



Agenda Date: 9/6/2017

Agenda Placement: 8A

Napa Sanitation District Board Agenda Letter

TO: Honorable Board of Directors

FROM: Jeff Tucker - Director of Administrative Services/CFO
NS-Administration

REPORT BY: Cheryl P. Schuh, Human Resources Officer/Clerk of the Board - 258-6003

SUBJECT: Approve Deferred Compensation Plan Committee Charter Regarding Governance and Oversight of Deferred Compensation Plan

RECOMMENDATION

Approve attached Deferred Compensation Plan Committee Charter establishing the 457(b) Deferred Compensation Plan and 401(a) Defined Contribution Plan Deferred Compensation Plan Committee Charter, to provide additional governance and oversight of NapaSan's 457(b) and 401(a) plans.

EXECUTIVE SUMMARY

NapaSan maintains three deferred compensation plans (457 plans) where employees can invest funds. In these plans, employees direct investments into several different mutual funds, with the fund offerings designed to provide different levels of investment risk.

ERISA

The Employee Retirement Income Security Act of 1974 (ERISA) established a national standard for benefit plan definition and administration. And while public sector employers are not subject to ERISA, the State of California has adopted its own standards that are almost identical to ERISA. For this reason, ERISA serves a convenient guide to best practices and accepted methods for plan design and operation. ERISA is a high standard, and it is a model that the courts look to for guidance when considering non-ERISA cases.

Until recently, it has been assumed by staff (and is a common assumption throughout the public sector) that because ERISA does not apply to the public sector, and because employees self-direct their investments in the 457 plans, that the agency had little to no exposure to fiduciary risk from its 457 plans. However, recent cases and changes in law have led to staff's belief that NapaSan's risk exposure is greater than originally thought. Staff recommends that NapaSan become more engaged with the administration of the 457 plans, with the goals of 1) increased oversight of plan sponsors and investment returns as compared to benchmarks and peer groups, 2)

decreased administrative fees paid by members, and 3) decreased risk of fiduciary breach.

Fiduciary Responsibility

It is likely that NapaSan, particularly the Board of Directors, has a fiduciary obligation to the 457 plans, because the Board is responsible for selecting, retaining or terminating record-keepers/plan administrators, and approves fees and expenses for plan services and investments. With this fiduciary responsibility comes a Duty of Loyalty to the plan members, a Duty to Follow Plan Documents, and a Duty of Prudence to execute its responsibilities with care, skill, prudence and diligence in the management of the deferred compensation plans.

Having reviewed the regular actions that would be necessary to meet its fiduciary duties and obligations, and with consultation from industry experts, staff believes that the considerable amount of work necessary to meet the fiduciary obligation would best be delegated from the Board to a staff committee.

Recommendation

Staff recommends that the Board of Directors delegate many of its fiduciary responsibilities and functions to a committee. The Deferred Compensation Plan Committee ("the committee") would assume significant fiduciary responsibilities from the Board, and would be responsible for the following:

- Fiduciary review of investments
- Fiduciary review of service providers
- Authorize changes to investments
- Authorize changes to investment providers
- Create or approve design of education/counseling programs
- Review and approval of hardship withdrawal requests
- Monitoring of fees and expenses

The committee would be made up of 6 members: 1) General Manager, 2) Director of Administrative Services/CFO, 3) Human Resources Officer, 4) Accountant, 5) one of the Union Shop Stewards, and 6) NapaSan retiree (appointed by the Human Resources Officer).

Staff recommends that the Board adopted the attached document creating the Deferred Compensation Plan Committee Charter.

FISCAL IMPACT

Is there a Fiscal Impact? No

ENVIRONMENTAL IMPACT

ENVIRONMENTAL DETERMINATION: The proposed action is not a project as defined by 14 California Code of Regulations 15378 (State CEQA Guidelines) and therefore CEQA is not applicable.

BACKGROUND AND DISCUSSION

None.

SUPPORTING DOCUMENTS

A . Presentation

B . Deferred Comp Plan Charter

Napa Sanitation District: Approve

Reviewed By: Jeff Tucker