

**SUBMITTAL TO THE FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

423B



FROM: General Manager-Chief Engineer

SUBMITTAL DATE:
December 9, 2008

SUBJECT: Adopt Resolution Numbers F2008-36 and F2008-37 to satisfy the legal requirements of IRC Section 414(h)(2) with the California Public Employees' Retirement System (PERS).

RECOMMENDED MOTION:

Adopt Resolution Numbers F2008-36 and F2008-37 to satisfy the legal requirements of IRC Section 414(h)(2) with the California Public Employees' Retirement System (PERS) allowing employee contributions to be "picked-up" by the employer and treated as employer contributions for tax purposes.

BACKGROUND:

Internal Revenue Code (IRC) Section 414(h)(2) allows public agencies to designate required CalPERS employee contributions as being "picked-up" by the employer and treated as employer contributions for tax purposes. The effect of a pick-up is to defer tax on employee contribution amounts until the employee retires and receives retirement benefits, or separates from employment and takes a refund of contributions.

(continued on page 2)

Attachments

JRH:mc

WARREN D. WILLIAMS
General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	N/A	In Current Year Budget:	N/A
	Current F.Y. Net County Cost:	N/A	Budget Adjustment:	N/A
	Annual Net County Cost:	N/A	For Fiscal Year:	N/A

SOURCE OF FUNDS: N/A	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:

County Executive Office Signature

Alex Gann

- Dept't Recomm.: Consent
- Per Exec. Ofc.: Consent
- Policy
- Policy

Prev. Agn. Ref.:

District: All

Agenda Number:

11.2

FORM APPROVED COUNTY COUNSEL
BY: ROBERT M. PEPPER, JR.
DATE: 11/26/08

SCAL PROCEDURES APPROVED
BY: VAN M. CHAND, FINANCE DIRECTOR
BY: JEANINE R. HAWKINS, CURRENT

**FLOOD CONTROL AND WATER CONSERVATION DISTRICT BOARD SUBMITTAL
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

SUBJECT: Adopt Resolution Numbers F2008-36 and F2008-37 to satisfy the legal requirements of IRC Section 414(h)(2) with the California Public Employees' Retirement System (PERS).

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BACKGROUND Continued:

The District has provided this benefit according to the provisions of each applicable Memorandum of Understanding (MOU) to eligible employees covered under both the Miscellaneous and Safety CalPERS contracts.

Absent the 414(h)(2) provision applicable to governmental plans, employee contributions to a defined benefit pension plan qualified under Section 401(a) would automatically be after-tax contributions (e.g. taxable income to the employee at the time the contribution was made).

Revenue Ruling 2006-43 allows employers who do not have written evidence of a pick-up to be treated as meeting the requirements of 414(h)(2) for past pre-tax contributions if the employer takes formal action in writing prior to December 31, 2008 with respect to future picked-up contributions.

Revenue Ruling 2006-43 provides, in general, that an employee contribution will not be treated as "picked-up" under IRC 414(h)(2) unless:

- (1) The employer specifies that the contributions, although designated as employee contributions, are being paid by the employer, and
- (2) The employer does not permit participating employees to opt out of the pick-up or receive the contributed amounts directly instead of having them paid by the employer to the plan.

Approval of the attached Resolution for the Riverside County Flood Control and Water Conservation District will satisfy the legal requirements of IRC Section 414(h)(2) and Revenue Ruling 2006-43. Signed Resolutions must be provided to CalPERS prior to December 31, 2008.

FINANCIAL:

There is no additional cost to the District by approval of these Resolutions.

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3 **RESOLUTION NO. F2008-36**
4 **REGARDING EMPLOYER PICK-UP OF MEMBER CONTRIBUTIONS**
5 **TO THE CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (CALPERS)**

6 **WHEREAS**, the Riverside County Flood Control and Water Conservation District (District) has the
7 authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code
8 (IRC); and

9 **WHEREAS**, the Board of Administration of the Public Employees' Retirement System adopted its
10 resolution regarding section 414(h)(2) IRC on September 18, 1985; and

11 **WHEREAS**, the Internal Revenue Service has stated in December 1985 that the implementation of the
12 provisions of section 414(h)(2) IRC pursuant to the Resolution of the Board of
13 Administration would satisfy the legal requirements of section 414(h)(2) IRC; and

14 **WHEREAS**, the District has determined that even though the implementation of the provisions of section
15 414(h)(2) IRC is not required by law, the tax benefit offered by section 414(h)(2) IRC
16 should be provided to its employees who are members of the Public Employees'
17 Retirement System:

18 **NOW, THEREFORE, BE IT RESOLVED:**

- 19 **I.** The District will implement the provisions of section 414(h)(2) Internal Revenue Code by making
20 employee contributions pursuant to California Government Code section 20691 to the Public
21 Employees' Retirement System on behalf of its employees who are members of the Public
22 Employees Retirement System. "Employee contributions" shall mean those contributions to the
23 Public Employees' Retirement System which are deducted from the salary of employees and are
24 credited to individual employee's accounts pursuant to California Government Code section
25 20691.
- 26 **II.** The contributions made by the District to the Public Employees' Retirement System, although
27 designated as employee contributions, are being paid by the District in lieu of contributions by the
28 employees who are members of the Public Employees' Retirement System.
- III.** Employees shall not have the option of choosing to receive the contributed amounts directly
instead of having them paid by the District to the Public Employees' Retirement System.
- IV.** The District shall pay to the Public Employees' Retirement System the contributions designated
as employee contributions from the same source of funds as used in paying salary.
- V.** The amount of the contributions designated as employee contributions and paid by the District to
the Public Employees' Retirement System on behalf of an employee shall be the entire
contribution required of the employee by the Public Employees' Retirement Law (California
Government Code sections 20000, et seq.).
- VI.** The contributions designated as employee contributions made by the District to the Public
Employees' Retirement System shall be treated for all purposes, other than taxation, in the same
way that member contributions are treated by the Public Employees' Retirement System.

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**BOARD OF SUPERVISORS
OF THE
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RESOLUTION
FOR
EMPLOYER PICK-UP OF MEMBER CONTRIBUTIONS
RESOLUTION NO. F2008-36**

ADOPTED AND APPROVED by the governing body of the Riverside County Flood Control and Water Conservation District this _____ day of _____, _____.

ATTEST:
Clerk of the Board
Nancy Romero

**RIVERSIDE COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT**

By: _____
Deputy

By: _____
MARION ASHLEY, Chairman
Board of Supervisors
Riverside County Flood Control
And Water Conservation District

Date: _____

JRH:mc
P8/122475

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4 **RESOLUTION NO. F2008-37**
5 **RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS**
6 **WITH TIME-IN-GRADE EXCEPTIONS**

7 **WHEREAS**, the Board of Supervisors of the Riverside County Flood Control and Water Conservation
8 District (District) is a contracting Public Agency of the Public Employees' Retirement
9 System.

10 **WHEREAS**, the Board of Supervisors of the District has elected to pay all or a part of the normal
11 member contributions to the California Public Employees' Retirement System (CalPERS)
12 pursuant to Government Code Section 20691, and applicable labor policies or agreements;

13 **WHEREAS**, the Board of Supervisors of the District may elect a time-in-grade Exception to said
14 Employer Paid Member Contributions (EPMC) within a given group or class of employees
15 as defined in Government Code Section 20636(e)(1) and as specifically authorized in Title
16 2, California Code of Regulations Section 569;

17 **WHEREAS**, the Board of Supervisors of the District has identified the following conditions for the
18 application of said Exception:

- 19 I. This exception shall apply to all employees in the following bargaining units:
20 Supervisory Unit; Professional Unit; Para-Professional Unit; Inspection and Technical
21 Unit; Trades, Crafts and Labor Unit; and Supporting Services Unit.
- 22 II. New employees pay 100% of Member contributions.
- 23 III. For employees covered by the Memorandum of Understanding for the Inspection and
24 Technical Unit; Trades, Crafts and Labor Unit; and Supporting Services Unit on July 11,
25 2002, the District will pay EPMC of 1% attributable to the increased member
26 contribution resulting from the adoption of the 3% @60 retirement formula.
- 27 IV. Once a newly-hired employee accrues five (5) years of total service (either on a
28 continuous or cumulative basis), s/he shall be entitled to payment of EPMC for the full
amount of applicable member contributions. In so resolving, the governing body of the
District agrees to abide by Section 569, the terms of which are incorporated-by-reference
as if fully set forth herein.
- V. The effective date of this Resolution shall be the date referenced in each applicable
bargaining unit's Memorandum of Understanding with the District.

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**BOARD OF SUPERVISORS
OF THE
RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT
RESOLUTION
FOR
EMPLOYER PICK-UP OF MEMBER CONTRIBUTIONS
RESOLUTION NO. F2008-37**

ADOPTED AND APPROVED by the governing body of the Riverside County Flood Control and Water Conservation District this _____ day of _____, _____.

ATTEST:
Clerk of the Board
Nancy Romero

**RIVERSIDE COUNTY FLOOD
CONTROL AND WATER
CONSERVATION DISTRICT**

By: _____
Deputy

By: _____
MARION ASHLEY, Chairman
Board of Supervisors
Riverside County Flood Control
And Water Conservation District

Date: _____

JRH:mc
P8/122475

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