



DATE: August 24, 2021

CATEGORY: Consent

DEPT.: Human Resources

TITLE: **Deferred Compensation Plans and Retirement Health Savings Accounts**

RECOMMENDATION

Adopt a Resolution of the City Council of the City of Mountain View Approving Adoption of Plan Documents for the City of Mountain View's Deferred Compensation Plans Under IRS Code Sections 457(b) and 401(a) and Omnibus Budget Reconciliation Act and the Retirement Health Savings Account Plan, and Authorizing the City Manager or Designee to Execute All Agreements and Other Documents Necessary to Implement Each Plan and Amendments to Implement Council-Approved Changes to Employee Compensation and Benefits and to Approve Future Revisions to the Plan Documents to Comply with IRS Regulations and Other Applicable Law, to be read in title only, further reading waived (Attachment 1 to the Council report).

BACKGROUND

On May 11, 2021 (Attachment 2), City Council approved the transition of the City's deferred compensation plans to move from three recordkeeping providers to a sole provider, Empower Retirement, LLC (Empower). Under legislation, the City must exercise fiduciary due diligence to ensure provider fees and services are competitive and offer optimal investment fund options. Following a competitive request for proposal process and selecting a sole provider met these requirements. Deferred compensation plans include plans under Internal Revenue Service (IRS) Code Section 457(b), Section 401(a) and the Omnibus Budget Reconciliation Act (OBRA). Empower will serve as the recordkeeping provider for the deferred compensation plans, and Educators Benefits Consultants, LLC, doing business as Aviben (Aviben), will serve as the recordkeeping provider and claims administrator for the Retirement Health Savings Account (RHSA) plans under a separate agreement.

ANALYSIS

For an eligible employer (Plan Sponsor) to offer a deferred compensation plan, a written plan document is required and must contain all of the provisions under applicable Treasury Regulation Sections. To ensure that all documents and agreements are compliant with current regulatory requirements and industry standard administrative practices are set in place, updates to the City's previous plan documents are necessary. Staff recommends adopting the plan document prototype of the City's new providers (i.e., Empower and Aviben), consistent with standard industry practice. Adopting the providers' plan document will facilitate the plan remaining current with changes in regulatory requirements as the providers will regularly update their prototype documents as needed.

As part of the transition, Empower is preparing updated plan documents for the 457(b) and OBRA Deferred Compensations Plans, and Aviben is preparing an updated plan document for RHSA. In addition, Empower is preparing a new plan document for the 401(a) deferred compensation plan that the Council authorized to be established for Department Heads and Council Appointees on June 23, 2015 under Resolution No. 17973 regarding compensation for unrepresented employees.

The plan document will set forth the required plan provisions and optional provisions that a Plan Sponsor (i.e., the City) may elect to make available to participants and implement. The plan document addresses administration; eligibility; contributions and allocation; valuation; determination and distribution of benefits; trust provisions; and amendments, termination, and mergers. The optional provisions of a plan document permitted under the IRS Code include, but are not limited to: age 50 catch-up limit, the special 457 catch-up limit, distributions for unforeseeable emergencies, loans, plan-to-plan transfers, additional deferral elections, acceptance of rollovers, and involuntary distributions of smaller (a.k.a., *de minimis*) accounts.

The plan document must contain provisions for any of the options that the Plan Sponsor wants to include in the plan. When a Plan Sponsor elects to adopt the provider's plan document prototype, which is what staff recommends, a separate Adoption Agreement is executed to identify the Plan Sponsor's approval for the optional provisions. An Adoption Agreement is created for each plan (i.e., 457(b), 401(a), OBRA, and RHSA).

The Adoption Agreements for the 457(b) plan, OBRA plan, and RHSA plans will largely replicate the current plan setup that has been previously approved, implemented, and administered with ICMA-RC, Nationwide, and VOYA. An Adoption Agreement for the 401(a) plan for Department Heads and Council Appointees will be implemented based

on the optional provisions as mutually determined and agreed by the Department Heads and Council Appointees.

In addition to replicating the City's existing plan, the updated plans include the following new provisions.

For loans (reflected in the Adoption Agreement for the 457(b) and 401(a) plans):

- Add option for qualified reservist distribution: Occurs when an employee is ordered or called to active duty for a period of more than 179 days or for an indefinite period because they are a member of a reserve component.
- Add option for partial or ad hoc distribution: One-time partial amount (currently, the City's plan only offers full installments or lump-sum distribution of the entire account balance).

For OBRA accounts of smaller (a.k.a. *de minimis*) value after an hourly employee is separated for more than 24 months (reflected in the Adoption Agreement for OBRA plan):

- \$1,000 to \$5,000 account value: Rollover OBRA account balance to an Individual Retirement Account (IRA) after a duration of 24 months has passed without an OBRA contribution made in to the account.
- Less than \$1,000 account value: Payout to the OBRA participant after a duration of 24 months has passed without an OBRA contribution made in the account.

This would only occur if no action is taken from separated hourly employees after 24 months. Hourly employees who return seasonally (e.g., every summer) would not have their OBRA accounts impacted if they left the City and returned within 24 months. Hourly employees who separate from the City can self-initiate either option (payout or rollover to an IRA) prior to 24 months.

FISCAL IMPACT

There is no fiscal impact to the City.

ALTERNATIVES

1. Direct staff to provide additional information.
2. Provide other direction.

PUBLIC NOTICING – Agenda posting.

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KED/6/CAM
033-08-24-21CR
201327

- Attachment:
1. Resolution
 2. May 11, 2021 Council Report