

AMENDMENT NO. 3

TO THE CITY OF CARSON DEFERRED COMPENSATION PROGRAM ADMINISTRATIVE SERVICES AGREEMENT BETWEEN THE CITY OF CARSON AND VOYA PLAN # 666972 & 666973

THIS AMENDMENT TO THE CITY OF CARSON DEFERRED COMPENSATION PROGRAM ADMINISTRATIVE SERVICES AGREEMENT ("Amendment No. 3") by and between the City of Carson, a California municipal corporation ("Plan Sponsor") and Voya Retirement Insurance and Annuity Company ("VRIAC") an insurance company organized under the laws of the State of Connecticut, and Voya Financial Partners, LLC, a limited liability company organized and existing under the laws of the State of Delaware (together with VRIAC, the "Contractor"), on behalf of the City of Carson Deferred Compensation Plan & City of Carson 401(a) Retirement Plan, Voya Plan Numbers 666972 & 666973 (referred to herein as the "Plan"), is effective as of the 2nd day of June, 2020.

RECITALS

A. Plan Sponsor and Contractor entered into that certain Agreement for Contractual Services dated May 1, 2015 (the "Agreement") whereby Contractor agreed to provide certain administrative services to the Plan.

B. On December 15, 2015, the Plan Sponsor and Contractor entered into that certain Amendment No. 1 to the City of Carson Deferred Compensation Program Administrative Services Agreement ("Amendment No. 1") to amend the language of the subsection entitled "Expense Account for Services of Expenditures" ("EASE Account") under Schedule I: Reimbursement of Plan Expenses, of the Agreement.

C. On December 3, 2019, the Plan Sponsor and Contractor entered into that certain Amendment No. 2 to the City of Carson Deferred Compensation Program Administrative Services Agreement ("Amendment No. 2") to amend the Agreement to update certain services provided to the Plan and reflect the reduced administration fee from .33 basis points to .21 basis points.

D. On March 13, 2020, the President of the United States declared the ongoing coronavirus pandemic of sufficient severity and magnitude to warrant a nationwide emergency declaration.

E. On March 27, 2020, the President of the United States signed into law the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act (the "Act"). The Act includes a number of tax provisions that affect retirement plans.

F. Plan Sponsor and Contractor now desire to amend the Agreement to reflect the provisions, that will permit: (i) Coronavirus related distributions; (ii) Coronavirus related loans; (iii) Coronavirus related loans delays; and (iv) a waiver of Required Minimum Distributions for 2020 enacted by the Act.

TERMS

I. **Contract Changes.** The Agreement is amended as provided herein.

A. **Section 5.10, "Notices," is hereby amended to read as follows** (deleted text is identified in ~~strike through~~, new text in ***bold italics***):

"5.10 Notices: Each party will promptly provide the other with notice and copy of any attempts to levy or attach amounts held under the Plan and/or any litigation affecting the Plan of which it becomes aware and/or any notices or demands to be given under this Agreement. All such notices, demands or other communications hereunder shall be in writing and duly provided if sent certified mail, return receipt requested, addressed to the party to be notified or upon whom a demand is being made, at the addresses set forth in this Agreement or such other place as either party shall from time to time designate in writing. The date of service of a notice or demand shall be the receipt date on any certified mail receipt.

Notices to the Contractor shall be sent to:

Voya Retirement Insurance and Annuity Company
Attn: Associate General Counsel
Legal Department, CIS
One Orange Way
Windsor, CT 06095

Notices to the Plan Sponsor shall be sent to:

~~Faye Moseley~~ ~~Gail McMahon~~
Director of Human Resources and Risk Management
City of Carson, California
701 E. Carson Street
Carson, CA 90745"

B. **A new Appendix V to Schedule A is hereby added to the Agreement to read as follows:**

"CITY OF CARSON DEFERRED COMPENSATION PROGRAM
Appendix V to Schedule A (Coronavirus Aid, Relief and Economic Security Act)

Notwithstanding another provision in the Agreement or Plan, the Contractor agrees to provide the Plan with the following limited services listed in this Appendix V to Schedule A, as required by the Coronavirus Aid, Relief and Economic Security Act, or CARES Act (the "Act"), from March 27, 2020 through December 31, 2020, unless otherwise provided. For the purposes of this Appendix V to Schedule A, all references to

"participant" are intended to apply equally to all account holders under the Plan.

1. Coronavirus Related Distribution from Certain Retirement Plans.

A plan participant or IRA owner may take a coronavirus related distribution from a 401(a), 401(k), 403(b), or governmental 457(b) plan or from a traditional IRA between January 1, 2020 and December 30, 2020, due to:

- a. that participant or IRA owner being diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Center for Disease Control and Prevention;
- b. the participant's or IRA owner's spouse or dependent being diagnosed with the virus SARS-CoV-2 or with coronavirus disease 2019 (COVID-19) by a test approved by the Center for Disease Control and Prevention; or
- c. the participant or IRA owner experiencing adverse financial consequences as a result of:
 - i. being quarantined, furloughed or laid off or having work hours reduced due to such virus or disease;
 - ii. being unable to work due to lack of child care due to such virus or disease, closing or reducing hours of a business owned or operated by the participant or IRA owner due to such virus or disease, or
 - iii. meeting such other factors as may be issued and determined by the U.S. Treasury Secretary, or designee.

The Plan Sponsor and Contractor may rely on the participant's certification that the participant satisfies the eligibility conditions in this Section for taking a coronavirus related distribution.

2. Federal Income Tax Treatment of Coronavirus Related Distribution.

A coronavirus related distribution is not subject to the mandatory federal 20% withholding or delivery or receipt of the Special Tax Notice. The coronavirus related distribution will be subject to a 10% federal withholding, unless the participant elects otherwise. The distribution shall also be subject to all applicable state and local tax withholdings. Contractor shall tax report the full distribution amount for tax year 2020.

3. Waiver of the IRS 10% Premature Distribution Penalty Tax. A participant or IRA owner who takes a coronavirus related distribution up to an aggregate amount of \$100,000 is not subject to the Internal Revenue Service 10% premature distribution penalty tax. Plan Sponsor's responsibility for monitoring the \$100,000 aggregate distribution amount of a participant or IRA owner's coronavirus related distribution is limited to only coronavirus related distributions a participant or IRA owner takes from all plans of that employer (and any other plans that are part of that employer's controlled group). The term "controlled group" shall be defined the same way it is defined in the Act. Contractor shall not monitor the \$100,000 aggregate distribution limit.

4. Repayment of Coronavirus Related Distributions. Coronavirus related distributions may be repaid in one or more contributions to a 401(a) 401(k), 403(b), or governmental 457(b) plan or to a traditional IR over a 3-year period beginning on the date that the distribution was received if the recontribution is made to: a 401(a), 401(k), 403(b), governmental 457(b) plan, or traditional IRA. The coronavirus related distribution is considered to be a rollover eligible distribution for recontribution purposes.

5. Plan Loan Relief. A participant who satisfies the eligibility requirements for a coronavirus related distribution, pursuant to Section 1 above:

a. May take a loan from a 401(a), 401(k), 403(b), or governmental 457(b) plan, only during the 180 day period beginning on March 27, 2020 and ending on September 22, 2020, of up to the lesser of \$100,000 (taking into account the outstanding balance of all other loans taken from plans of the employer) or 100% of the non-forfeitable value of the participant's account under the plan (note existing outstanding loan amounts and number of loans permitted under the plan will serve to decrease the amount available); and

b. May delay repayment of a new or existing loan from a 401(a), 401(k), 403(b) or government 457(b) plan for a period of up to one year for loan repayments outstanding on March 27, 2020 through December 31, 2020. Loan repayments will resume in January 2021 and the term of the loan will be extended to reflect the period of the loan delay. The delay of the loan repayment will not cause the loan to fail to meet the Internal Revenue Code requirements for the maximum five-year loan term for nonresidential loans or substantially level reamortized payment

schedule. Any subsequent repayments with respect to any such loan shall be appropriately adjusted to reflect the delay in due date under Section 5, Subsection a, above, and any interest accruing during such delay.

6. Waiver of Required Minimum Distribution ("RMD") from Certain Defined Contribution Plans and Traditional IRAs for 2020 Calendar Year. RMDs are waived for all participants and beneficiaries in 2020 from accounts within a defined contribution 401(a) or 401(k) plan, defined contribution 403(b) plan, or a defined contribution governmental 457(b) plan, or a traditional IRA. Contractor shall automatically waive RMDs for 2020, except to the extent that such payment is part of a periodic payment requested by the participant."

2. **Continuing Effect of Agreement.** Except as amended by this Amendment No. 3, all provisions of the Agreement, as amended by Amendment Nos 1 and 2, shall remain unchanged and in full force and effect. From and after the date of this Amendment No. 3, whenever the term "Agreement" appears in the Agreement, it shall mean the Agreement, as amended by Amendment Nos. 1, 2 and 3.

3. **Affirmation of Agreement; Warranty Re Absence of Defaults.** Plan Sponsor and Contractor each ratify and reaffirm each and every one of the respective rights and obligations arising under the Agreement. Each party represents and warrants to the other that there have been no written or oral modifications to the Agreement other than as provided herein. Each party represents and warrants to the other that the Agreement is currently an effective, valid, and binding obligation.

Contractor represents and warrants to the Plan Sponsor that, as of the date of this Amendment, Plan Sponsor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

Plan Sponsor represents and warrants to Contractor that, as of the date of this Amendment, Contractor is not in default of any material term of the Agreement and that there have been no events that, with the passing of time or the giving of notice, or both, would constitute a material default under the Agreement.

4. **Adequate Consideration.** The parties hereto irrevocably stipulate and agree that they have each received adequate and independent consideration for the performance of the obligations they have undertaken pursuant to this Amendment No. 3.

5. **Authority.** The persons executing this Amendment No. 3 on behalf of the parties hereto warrant that (i) such party is duly organized and existing, (ii) they are duly authorized to execute and deliver this Amendment No. 3 on behalf of said party, (iii) by so executing this Amendment No. 3, such party is formally bound to the provisions of this Amendment No. 3, and (iv) the entering into this Amendment No. 3 does not violate any provision of any other agreement to which said party is bound.

IN WITNESS WHEREOF, the parties hereto have executed this Amendment No. 3 on the date and year first-above written.

PLAN SPONSOR:

CITY OF CARSON

Albert Robles, Mayor

ATTEST:

Donesia L. Gause-Aldana, MMC City Clerk

APPROVED AS TO FORM:

ALESHIRE & WYNDER, LLP

Sunny K. Soltani, City Attorney
[AE]

CONTRACTOR:

**VOYA RETIREMENT INSURANCE
AND ANNUITY COMPANY**

By: _____
Name:
Title:

By: _____
Name:
Title:
Address:

VOYA FINANCIAL PARTNERS, LLC

By: _____
Name:
Title:

By: _____
Name:
Title:
Address:

Two corporate officer signatures required when Contractor is a corporation, with one signature required from each of the following groups: 1) Chairman of the Board, President or any Vice President; and 2) Secretary, any Assistant Secretary, Chief Financial Officer or any Assistant Treasurer. CONTRACTOR'S SIGNATURES SHALL BE DULY NOTARIZED, AND APPROPRIATE ATTESTATIONS SHALL BE INCLUDED AS MAY BE REQUIRED BY THE BYLAWS, ARTICLES OF INCORPORATION, OR OTHER RULES OR REGULATIONS APPLICABLE TO CONTRACTOR'S BUSINESS ENTITY.

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

- ☐ CAPACITY CLAIMED BY SIGNER
☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ TITLE(S)
☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy or validity of that

STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

On _____, 2020 before me, _____, personally appeared _____, proved to me on the basis of satisfactory evidence to be the person(s) whose names(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: _____

OPTIONAL

Though the data below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent reattachment of this form.

- CAPACITY CLAIMED BY SIGNER**
- ☐ INDIVIDUAL
☐ CORPORATE OFFICER

- ☐ PARTNER(S) ☐ LIMITED
☐ GENERAL
- ☐ ATTORNEY-IN-FACT
☐ TRUSTEE(S)
☐ GUARDIAN/CONSERVATOR
☐ OTHER _____

SIGNER IS REPRESENTING:
(NAME OF PERSON(S) OR ENTITY(IES))

DESCRIPTION OF ATTACHED DOCUMENT

TITLE OR TYPE OF DOCUMENT

NUMBER OF PAGES

DATE OF DOCUMENT

SIGNER(S) OTHER THAN NAMED ABOVE