

Board of Deferred Compensation Administration
Plan Governance Committee
COMMITTEE REPORT 16-02

Plan Governance Committee Members

John R. Mumma, Chair

Clifford Cannon

Linda P. Le

Michael Amerian

Date: December 2, 2016
To: Plan Governance & Administrative Issues Committee
From: Staff
Subject: Deferred Compensation Plan Document & Board Bylaws Review

Recommendation:

That the Plan Governance and Administrative Issues Committee (“Committee”) receive and file report and approve proposed review/update process for the Deferred Compensation Plan’s Plan Document and Board Bylaws.

Discussion

A. Plan Document

The City’s Plan periodically reviews and updates the Plan Document in order to refine, when necessary, Plan administrative rules as well as verify compliance with any updated policies/regulations. Staff has conducted a preliminary review of the Plan Document and identified certain potential areas for refinement/improvement. These include the following:

- **Distribution Option Deletion** - Section VI (c)(5) contains an option for participants to elect a period payment with an annual Cost of Living Adjustment (COLA) that increases their contribution over time in the same manner they may receive COLA increases in their defined benefit plan payments. This distribution option was implemented early in then Great-West’s administration of the City’s Plan. Great-West eliminated this option at some unknown prior date but neither Empower nor staff have been able to identify any records with respect to when this occurred specifically and if or how it was communicated to the City. Empower indicates it cannot administer this, and Voya has similarly indicated it does not administer this kind of distribution option for other clients. There do not appear to be any participants utilizing it on a grandfathered basis. Given this, staff recommends this option be deleted so that the Plan Document is consistent with current administrative practice.
- **Changes to Distribution Elections Deletion** - Section VI (d) provides the option for the City’s Plan to assess fees on retired/terminated participants who make changes to their distribution elections more than two times within a calendar year. In the past, IRS rules provided for only one post-severance distribution election, precluding participants from making changes to a previously elected periodic distribution amount. Following legislative changes that allowed for

unlimited changes to post-severance distribution elections, this provision was included within the City's Plan document to provide latitude in the event that distribution election changes created significant administrative and cost burdens on the Plan. In practice, however, this has not been the case, and the City's Plan has never contemplated charging fees to participants for making distribution elections. Given this, staff believes that this section should be deleted from the Plan Document.

- **Qualified Domestic Relations Order (QDRO) Account Option Revision** - Paragraph 2 of Section VI (g) states that an alternate payee shall be paid out in a lump sum following the approval of a QDRO. The origins of this specific language are unclear as this is not an Internal Revenue Code requirement and the Plan currently accommodates and allows for alternate payees to retain accounts with the Plan. After conferring with Segal, the Plan's Administrative consultant, on this issue, staff recommends that this provision in the Plan Document be revised in order to be consistent with current administrative practice.
- **2009 Required Minimum Distribution (RMD) Suspension** - Following the economic downturn of 2008, The Worker, Retiree and Employer Recovery Act ("the Act") was passed by Congress, which provided relief to retired individuals subject to mandatory distributions. Current law requires retired and/or terminated Plan participants take RMD's after reaching age 70½, and an individual who fails to take a RMD is subject to a 50% excise tax on amounts not distributed. This law waived RMD's for the 2009 year. In compliance with the Act, the language as indicated in Section VI (f) was added to the Plan Document. However, due to the currently outdated and no longer applicable nature of this provision, staff believes that this section can now be deleted.

With the Committee's concurrence, and any additional suggested revision topics, staff will then provide this document to Board counsel for review and specific language changes. The Plan's future Third Party Administrator, Voya, is also reviewing the Plan Document relative to its administrative processes and procedures to identify any potential areas where the Plan rules and administrative processes may need to be modified (e.g. with respect to auto enrollment, loan processing, etc.).

In the interim, staff can bring a recommendation from the Committee to the full Board to recommend that the Board authorize use of outside tax counsel to conduct a Plan Document compliance review. Following reviews from all parties, a draft revised Plan Document can then be returned to the Committee for review prior to taking to the full Board for adoption.

The current Plan Document is provided as **Attachment A** to this report.

B. Board Governance Policies/Bylaws

The Board has established its Governance Policies/Bylaws, which relate to the conduct of Board meetings, define roles and responsibilities, and set forth certain policies

relating to administration of the City’s Plan. Simultaneous to the Plan Document review, staff further proposes a review of the Governance Policies/Bylaws to incorporate any recommended updates or policy additions. These proposed revisions can then be brought back to the Committee for review prior to taking to the full Board for adoption.

The current Governance Policies/Bylaws document is provided as **Attachment B** to this report.

Submitted by: _____
Matthew Vong

Steven Montagna