

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



**ITEM: 3.16
(ID # 24636)**

MEETING DATE:
Tuesday, April 09, 2024

FROM : HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Approve the Assignment, Assumption and Amendment Agreement between Washington Trust Bank as Current Trustee and Alta Trust Company to become Successor Trustee holding Trust assets of a health reimbursement plan sponsored by the County of Riverside and Appendix A Consent of Gallagher, Successor Trustee, and Plan Sponsor (Attachment A), All Districts. [\$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Assignment, Assumption and Amendment Agreement between Washington Trust Bank as Current Trustee and Alta Trust Company to become Successor Trustee holding Trust assets of a health reimbursement plan sponsored by the County of Riverside and Appendix A Consent of Gallagher, Successor Trustee, and Plan Sponsor (Attachment A);
2. Authorize the Chairman of the Board of Supervisors to execute the above-referenced agreements on behalf of the County of Riverside; and
3. Direct the Clerk of the Board to retain one (1) copy of each signed agreement and return three (3) copies of each signed agreement to Human Resources for distribution.

ACTION:

Sarah Franco

Sarah Franco, Assistant County Executive Officer

4/1/2024

MINUTES OF THE BOARD OF SUPERVISORS

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

Ayes: Jeffries, Spiegel, Washington, Perez and Gutierrez
Nays: None
Absent: None
Date: April 9, 2024
xc: H.R.

Kimberly A. Rector
Clerk of the Board

By: *Nancy Li*
Deputy

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

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: 23/24	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Post Employment VEBA Health Savings Plan reimbursement arrangement, currently contracted with Gallagher, was approved by the Board on February 11, 2020, Agenda Item No. 3.18. The VEBA Health Savings Plan includes Gallagher Benefits Services, Inc., Gallagher Fiduciary Advisors, Inc., and Washington Trust Bank to administer the plan effectively and efficiently for the County of Riverside (“Plan Sponsor”). Washington Trust Bank holds the assets of the Health Savings Plan.

Washington Trust Bank (“Current Trustee”) is also the Master Trustee under the trust. The Current Trustee will resign its role as the Master Trustee under the Master Trust on April 30, 2024, and the Alta Trust (“Successor Trustee”) will assume the trusteeship, as Master Trustee, under the Master Trust immediately afterwards.

The County of Riverside Post Employment Program was approved by the Board on November 26, 2002, Agenda Item No. 3.39 with an effective date of December 1, 2002. The program consists of the Voluntary Employees’ Beneficiary Association (VEBA) Health Savings Plan, which is a health reimbursement arrangement (“HRA”) that provides employees with post-employment health expense reimbursement that may be used for qualified out-of-pocket healthcare expenses as governed by Internal Revenue Code Section 213(d) and as outlined in IRS Publication 502.

The County and employees do not pay Social Security or Medicare taxes on any amounts deposited into the plan. The funds in these accounts earn interest, and participants can direct the investment of their accounts using multiple fund options in which their eligible leave balance contributions will be invested. There are approximately 7,000 participants in the plan with assets totaling approximately \$91 million as of March 28, 2024.

The Assignment, Assumption and Amendment Agreement has been approved as to form by County Counsel.

Impact on Residents and Businesses

There is no financial impact to the residents and businesses as a result of the recommended action.

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Other Financial Information

Any payments will be funded by existing Plan assets, so there is no direct effect on the County's budget, and the cost of this Agreement is \$0.

ATTACHMENTS:

Attachment A: Assignment, Assumption and Amendment Agreement



Aaron Gettis, Chief of Deputy County Counsel 4/1/2024

APPENDIX A
CONSENT OF GALLAGHER, SUCCESSOR TRUSTEE,
AND PLAN SPONSOR

Gallagher, Successor Trustee, and Plan Sponsor agree to the assignment of trusteeship by the Current Trustee to the Successor Trustee under the Trust and the Master Trust as provided above and in the Assignment of Master Trust and to the following amendments to the Trust Agreement and the Master Trust Agreement:

(1) **Governing Law.** The governing law for purposes of dealing with disputes arising between the parties to the Trust Agreement and Master Trust Agreement shall be the laws of the State of South Dakota to the extent not superseded by federal law, and venue shall be in Sioux Falls, South Dakota.

(2) **Arbitration.**

Section 5.13 of the Trust Agreement with regard to disputes under the Trust Agreement, as amended hereby, is hereby amended as follows to add an arbitration provision for disputes:

“5.13 Disputes. Any disputes arising under this Agreement shall be arbitrated in accordance with the commercial arbitration rules of the American Arbitration Association. Arbitration proceedings will take place in a venue mutually acceptable to the parties or on an electronic portal (e.g., zoom, Microsoft Teams, etc.). To the extent not preempted by federal law, California law shall control issues related to the dispute between the parties, provided that issues related to the validity of this Trust Agreement or the standing of the Trustee shall be governed by South Dakota statutory law as provided in Section 10.1. The Trustee and Plan Sponsor each waive any right either of them may have to institute or conduct litigation or arbitration in any other forum or location, or before any other body. Arbitration is final and binding on the Parties. An award rendered by the arbitrators may be entered in any court having jurisdiction over the pertinent Party. The prevailing Party in any arbitration will be entitled to reasonable attorney fees and costs, including fees and costs on appeal.”

Section 10.1 of the Trust Agreement with regard to the validity of the Trust Agreement, as amended hereby, is hereby amended as follows:

“10.1 Validity of Agreement. The Trust shall be administered as a South Dakota Trust, and the validity of this Trust Agreement shall be determined, and construction, effect, and administration of this Trust Agreement shall be construed and interpreted in accordance with the laws of the State of South Dakota. If any provision of this Trust Agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the Agreement unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Trust. In the event of any such holding, the Trustee may immediately, and if in accordance with appropriate law retroactively, amend the Agreement as is necessary to remedy any such defect.”

Section 5.13 of the Master Trust Agreement with regard to disputes under the Master Trust Agreement, as amended hereby, is hereby amended as follows to add an arbitration provision for disputes:

“5.13 Disputes. Any disputes arising under this Agreement shall be arbitrated in accordance with the commercial arbitration rules of the American Arbitration Association. All arbitration proceedings will take place only in South Dakota, unless otherwise agreed to by the Master Trustee and the applicable Plan Sponsor. To the extent not preempted by federal law, South Dakota statutory law (including, without limitation, the statutes governing the award of damages and arbitration) and South Dakota common law will control during arbitration. The Trustee and each Plan Sponsor each waive any right either of them may have to institute or conduct litigation or arbitration in any other forum or location, or before any other body. Arbitration is final and binding on the Parties. An award rendered by the arbitrators may be entered in any court having jurisdiction over the pertinent Party. The prevailing Party in any arbitration will be entitled to reasonable attorney fees and costs, including fees and costs on appeal.”

Section 9.1 of the Master Trust Agreement with regard to the validity of the Master Trust Agreement, as amended hereby, is hereby amended as follows:

“9.1 Validity of Agreement. The Master Trust shall be administered as a South Dakota Trust, and the validity of this agreement shall be determined, and construction, effect, and administration of this agreement shall be construed and interpreted in accordance with the laws of the State of South Dakota. If any provision of this agreement is held to be illegal or invalid for any reason, such illegality or invalidity shall not affect the remaining portions of the agreement unless such illegality or invalidity prevents accomplishment of the objectives and purposes of the Master Trust. In the event of any such holding, the Master Trustee may immediately, and if in accordance with appropriate law retroactively, amend the agreement as is necessary to remedy any such defect.

Should any amendment of the Master Trust be required in accordance with the newly revised Section 9.1 above, the HRA Service Manager will provide the County with prompt notice regarding such amendment. (3) **Plan Document.** Notwithstanding any other provisions of the Trust Agreement, Successor Trustee shall not be responsible for reviewing or administering the Trust in accordance with the health reimbursement account plan documents, the assets of which are held in the Trust, and, in connection with its role and obligations as Successor Trustee of the Trust, shall be entitled to rely on direction from the Plan Sponsor or Gallagher in its capacity as the HRA Service Manager.

(4) **Resignation of Successor Trustee.** If the Successor Trustee elects to resign as trustee of Trust and gives proper notice of such resignation as provided in the Trust Agreements and a new successor trustee is not appointed in accordance with the terms of the Trust Agreement or otherwise within ninety (90) days from the date notice of resignation is received by the successor Trustee, the individual who holds the same or substantially similar title as the officer of the Plan Sponsor who executed this Agreement shall automatically become the successor trustee.

(5) **Amendments.** The Trust Agreement and Master Trust Agreement may be amended in the manner set forth herein and consistent with the procedure described in U.S. Department of Labor Advisory Opinion 97-16A or by written consent of the parties. Successor Trustee and Gallagher may jointly propose to modify the Trust Agreement or Master Trust Agreement by giving the Plan Sponsor advance notice of not less than 60 days prior to the effective date of the proposed change. The notice shall be given in the manner described in the Trust Agreement, as amended hereby. The notice will (1) explain the proposed change; (2) fully disclose any resulting changes in the fees to be charged as a result of any proposed change to the Trust Agreement; (3) identify the effective date of the change; (4) explain the Plan Sponsor's right to reject the change or terminate the services of Gallagher, as HRA Service Manager and Alta Trust, as Trustee under the Trust Agreement; and (5) state that pursuant to the provisions of this Agreement, if the Plan Sponsor fails to object to the proposed change before the date on which the change become effective, the Plan Sponsor will be deemed to have consented to the proposed change. If the Plan Sponsor objects to the proposed change, Plan Sponsor shall submit its objection in writing not less than 30 days prior to the effective date of the proposed change. If on or before the effective date of the proposed change, the Plan Sponsor, Gallagher, and Successor Trustee have not reached agreement with respect to the proposed change, the Plan Sponsor's objection to the proposed change shall be subject to Gallagher's right to resign and the Plan Sponsor's right to remove Gallagher, as the Third Party Administrator as set forth in the HealthInvest Adoption Packet between the Plan Sponsor and Gallagher. Any resignation by or termination of Gallagher will be treated as a termination of the Plan Sponsor's engagement of Alta Trust, as trustee and the assets of the Plan held in the Trust will be transferred pursuant to the process described in subsection (4) above.

(6) **Amendment to Notices Provision.** Section 10.15 of the Trust Agreement shall be amended regarding the manner of delivery of notices as follows:

"10.15 Notices. Whenever any notice may be or is required or permitted to be given by the Trustee, HRA Service Manager, a Plan Sponsor, or an Administrator, such notice shall be in writing and shall be deemed to have been duly given, received and effective three (3) business days after the date of posting by mail. In all cases the notice shall be addressed to the applicable Party at the last physical, mailing, or electronic mail address (as applicable) of such person appearing in the records of the HRA Service Manager."

(7) **Custody and Omnibus Investment of Plan Assets.** In connection with the assignment of the Trust by the Current Trustee, and the assumption of the Trust by the Successor Trustee, the Current Trustee has also assigned, and the Successor Trustee has assumed, the role of Master Trustee of the Master Trust. The Plan Sponsor hereby consents to such assignment and assumption. Without limiting the fiduciary obligations of Successor Trustee, the Plan Sponsor further authorizes the Successor Trustee and Gallagher to cause the assets of the Trust to be removed from the Master Trust and deposited, held, and invested in another master trust account or omnibus custodial account on behalf of the Plan, if Gallagher and Successor Trustee reasonably determine it to be more operationally efficient or cost effective to hold and invest the trust assets on behalf of the Plan and Trust (including for the purpose of obtaining a higher share class with lower pricing for investments into which the trust assets are invested).

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, Gallagher, the Successor Trustee, and the Plan Sponsor agree and approve of the Trust Agreement set forth in Appendix A to this Agreement as of the dates set forth by their signatures.

GALLAGHER BENEFIT SERVICES, INC.

“PLAN SPONSOR”
COUNTY OF RIVERSIDE

By: _____

By: Chuck Washington

Name: David Ritchie
Title: National Practice Leader, HRA VEBA and Trusts
Date:

Name: CHUCK WASHINGTON
Title: CHAIR, BOARD OF SUPERVISORS
Date: 4/09/2024

ALTA TRUST COMPANY

By: _____

Name:
Title:
Date:

ATTEST:
KIMBERLY A. RECTOR, Clerk

By: Naomy Li
DEPUTY

FORM APPROVED COUNTY COUNSEL
BY Kristine Bell-Valdez DATE

APR 09 2024 3.16

ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT

THIS ASSIGNMENT, ASSUMPTION AND AMENDMENT AGREEMENT ("Agreement") is entered into and effective as of the "Effective Date" defined below, by and between WASHINGTON TRUST BANK, a trust bank chartered under the laws of the State of Washington ("Current Trustee"), and ALTA TRUST COMPANY, a trust company organized and existing under the laws of the State of South Dakota ("Successor Trustee" or "Alta Trust"), and the entity identified as the plan sponsor on the signature page (the "Plan Sponsor") with reference to the following:

A. Current Trustee is the current trustee of the trust identified on the signature page to this Agreement (the "Trust") pursuant to the trust document identified on the signature page (the "Trust Agreement"). The Trust holds assets of a health reimbursement plan (the "Plan") sponsored by the Plan Sponsor.

B. Current Trustee is also the master trustee under the trust ("Master Trust") established by the "Amendment and Restatement of Agreement and Declaration of Trust Establishing the HealthInvest HRA Master Trust," effective as of April 1, 2017 (the "Master Trust Agreement"), established by Current Trustee, as the "Master Trustee" thereunder. The Master Trust holds assets of participating trusts created to fund health reimbursement plans sponsored by the plan sponsors of each plan and participating trust, including the Plan Sponsor's Plan and Trust.

C. Current Trustee desires to resign its role as the trustee of the Trust and Master Trustee of the Master Trust, and Successor Trustee is willing to become the successor trustee of the Trust on the terms and conditions of the Trust Agreement as amended hereby and the successor Master Trustee of the Master Trust as amended hereby.

D. Plan Sponsor desires to appoint Alta Trust as successor Trustee under the Trust and successor Master Trustee under the Master Trust in accordance with the current terms of the Trust Agreement and Master Trust Agreement, respectively, and Plan Sponsor and Successor Trustee desire to amend the Trust Agreement and Master Trust Agreement as set forth in Appendix A to this Agreement.

E. Current Trustee and Successor Trustee have entered into a separate Assignment and Assumption of Master Trust ("Assignment of Master Trust"), pursuant to which the Current Trustee resigns as the Master Trustee under the Master Trust effective as of 11:59 p.m. on April 30, 2024, and the Successor Trustee assumes the trusteeship, as Master Trustee, under the Master Trust immediately thereafter.

F. Gallagher Benefit Services, Inc. ("Gallagher") serves as the non-discretionary HRA Service Manager for the Plan and the Trust. Gallagher is a party to this Agreement solely for the purpose of acknowledging the amendments to the Trust Agreement and Master Trust Agreement set forth in Appendix A to this Agreement, in its capacity as the "HRA Service Manager" under the Trust Agreement and Master Trust Agreement.

G. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Trust Agreement.

H. Current Trustee and Successor Trustee are referred to herein collectively as the Trustee Parties.

NOW, THEREFORE, the Trustee Parties and Plan Sponsor agree as follows:

1. Resignation. Current Trustee hereby resigns as the trustee of the Trust effective as of 11:59 p.m. on April 30, 2024 (the "Effective Date"). Gallagher as the HRA Service Manager accepts Current Trustee's resignation as timely under the Trust Agreement and the Master Trust.

2. Appointment of Successor Trustee; Survival or Trust Indemnity. The Plan Sponsor hereby appoints, and Alta Trust hereby accepts the appointment, to succeed Current Trustee as the trustee of the Trust and as the Master Trustee under the Master Trust, concurrently with the resignation of the Current Trustee under the Trust and the Master Trust, respectively. The Plan Sponsor acknowledges and agrees that its indemnification and limitation of liability obligations under the Trust Agreement between the Plan Sponsor and the Current Trustee and under the Master Trust Agreement shall survive the resignation by the Current Trustee, appointment of the Successor Trustee, and any simultaneous or future amendment or restatement of the Trust Agreement.

3. Obligations of Current Trustee. Notwithstanding its resignation as trustee, Current Trustee hereby agrees as follows:

a. As soon as reasonably practicable, and in any event, not later than the Effective Date, Current Trustee shall turn over all records, including electronic records, related to the Trust to Successor Trustee to enable Successor Trustee to perform its duties as trustee.

b. Current Trustee shall take all steps reasonably required to re-title all assets in the Trust to Alta Trust, as Successor Trustee, and to complete such other steps as soon as may be reasonably required to complete the transfer of the trusteeship of the Trust to Successor Trustee following the Effective Date.

4. Representation by Current Trustee. Current Trustee represents and warrants that, to the best of its knowledge, it has operated the Trust in accordance with all laws, rules and regulations applicable to the Trust and with the Trust Agreement.

5. Representations by Successor Trustee. Successor Trustee represents and warrants that, in taking on the role of trustee to the Trust, it: (i) is capable of fulfilling and will fulfill all obligations of the Trustee in compliance with all applicable laws, rules and regulations, (ii) has engaged competent counsel to advise it on its obligations in taking on such role, and (iii) has obtained adequate fiduciary liability, cybersecurity and other appropriate insurance for such role.

6. Arbitration of Disputes. Any disputes arising under this Agreement with respect to the resignation by the Current Trustee under the Trust and Master Trust, or the Current Trustee's rights or obligations under the Trust Agreement or Master Trust Agreement prior to the Current Trustee's resignation as trustee under the Trust and the Master Trust, including the Current

Trustee's right to indemnification or limitation of liability thereunder, shall be arbitrated in accordance with the commercial arbitration rules of the American Arbitration Association. All arbitration proceedings will take place only in Washington, unless otherwise agreed to by both Trustee Parties. To the extent not preempted by federal law, Washington statutory law (including, without limitation, the statutes governing the award of damages and arbitration) and Washington common law will control during arbitration. The Trustee Parties waive any right either of them may have to institute or conduct litigation or arbitration in any other forum or location, or before any other body. Arbitration is final and binding on the Trustee Parties. An award rendered by the arbitrators may be entered in any court having jurisdiction over the pertinent Trustee Party. The prevailing Trustee Party in any arbitration will be entitled to reasonable attorney fees and costs, including fees and costs on appeal.

Any dispute arising under this Agreement with respect to the Plan Sponsor's appointment of the Successor Trustee, or the rights or obligations of the Successor Trustee under the Trust, shall be subject to Section 5.13 of the Trust Agreement, as amended hereby. Any dispute arising under this Agreement with respect to the appointment of the Successor Trustee or the rights or obligations of the Successor Trustee under the Master Trust shall be subject to Section 5.13 of the Master Trust Agreement, as amended hereby.

7. Further Assurances. The Trustee Parties agree to execute such additional documents and perform such additional acts as may be necessary to carry out the purposes and intent of this Agreement.

8. General Provisions.

a. This Agreement is for the benefit of the Plan Sponsor, the Trustee Parties, and each of their successors and permitted assigns, except that this Agreement may not be assigned by either Party without the prior written consent of the other Party.

b. No term or provision of this Agreement may be waived or changed except in writing signed by the Party against whom such waiver or change is sought to be enforced.

c. If any provision of this Agreement is or should become inconsistent with any law or rule of any governmental or regulatory body having jurisdiction over the subject matter of this Agreement, the provision will be deemed to be rescinded or modified in accordance with any such law or rule. All other provisions of this Agreement will continue to remain in full force and effect.

d. This Agreement and the Assignment of Master Trust contains the entire agreement and understanding between the Trustee Parties hereto and supersedes all prior agreements and understandings concerning the subject matter of this Agreement.

[SIGNATURE PAGE FOLLOWS]

SIGNATURE PAGE

IN WITNESS WHEREOF, the Plan Sponsor and the Trustee Parties have executed this Agreement as of the dates set forth by their signatures.

WASHINGTON TRUST BANK

ALTA TRUST COMPANY

By: _____

By: _____

Name:

Name:

Title:

Title:

Date:

Date:

PLAN SPONSOR

By: _____

By: 

Name:

Name: CHUCK WASHINGTON

Title:

Title: CHAIR, BOARD OF SUPERVISORS

Date:

Date: 4/09/2024


Name of the Trust: The Plan Sponsor Trust of the Plan Sponsor named below

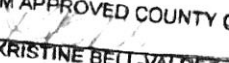
Description of Trust Agreement: Amended and Restated Trust Agreement for the Voluntary Employees' Beneficiary Association Post-Employment Health Savings Plan (Dated March 1, 2020)

This is the primary trust agreement adopted by the plan sponsor to fund contributions to its HealthInvest HRA Plan.

Plan Sponsor: County of Riverside

ATTEST:
KIMBERLY A. RECTOR, Clerk

By  _____
DEPUTY

FORM APPROVED COUNTY COUNSEL
BY 
KRISTINE BELL-VALDEZ DATE

APR 09 2024 3.16