

RESOLUTION NUMBER R-286397

ADOPTED ON OCTOBER 9, 1995

WHEREAS, The City of San Diego ("City") maintains a number of tax qualified plans such as the San Diego City Employees' Retirement System ("SDCERS"), the Supplemental Pension Savings Plans ("SPSP") and 401(k); and

WHEREAS, Internal Revenue Code ("IRC") § 401(a)(17) provides an annual compensation limit for each employee under a qualified plan; and

WHEREAS, a qualified plan does not satisfy IRC § 401(a)(17) unless it provides that an employee's compensation in excess of the annual limit is not used in determining allocations or accruals for a plan year to which the annual limit applies; and

WHEREAS, IRC § 401(a)(17) also governs the amount of an employee's annual compensation that may be taken into account in applying certain specified nondiscrimination rules under the IRC; and

WHEREAS, The Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") amended IRC § 401(a)(17) to reduce the annual compensation limit from \$200,000 as indexed (\$235,840 in 1993) to \$150,000 in 1994, with limited future indexing; and

WHEREAS, prior to the effective date of the OBRA '93 changes, the annual compensation limit was increased annually based on the IRC § 415 cost of living adjustment; and

WHEREAS, after the effective date of OBRA '93, the annual

compensation limit, as adjusted for changes in the cost of living, is rounded down to the next lowest multiple of \$10,000, thus increasing only when the cost of living adjustment would increase the limit by an increment of at least \$10,000; and

WHEREAS, according to OBRA '93, a qualified plan must expressly limit the amount of compensation that it takes into account for purposes of calculating allocations or accruals, even if there are no participants whose compensation presently exceeds the limits mandated by IRC § 401(a)(17); and

WHEREAS, public and private sector plans which do not contain the limitations mandated by IRC § 401(a)(17) are required to amend their plans accordingly; and

WHEREAS, OBRA '93 also permits public sector plans to grandfather the use of compensation limits specified in the plan as of July 1, 1993, for employees participating in the plan prior to January 1, 1996; and

WHEREAS, the annual compensation limit specified in the 401(k) and SPSP plans as of July 1, 1993, was \$235,840; and

WHEREAS, in order to take advantage of the grandfather provision, the 401(k) and SPSP plans must be amended before the plan year beginning in 1996 to incorporate the revised limits mandated by IRC § 401(a)(17) as amended by OBRA '93; and

WHEREAS, the grandfather provision does not apply unless the 401(k) and SPSP plans are amended to add the new \$150,000 limit for employees who become members of the plans after 1995; and

WHEREAS, failure to adopt this amendment for the 401(k) and SPSP plans will result in all participants being subject to the

new lower limits effective with plan years beginning in 1996; and
WHEREAS, the 401(k) and SPSP plan documents specify that the City of San Diego may amend these plans without a vote of the plan participants to implement changes to bring the plans into conformance with federal tax law; and

WHEREAS, it is now necessary and appropriate to amend the 401(k) and SPSP plans to incorporate the annual compensation limit of IRC § 401(a)(17) as amended by OBRA '93, including the grandfather provision for current members; NOW, THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego, that the definition of compensation in the 401(k), SPSP, SPSP-M and SPSP-H plans is amended as set forth in Attachments 1 - 4, respectively, on file in the office of the City Clerk as Document Nos. RR- 286397(1), 286397(2), 286397(3) and 286397(4), to bring the Plans into conformance with federal tax law, effective upon the date of adoption of this resolution by the City Council.

APPROVED: JOHN W. WITT, City Attorney

By Loraine E Chapin
Loraine E. Chapin
Deputy City Attorney

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Or.Dept:Risk.Mgmt.
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ARTICLE IDEFINITIONS

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 1.03 [NO CHANGE]

1.04 Compensation

"Compensation" means regular bi-weekly salary, special assignment pay, shift differentials, paid sick leave, industrial leave, paid annual leave, pay in lieu of annual leave, paid overtime, and including amounts contributed by an Employee through salary deduction to the City of San Diego's 401(k) Plan. Compensation shall exclude any salary reduction authorized for a Plan established in accordance with Section 125 of the Code or any salary deferral for a Plan of deferred compensation established in accordance with Section 457 of the Code, Workers' Compensation, Long-term Disability Benefits, bonus awards, suggestion awards, termination payoffs for accrued sick leave and annual leave upon termination, retirement and deferred compensation benefit payments and any death benefits. Compensation is limited to \$200,000 beginning January 1, 1989. This limit will be adjusted annually in accordance with Section 401(a)(17) of the Code. As of July 1, 1993, this limit, as adjusted, was \$235,840.

In accordance with the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), except as provided herein, the annual compensation taken into account under the Plan for any purpose, including but not limited to contributions and/or benefits, shall not exceed \$150,000 or such larger amount as allowed by Section 401(a)(17) of the Code. This \$150,000 limit shall only apply for years beginning after December 31, 1995, and shall only apply to individuals who first become members of the Plan in plan years beginning on and after January 1, 1996.

Individuals who become members of the Plan before plan years beginning on and after January 1, 1996, shall not be subject to the limits of Internal Revenue Code section 401(a)(17). Instead, the annual compensation limit will not apply to these individuals to the extent that application of the limit would reduce the amount of compensation taken into account under the Plan below the amount that was allowed to be taken into account under the Plan as it was in effect on July 1, 1993.

1.05 through 1.26 [NO CHANGE]

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1.06 through 1.34 [NO CHANGE]

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1.06 through 1.30 [NO CHANGE]