



City Attorney's Office

AGENDA REPORT

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| DATE: | December 20, 2022 |
| TO: | Mayor Butt and Members of the City Council |
| FROM: | Dave Aleshire, City Attorney Nickie Mastay, Deputy City Manager |
| Subject: | City Manager Contract Amendment |
| FINANCIAL IMPACT: | \$1,000 for Fiscal Year 2022-2023 and an estimated \$2,000 for Fiscal Year 2023-2024 |
| PREVIOUS COUNCIL ACTION: | April 5, 2022 |
| STATEMENT OF THE ISSUE: | <p>On April 5, 2022, the City Council approved an Employment Agreement with City Manager, Shasa Curl. The Agreement is for a three-year term, beginning April 6, 2022 and ending April 5, 2025. The proposed First Amendment to the Agreement would amend Section 2.06 A. and B. to: i) specify timing for the City's contribution to Employee's deferred compensation plan and provide that the contribution will be the then-current deferred comp contribution limit (excluding catchup contributions); and ii) provide that instead of the City providing \$7,850 annually in FSA contributions, the City Manager will receive an annual nonpersable lump sum payment in the same amount.</p> |

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| RECOMMENDED ACTION: | APPROVE a first amendment to the City Manager Employment Agreement that i) specifies timing for the City's contribution to Employee's deferred compensation plan and provides that the contribution will be the then-current deferred comp contribution limit (excluding catchup contributions); and ii) provides that instead of the City providing \$7,850 annually in FSA contributions, the City Manager will receive an annual nonpersable lump sum payment in the same amount – City Attorney's Office (Dave Aleshire 510-620-6509) . |
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DISCUSSION:

On April 5, 2022, the City Council approved a City Manager Employment Agreement ("Agreement") with Shasa Curl (Attachment 2). The Agreement is for a three-year term, between April 6, 2022 and April 5, 2025. The proposed First Amendment to the Agreement would amend Section 2.06 A. and B., as further described below (Attachment 3). The purpose of amending the Agreement is to do the following: i) clarify the timing of the City deferred compensation contribution and increase the City contribution to match the then-current IRS annual contribution limit, rather than having the contribution be fixed at the 2022 limit of \$20,500 (Section 2.06 A.); and ii) provide the City Manager an annual nonpersable lump sum retention payment of \$7,850 in lieu of FSA contributions in the same amount, because the FSA contributions as originally contemplated cannot be provided consistent with IRS requirements.

Section 2.06 A. of the Agreement currently provides that the City will contribute \$20,500 annually to a deferred compensation plan. Timing for the contribution was not specified in the Agreement. The First Amendment to the Agreement would provide that such contribution is to be made following April 6 of each year, and no later than April 30. Additionally, language in Section 2.06 A. would be revised to provide that the City contribution would be the then-current annual contribution limit for a 457 deferred compensation plan, excluding catch up contributions, instead of \$20,500 each year going forward. The 2022 annual contribution limit was \$20,500. For 2023, the annual contribution limit will increase to \$22,500.

Section 2.06 B. of the Agreement currently provides that the City make the following contributions annually to Employee: i) \$2,850 to Flexible Spending Account ("FSA") Health Care and ii) \$5,000 to FSA Dependent Care. City staff recently learned that because the City does not contribute to all employees' FSA accounts in the same manner as proposed in the Agreement, the City cannot contribute to the City Manager's FSA account without the benefit losing its tax-favored treatment for the employee. Per IRS requirements, employer contributions to an FSA cannot be higher for highly compensated employees than for other employees. Additionally, with respect to FSA Health Care contributions, an employer can only contribute up to \$500 towards an employee's FSA without matching an employee's contribution.

Since Ms. Curl has not been provided any FSA contributions yet and cannot be provided the contemplated FSA contributions consistent with the above IRS requirements, the First Amendment to the Agreement would provide that Ms. Curl instead be provided annually a “nonpersable” lump sum payment of the identical amount- \$7,850- to encourage her continued retention under the Agreement. The first payment to Ms. Curl would be made December 30, 2022. In 2023, and the subsequent year under the term of the Agreement, the payment would be made following April 6 of that year, to be made no later than April 30. The lump sum payments would not be reportable to CalPERS.

DOCUMENTS ATTACHED:

Attachment 1 – April 5, 2022 Staff Report

Attachment 2 – City Manager Employment Agreement

Attachment 3 – First Amendment to City Manager Employment Agreement (proposed)