



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Deferred Compensation
Advisory Committee

SUBJECT: SEE BELOW

DATE: 08-10-07

COUNCIL DISTRICT: N/A
SNI AREA: N/A

**SUBJECT: APPROVAL OF CUSTODY AGREEMENT FOR THE DEFERRED
COMPENSATION LOAN PROGRAM**

RECOMMENDATION

Adoption of a resolution approving an agreement with ING National Trust to perform custody services for the Deferred Compensation Plan Loan Program, and authorizing the Secretary to the Deferred Compensation Advisory Committee to execute the agreement.

OUTCOME

Approval of the Custody Agreement will enable the Deferred Compensation Plan to implement the Plan's Loan Program.

BACKGROUND

In June 2007, the Council approved an ordinance amending the Deferred Compensation Plan to permit participants to take out loans against their account balances, similar to loans provided by 401(k) plans. The Deferred Compensation Advisory Committee has appointed ING National Trust to be the custodian for the Loan Program and has approved the rules relating to the Program. The only remaining requirement for implementation is approval of the Custody Agreement with ING National Trust.

ANALYSIS

Under Chapter 3.48 of the San José Municipal Code, the Deferred Compensation Advisory Committee (DCAC) is the administrator of the City's Deferred Compensation Plan. The current investment provider, ING Life Insurance and Annuity Company (ILIAC), will administer the Loan Program and process applications. ING National Trust, a national banking association, will receive the loan documents and hold the documents for the benefit of the Deferred Compensation Plan.

The DCAC has the authority to enter into agreements on behalf of the City for the administration of the Plan and for custodial agreements where there is no amount to be paid by the City under the agreement. ILIAC has waived the custody fees, but the bank requires an indemnification provision in the Custody Agreement whereby the Plan sponsor will indemnify the bank against losses caused by the City's or the Plan's negligence or willful misconduct or caused by the bank's carrying out instructions from the City. In the event there is a loss caused by the City's negligence, the City would be required to pay money under the agreement. Therefore, the City Council's concurrence in the Custody Agreement is needed. ING National Trust has agreed to indemnify the City and the Plan against any losses caused by the bank's negligence or willful misconduct and has agreed that the City's indemnification will not include attorney's fees. The agreement can be terminated upon 60 days notice.

PUBLIC OUTREACH/INTEREST

- Criteria 1:** Requires Council action on the use of public funds equal to \$1 million or greater; **(Required: Website Posting)**
- Criteria 2:** Adoption of a new or revised policy that may have implications for public health, safety, quality of life, or financial/economic vitality of the City. **(Required: E-mail and Website Posting)**
- Criteria 3:** Consideration of proposed changes to service delivery, programs, staffing that may have impacts to community services and have been identified by staff, Council or a Community group that requires special outreach. **(Required: E-mail, Website Posting, Community Meetings, Notice in appropriate newspapers)**

Although this item does not meet any of the criteria above, this memorandum is posted on the City's website for the August 28, 2007, City Council meeting.

COORDINATION

This memorandum was coordinated with the Deferred Compensation Advisory Committee (DCAC) and the City Attorney's Office.

COST SUMMARY/IMPLICATIONS

There are no City costs associated with this recommendation; however, the indemnification provisions of the custody agreement with ING National Trust could result in payment if ING National Trust incurs losses caused by the City's or the Plan's negligence or willful misconduct, or losses caused by the bank's carrying out instructions from the City. In the event there is a loss caused by the City's negligence, the City would be required to pay money under the agreement in an amount that would be determined by the circumstances.

CEQA

Not a project.



ARLENE GIBBS
Secretary, Deferred Compensation
Advisory Committee

For questions please contact Dave DeLong, Acting Benefits Manager, (408) 975-1428.