

RESOLUTION NO. OC SAN 23-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF ORANGE COUNTY SANITATION DISTRICT (OC SAN), APPROVING PAYMENT BY OC SAN TO OC SAN'S 457(b) DEFERRED COMPENSATION PLAN ("457 PLAN") ON BEHALF OF OC SAN'S DIRECTOR-EMPLOYEES IN LIEU OF CONTRIBUTIONS PURSUANT TO THE FEDERAL INSURANCE CONTRIBUTIONS ACT ("FICA"), AS MANDATED BY THE FEDERAL OMNIBUS BUDGET RECONCILIATION ACT OF 1990 ("OBRA"); AND REPEALING RESOLUTION NO. OCSD 98-4.

WHEREAS, the United States Congress enacted the Federal Omnibus Budget Reconciliation Act of 1990 ("OBRA"), changing several provisions of the Federal Social Security Act, as applied to local government entity employees; and,

WHEREAS, OBRA amended the prior law by adding a new Section 3121(b)(7)(F) to the Internal Revenue Code, by expanding the definition of "employment" for Federal Insurance Contribution Act ("FICA") tax purposes, to include service performed after July 1, 1991, as an employee for a local government entity, unless the employee is a member of a retirement system of such entity; and,

WHEREAS, the provisions of OBRA require compliance with the requirement to make FICA contributions on behalf of local government agency employees by not later than December 31, 1991; and,

WHEREAS, the Internal Revenue Service has adopted final regulations under Section 3121(b)(7)(F) of the Internal Revenue Code, containing rules relating to local government entity employees and determination of membership in the local entity retirement system; and,

WHEREAS, OC San's Director-Employees are not eligible for participation in OC San's Retirement Plan, to wit: County of Orange Employees Retirement System; and,

WHEREAS, the Internal Revenue Service regulations allow a contribution into an Internal Revenue Code Section 457(b) Deferred Compensation Plan, as meeting the requirements for retirement system contribution, in lieu of making the contributions to FICA; and,

WHEREAS, OC San enacted Resolution No. 98-4, effective July 1, 1998, authorizing OC San's Directors to participate in OC San's 457(b) Deferred Compensation Plan ("457 Plan"); and,

WHEREAS, the OC San Directors have determined that they can satisfy the legal

requirements of Internal Revenue Code Section 3121(b)(7)(F) in the most cost effective manner, by having OC San contribute the minimum sum authorized by Internal Revenue Service regulation, to wit: 7.5% of the Director-Employee's compensation to OC San's 457 Plan.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE ORANGE COUNTY SANITATION DISTRICT DOES HEREBY RESOLVE, DETERMINE AND ORDER:

Section 1: Pursuant to Internal Revenue Code Section 3121(b)(7)(F), OC San approves the payment of the sum equal to 7.5% of the compensation payable to each Director into OC San's 457 Plan. Said contributions will be made in accordance with OC San's Internal Revenue Code Section 457 Plan and shall be made on behalf of each OC San Director-Employee.

Section 2: Upon payment of the sums set forth above, no payments are required, nor shall be made on behalf of, any of OC San's Director-Employees pursuant to the FICA, except the health insurance portion (currently 1.45%) of the FICA tax for those Director-Employees who commenced service with OC San on or after April 1, 1986.

Section 3: Appendix I to Schedule A of OC San's 457 Plan, providing for a minimum annual contribution of \$650.00, is hereby ordered waived on behalf of the contributions to be made on behalf of each OC San Director-Employee.

Section 4: That the contributions provided for in Section 1 hereof shall commence with payment of any compensation after January 25, 2023.

PASSED AND ADOPTED at a Regular Meeting of the Orange County Sanitation District Board of Directors held January 25, 2023.

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Chad P. Wanke  
Board Chairman

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Kelly A. Lore, MMC  
Clerk of the Board

APPROVED AS TO FORM:

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Bradley R. Hogin  
General Counsel

STATE OF CALIFORNIA )  
 )            ss  
COUNTY OF ORANGE )

I, Kelly A. Lore, Clerk of the Board of Directors of the Orange County Sanitation District, do hereby certify that the foregoing Resolution No. OC SAN 23-03 was passed and adopted at a regular meeting of said Board on the 25<sup>th</sup> day of January 2023, by the following vote, to wit:

**AYES:**  
**NOES:**  
**ABSTENTIONS:**  
**ABSENT:**

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of Orange County Sanitation District this 25<sup>th</sup> day of January 2023.

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Kelly A. Lore, MMC  
Clerk of the Board of Directors  
Orange County Sanitation District