

Agenda Report

Attn: FINANCE COMMITTEE
TO: CITY COUNCIL

FROM: CITY MANAGER

DATE: DECEMBER 14, 1998

SUBJECT: AMENDMENT AND RESTATEMENT OF THE CITY OF PASADENA DEFERRED COMPENSATION PLAN.

RECOMMENDATION:

It is recommended that the City Council adopt a Resolution:

- 1- Approving the Amended and Restated City of Pasadena Deferred Compensation Plan;
- 2- Approving the City of Pasadena Deferred Compensation Plan and Trust attached as Exhibit "A";
- 3- Authorizing the City Manager to enter into agreements with the existing deferred compensation providers.

BACKGROUND:

In August of 1996, President Clinton signed into law the Small Business and Job Protection Act of 1996. This law provided a number of positive changes to the internal revenue Code in the areas that affect public employee deferred compensation plans under IRC Section 457. The Treasury Division has now written this bill into law, which took effect January 1, 1998.

The following are the major changes in the law:

- 1. The \$7,500 limit will be indexed for inflation. The first adjustment took effect January 1, 1998 and raised the maximum annual deferral to \$8,000.**
- 2. The new law allows a one-time change to the irrevocable election date regarding commencement of benefits. Under the current plan, the election regarding pay-out is irrevocable once the Participant has made a decision. The new law allows a one-time only change of this election prior to any actual disbursement of benefits to the participant.**
- 3. The new law allows plan sponsors to distribute inactive account balances under \$5,000 to the participant. This only qualifies if an account has been inactive for at least two years and no previous disbursements have been made to the participant.**
- 4. The last major change and the most significant one is the requirement of plan assets to be held for the exclusive benefit of plan participants in a trust, custodial account, or a qualifying insurance annuity contract. The deadline to comply with this requirement is January 1, 1999.**

In January 1998, the City Council approved amendments to the City's Deferred Compensation Plan to comply with number 1,2, and 3 of the above mentioned changes. Staff's recommendation to the City Council now is to amend and restate the City's Deferred Compensation Plan to incorporate all these changes in one document as well as to create a Trust and place all assets in the Plan in Trust for the exclusive benefits of the plan participants. Prior to the new law, all assets held under section 457 plan were part of the employer's general assets. In other words, even though each plan participant has a separate account with one or more providers and self directs his or her investments, those assets belong to the City and are subject to risk by the City's creditors in case of a bankruptcy. The new law requires that all amounts of compensation deferred pursuant to the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights shall be held in trust for the exclusive benefit of participants and beneficiaries under the plan.

The proposed trust appoints the City of Pasadena as Trustee. The Plan also appoints an oversight committee consisting of the Director of Finance, the City Treasurer, the Director of Human Resources and two employee representatives. Employees interested in serving on the oversight committee shall submit their names to the City Clerk's office. All City employees will be able to cast a vote for a candidate seeking appointment to the oversight committee. The two candidates with the most votes will serve on the committee for a two-year term and may be reappointed through a bi-annual election.

The Trustee shall have the fiduciary standard of conduct and shall discharge its duties with respect to this plan solely in the interest of the participants and beneficiaries of the

plan. The trustee shall hold the Plan assets in trust in accordance with the terms and conditions of the Plan and Trust.

The Plan oversight committee shall have the following duties and responsibilities:

- 1. Conduct reviews of the Deferred Compensation program and make recommendations as necessary.**
- 2. Review Plan provider performance and assist the Plan Administrator in developing recommendations on adding, deleting or amending Plan providers to the City Council.**
- 3. Review and make recommendations on adding, deleting or amending investment options and or providers.**
- 4. Hold hearings on any appeal of the Plan Administrator's decision regarding hardship withdrawals.**
- 5. Respond to complaints or comments regarding the administration of the Plan.**

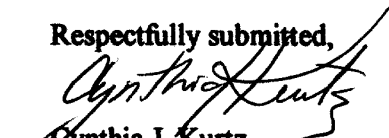
The Plan Administrator shall be the Director of Finance or his/her designee. The Plan Administrator shall have the following duties and responsibilities:

- 1. Day to day administration, including approval of plan participation agreements and preliminary evaluation of hardship cases.**
- 2. Authority to sign all legal agreements with approved Plan providers, including minor Plan amendments.**
- 3. Communicate the Deferred Compensation Plan benefits to encourage employee involvement.**
- 4. Insure that all monies withheld from participants for deferred compensation purposes are immediately transferred to the providers and invested in accordance with participants' directions.**

FISCAL IMPACT:

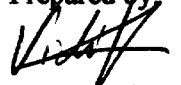
Holding the Deferred Compensation Plan assets in a trust eliminates all risks of the plan participants of losing their assets from the plan sponsor invading the plan assets, or from a government's creditors in case of a bankruptcy. All investments under the 457 plan shall be segregated from the general City assets. There is no financial impact to the City by placing the deferred compensation plan assets in a trust.

Respectfully submitted,



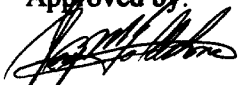
Cynthia J. Kurtz
City Manager

Prepared by:



Vic Erganian
City Treasurer

Approved by:



Jay M. Goldstone
Director of Finance