follows: \$25,555,000.00 on May 31, 2016; \$30,542,000.00 on June 30, 2016; \$30,157,000.00 on July 28, 2016; \$32,297,000.00 on August 31, 2016; \$34,320,000.00 on September 30, 2016; \$32,469,000.00 on October 30, 2016; and \$59,518,000.00 on or before November 30, 2016. Disbursements of Additional Funds shall be made on April 29, May 31, June 30, July 28, August 31, September 30, October 31 and November 30, of each succeeding fiscal year on a similar prorated basis or as otherwise agreed by both parties.

**5.2 Disbursement Authority.** The parties agree that nothing in this ~~Agreement~~ MOU shall require the County to ~~(a) make disbursements to the Fund that violate court orders or are otherwise prohibited by law; or (b) disburse any part of the Additional Funds any time after November 30, 2016 beyond that which is appropriated in the County FY 2016 Appropriation Bill or the term of this Agreement.~~

**6. Limitations on Use of Additional Funds.** The Pension Fund represents that the Additional Funds received from the County under Section 5 of this ~~Agreement~~ MOU, and any earnings or interest derived therefrom, shall be invested in a manner consistent with the Illinois Pension Code and the Pension Funds Investment Policy, both of which include, but are not limited to, the inherent obligation of the Pension Fund to adhere to prudent man principals of investment and shall be used by the Pension Fund to reduce the unfunded pension liabilities of the Pension Fund.

**7. Future Additional Fund Requests.** The Pension Fund agrees that during Fiscal Year 2016 it will provide a calculation of additional funds calculated by its independent actuary on the basis of the amount needed to amortize the Fund's Pension Liability on a 30-year basis

starting in 2017 and concluding in 2046, with said amortization payments reflecting an annual escalation factor of two-percent, and reflecting a discount rate for all liabilities consistent with the assumed investment rate of return on fund assets and five-year smoothing of the value of actuarial assets. ~~The independent actuary's calculation will be provided to the County for its use in considering whether to provide additional funds to the Pension Fund which would be in excess of the statutory basis contained in Section 9-169 of the Illinois Pension Code in the County's FY 2017 Appropriation Bill. In the event that any future intergovernmental agreements with the County are executed, the Pension Fund would provide a calculation that anticipates layered amortization of any further actuarial losses in a period of thirty years, reflecting a similar two percent escalation factor for future layers. Any Such estimate prepared by the independent actuary to such additional funds by the Pension Fund to be included in the County's FY 2017 Appropriation Bill shall be submitted to the County's Chief Financial Officer and the Cook County Board of Commissioners on or before June 15, 2016 and on or before June 15 of each succeeding fiscal year. Any such future agreement will be subject to the annual appropriation process as dictated in the County Codes and relevant Illinois law.~~

**8. No Right, Interest, Expectation, Reliance, Waiver or Release.** The provision for the Additional Funds in this Agreement MOU and any action taken by the County relative to or associated with said Additional Funds shall not suggest or imply, and shall not be construed as suggesting or implying, that by virtue of this Agreement MOU (a) the County either has or has assumed an obligation, continuing obligation, responsibility, or duty to the Pension Fund, its trustees, or its participants; or (b) the Pension Fund, its trustees, or its participants have continuing right to, an interest in or reason to rely on such provisions or action, except as provided in this MOU beyond the provisions of this Agreement. The acceptance of the Additional Funds through this Agreement MOU shall not be construed as a waiver or release of the Pension Fund's rights against the County in relation to any obligations the County may have under the Illinois Pension Code and the Illinois Constitution.

## **9. General Conditions and Miscellaneous Term**

**9.1 Term.** This Agreement MOU shall commence on the date of execution by the Parties and shall remain in force and effect until terminated. ~~through November 30, 2016.~~

**9.2 Expenses.** Each party to this Agreement MOU shall bear its own costs of carrying out this Agreement MOU. No party shall seek to charge or obtain reimbursement from the other party for any costs associated with this Agreement MOU.

**9.3 Amendments.** The Parties may from time to time, during the term of this Agreement MOU, amend this Agreement MOU, but only through written agreement of both Parties.

**9.4 Termination.** ~~A party~~ The Cook County Board of Commissioners and the Pension Fund each may terminate its involvement with this Agreement MOU upon 30 days' written notice to the other party, submitted to those persons identified in Section 9.6. A termination notice from the Cook County Board of Commissioners and the President of the Cook County Board of Commissioners shall be issued from the Secretary of the Cook County Board of Commissioners.

**9.5 ~~Enforceability Covenant Not To Sue.~~** The Parties covenant and agree that the provisions of ~~Agreement~~ the MOU are ~~not~~ enforceable as between them but not as between either of them and or as between any third party, ~~and further covenant and agree that they will not in any way initiate, bring, or support any suit under any provisions of this Agreement.~~

**9.6 Notice.** All formal notices or other communications associated with this ~~Agreement~~ MOU shall be in writing and addressed to the President of the Cook County Board of Commissioners, the Cook County Board of Commissioners, the President of the Board of Trustees of the Pension Fund and each of its individual Trustees, the Chief Financial Officer of the County, and the Executive Director of the Pension Fund at their respective addresses set forth below, as may be from time to time modified in writing by the parties, by any of the following means: (a) personal services, (b) email; or (c) United States mail, registered or certified return requested.

*Cook County Board President*  
118 N. Clark Street, Room 537  
Chicago, IL 60602

*President of Board of Trustees*  
Cook County Pension Fund  
33 North Dearborn, Suite 1000  
Chicago, IL 60602

*Cook County Board of Commissioners*  
Cook County Building, Room 567  
118 North Clark Street  
Chicago, IL 60601

*Executive Director of the Pension Fund*  
33 North Dearborn, Suite 1000  
Chicago, IL 60602  
[nhacket@countypension.com](mailto:nhacket@countypension.com)

*Cook County Chief Financial Officer*  
Cook County Building, Suite 1128  
118 N. Clark Street  
Chicago, IL 60601  
[Ivan.samstein@cookcountyil.gov](mailto:Ivan.samstein@cookcountyil.gov)

With a copy to each:  
*Trustee of the Retirement Board*  
Cook County Pension Fund  
33 N. Dearborn Street, Suite 1000  
Chicago, IL 60602

**9.7 Compliance with Laws.** The Parties shall comply with all applicable laws, ordinances, rules and regulations and executive orders of the federal, state and local government now existing or later in effect, that may in any manner affect the performance of this ~~Agreement~~ MOU.

**9.8 Severability.** In the event that any provision of this ~~Agreement~~ MOU is deemed to be invalid by reason of the operation of any law or by reason of the interpretation placed thereon by any court or any other governmental body, this ~~Agreement~~ MOU shall be construed as not containing such provision and any and all other provisions hereof which otherwise are lawful and valid shall remain in full force and effect.

**9.9 Interpretation.** Any headings of this ~~Agreement~~ MOU are for convenience or reference only and do not define or limit the provisions thereof. Words of gender shall be deemed and construed to include correlative words of other genders. Words importing the singular shall include the plural and vice versa unless the context shall otherwise indicate. All reference to any such person or entity shall be deemed to include any person or entity succeeding to the rights, duties, and obligations of such person or entity in accordance with the terms and conditions of this ~~Agreement~~ MOU. A reference to the County includes the County's officers, commissioners, employees, attorneys, agents and assigns.

**9.10 Governing Law.** This ~~Agreement~~ MOU shall be governed by and construed in accordance with the laws of the State of Illinois.

**9.11 Counterparts.** This ~~Agreement~~ MOU may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which when taken together shall be deemed to be one and the same instrument.

**9.12 Entire Agreement.** This ~~Agreement~~ MOU constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all other prior and contemporary agreements, understandings, representations, negotiations, and commitments between them with respect to the subject matter hereof.

**IN WITNESS WHEREOF**, the parties have hereto caused their duly authorized representatives to execute this ~~Intergovernmental Agreement~~ MOU on the dates hereafter set forth below.

**COOK COUNTY EXECUTION:** The undersigned, on behalf of the County of Cook, Illinois, ~~a body politic and corporate of the State of Illinois,~~ hereby accepts the foregoing ~~Intergovernmental Agreement~~ MOU:

\_\_\_\_\_  
Toni Preckwinkle  
President, Cook County Board of Commissioners

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
David Orr  
Cook County Clerk

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
NAME

Assistant State's Attorney

**PENSION FUND EXECUTION:** The undersigned, on behalf of the Pension Fund, ~~a body politic and corporate of the State of Illinois,~~ hereby accepts the foregoing ~~Intergovernmental Agreement~~ MOU:

\_\_\_\_\_  
Alexis Herrera  
President, Retirement Board of the County Employees'  
and Officers' Annuity and Benefit Fund of Cook County

Date: \_\_\_\_\_

Approved as to form:

\_\_\_\_\_  
Attorney for the Pension Fund  
NAME