



# CITY OF CARSON

## Legislation Text

File #: 2020-269, Version: 1

### Report to Mayor and City Council

Tuesday, May 05, 2020

Consent

#### **SUBJECT:**

**APPROVE CONTRACT AMENDMENT NO. 3 WITH VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY AND VOYA FINANCIAL PARTNERS, LLC (CITY COUNCIL)**

#### **I. SUMMARY**

On May 1, 2015, the City of Carson entered into the City of Carson Deferred Compensation Program Administrative Services Agreement ("Agreement") with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC to make improvements to the City of Carson's Deferred Compensation Plan and City of Carson 401 (a) Retirement Plan, Voya Plan Numbers 666972 and 666973. On December 15, 2015, the Agreement was first amended to correct certain errors with the Expense Account for Services Account. On December 3, 2019, the Agreement was further amended to reduce the administrative fee. The proposed amendment will now incorporate certain tax and distribution provisions required pursuant to the Coronavirus Aid, Relief, and Economic Security Act, or CARES Act (the "Act").

#### **II. RECOMMENDATION**

WAIVE further reading and APPROVE THE VOYA ADMINISTRATIVE SERVICES CONTRACT AMENDMENT NO. 3 WITH VOYA RETIREMENT INSURANCE AND ANNUITY COMPANY AND VOYA FINANCIAL PARTNERS, LLC."; AND

AUTHORIZE THE MAYOR TO EXECUTE THE AGREEMENT UPON APPROVAL AS TO FORM BY THE CITY ATTORNEY.

### **III. ALTERNATIVES**

Take any other action deemed appropriate.

### **IV. BACKGROUND**

On May 1, 2015, the City entered into the City of Carson Deferred Compensation Program Administrative Services Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC to make improvements to the City of Carson's Deferred Compensation Plan (Exhibit 1). The Agreement contains a section for Reimbursement of Plan Expenses to be withdrawn from the Expense Account for Services of Expenditures ("EASE Account"). The EASE Account is an expense account to be used to defray the reasonable expense of administering this Plan.

On December 15, 2015, the City approved Amendment No. 1 to the Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC correcting certain errors related the EASE Account (Exhibit 2).

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 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 (Exhibit 3).

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. 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 and distribution provisions that affect retirement plans.

Staff is presenting Voya Administrative Services Agreement Amendment No. 3 (Exhibit 4) to City Council for approval to amend the Agreement to reflect the provisions that will permit limited early withdrawals and higher loan amounts from qualified retirement accounts, as enacted by the CARES Act. Current loan provisions allow an active employee to have no more than one loan at any given time with an IRC maximum of no more than \$50,000 or 50% of the account balance, whichever is less. The CARES Act temporarily increases the loan limit to \$100,000, thereby eliminating the 50% threshold. Participants must meet the eligibility defined in the CARES Act in order to take a COVID-19 related loan.

In addition, a participant with a current loan balance must pay back their current loan balance in order to take a new COVID-19 related loan since the plan allows for only one (1) outstanding loan at a time. The City has 52 participants with a combined total outstanding loan balance of \$379,000.

The City Council may consider the addition of a second loan, subject to CARES Act provisions, which will require an amendment to the City's current loan provisions, subject to prior legal counsel review.

In the spirit of full transparency, a second loan option may bring unintended consequences to the 52 participants. A loan, pursuant to the CARES Act, must be repaid within 5-years, with repayment starting in 2021. If a participant takes a \$100,000 loan (the maximum amount permitted), he or she will have a monthly loan payment in an amount estimated to be \$1,700. Such high amount may be a financial burden for the participant. Secondly, if there are financially negative changes to the participant's personal and/or household income and he/she cannot make the loan payments, the outstanding loan balance becomes taxable and reported on Form 1099-R. Staff shares similar concerns for all participants taking a loan due to the uncertainty during this challenging time.

Note, the Internal Revenue Service ("IRS") will adopt their own regulations adopting the CARES Act. Accordingly, Staff anticipates it will bring the City Council an additional amendment to the Agreement to implement any additional changes or clarifications issued by the IRS.

## **V. FISCAL IMPACT**

There is no additional fiscal impact to the City. These provisions are intended to provide plan participants with additional tools and resources as we all navigate this unprecedented pandemic.

## **VI. EXHIBITS**

1. City of Carson Deferred Compensation Program Administrative Services Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC. (pgs. 4-53)
2. Amendment No. 1 to the City of Carson Deferred Compensation Program Administrative Services Agreement with Voya Retirement Insurance and Annuity Company and Voya Financial Partners, LLC. (pgs. 54-61)

3. Amendment No. 2 to the City of Carson Deferred Compensation Program  
Administrative Services Agreement with Voya Retirement Insurance and Annuity  
Company and Voya Financial Partners, LLC. (pgs. 62-68)
4. Amendment No. 3 to the City of Carson Deferred Compensation Program  
Administrative Services Agreement with Voya Retirement Insurance and Annuity  
Company and Voya Financial Partners, LLC. (pgs. 69-77)

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