OCII
office of
COMMUNITY INVESTMENT
and INFRASTRUCTURE

107-0632020-002

Agenda Item **No. 5(f)**
Meeting of July 21, 2020

MEMORANDUM

TO: Community Investment and Infrastructure Commissioners

FROM: Nadia Sesay, Executive Director

SUBJECT: Approving an amended and restated 457 Deferred Compensation Plan and authorizing the Executive Director to conform, as needed, the plan to applicable law and administer said plan in accordance with its terms

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EXECUTIVE SUMMARY

Under the Personnel Policy, the Office of Community Investment and Infrastructure ("OCII") offers a deferred compensation plan ("the Plan") to its employees pursuant to Section 457 of the Internal Revenue Code (the "Code"). Section 457 of the Code allows state and local governmental agencies to establish deferred compensation plans similar to those provided for private employers. A 457 deferred compensation plan withholds a portion of an employee's pay, as specified by the employee, until a date certain, usually retirement. MassMutual administers OCII's deferred compensation plan.

The rules and procedures by which Mass Mutual administers the Plan are described in the Plan document, which must conform to the regulations established by the Internal Revenue Service. OCII wishes to amend and affirm the current Plan document, which was last amended by Redevelopment Agency Resolution 92-2007 (Aug. 21, 2007). The proposed Plan document brings the Plan into conformance with the latest 457 regulations, allows employee loans, and adds benefits allowed by the Corona Virus Aid, Relief, and Economic Security Act ("CARES") Act passed by Congress in 2020. Staff reviewed the proposed Plan changes and determined they are either required by a change in regulation, are administrative in nature, or are of benefit to the employee.

As OCII last amended the Plan document in 2007, OCII also wishes to reauthorize the Executive Director to administer said Plan in accordance with its terms. Staff recommends approval of a resolution approving the amended and restated 457 Deferred Compensation Plan, approving Plan terms allowing employee loans and providing other benefits consistent with the Corona virus Aid, Relief, and Economic Security Act, and authorizing the Executive Director to administer said Plan in accordance with its terms.

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Background

In 1979, the San Francisco Redevelopment Agency instituted, by Resolution No. 144-79 (May 22, 1979), a 457 deferred compensation plan for the benefit of its employees. A 457 deferred compensation plan withholds a portion of an employee's pre-tax wages, as specified by the employee, until a date certain, usually retirement, and provides investment opportunities using the withheld wages. Following Dissolution, the Successor Agency to the San Francisco Redevelopment Agency, commonly known as the Office of Community Investment and Infrastructure ("OCII"), took over responsibility for the 457 plan so retirees and current employees would continue to receive the same benefits. MassMutual administers OCII's deferred compensation plan. OCII's Personnel Policy, which is incorporated by reference in OCII's collective bargaining agreements with Locals 21 and 1021, authorizes a deferred compensation plan for the benefit of employees.

The rules and procedures by which Mass Mutual administers the Plan are described in the Plan document and must comply with regulations of the Internal Revenue Service ("IRS"). The Plan document describes guidelines regarding participation, contribution, limitations on amounts deferred, investment responsibilities, distributions, roll-overs and plan transfers, payments to beneficiaries, as well as administration and accounting. Since 1979, the IRS regulations have been amended on several occasions and the Agency's Plan document has been periodically amended to reflect these changes. The Agency's Plan document was last amended by Resolution 92-2007 on August 21, 2007. OCII now wishes to amend the Plan document to reflect changes to IRS regulations since the plan was last amended, provide staff with the option to receive a loan from their withheld funds, and add benefits allowed by the Corona virus Aid, Relief, and Economic Security Act ("CARES") Act passed by Congress in 2020.

OCII wishes to amend the Plan document to reflect changes to IRS regulations since the Plan document was last amended. Such changes include: making compensation received for work performed as an independent contractor eligible for participation, treating pay for military services as employer compensation, and making changes to deferral amounts possible at any time, rather than limiting changes in deferral amounts to September, December, March, and June. A summary of the proposed Plan changes is included in Appendix A. Staff have reviewed the changes and determined that they are either required by a change in regulation, are administrative in nature, or are of benefit to the employee.

OCII also wishes to amend the Plan to allow employees to receive a loan from their withheld funds. Under the terms of the program, staff can borrow 50 percent of their vested account balance up to $50,000, for any reason. Borrowers will be charged an interest rate equal to the prime interest rate. The prime interest rate is the interest rate that commercial banks charge their most creditworthy corporate customers. This rate is generally lower than the rates available to retail borrowers. Loan repayments will be deducted automatically via ACH Debit from the employee's designated bank account.

Finally, OCII wishes to amend the Plan document to reflect benefits allowed by the CARES Act. These benefits include: penalty free plan withdrawals up to $100,000 for 2020 if employee has COVID-19 related impacts, temporarily increasing the amount of loans made from an employee's withholdings from $50,000 to $100,000 and 100 percent of the vested account balance, suspending, for one year, loan repayments due between the effective date of the CARES Act and December 31, 2020, and waiving required minimum distributions. Waiving the required minimum distributions ensures that seniors age 70-1/2 and older who can afford to skip their 2020 distribution are not required to withdraw from their pre-tax retirement portfolios when the market is down. The benefits allowed by the CARES Act are intended to offset the financial burden of COVID-19.

As OCII last amended the Plan document in 2007, OCII wishes to reauthorize the Executive Director to administer said Plan in accordance with its terms and to authorize the Executive Director to make future changes in the Plan as needed to comply with applicable law. Administration of the Plan includes coordinating employee enrollment and education, withholding and transmitting employee funds to Mass Mutual, and reviewing and revising the investment options provided by the Plan.

OCII staff provided OCII's bargaining unit representatives with a description of these proposed changes and met on June 30, 2020 with representatives of both bargaining units who did not object to the proposed changes.

California Environmental Quality Act

Approval of this Memorandum of Understanding is not a "Project" subject to environmental review pursuant to the California Environmental Quality Act ("CEQA") because it is an administrative activity of government that will not result in direct or indirect physical changes in the environment, per CEQA Guidelines § 15378 (b)(5).

Requested Action

Staff seeks the Commission's approval of a resolution approving the amended and restated 457 Deferred Compensation Plan, approving Plan terms allowing employee loans and providing other benefits consistent with the Corona virus Aid, Relief, and Economic Security Act, and authorizing the Executive Director to amend the Plan in the future to conform with future changes in the law and to administer said Plan in accordance with its terms

(Originated by Bree Mawhorter, Deputy Director of Finance and Administration)

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Nadia Sesay
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Nadia Sesay
Executive Director

Appendix A: San Francisco Redevelopment Agency Deferred Compensation Plan Summary of Changes

PPA Plan Section	Provision
1.1	**Compensation:** Compensation earned by independent contractors is included in the definition of Compensation; compensation and accrued sick time, vacation and other leave time earned within 2 1/2 months following severance and differential pay due to military service are also included.
1.1	**Employee:** Collective bargained employees must have a collective bargaining agreement providing for participation in the plan. (Previously excluded independent contractors and casual hourly rate employees.)
1.1	**Includible Compensation** is compensation defined under 415(c)(3). Previously was Box 1 of W2, increased by payments under Code section 125,132(f), 401(k), 403(b) or 457(b).
1.1	**Normal Retirement Age**: defined by NRA of pension plan; otherwise, cannot be earlier than age 65.
1.1	**Plan Year:** Plan Year is now a defined term.
1.1	**Severance from Employment:** A participant in military service of at least 30 days may receive a distribution.
2.3	**Commencement of Participation.** In 2nd sentence, “earlier” was replaced by “later”.
2.4	**Deferral Election.** Deferral amounts may be changed at any time (was quarterly).
2.7	**Employer Contributions.** Employer contributions are allowed.
2.10	**Protection of Persons Who Serve in a Uniformed Service.** Restorative Employer Contributions may be made for participants reemployed following military service.
3.2	**Age 50 Catch-up Annual Deferral Contributions.** Catch up contributions may not be made in a year in which Special Section 457 Catch-up is made.
4.4	**Investment Changes.** Alternate payees and beneficiaries added to persons who can make investment changes.
4.5	**Default Investment Fund**. Default Investment Fund added.
4.6	**Statements.** Statements to be issued periodically (was quarterly).
6.1	**Distributions.** Defines Earliest Distribution Date.
6.3	**Distributions on Death.** Death benefits may be payable under the 5 year rule (Was the following calendar year); Death while in military service treated as if it happened while employed.
6.4	**Distribution of Small Account Balances.** No mandatory cash outs (was $1,000).
6.6	**Minimum Distributions**. Reflects final 401(a)(9) regulations.
6.9	**Direct Rollover.** Non-spousal beneficiaries may elect a direct rollover.
6.10	**In Service Distribution.** In certain circumstances, a participant may request an in-service distribution if the account balance is $5,000 or less. Unforeseeable emergency does not apply to participant’s or beneficiary’s lineal ascendants or descendants (as in prior plan) – only their spouses or dependents.
9.3	**Paperless Administration**. Allows paperless administration.
12.4	**Mistaken Contributions.** Return of mistaken contribution – investment gains are not included (only losses).