

CITY OF SANTA ROSA
CITY COUNCIL

TO: MAYOR AND CITY COUNCIL
FROM: ALAN ALTON, CHIEF FINANCIAL OFFICER,
FINANCE DEPARTMENT
SUBJECT: RESOLUTION – FREEZE AND CORRECTION OF
MISSIONSQUARE “OPT-IN” PLANS, AUTHORIZATION TO
DEVELOP AND IMPLEMENT REPLACEMENT PLANS, AND
DESIGNATION OF FIDUCIARY

AGENDA ACTION: RESOLUTION

RECOMMENDATION

It is recommended by the Finance Department that the Council, by resolution: 1) authorize the freeze and correction of the two MissionSquare “opt-in” plans that are described below (Plans); 2) authorize the City Manager, the Chief Financial Officer, and the Human Resource Director to negotiate, develop, and implement one or more retirement plans to replace the Plans, once frozen; and 3) designate the Chief Financial Officer, or its designee as the individual with day-to-day fiduciary responsibility for the proper and prudent investment and administration of all City retirement plans.

EXECUTIVE SUMMARY

The City previously established and currently maintains among others, two 401(a) retirement plans: an Executive Management Plan for the City's Unit 10 – Executive Management, and a plan for the City Manager and City Attorney with the assistance and advice of MissionSquare (formerly ICMA). Staff requested a compliance review of these Plans, conducted by outside counsel from Best Best & Krieger LLP (Outside Counsel), who specializes in employee benefits. The review revealed that the Plans were improperly designed and administered, which violated certain plan qualification rules under the Internal Revenue Code (Plan Failures). The Internal Revenue Service (IRS) recently issued guidance that will allow the City to self-correct these Plans, and in doing so the account balances for the individuals participating will not be adversely affected.

BACKGROUND

The City has historically offered 401(a) retirement plans to its Executive Management, City Attorney, and City Manager. Mission Square, formerly ICMA, is a firm specializing

RESOLUTION – FREEZE AND CORRECTION OF MISSIONSQUARE “OPT-IN”
PLANS, AUTHORIZATION TO DEVELOP AND IMPLEMENT REPLACEMENT PLANS,
DESIGNATION OF FIDUCIARY
PAGE 2 OF 3

in offering retirement benefits to government employees, have been managing the Plans with us. The 401(a) plan is a defined contribution plan that may be used in conjunction with a 457(b) deferred compensation plan. The Plans were designed to allow eligible participants a one-time election to defer certain amounts of their pay on a pre-tax basis. The manner in which the Plans were administered caused them to operate like 401(k) plans, something that governmental employers such as the City are not permitted to maintain.

Fortunately, the IRS has established and maintains the Employee Plans Compliance Resolution System (EPCRS), a comprehensive set of rules and guidance that allows retirement plan sponsors an opportunity to fix or correct a wide variety of plan qualification failures, including the Plan Failures. Furthermore, in response to certain legislative changes made by Congress at the end of 2022 pursuant to the Consolidated Appropriations Act, the IRS has recently issued certain guidance (Guidance) that considerably expands and liberalizes the types of plan failures that can be self-corrected, as well as the manner in which such corrections may be accomplished.

ANALYSIS

Following receipt and careful analysis of legal and tax advice from Outside Counsel, City Staff is recommending that the Plan Failures be self-corrected, in accordance with the recently issued IRS Guidance, and with the assistance of Special Counsel. This will require the freezing of all further employee or employer contributions to the Plans, as well as the current participation in the Plans. By making such corrections, the account balances and ongoing investments by the participants in the Plans will not be adversely affected.

Once the Plans have been frozen, it will be necessary to adopt one or more “replacement plans,” which would be used to make up for or mitigate the freezing of the Plans. The Chief Financial Officer and the Human Resource Director are seeking Council approval and authorization to work with Outside Counsel to develop and implement, on behalf of the City, one or more such replacement plans. It being understood that no further Council approval for such new plans would be required; provided, that, the new plans do not have a material adverse fiscal impact on the City. If such plans would involve or require a material increase in City expenditures or contributions, staff will bring such plans back to Council for further review and approval.

During its review of the Plans, Outside Counsel noted inconsistencies in the way our retirement and deferred compensation plan providers titled the role of the City position responsible with fiduciary oversight of these Plans. For the Nationwide 457(b) deferred compensation plan, it is the Plan Administrator; for Mission Square, it is the Plan Coordinator. Consistent with fiduciary best practices adopted by numerous other municipalities, Outside Counsel recommends that the City confirm and designate the Chief Financial Officer, or designee, as the position with fiduciary oversight and

RESOLUTION – FREEZE AND CORRECTION OF MISSIONSQUARE “OPT-IN”
PLANS, AUTHORIZATION TO DEVELOP AND IMPLEMENT REPLACEMENT PLANS,
DESIGNATION OF FIDUCIARY
PAGE 3 OF 3

responsibility for their administration, in accordance with the terms of the plans, including responsibility for the selection and monitoring of the various plan’s advisors, consultants and recordkeepers.

FISCAL IMPACT

Other than the periodic assistance and advice of Outside Counsel, there is no ongoing budgetary impact to the General Fund as a result of this item.

The fees for managing the new plan are based on total assets held in aggregate and will be paid for out of the assets held in those plans.

ENVIRONMENTAL IMPACT

The actions provided for herein are exempt from the provisions of the California Environmental Quality Act (CEQA) under CEQA Guidelines Section 15061(b)(3) and 15378 in that there is no possibility that the implementation of these actions may have significant effect on the environment. No further environmental review is required.

NOTIFICATION

Not applicable.

ATTACHMENTS

- Resolution

PRESENTER

Alan Alton, Chief Financial Officer