



## OFFICE OF COMPTROLLER

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**ORANGE  
COUNTY  
FLORIDA**

**Phil Diamond, CPA**  
**County Comptroller**  
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**DATE:** December 26, 2018

**TO:** Mayor Jerry L. Demings  
Board of County Commissioners

**FROM:** Phil Diamond, County Comptroller *PAD*

**SUBJECT:** Orange County, Florida Section 457(b) Deferred Compensation Plan  
Recordkeeping Services Agreement with Vanguard

In 1976, Orange County began offering the Deferred Compensation Program for County employees. Vanguard has been the deferred compensation service provider since May of 2009. The County's 457(b) Deferred Compensation Program is a tax favored supplemental retirement program that allows employees to contribute a portion of their salary before federal taxes. This optional program is a defined contribution program that supplements the Florida Retirement System. Per Internal Revenue Service regulations, the County is the Plan Sponsor. However, the program is funded only through employee contributions. Currently, employees of the Board of County Commissioners as well as the Clerk of Courts, Comptroller, Property Appraiser, Supervisor of Elections, and Tax Collector participate in the program. The Sheriff's Office maintains a separate but similar 457(b) program.

On September 19, 2018, the Orange County Sheriff's Office (OCSO) issued a Request for Proposals (RFP) for recordkeeping services for its 457(b) Deferred Compensation Program. The OCSO received six proposals and, after a careful and thorough evaluation, selected Vanguard to continue as the service provider. A representative from the Comptroller's office observed all aspects of the Sheriff's RFP including the evaluation process and determined that (1) the OCSO's RFP was very comprehensive and provided all necessary information to make a fully informed decision; (2) was adequately advertised and noticed; and (3) the OCSO evaluation process was thorough, fair and produced not only a reasonable, but excellent result for the plan participants. The Orange County Sheriff signed the Service Agreement with Vanguard on November 16, 2018.

On November 27, 2018, the Orange County Deferred Compensation Committee, established pursuant to Orange County Code Section 2-91 (d), met and voted to recommend to the Comptroller that the County contract with Vanguard for recordkeeping services under the same contract terms as the OCSO pursuant to the "piggybacking" provisions of Section 17-312 (d), Orange County Code. The votes were cast after the Committee heard from the Sheriff's representative, the Comptroller's observer of the OCSO's RFP process, and from DAHAB and Associates, the Deferred Compensation Plan's Independent Investment Advisor. This "piggybacking" approach is similar to the leveraging approach the County often uses with State contracts to minimize the costs and delays associated with the RFP process. The term of the agreement is for five years with two, five-year renewals.

It is my recommendation, as Plan Administrator per County Ordinance 2009-01, that the action requested below be approved. Please feel free to contact me if you have any questions.

**Action Requested**

**Approval and execution of The Vanguard Group, Inc. Service Agreement by and between Orange County, Florida and The Vanguard Group, Inc. The term of the agreement is for five years with two, five-year renewals.**

BCC Mtg. Date: January 15, 2019

THE VANGUARD GROUP, INC.

SERVICE AGREEMENT

THIS AGREEMENT effective the 1<sup>st</sup> day of May, 2019 (the "Effective Date"), by and between ORANGE COUNTY, FLORIDA (the "Employer") and THE VANGUARD GROUP, INC., a Pennsylvania Corporation ("Vanguard"),

WITNESSETH:

WHEREAS, the Employer has adopted and is maintaining the ORANGE COUNTY, FLORIDA SECTION 457(b) DEFERRED COMPENSATION PLAN (the "Plan") pursuant to Section 457 of the Internal Revenue Code, as amended (the "Code") for the exclusive benefit of its employees and the employees of the Participating Agencies (as such term is defined in the Plan); and

WHEREAS, the Employer, in its role as Plan administrator, has established a trust to contribute the assets that shall be held therein for the exclusive benefit of participants and their beneficiaries to satisfy the requirements of Code Section 457(g); and

WHEREAS, Vanguard Fiduciary Trust Company (the "Trustee") is serving as trustee for the Plan pursuant to an agreement of trust entered into with the Employer; and

WHEREAS, the Orange County Comptroller is the entity designated by the Employer under the Plan as having the authority to control and manage the operation and administration of the Plan (the "Plan Administrator"); and

WHEREAS, it is intended that the Plan utilize certain recordkeeping, participant accounting, benefit payment and tax reporting services provided by Vanguard in connection with Plan assets invested in certain available investment funds (the "Investment Funds"); and

WHEREAS, Vanguard is willing to provide recordkeeping, participant accounting, benefit payment and tax reporting services to the Plan in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereto, intending to be legally bound, hereby agree and declare as follows:

1. Selection Of Investment Funds. The Employer, in its role as Plan administrator, shall designate the Investment Funds available for investment by participants under the Plan, which designation shall be made on a separate Selection of Investment Funds form or similar written document delivered to Vanguard. As provided in the Selection of Investment Funds form, the Employer shall give Vanguard 30 days written notice (which notice may, however, be waived by Vanguard) prior to changing the list of Investment Funds that are available investments under the Plan.

2. Participant Accounting. In accordance with the written or electronic instructions furnished by the Employer, Vanguard shall establish and maintain separate accounts in the name of each participant in the Plan to record the assets of the Plan allocated to the participant and the earnings, losses and expenses credited thereto. The maintenance of separate accounts by Vanguard under this Agreement shall be for accounting purposes only, and the books and records of Vanguard shall at all times show the legal ownership of Plan assets to be in the name of the Trustee. The Employer, Plan Administrator, and/or Participating Agencies (Orange County Clerk of Courts, Orange County Comptroller, Orange County Property Appraiser, Orange County Supervisor of Elections, and Orange County Tax Collector) shall furnish Vanguard with participant enrollment data via hardcopy or electronic file identifying the name, address, and social security number of each Plan participant for whom one or more separate accounts is to be established by Vanguard under this Agreement.

3. Transmittal Of Plan Assets And Participant Information To Vanguard. With respect to all Plan contributions and other amounts that are transmitted to Vanguard for investment in the Investment Funds, the Employer, Plan Administrator, and/or Participating Agencies shall furnish Vanguard with participant allocation data via hardcopy or electronic file, identifying each Plan participant on whose behalf an amount is being transmitted to Vanguard for investment in the Investment Funds and the dollar amount to be allocated to each of the participant's separate accounts under the Plan. In

allocating amounts to participants' separate accounts under the Plan and investing such amounts in the Investment Funds, Vanguard shall be fully entitled to rely on the participant enrollment and allocation data furnished to it by the Employer, Plan Administrator, and/or Participating Agencies and shall be under no duty to make any inquiry or investigation with respect thereto. If Vanguard receives any Plan contribution or other amount that is not preceded or accompanied by written or electronic instructions directing its allocation to participants' separate accounts or investment within the Investment Funds, Vanguard shall immediately notify the Employer or the Participating Agencies of that fact, and Vanguard shall hold or return to the Employer or the Participating Agencies all or a portion of the Plan contribution or other amount uninvested without liability for loss of income or appreciation pending receipt of proper allocation or investment directions.

4. Deemed Investment Directions by Participants. Unless Vanguard is notified to the contrary by the Employer or the Plan Administrator, participants in the Plan shall be permitted to direct Vanguard to make deemed investment directions with respect to amounts allocated to their separate accounts under the Plan among the Investment Funds selected by the Plan Administrator, in its role as Plan administrator as eligible deemed investments under the Plan in accordance with Section 1 of this Agreement. Any such deemed investment direction by a participant shall be transmitted directly by the participant to Vanguard via the web, in writing or by telephone in accordance with rules and procedures that are established by Vanguard and communicated to and approved by the Employer or the Plan Administrator. In making any such deemed investment directions, Vanguard shall be fully entitled to rely on directions furnished to it by participants which directions are provided in accordance with the approved rules and procedures, and shall be under no duty to make any inquiry or investigation with respect thereto. It is intended and understood that the receipt of deemed investment directions by Vanguard from participants is for Plan accounting purposes only and that all rights associated with assets of the Trust shall be exercised by the Trustee or the person designated by the Trustee, and shall in no event be exercisable by or rest with Plan participants.

5. Distributions. Any amounts allocated to participants' separate accounts established under item 2 of this Agreement shall be paid to the participant or the participant's designated beneficiary based on and consistent with the provisions of the Plan document as interpreted by the Plan Administrator, and the procedures established thereby by the Plan Administrator and agreed upon by Vanguard ("Payment Directions"). Vanguard shall be fully entitled to rely on all Payment Directions and shall be under no

duty to ascertain whether the Payment Directions are in accordance with the provisions of the Plan. In making payments to Plan participants and their beneficiaries, Vanguard shall be responsible for generating all necessary Internal Revenue Service tax forms.

6. Vanguard Records. Vanguard shall keep full and accurate accounts of all receipts, investments, disbursements and other transactions occurring with respect to Plan assets under this Agreement, including such specific records as may be agreed upon in writing with the Employer or Plan Administrator. All such accounts, books and records shall be open to inspection and audit at all reasonable times by any authorized representative of the Employer.

7. Limitation Of Obligations And Duties Of Vanguard. The obligations and duties of Vanguard with respect to the Plan shall be those specifically listed in this Agreement, and Vanguard shall have no other obligation, duty, responsibility or liability with respect to any other aspect of the operation or administration of the Plan. In making any investment or disposition of Plan assets, Vanguard shall be fully entitled to rely on the instructions furnished to it by the Employer, the Plan Administrator, the Participating Agencies, or Plan participants in accordance with the terms and conditions of this Agreement, and shall be under no duty to make any inquiry or investigation with respect thereto.

8. Vanguard Compensation. Vanguard shall be entitled to reasonable compensation for its recordkeeping, participant accounting, benefit payment and tax reporting services as set forth in a separate Recordkeeping Fee Agreement between Vanguard and the Employer. If not paid directly by the Employer, such compensation shall be paid to Vanguard from the assets of the Plan.

9. Term. Unless terminated earlier in accordance with Section 10 herein, the initial term of this Agreement shall be the five (5) year period beginning on the Effective Date and ending on April 30, 2024 (the "Initial Term"). This Agreement shall be subject to automatic renewal for two (2) additional five (5) year terms following completion of the Initial Term. Either Vanguard or the Employer may prevent a renewal of this Agreement for an additional term by providing written notice to the other party no later than 180 days prior to the end of the applicable term (which notice may, however, be waived by the receiving party). The Employer shall not incur or be required to pay any fees or penalties for not renewing this Agreement in accordance with this Section 9.

10. Amendment and Termination of Agreement. The Employer and Vanguard may agree in writing to amend this Agreement at any time in whole or in part. Vanguard may terminate this Agreement upon 180 days written notice to the Employer (which notice may, however, be waived by the Employer), except that Vanguard shall not terminate this Agreement (without the prior written consent of the Employer) before April 30, 2024 for reasons other than material breach of this Agreement by the Employer after reasonable written notice describing the breach in detail and the Employer's failure to undertake cure within 30 business days after the Employer receives the notice. The Employer may terminate this Agreement upon 180 days written notice to Vanguard (which notice may, however, be waived by Vanguard). In the event of such termination, all assets of the Plan invested in the Investment Funds as of the date of termination shall be disposed of in accordance with the written instructions of the Employer. The Employer shall not incur or be required to pay any fees or penalties for terminating this Agreement in accordance with this Section 10.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective the day and year first above written.



ORANGE COUNTY, FLORIDA

By: Bryan W. Brooks  
for Title: Orange County Mayor

THE VANGUARD GROUP, INC.

By: M. Ray  
Title: Principal