

RESOLUTION NUMBER R- 285505

ADOPTED ON MAR 20 1995

WHEREAS, The City of San Diego ("the City") maintains and administers a number of tax qualified defined contribution savings plans ("the Plans") and trust funds ("Trust Funds") for the welfare and benefit of City officers and employees ("Plan Participants"); and

WHEREAS, the Plans serve the interests of the City by enabling the City to provide reasonable retirement security for employees, providing increased flexibility in personnel management and assisting in the attraction and retention of competent personnel; and

WHEREAS, Plan Participants are able to enjoy the substantial advantage of deferring payment of income taxes on compensation already earned and being saved for retirement; and

WHEREAS, the Plans maintained and administered by the City include: the Supplemental Pension and Savings Plan ("SPSP"), SPSP-M, SPSP-H and 401(k); and

WHEREAS, the Plans are structured and maintained in accordance with legal documents ("Plan Documents") which designate the Director of the Risk Management Department as Plan Administrator and the City Treasurer as Trustee for the Plans; and

WHEREAS, the Plan Documents require the Trustee to be responsible for maintaining custody of the Trust Funds and investing the Trust Funds for the benefit of Plan Participants; and

WHEREAS, the Plan Documents restrict the Trustee to investments where the principal of the trust is invested at minimal risk in a like manner to the City Treasury; and, WHEREAS, Plan Participants have requested and prudent fiduciary policy supports the concept of giving Plan Participants the ability to self direct all or a portion of their retirement savings in investments designed for growth of principal as a hedge against inflation, depending upon their age, years to retirement and risk tolerance; and

WHEREAS, the Plan Administrator has retained an independent consultant who has studied the financial services and products available in the marketplace for plan administration and investment of defined contribution plans; and

WHEREAS, the consultant has advised the Plan Administrator that financial services and products are available in the marketplace which make it possible for the City to enhance the quality of administration of the Plans and offer Plan Participants the ability to self direct investment dollars in order to tailor an investment strategy to meet their needs; and

WHEREAS, amending the Plans as proposed would allow for third party administration and investment services to be funded

by a "net fee" charge offset against Trust Fund assets at no cost to City taxpayers; and

WHEREAS, in order to diversify and enhance the range of expertise for monitoring and oversight of plan administration and investment services provided by a third party administrator, it is prudent to amend the Plan Documents to create Co-Trustees to manage the Trust Fund to include, the City Treasurer, the City Manager and the Retirement Administrator or their designees; and

WHEREAS, the Plan Documents specify that before the Plans are amended by the Plan Sponsor, the amendments are subject to a vote of approval by the Plan Participants; and

WHEREAS, the Plan Documents also specify that the Plan Sponsor may amend the Plan without a vote of the Plan Participants to implement changes to bring the Plans into conformance with state and federal law; and

WHEREAS, effective January 1, 1993 Congress amended federal tax law affecting tax qualified retirement plans to permit plan participants to elect to rollover eligible distribution amounts and the Plans need to be amended accordingly; and

WHEREAS, it is also necessary to amend the Plans to bring them into conformance with California community property law;

NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the SPSP, SPSP-M, SPSP-H and 401(k) plans are amended consistent with the changes set forth in Attachment 1, subject to a vote of approval by the Plan Participants and effective upon that date.

BE IT FURTHER RESOLVED, by the City Council of The City of San Diego, that the SPSP, SPSP-M, SPSP-H and 401(k) plans are amended consistent with the changes set forth in Attachment 2 to bring the Plans into conformance with federal tax law and California community property law, effective upon the date of adoption of this resolution by the City Council.

APPROVED: JOHN W. WITT, City Attorney

By   
Richard A. Duvernay  
Deputy City Attorney

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**REDLINE/STRIKEOUT VERSION OF  
SPSP PLAN AMENDMENTS TO  
IMPLEMENT PARTICIPANT DIRECTED  
INVESTMENT OPTIONS**

**THESE AMENDMENTS MUST BE APPROVED  
BY MAJORITY VOTE OF THE PLAN PARTICIPANTS  
AND WILL BECOME EFFECTIVE ON THE DAY  
THEY ARE APPROVED**

**ARTICLE I**  
**DEFINITIONS**

Whenever used herein, the following words and phrases shall have the meaning specified below. Additional words and phrases may be defined in the text of the Plan.

1.01 through 1.09 [NO CHANGE]

1.10 [DELETED PER CHANGE REQUIRED TO CONFORM WITH FEDERAL LAW]

1.11 through 1.22 [RENUMBERED TO READ 1.10 TO 1.21]

1.23 [RENUMBERED TO READ 1.22 AND AMENDED TO CONFORM WITH FEDERAL LAW]

1.24 through 1.27 [RENUMBERED TO READ 1.23 TO 1.26]

1.287 ~~Trustee~~ Co-trustees

"~~Co-trustees~~" means the City Treasurer, the City Manager and the Retirement Administrator or their designees.

1.298 Trust Fund

"Trust Fund" means the City of San Diego Supplemental Pension Savings Plan Trust Fund.

1.3029 Valuation Date

"~~Valuation Date~~" means ~~March 31, June 30, September 30, and December 31~~ those dates when investment gains and losses are calculated and posted to the account of plan participants.

1.31 through 1.34 [RENUMBERED TO READ 1.30 TO 1.33]

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## ARTICLE V

### INVESTMENT OF CONTRIBUTIONS AND VALUATION OF FUNDS

5.01 [NO CHANGE]

5.02 Investment Fund Options

The Plan Administrator shall establish and maintain a Trust Fund for the investment of Participant's and Employer contributions under the Plan, which is to be managed by the ~~City Treasurer~~ Co-trustees and may include Participant directed investment fund options. Funds are to be invested so that the principal of the investments is not at risk. ~~In the event that management of the funds requires sale of an investment prior to maturity, any gain or loss so incurred will be treated as an increase or decrease in the current period earnings and not an increase or decrease in the Participant's principal.~~

5.03 Valuation of Investment Funds

As of each Valuation Date, the ~~Trustee~~ Co-trustees shall determine the value of the net assets of each investment fund and investment gains and losses shall be posted to the account of each Plan Participant. ~~The interest rate used to allocate Plan earnings to Participant's Accounts will be determined quarterly based on the Earned Investment Yield adjusted to properly reflect quarterly compounding and a quarterly time period as determined by the Auditor and Comptroller.~~

5.04 Records and Reports

The ~~City Treasurer~~ Co-trustees shall keep full books of account in accordance with regulations prescribed by the Employer. The ~~City Treasurer~~ Co-trustees shall, as of December 31 of each Plan Year and within sixty days following the close of such year, and at such other dates as the Employer may request, submit to the Employer a report on the Trust Fund, which shall include a list of the investments comprising the Trust Fund at the end of the period covered by the report, the Earned Interest Yield for the reporting period, and disbursements since the last report. Copies of such reports shall be available for inspection at the principal office of the Employer and at such other places as the Employer shall specify.

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## ARTICLE X

### PLAN ADMINISTRATOR

10.01 [NO CHANGE]

10.02 Powers and Duties

- (a) The Plan Administrator shall have full power to administer the Plan and to construe and apply all of its provisions on behalf of the Employer. The Plan Administrator shall be a fiduciary within the meaning of applicable California and federal trust law for purposes of Plan administration. The Plan Administrator may delegate to any other person or organizations any of its powers and duties with respect to the operation of this Plan. The Plan Administrator's powers and duties, unless properly delegated, shall include, but shall not be limited to:
- (i) Deciding questions relating to eligibility, continuity of service and amount of benefits.
  - (ii) Deciding disputes which may arise with regard to the rights of Employees, Participants and their legal representatives or Beneficiaries under the terms of the Plan. Such decisions by the Plan Administrator shall be deemed final in each case.
  - (iii) Obtaining such information from the Employer with respect to Employees as shall be necessary to determine the rights and benefits of Employees under the Plan. The Plan Administrator may rely conclusively upon such information furnished by the Employer.
  - (iv) Compiling and maintaining all records necessary for the Plan.
  - (v) Furnishing the Employer, upon request, such reports with respect to the administration of the Plan as are reasonable and appropriate.
  - (vi) Authorizing the ~~Trustee~~ ~~Co-trustees~~ to make payment of all benefits as they become payable under the Plan.

10.03 - 10.05 [NO CHANGES]

10.06 Payment of Expenses

~~The Plan Administrator and his or her designees may be reimbursed from~~ ~~shall serve without compensation for services as such.~~ However, the Trust Fund may reimburse the Plan Administrator and other fiduciaries for all necessary and proper expenses incurred in carrying out their duties under the Plan, including ~~the compensation or fees of accountants, counsel, employees of the City of San Diego and other specialists, and any other costs for administering the Plan or Trust shall be paid directly by the Employer provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.~~

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**ARTICLE XI**

**AMENDMENT TO THE PLAN**

11.01 Right to Amend

The Employer, after approval by a simple majority vote of all active Participants, shall have the right to amend the Plan at any time and, from time to time, to any extent that it deems advisable. Notwithstanding the previous sentence, the Employer shall have the right to amend the Plan at any time to comply with federal or state laws necessary to maintain the qualified status of the Plan. No amendment shall increase the duties or responsibilities of the ~~Trustee~~ ~~Co-trustees~~ without written consent thereto. No amendment shall be made to this Plan which shall attempt to transfer any part of the corpus or income of the Trust Fund to purposes other than the exclusive benefit of Participants and their Beneficiaries. No amendment shall deprive any Participant or Beneficiary of any benefits to which he or she is entitled under the Plan with respect to contributions previously made to the Plan.

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## ARTICLE XIII

### TRUST AND THE TRUSTEE/CO-TRUSTEES

#### 13.01 Employer to Select Trustee/Co-trustees

~~The Employer shall select a Trustee to hold and invest the Trust Fund in accordance with the terms of a trust agreement and/or other contract. The Trustee/Co-trustees shall be the City Treasurer, the City Manager and the Retirement Administrator or their designees provided the City Treasurer is qualified to operate as a trustee. The Co-trustees may jointly delegate their duties under the Plan pursuant to the terms of a properly executed trust agreement and/or other contract. The trust agreement and/or other contract may include a provision for participation in a joint or associated Trust Fund or pooled separate account for the purpose of pooling investment experience. The Employer may, from time to time, change the Trustee then serving under the trust agreement and/or other contract to another Trustee or elect to terminate the trust and/or other contract and hold the Plan assets in any other method acceptable under ERISA.~~

~~The Trustee/Co-trustees shall invest, manage, acquire, and dispose of the Plan's assets. The Trustee/Co-trustees shall be trustees and fiduciaries within the meaning of applicable federal and California trust law with respect to investment, management, and control of the Trust Fund, unless such duties are retained by the Employer or otherwise delegated under the terms of the trust agreement and/or other contract. The trust agreement and/or other contract may include provision for participation in a joint or associated Trust Fund or pooled separate account for the purpose of pooling investment experience.~~

~~The Co-trustees may be reimbursed from the Trust Fund for all necessary and proper expenses incurred in carrying out their duties under the Plan, including the compensation or fees of accountants, counsel, employees of the City of San Diego and other specialists, provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.~~

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**REDLINE/STRIKEOUT VERSION OF  
SPSP PLAN AMENDMENTS TO  
BRING PLAN INTO CONFORMANCE WITH  
STATE AND FEDERAL LAWS**

**THESE AMENDMENTS DO NOT REQUIRE  
A VOTE OF APPROVAL FROM PLAN PARTICIPANTS  
AND THUS WILL BECOME EFFECTIVE UPON  
ADOPTION BY CITY COUNCIL**

**ARTICLE I**

**DEFINITIONS**

Whenever used herein, the following words and phrases shall have the meaning specified below. Additional words and phrases may be defined in the text of the Plan.

1.01 through 1.09 [NO CHANGE]

~~1.10 ERISA~~

~~"ERISA" means the Employee Retirement Income Security Act of 1974, as periodically amended. [DELETED PER CHANGE REQUIRED TO CONFORM WITH FEDERAL LAW]~~

1.11 through 1.22 [RENUMBERED TO READ 1.10 TO 1.21]

1.23 Plan

"Plan" means the Plan designated as the City of San Diego Supplemental Pension Savings Plan, as described in this document and as it may be periodically amended. The Plan is a Governmental Plan within the meaning of Code section 414(d) and thus is not governed by the Employee Retirement Income Security Act of 1974 ("ERISA").

1.24 through 1.27 [RENUMBERED TO READ 1.23 TO 1.26]

1.28 [RENUMBERED AND AMENDED TO IMPLEMENT PARTICIPANT DIRECTED INVESTMENT OPTION]

1.29 [RENUMBERED]

1.30 [RENUMBERED AND AMENDED TO IMPLEMENT PARTICIPANT DIRECTED INVESTMENT OPTION]

1.31 through 1.34 [RENUMBERED TO READ 1.30 TO 1.33]

**ARTICLE II**  
**PARTICIPATION**

2.01 [NO CHANGE]

2.02 [NO CHANGE]

2.03 Designation of Beneficiary

~~Subject to limitations of California community property law,~~ Each Participant shall designate a Beneficiary to receive any death benefit payable under the Plan. In the event the Participant dies before a distribution has occurred pursuant to Sections 7.01, 7.02, or 8.01, such distribution shall be paid to ~~the Participant's surviving spouse. If there is no surviving spouse, or if the surviving spouse consents to forego receipt of the distribution in accordance with Section 9.04, distribution shall be made to~~ any person, persons or entity designated by the Participant as a Beneficiary hereunder. If more than one Beneficiary is named, the Participant may specify the sequence and/or proportion in which payments must be made to each Beneficiary. In the absence of such specification, payments shall be made in equal shares to all named Beneficiaries. To the extent otherwise consistent with this Plan, a Participant may change his Beneficiary from time to time by written notice delivered to the Plan Administrator in the manner prescribed by the Plan Administrator. If no Beneficiary has been designated or if no designated Beneficiary is living at the time of the Participant's death, payment of such death benefit, if any, to the extent permitted by law, shall be made to the surviving person or persons in the first of the following classes of successive preference of Beneficiaries: (a) surviving spouse, (b) lineal descendants on the principle of representation, (c) parents, (d) executors or administrators. Any minor's share shall be paid to such adult or adults as have, in the opinion of the Plan Administrator, assumed custody and support of such minor. Proof of death satisfactory to the Plan Administrator must be furnished prior to the payment of any death benefit under the Plan.

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**ARTICLE IX**  
**DISTRIBUTION OF BENEFITS**

9.01 [NO CHANGE]

9.02 [NO CHANGE]

9.03 [NO CHANGE]

9.04 [NO CHANGE]

9.05 [NO CHANGE]

9.06 Direct Rollover to an Eligible Retirement Plan

Notwithstanding any provision of the Plan to the contrary that would otherwise limit a Participant's election under this Section, effective January 1, 1993, a Participant may elect at the time and in the manner prescribed by the City to have any portion of an Eligible Rollover Distribution paid directly to an Eligible Retirement Plan specified by the participant in a Direct Rollover.

Solely for purposes of this Section, the following definitions shall apply:

- (a) "Participant" shall mean a current or former Employee, the current or former Employee's surviving spouse, or a current or former Employee's ex-spouse who is an alternate payee under a qualified domestic relations order as defined in Section 414(p) of the Code.
- (b) "Eligible Rollover Distribution" shall mean a lump sum or a series of substantially equal periodic or installment payments made at least annually for a selected period of less than ten years, excluding any mandatory distribution under Section 401(a)(9) of the Code and the portion of any distribution which represents any after tax Employee contributions which are not includible in the Employee's gross income.
- (c) "Eligible Retirement Plan" shall mean an individual retirement account or annuity described in Sections 408(a) and (b) of the Code, an annuity plan described in Section 403(a) of the Code or a qualified trust described in Section 401(a) of the Code. However, in the case of an "Eligible Retirement Plan" for a surviving spouse, an Eligible Retirement Plan means an individual retirement account or annuity described in Sections 408(a) and (b) of the Code.
- (d) "Direct Rollover" means a payment by the Plan made to the Eligible Retirement Plan specified by the Participant.

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## ARTICLE X

### PLAN ADMINISTRATOR

10.01 [NO CHANGE]

10.02 Powers and Duties

- (a) The Plan Administrator shall have full power to administer the Plan and to construe and apply all of its provisions on behalf of the Employer. The Plan Administrator shall be a ~~Named Ffiduciary~~ within the meaning of ~~Section 402(a) of ERISA~~ applicable California and federal trust law for purposes of Plan administration. The Plan Administrator may delegate to any other person or organizations any of its powers and duties with respect to the operation of this Plan. The Plan Administrator's powers and duties, unless properly delegated, shall include, but shall not be limited to:

[SUBSECTIONS i THROUGH vi NO CHANGE]

- (b) ~~The Plan Administrator shall require the City to be joined in any legal action before formally recognizing any domestic relations order, judgment or decree from a court of law which creates or recognizes the existence of a former spouse's right or assigns to a former spouse the right, to receive all or a portion of the benefits payable or amounts credited to the Account of a Plan Participant.~~

~~The Plan Administrator shall determine whether domestic relations orders represent "qualified domestic relations orders" as that term is defined in Section 414(p) of the Code or a successor provision. If the Plan Administrator determines the order is a qualified domestic relations order the Plan Administrator shall direct the manner and time of distribution pursuant to the order. Prior to such determination the Plan Administrator shall promptly notify the Participant affected with respect to the order and any payee under the order of the receipt of the order. The Plan Administrator shall send such notices to the address set forth in the order, or if the address is not set forth therein, to the last known address. Such notice shall state that the Plan Administrator is in the process of determining whether the order is a qualified domestic relations order and such notice shall also permit a reasonable period under the circumstances for comment with respect to such determination. During such period the Plan Administrator shall cause the amounts otherwise payable under the order to be segregated in a separate account. After the determination is made, the Plan Administrator shall notify the Participant and any payee under the order of such determination. Any payee may designate a representative for receipt of copies of notices sent to the payee with respect to the order.~~

~~In the event the Plan Administrator receives an order, joinder, summons, or other legal action which may result in a qualified domestic relations order, the Plan Administrator may withhold any payment from the Plan beyond the date such payment would be distributed, to a maximum of 90 days.~~

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The Plan Administrator shall establish rules and procedures in conformance with applicable California community property law for the proper response, evaluation and processing of court notices and orders related to the division of a Plan Participant's Account in the event of dissolution of marriage.

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## ARTICLE XIII

### TRUST AND THE CO-TRUSTEES

#### 13.01 Co-trustees

The Co-trustees shall be the City Treasurer, the City Manager and the Retirement Administrator or their designees. The Co-trustees may jointly delegate their duties under the Plan pursuant to the terms of a properly executed trust agreement and/or other contract. The trust agreement and/or other contract may include a provision for participation in a joint or associated Trust Fund or pooled separate account for the purpose of pooling investment experience.

The Co-trustees shall invest, manage, acquire, and dispose of the Plan's assets. The Co-trustees shall be the ~~Named Fiduciary trustees and fiducianes~~ within the meaning of ~~ERISA applicable federal and California trust law~~ with respect to investment, management, and control of the Trust Fund.

The Co-trustees may be reimbursed for all necessary and proper expenses incurred in carrying out duties under the Plan, including the compensation or fees of accountants, counsel, employees of the City of San Diego and other specialists, provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.

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