

FORM APPROVED COUNTY COUNSEL
 BY: *[Signature]*
 ROBERT M. PEPPER, JR. DATE 11/25/08

**SUBMITTAL TO THE BOARD OF DIRECTORS
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

483



FROM: Riverside County Waste Resources Management District

SUBMITTAL DATE:
 November 25, 2008

SUBJECT: Adopt Resolution Numbers 2008-01 and 2008-02 to satisfy the legal requirements of IRC Section 414(h)(2) with the California Public Employees' Retirement System (PERS).

RECOMMENDED MOTION:

Adopt Resolution Numbers 2008-01 and 2008-02 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. The District has provided this benefit according to the provisions of each applicable Memorandum of Understanding (MOU) to eligible employees covered under the Miscellaneous CalPERS contract.

(continued on Page 2)

Departmental Concurrence

[Signature]
 Hans W. Kernkamp, General Manager-Chief Engineer

FINANCIAL DATA	Current F.Y. Total Cost:	\$	In Current Year Budget:	
	Current F.Y. Net County Cost:	\$		Budget Adjustment:
	Annual Net County Cost:	\$		For Fiscal Year:

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

C.E.O. RECOMMENDATION:

APPROVE

BY: *[Signature]*
 Alex Gann

County Executive Office Signature

Dept't Recomm.: Consent Policy X Policy

Per Exec. Ofc.: Consent Policy

Prev. Agn. Ref.: | District: | Agenda Number:

12.3

Background (continued):

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 Resolutions for the Riverside County Waste Resources Management 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.

There is no additional cost to the District by approval of this Resolution.

Board of Directors

Riverside County Waste Resources Management District

RESOLUTION 2008-01

RESOLUTION FOR EMPLOYER PAID MEMBER CONTRIBUTIONS

WHEREAS, the governing body of the Riverside County Waste Resources Management District (the District) has the authority to implement Government Code Section 20691;

WHEREAS, the governing body of the District has a written labor policy or agreement which specifically provides for the normal member contributions to be paid by the employer;

WHEREAS, one of the steps in the procedures to implement Section 20691 is the adoption by the governing body of the District of a Resolution to commence said Employer Paid Member Contributions (EPMC);

WHEREAS, the governing body of the District has identified the following conditions for the purpose of its election to pay EPMC:

- This benefit shall apply to all employees of all Miscellaneous employees of the District .
- This benefit shall consist of paying 8% of the normal member contributions as EPMC.
- The effective date of this Resolution shall be December 9, 2008 bringing past practice into compliance..

NOW, THEREFORE, BE IT RESOLVED that the governing body of the District elects to pay EPMC, as set forth above.

BY

Roy Wilson

Chairman, Board of Directors

(Date adopted and approved)

Board of DirectorsRiverside County Waste Resources Management District**RESOLUTION NO. 2008- 02****REGARDING EMPLOYER PICK-UP OF MEMBER CONTRIBUTIONS TO THE CALIFORNIA PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (CalPERS)**

WHEREAS, the Riverside County Waste Resources Management District has the authority to implement the provisions of section 414(h)(2) of the Internal Revenue Code (IRC); and

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

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

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

NOW, THEREFORE, BE IT RESOLVED:

- I. That the Riverside County Waste Resources Management District will implement the provisions of section 414(h)(2) Internal Revenue Code by making employee contributions pursuant to California Government Code section 20691 to the Public Employees' Retirement System on behalf of its employees who are members of the Public Employees Retirement System. "Employee contributions" shall mean those contributions to the Public Employees' Retirement System which are deducted from the salary of employees and are credited to individual employee's accounts pursuant to California Government Code section 20691.
- II. That the contributions made by the Riverside County Waste Resources Management District to the *Public Employees' Retirement System*, although designated as employee contributions, are being paid by the Riverside County Waste Resources Management District in lieu of contributions by the employees who are members of the Public Employees' Retirement System.
- III. That employees shall not have the option of choosing to receive the contributed amounts directly instead of having them paid by the Riverside County Waste Resources Management District to the Public Employees' Retirement System.
- IV. That the Riverside County Waste Resources Management 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. That the amount of the contributions designated as employee contributions and paid by the Riverside County Waste Resources Management 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. That the contributions designated as employee contributions made by Riverside County Waste Resources Management 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.