

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



ITEM: 11.9
(ID # 17803)

MEETING DATE:
Tuesday, December 07, 2021

FROM : FLOOD CONTROL DISTRICT:

SUBJECT: FLOOD CONTROL DISTRICT: Amend the Human Resources Service Provider Agreement - Revenue Share for the Riverside County Flood Control and Water Conservation District Deferred Compensation Plan, All Districts. [\$0] (Companion Item to MT 15170)

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve Amendment No. 3 to the Service Provider Agreement with VALIC Retirement Services Company (Amendment) effective January 1, 2022 for services with respect to the Riverside County Flood Control and Water Conservation District (District) 457(b) Deferred Compensation Plan (Attachment A), and authorize the Chair of the District's Board of Supervisors to execute the Amendment on behalf of the District; and
2. Direct the Clerk of the Board to retain one (1) signed copy and return two (2) signed copies to the County of Riverside Human Resources Department for distribution.

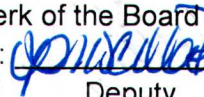
ACTION:Policy


Bob Cullen, Assistant Chief Engineer 11/22/2021

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Perez, seconded by Supervisor Hewitt and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 7, 2021
xc: Flood, HR

Kecia R. Harper
Clerk of the Board
By: 
Deputy

(Companion Item 3.28)

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| FINANCIAL DATA | Current Fiscal Year: | Next Fiscal Year: | Total Cost: | Ongoing Cost |
|-----------------------------|-----------------------------|--------------------------|-------------------------------|---------------------|
| COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| NET COUNTY COST | \$ 0 | \$ 0 | \$ 0 | \$ 0 |
| SOURCE OF FUNDS: N/A | | | Budget Adjustment: No | |
| | | | For Fiscal Year: 21/22 | |

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Riverside County Flood Control and Water Conservation District offers a Deferred Compensation Plan (Plan) to employees that is governed by Sections 457(b) and 401(a) of the Internal Revenue Code. The Plan is intended to comply with all applicable laws and regulations. The Plan allows participants to defer a portion of their salary into investment options provided through the Plan. Participants' earnings from investments are tax deferred until the money is withdrawn from the Plan.

The investment options available through the Plan cover a broad range of investment risk and potential reward appropriate for this type of retirement savings program. The investment options (funds) made available in the Plan are recommended by the Deferred Compensation Advisory Committee and may change from time to time to achieve optimal fund performance.

Language in the agreements have been revised to allow the use of electronic signatures and to extend each agreement through December 31, 2022.

Specific changes made to the Custodial Agreement for the 457 Deferred Compensation Plan are as follows:

No changes.

Impact on Residents and Businesses

There is no direct impact on residents or business in the County of Riverside for any of these recommended changes.

Attachments:

1. Attachment A: Amendment No. 3 to Service Provider Agreement – 457(b) Deferred Compensation Plan

JR:bad
P8/241216

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



Jason Farin, Principal Management Analyst 11/29/2021



Gregory V. Priaplos, Director County Counsel 11/23/2021

**Amendment No. 3
to
Service Provider Agreement**

This Amendment is made to the Service Provider Agreement (“Agreement”) by and between Riverside County Flood Control and Water Conservation District (“Employer” or “County”) and VALIC Retirement Services Company (“Service Provider”) approved on April 7, 2020, as item 11.7, previously amended on October 6, 2020, as item 11.1 and on March 9, 2021, as item 11.7, for services with respect to the 457 Deferred Compensation Plan, a plan established pursuant to Section 457(b) of the Internal Revenue Code of 1986, as amended (“Code”).

WHEREAS, Employer and Service Provider entered into the Agreement for nondiscretionary plan administrative services effective July 1, 2019;

WHEREAS, the Agreement provided for an Initial Term beginning on July 1, 2019 through December 31, 2021; and

WHEREAS, Employer and Service Provider desire to extend the Initial Term of the Agreement, modify the Excess Service Provider Revenue provision and add certain provisions to the Agreement.

NOW, THEREFORE, in consideration of the mutual promises herein contained, the parties hereto agree to amend the Agreement, effective January 1, 2022, provided that this Amendment has been executed by Employer and received by Service Provider on or before December 10, 2021, as follows:

1. The Initial Term of the Agreement is hereby extended through December 31, 2022.
2. Section XXIII, Excess Service Provider Revenue, of the Agreement is deleted in its entirety and replaced with the following:

“XXIII. Excess Service Provider Revenue. If the total revenue received by Service Provider in accordance with Section XI, as determined each calendar quarter, exceeded the gross annual Administrative Service Fee (0.17%) as described in that same section, then Service Provider will deposit the amount of such excess into an account under the Plan. Such deposits will be invested in the Vanguard Federal Money Market Investor fund until such time as Employer changes such investment election. Service Provider shall pay from this Plan account invoices received no more frequently than quarterly from Employer for Plan administration expenses, which expenses Employer has determined to be reasonable and properly payable from Plan assets. Service Provider shall pay such invoices within thirty (30) days of their receipt from Employer. This account shall maintain a balance of \$5,000. At the close of each Plan year, any amount in excess of the \$5,000 shall be reallocated to Participant Accounts on a per capita basis with a unique Social Security Number in the Plan with an account balance greater than \$0 as of December 31st.”

3. The following are hereby added as Sections XXIX, XXX and XXXI to the Agreement:

“XXIX. Confidentiality. Service Provider agrees that it shall not use, disclose, or permit access to Confidential Information acquired in connection with the services performed under this Agreement other than to exercise its rights under this Agreement and perform its obligations under this Agreement or as otherwise described herein. “Confidential Information” includes, but is not limited to, nonpublic personal information (*e.g.*, names, addresses, account balances, account numbers, account activity, Social Security numbers, taxpayer identification numbers, and sensitive financial information), information pertaining to products, operations, systems, customers, prospective customers, techniques, intentions, processes, plans, know-how, as well as any information entrusted to any affiliates of the parties. All Confidential Information shall be held in confidence by Service Provider to the same extent and in at least the same manner as Service Provider protects its own Confidential Information, but in no case in a lesser manner than a reasonable degree of care under the circumstances. The foregoing shall not restrict use, disclosure, or access to Confidential Information related to the performance or evaluations of retirement services, the provision of services under this Agreement or any other agreement with the Employer, or as otherwise provided herein; provided, however, in no event will Service Provider release any information to any person or entity except as permitted by applicable law. The Employer expressly authorizes Service Provider to disclose Confidential Information to Employer’s consultant(s), counsel, agents, and to Service Provider’s affiliates, agents, and representatives consistent with the limitations herein.

The obligations of this section shall not act to restrict any lawful disclosure of Confidential Information by Service Provider pursuant to any applicable state or federal laws or to the extent required to satisfy any valid subpoena, court order, litigation or regulatory request, or any other legal requirement of a competent governmental authority, provided that following receipt of any such request, and to the extent that it may legally and reasonably do so, Service Provider advises Employer prior to making such disclosure in order that Employer may object to such disclosure, take action to ensure confidential treatment of the Confidential Information, or take such other action as it considers appropriate. Notwithstanding the foregoing, Service Provider need not provide notice to Employer prior to responding to those routine subpoenas or court orders that are commonly received, and responded to, by Service Provider in its role as a Plan record keeper (*e.g.*, Domestic Relations Orders). Notwithstanding the foregoing, Service Provider may use data or any derivatives thereof in an anonymous form (*i.e.*, such that it is not identified or recognizable as Employer’s, Plan’s, or Participants’ information) for Service Provider’s marketing analytics and other purposes. In addition, Service Provider will not be considered to have breached its obligations hereunder for using or disclosing Confidential Information to the extent Service Provider or a Service Provider affiliate is specifically authorized by an individual to use that individual’s personal information (including Plan-related and Participant Account-related information applicable to that individual) in connection with any other Service Provider products or services. Additionally, the obligations of this section shall not apply to information which, without breach of obligations of confidentiality or violation of law: (1) is independently developed by Service Provider; (2) is or becomes publicly known; (3) is already known by Service Provider as evidenced by the written records or (4) is obtained from an independent source.

XXX. Data Security and Privacy. Service Provider agrees to maintain and hold all nonpublic personal information received in connection with the performance of services under this Agreement in confidence, consistent with the terms herein. Nonpublic personal information (“NPI”) is limited to personally identifiable financial information which (1) is provided by a participant to Service Provider or (2) results from a transaction with the participant of any service performed for the participant or (3) is otherwise obtained by the financial institution. Service Provider agrees that their collection, use and disclosure of any and all NPI is and will be at all times conducted in compliance with all applicable data protection and/or privacy laws, rules and/or regulations, and Service Provider’s Privacy Policy as updated from time to time and found at www.aig.com/Retirement Services.

Service Provider will use reasonable care to secure NPI through the use of appropriate physical and logical security measures, and will take all commercially reasonable organizational and technical steps to protect against unlawful and unauthorized processing of NPI. Service Provider may use and disclose relevant aspects of NPI to its employees, affiliates, permissible assigns, subcontractors, advisors and agents to the extent such disclosure is reasonably necessary for the performance of its obligations, the maintenance and/or improvement of overall service delivery, or the enforcement of its rights under this Agreement. For purposes of this section, NPI includes user credentials, passwords, and other authentication data that enables Employer, its authorized agents, or participants to access Service Provider software. Service Provider will promptly notify the Employer in the event of (i) any breach of its security measures that results in unauthorized access to NPI that could result in harm to the impacted individual; (ii) the consequences of the breach; and (iii) the corrective action taken to remedy the breach. Nothing in this Agreement shall in any way affect other product or service arrangements entered into separately by Service Provider or its affiliates and the Plan and/or Participants.

XXXI. Force Majeure. In no event shall either party be liable to the other for any delay or failure to perform in breach of any of the terms of this Agreement to the extent that such breach results entirely from an unforeseen event outside the control of the breaching party, including, but not limited to, acts of God; acts of the public enemy; acts of terrorism; acts of any foreign government; acts, orders or regulations of the United States of America, or any state, territory or political division of the United States of America or of the District of Columbia; fires, floods, epidemics, pandemics, quarantine restrictions, freight embargoes, and unusually severe weather conditions; provided that, in every case, the delay or failure to perform is beyond the control and without the fault or negligence of the party claiming excusable delay and that such party cures the breach as soon as possible.”

4. This Amendment No. 3 may be executed in any number of counterparts, each of which will be an original, but all of which together will constitute one instrument. Each party herein agrees to the use of electronic signatures, such as digital signatures that meet the requirements of the California Uniform Electronic Transactions Act (“CUETA”) Cal. Civ. Code §§ 1633.1 to 1633.17), for executing this Amendment. The parties further agree that the electronic signatures of the parties included herein are intended to authenticate this writing and to have the same force and effect as manual signatures. Electronic signature means an electronic sound, symbol, or process attached to or logically associated with an electronic record and executed or adopted by a person with the intent to sign the electronic record pursuant to the CUETA as amended from time to time. The CUETA authorizes use of an electronic signature

for transactions and contracts among parties in California, including a government agency. Digital signature means an electronic identifier, created by computer, intended by the party using it to have the same force and effect as the use of a manual signature, and shall be reasonably relied upon by the parties. For purposes of this section, a digital signature is a type of "electronic signature" as defined in subdivision (i) of Section 1633.2 of the Civil Code.

5. Each party certifies that the individual signing below has the authority to execute this Amendment No. 3 to the Agreement on behalf of such party and may legally bind such party to the terms and conditions herein, including any attachments hereto.
6. This Amendment No. 3 shall be effective January 1, 2022 until termination of the Agreement or as otherwise modified in accordance with the terms and conditions therein.

This Amendment shall remain in full force and effect until termination of the Agreement in accordance with the terms and conditions therein.

SAVE AND EXCEPT as specifically amended herein, the terms and conditions of the Agreement shall remain in full force and effect.

In Process

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have caused this Amendment to be executed by their duly authorized representatives.

ATTEST:

RIVERSIDE COUNTY FLOOD CONTROL AND WATER CONSERVATION DISTRICT:

Clerk of the Board
Kecia R. Harper

By: [Signature]
Deputy

By: Karen S. Spiegel
Karen Spiegel
Chair, Board of Supervisors

Date: 12/07/2021

Date: 12/07/2021

Approved as to Form:
Gregory P. Priamos
County Counsel

By: [Signature] **In Process**

VALIC RETIREMENT SERVICES COMPANY:

By: DocuSigned by: Sherry Rowe
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Printed Name: Sherry Rowe

Title: Administrative Officer

Date: 11/9/2021 | 7:05 PM CST

APPROVED
AS TO CONTRACT COMPLIANCE
LAW SERVICES

CONTROL NO. 2870

DATE 11/9/2021 | 11:56 AM CST

SIGNED DocuSigned by: Gayle Rollins
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