

IMPLEMENTING A
DEFERRED COMPENSATION PLAN
and
SERVICE AGREEMENT

Division of Local Government Services
New Jersey Department of Community Affairs

OCTOBER, 2022

SUBMISSION OF DOCUMENTATION

An emailed copy of a signed, sealed and dated copy of the resolution must be forwarded to the Division for review and approval prior to the deferral of any funds.

Should you have any questions, please contact the Division at:

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RESOLUTION FOR ADOPTING A PROTOTYPICAL DEFERRED COMPENSATION PLAN AND SERVICE AGREEMENT

The implementation of a Deferred Compensation Plan and the authorization to execute a Service Agreement with an approved contractor for the administration of the Plan's investments shall only be accomplished through the adoption of a single resolution of the governing body of the local governmental unit.

The specific areas of concern which must be addressed in the resolution are set forth in *Municipal, County and Authority Employees Deferred Compensation Plans Rule at N.J.A.C. 5:37-5.2 and N.J.A.C. 5:37-5.3.*

Set forth below is a narrative description of those elements which must be contained in a resolution implementing a Deferred Compensation Plan and Service Agreement.

A resolution is composed of two types of clauses --- “**WHEREAS**” and the “**BE IT RESOLVED.**” The “**WHEREAS**” Clauses describe why the governing body is undertaking a particular activity. The “**BE IT RESOLVED**” clauses specify actions being implemented through the adoption of the resolution.

WHEREAS

In setting forth the rationale for the adoption and implementation of a Deferred Compensation Plan and Service Agreement, it is recommended that the resolution reflect some of the following concerns:

- the desire to attract and retain qualified employees;
- the accrual of tax benefits to eligible employees through participation in a Deferred Compensation Plan as established pursuant to *Section 457 of the Federal Internal Revenue Code*;
- the fact that there is no cost to the local governmental unit to adopt and implement a Deferred Compensation Plan; and
- the implementation of a Deferred Compensation Plan will serve the interests of the local governmental unit by enabling it to provide enhanced retirement security to its eligible employees.

NOW, THEREFORE BE IT RESOLVED

The following is a list of items that **MUST** be addressed in the resolution. An example to the type of language that might be incorporated into the resolution follows each item in italic type.

Plan Adoption (N.J.A.C. 5:37-5.2)

When adopting a Prototypical Plan, the resolution must identify the full name of the contractor and list the Plan's identifier that was assigned by the Director of the Division of Local Government Services.

The governing body hereby adopts a Deferred Compensation Plan provided by [identify contractor and plan identifier].

Compliance With Internal Revenue Code (N.J.A.C. 5:37-3.5)

The resolution must state that the local governmental unit is adopting a Prototypical Plan which is substantially similar to one on which a satisfactory Internal Revenue Service private letter ruling has been obtained. The resolution also shall indicate that the use of the Ruling is for guidance only and the realization that for Internal Revenue Service purposes, the Ruling of another employer is not to be considered precedent.

The [identify local governmental unit] is adopting a Deferred Compensation Plan substantially similar to one on which a favorable Private Letter Ruling has been previously obtained from the federal Internal Revenue Service except for provisions added by reason of the Small Business Job Protection Act of 1996 (United States Public Law No. 104-188) and the Economic Growth and Tax Relief Reconciliation Act of 2001 (United States Public Law No. 107-16) and all such provisions are stated in the plan in terms substantially similar to the text of those provisions in the Internal Revenue Code Section 457. The use of the Ruling is for guidance only and acknowledges that for Internal Revenue Service purposes, the Ruling of another employer is not to be considered precedent.

Local Plan Administrator (N.J.A.C. 5:37-5.4)

The resolution **MUST** identify the local plan administrator. This is best implemented by identifying the person(s) to serve as Administrator by title(s) rather than by name.

The [title(s)] is hereby designated as the Local Plan Administrator for the administration of the Plan.

Selection of Contractor/Solicitation Methods (N.J.A.C. 5:37-7.1)

The resolution must: (1) describe the method used to solicit proposals, (2) identify the responding vendors and (3) state the rationale for selecting the successful vendor.

Solicit Proposals: *A request for proposals for a Deferred Compensation Plan and Service Agreement was prepared and made available to [identify approved vendors solicited].*

Responding Vendors: *The vendors responding to the request for proposals were [identify responding vendors].*

Selection Rationale: *The successful vendor is [identify vendor]. The governing body reviewed all of the proposals submitted and met with representatives of the responding companies. The [identify vendor] was selected because [detail reason for selection].*

Statement of Non-Collusion (N.J.A.C. 5:37-5.7)

The resolution must contain a statement that there was no collusion, or evidence or appearance of collusion, between any local official and a representative of the contractor in the selection of a contractor for the administration of a Service Agreement.

There has been no collusion, or evidence or appearance of collusion, between any local official and a representative of the contractor in the selection of a contractor for the administration of a Service Agreement pursuant to N.J.A.C. 5:37-5.7.

Execution of a Service Agreement and Contractor Identified

The resolution must contain specific language related to an authorization for the execution of a Service Agreement with the contractor. The title of the person(s) authorized to execute the Agreement has to be identified.

The [title(s)] is/are authorized to execute a Service Agreement with [identify contractor and Service Agreement Identifier] and to submit all necessary documents to the Director of the Division of Local Government Services within the State Department of Community Affairs for approval.

Certification

The resolution ends with language certifying that the document is a true copy of a resolution passed by the governing body. The document is signed, dated and sealed.

I, [Name], [Title], do solemnly swear that this is a true copy of a resolution duly passed by the [Mayor and/or Council] of the [Name of Municipality] at a meeting held on [Date].