

RESOLUTION NUMBER R- 292049

ADOPTED ON AUG 02 1999

WHEREAS, The City of San Diego (City) maintains and administers a number of tax qualified defined contribution savings plans (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 were amended pursuant to Resolution No. R-285505 on March 20, 1995 to allow for third party administration and investment services and to establish Co-Trustees to manage the Trust Fund; and

WHEREAS, the Plans were amended pursuant to Resolution No. R-287054 on March 18, 1996 to add two additional Co-Trustees who are elected by the SPSP Plans and 401(k) Plan Participants and to add a loan program; and

WHEREAS, the SPSP and SPSP-M Plan amendments were subject to approval by SPSP and SPSP-M Plan Participants who approved said 1995 and 1996 changes through a vote conducted in July 1996; and

WHEREAS, with the establishment of the Co-Trustees known as the Defined Contribution Plans (DCP) Trustee Board, the implementation of the third party administrator/investor, and discussions during the meet and confer process, several plan document revisions have been identified to 1) establish procedures not previously determined; 2) change procedures to enhance the plans provisions or administration; 3) reflect current practice or 4) comply with changes to the regulations; and

WHEREAS, these changes are as follows:

1. Reflect details of the established loan procedures adopted by the DCP Trustee Board for the SPSP, SPSP-M and 401(k) Plans which includes the restriction from annual in-service withdrawals when the loan has been defaulted;
2. Increase the limit that may be automatically paid out upon a distributable event, at the Plan Administrator's discretion, from \$3,500 to \$5,000 based on a change made by the Taxpayer Relief Act (TRA '97) for all four of the Plans;
3. Revise the term "hardship withdrawal" for the SPSP, SPSP-M and 401(k) Plans as defined by IRC Section 401(k) and the corresponding Treasury Regulations which currently include costs directly related to the purchase of a Participant's primary residence or payments of tuition and other related education expenses for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents;
4. Eliminate the exclusion of part-time or 3/4 time employees from the 401(k) Plan pursuant to the IRC regulations and eliminate the one year waiting period to participate in the 401(k) Plan due to changes to non-discrimination testing provisions;
5. Reflect the current practice for the SPSP, SPSP-M, and 401(k) Plans of allowing employees who have been on Long Term Disability for 12 months and are deemed permanently

and totally disabled to receive a total distribution, upon the Participant's request, prior to termination;

6. Eliminate the imposed safeharbor maximum limits in the 401(k) Plan to allow participants to increase 401(k) contributions up to the limit allowed under IRC 415c;

7. Revise the definition of "Compensation" for the 401(k) Plan to include any salary deferrals pursuant to a change allowed under the Pension Simplification Act;

8. Reflect the changes that were approved regarding Co-Trustees and Distribution of Benefits pursuant to R-287054;

9. Reflect the current practice allowing participants of SPSP-M hired between April 1, 1986 and July 1, 1986 to contribute 4.5% voluntary contribution as agreed to upon implementation of the Plan; 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; 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 as set forth in this resolution and in Attachment A, on file in the office of the City Clerk, as Document No. RR- 292049, subject to a vote of approval by the Plan Participants as required and effective upon that date and effective upon the

date of adoption of this resolution by the City Council for those changes not requiring a vote of approval by the Plan Participants.

APPROVED: CASEY GWINN, City Attorney

By Stuart H. Swett  
Stuart H. Swett  
Deputy City Attorney

SHS:smf  
07/14/99  
Or.Dept:RiskMgmt.  
R-2000-87  
Form=r-t.frm

~~REDLINE/STRIKEOUT~~ VERSION OF  
SPSP, SPSP-M PLAN AMENDMENTS

THESE AMENDMENTS MUST BE APPROVED  
BY MAJORITY VOTE OF THE SPSP AND SPSP-M  
PLAN PARTICIPANTS

DOCUMENT NO. RP-292049  
FILED AUG 02 1999  
OFFICE OF THE CITY CLERK  
SAN DIEGO, CALIFORNIA

**ATTACHMENT A**

## SPSP, SPSP-M PLAN DOCUMENTS

### ARTICLE XV

#### MISCELLANEOUS

##### 15.09 Loan Program

~~A loan program for the benefit of Plan Participants will be established by January 1, 1997. The provisions of the Program will be added to the Plan when they have been established.~~

A Plan Participant may borrow an amount that does not exceed the lesser of 50% of their vested account balance or \$50,000, reduced by the excess, if any, of the highest outstanding balance of loans from any related plans during the one year period ending before the date on which such loan is made, including repaid loans during that period. The minimum loan amount is \$500. The Participant determines the length of repayment up to five years. The interest rate is determined monthly by the Plan Administrator and is based on the return rate that is comparable to interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. The interest rate is fixed for the term of the loan at the time the loan is approved. A participant may have one outstanding loan per Plan at a time. A \$50 loan setup fee will be deducted from the Participant's loan check. The Plan Administrator is the fiduciary responsible for administering the Plan's loan program.

A Participant's request to take a loan from the Plan will be approved if he or she is a current employee of the City and the Participant has a sufficient net bi-weekly pay to satisfy the anticipated bi-weekly loan payment deductions associated with the requested terms of the loan.

A Participant initiates a loan by calling the Third Party Administrator's Participant Services Line and requesting via a Service Representative or automated system. All loan requests must be made through a fully executed loan application generated by the Third Party Administrator and sent to the Participant.

Spousal consent is required on all loans for Participants who are married as documented by the spouse's signature and witnessed by a Notary. Spousal consent shall not be required from a married Participant if it is demonstrated to the satisfaction of the Plan Administrator that the spouse cannot be located or spousal consent is not required by operation of the law.

The obligation of the borrowing participant shall be evidenced by a note which shall contain the terms of repayment and provisions covering default. The Third Party Administrator shall cause to be furnished to any participant receiving a loan any information required to be furnished pursuant to the Federal Truth in Lending Act, if applicable, or pursuant to any other applicable law. The Participant's vested accrued benefit portion of their account will serve as the collateral for the loan from the Plan.

The loan amount is withdrawn from the Participant's account pro rata by investment fund and by portion.

Repayment of the loan, and interest, is paid bi-weekly in substantially level payments through payroll deduction and applied to the Participant's account pro rata by portion. All loans will be amortized on a bi-weekly basis. The loan repayments are deducted after-tax and replace the contributions initially deducted for the loan. The loan payments are invested back into the accounts according to the participant's current investment election to the funds. Loans may be paid off early without penalty by lump sum payment. No partial payments of the loan is available. Any overpayment of a loan will be returned to the Participant.

The Plan Administrator has fiduciary responsibility to safeguard the Plan's assets and may deem a Participant's outstanding loan balance to be in default if:

- (i) the Participant dies;
- (ii) the Participant fails to make timely payments on his or her loan;
- (iii) there is a negative change in the Participant's financial affairs that in the opinion of the Plan Administrator impairs the security risk of the loan, or
- (iv) the Internal Revenue Service denies approval of the Plan's loan provisions or the tax qualified status of the Plan.

If a loan is not repaid for a period of 30 days or more after the date it would have been paid through payroll deduction, the Plan Administrator may consider the total outstanding loan balance to be in default. The Third Party Administrator will notify the Participant when a loan payment payroll deduction was not made. Terminated Participants, Participants with insufficient bi-weekly net pay to satisfy the bi-weekly loan payment payroll deduction, and Participants on Leave Without Pay must continue to repay their loans directly to the Third Party Administrator by cashiers checks or money order. There is no continuance of loan repayments upon a Participant's death. If the outstanding loan payment(s) is not received within thirty days from the date of the notice from the Third Party Administrator, the loan will be defaulted. The total outstanding loan balance will

R-292049

be deemed distributed and reported via a 1099-R for the calendar year in which the loan is defaulted. Once the loan has been defaulted, it will not continue to accrue interest. No further payment can be accepted on the loan after it has been defaulted. The Participant will be subject to personal and penalty taxes on the deemed distribution.

The defaulted loan balance will remain outstanding in the Participant's account until the loan has been paid or there has been a distributable event at which time the loan balance can be offset against the account to satisfy the loan obligation. No withdrawals will be allowed until the defaulted loan is satisfied. Employee contributions and the earnings thereon that would normally be available to the Participant to make a once a year in-service withdrawal, will be applied toward the defaulted loan balance at the end of each calendar year until the loan has been satisfied in full. The Participant may not take any further loan from the Plan while the defaulted loan balance is outstanding.



## SPSP, SPSP-M PLAN DOCUMENTS

### ARTICLE IX

#### DISTRIBUTION OF BENEFITS

##### 9.03 Small Benefits

Notwithstanding any provisions of the Article IX, if the vested value of a Participant's Account as of retirement, disability, death, or termination of employment, is ~~\$3,500~~ \$5,000 or less, then such benefit, at the discretion of the Plan Administrator, will be paid to the Participant, or Beneficiary if applicable, in a lump sum cash payment, together with the value of the Participant's Employee Mandatory Contribution Account and Employee Voluntary Contribution Account. Such payment will be in lieu of all other benefits payable under the Plan to such Participant or Beneficiary.

# SPSP , SPSP-M PLAN DOCUMENTS

## ARTICLE I

### DEFINITIONS

#### 1.10 Extreme Financial Hardship

"Extreme Financial Hardship" is ~~severe financial hardship~~ an immediate and heavy financial need that cannot be satisfied from other resources that are reasonably available to the participant resulting from a sudden and unexpected illness or accident of the participant or of a dependent of the participant or other similar extra-ordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant as defined by Internal Revenue Code Section 401(k) and the corresponding Treasury Regulations pertaining to that section. The Participant's resources are deemed to include those assets of the Participant's spouse and minor children that are reasonably available to the Participant.

The following types of distribution are deemed to be on account of an immediate and heavy financial need if the distribution is for:

- (i) expenses for necessary medical care previously incurred by the Participant, the Participant's spouse, children or dependents, or for expenses that are necessary for these persons to obtain medical care,
- (ii) costs directly related to the purchase of a Participant's principal residence (excluding mortgage payments),
- (iii) payments of tuition, related education fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents,
- (iv) payments necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage on that residence, or
- (v) costs directly related to an unforeseeable and extraordinary event or emergency that is beyond the Participant's control, such as but not limited to an unexpected illness or accident of the Participant, the Participant's spouse, children, or dependents, the loss or damage of the Participant's property due to casualty or any act of God, or the payment of funeral expenses for the Participant's spouse, children, dependents, or parents.

The determination as to whether a hardship withdrawal is necessary to satisfy an immediate and heavy financial need will be based on all the relevant facts and circumstances surrounding the Participant's request, resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of event beyond control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the fact of each case, but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (i) through reimbursement or compensation by insurance or otherwise,
- (ii) by liquidation of the Participant's assets, to the extent such liquidation of such assets would not itself cause severe financial hardship, or
- (iii) by cessation of Deferral Contributions under the Plan: and all other City plans, or
- (iv) by obtaining a loan that is available under the Plan and all other City plans.

**SPSP, SPSP-M PLAN DOCUMENTS**

**ARTICLE VI**

**WITHDRAWALS WHILE EMPLOYED**

**6.06 Withdrawal due to Disability**

Once a Participant meets the definition of Permanently and Totally Disabled under the Plan as defined in Section 1.21, he or she may request a distribution of the Account in accordance with Section 7.02, as provided in Section 9.04.

## SPSP, SPSP-M, PLAN DOCUMENTS

### ARTICLE XIII

#### TRUST AND THE CO-TRUSTEE

##### 13.01 Co-Trustees

The Co-Trustees shall be the City Treasurer, the City Manager Risk Management Director, the Retirement Administrator or their designees, and one Trustee elected by the combined active participants in the SPSP, SPSP-M, and SPSP-H Plans and one employee of the City elected by the active 401(k) Plan Participants. The Co-Trustees may only delegate their duties under the Plan after unanimous agreement and 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 trustees and fiduciaries within the meaning of applicable federal and California trust law with respect to investment, management, and control of the trust Fund.

The Trust Fund may reimburse the Co-Trustees 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 specialist, provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.

##### 13.02 Trustee Election by Plan Participants

The term for the Trustee elected by the Plan Participants shall be three (3) years. ~~There shall be a maximum of two terms, whether consecutive or non-consecutive, than any employee may serve.~~ The Plan Administrator shall be responsible for establishing and implementing necessary and appropriate procedure to conduct the elections for the Plan Participant Trustee in accordance with this provision. Nomination petitions for the position of Trustee shall be signed by ten active participants in either the SPSP, SPSP-M, or SPSP-H Plan. ~~The nominee getting the most votes will be seated as the Trustee.~~ A majority of the votes, plus one, cast shall be necessary in order to be elected. Should no nominee receive a majority plus one of the votes cast, a runoff election between the two nominees receiving the most votes will be held with nominee receiving the majority of votes being appointed.

R-292049

## SPSP, SPSP-M PLAN DOCUMENTS

### ARTICLE IX

#### DISTRIBUTION OF BENEFITS

##### 9.04 Application for Benefits and Timing of Distribution

(a) Termination of Employment or Retirement

~~Within a 30-day period following a Participant's termination, retirement or death, the Participant (or his Beneficiary in the case of death) is to file an application for benefits. On the application, the Participant (or Beneficiary) shall elect the form in which payments are made, in accordance with the options described in Section 9.01 or 9.02, as applicable.~~

~~If no application is received within the 30-day period, the Plan Administrator shall automatically pay the vested value of the Participant's Accounts in a single lump sum cash payment within 60 days of the date of the Participant's termination, retirement, or death. Interest shall be earned on such Accounts to the date of distribution.~~

~~Upon termination or retirement, a Participant must request a distribution in accordance with the options described in Section 9.01 or 9.02, as applicable. Until a distribution request is received by the Plan Administrator, or their designee, the vested value of the Participant's Accounts will remain invested in the same manner preceding termination or retirement. The Participant may continue to self direct investments receiving subsequent gains/losses until distribution of the Account has been made.~~

~~In no event will the entire interest of a Participant be distributed, or commence to be distributed later than the April 1 following the calendar year in which the Participant attains age 70 ½ or retires, whichever is later.~~

(b) Death

~~Subject to the requirements of Section 9.02, payment will be made within 30 days of receipt of a certified copy of the deceased Participant's death certificate and upon receipt of an application for benefits a distribution form from the Beneficiary but not later than five years from the Participant's death. Interest shall be earned on the Participant's and non-Participant's Accounts to the date of distribution.~~

R-292049

## SPSP-M PLAN DOCUMENT

### ARTICLE I

#### DEFINITIONS

##### 1.08 Employee

"Employee" means each employee of the City of San Diego who is a member of one of the following classifications and whose initial date of hire or rehire is on or after ~~July 1, 1986~~ April 1, 1986:

- (a) All employees eligible to participate as General Members of CERS ~~or the 1981 Pension Plan~~.
- (b) Legislative Members of CERS ~~or the 1981 Pension Plan~~ (the Mayor and City Council member of the City of San Diego).
- (c) Safety Members of CERS ~~or the 1981 Pension Plan~~ covered by Social Security as of December 31, 1981.
- (d) All salaried employees working at least one-half time in the Unclassified Service hired on or after September 3, 1982, and who have opted not to become members of the ~~CERS~~ the 1981 Pension Plan.

##### 3.01 Participant Contributions

- (b) Each Participant, ~~hired or rehired on or after July 1, 1986~~, who is also a Participant in CERS may elect, on his or her date of employment, to contribute an additional amount up to 3.05% of Compensation. ~~Participants hired between April 1, 1986 and June 30, 1986 may elect to contribute an additional amount up to 4.5% of Compensation.~~ Effective July 1, 1991, the Voluntary Contribution limitation for each Participant who is not a participant in CERS is an amount of up to 3.75% of Compensation. Such amounts shall be credited to the Participant's Employee Voluntary Contribution Account, and shall be referred to as Voluntary Contributions. A Participant's Voluntary Contributions must be deducted from his or her bi-weekly Compensation. If a Participant is on leave of absence from the Employer, then upon his or her return the Participant shall not be permitted to make up Voluntary Contributions which could have been made had the Participant been in active employment during such leave.

~~REDLINE/STRIKEOUT~~ VERSION OF  
SPSP-H PLAN AMENDMENTS

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



## SPSP-H PLAN DOCUMENT

### ARTICLE IX

#### DISTRIBUTION OF BENEFITS

##### 9.03 Small Benefits

Notwithstanding any provisions of the Article IX, if the vested value of a Participant's Account as of retirement, disability, death, or termination of employment, is ~~\$3,500~~ \$5,000 or less, then such benefit, at the discretion of the Plan Administrator, will be paid to the Participant, or Beneficiary if applicable, in a lump sum cash payment, together with the value of the Participant's Employee Mandatory Contribution Account and Employee Voluntary Contribution Account. Such payment will be in lieu of all other benefits payable under the Plan to such Participant or Beneficiary.

## SPSP-H PLAN DOCUMENT

### ARTICLE XIII

#### TRUST AND THE CO-TRUSTEE

##### 13.01 Co-Trustees

The Co-Trustees shall be the City Treasurer, the City Manager Risk Management Director, the Retirement Administrator or their designees, and one Trustee elected by the combined active participants in the SPSP, SPSP-M, and SPSP-H Plans and one employee of the City elected by the active 401(k) Plan Participants. The Co-Trustees may only delegate their duties under the Plan after unanimous agreement and 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 trustees and fiduciaries within the meaning of applicable federal and California trust law with respect to investment, management, and control of the trust Fund.

The Trust Fund may reimburse the Co-Trustees 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 specialist, provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.

##### 13.02 Trustee Election by Plan Participants

The term for the Trustee elected by the Plan Participants shall be three (3) years. ~~There shall be a maximum of two terms, whether consecutive or non-consecutive, than any employee may serve.~~ The Plan Administrator shall be responsible for establishing and implementing necessary and appropriate procedure to conduct the elections for the Plan Participant Trustee in accordance with this provision. Nomination petitions for the position of Trustee shall be signed by ten active participants in either the SPSP, SPSP-M, or SPSP-H Plan. ~~The nominee getting the most votes will be seated as the Trustee.~~ A majority of the votes, plus one, cast shall be necessary in order to be elected. Should no nominee receive a majority plus one of the votes cast, a runoff election between the two nominees receiving the most votes will be held with nominee receiving the majority of votes being appointed.

R- 292049

SPSP-H PLAN DOCUMENT

ARTICLE IX

DISTRIBUTION OF BENEFITS

9.04 Application for Benefits and Timing of Distribution

(a) Termination of Employment or Retirement

~~Within a 30-day period following a Participant's termination, retirement or death, the Participant (or his Beneficiary in the case of death) is to file an application for benefits. On the application, the Participant (or Beneficiary) shall elect the form in which payments are made, in accordance with the options described in Section 9.01 or 9.02, as applicable.~~

~~If no application is received within the 30-day period, the Plan Administrator shall automatically pay the vested value of the Participant's Accounts in a single lump sum cash payment within 60 days of the date of the Participant's termination, retirement, or death. Interest shall be earned on such Accounts to the date of distribution.~~

~~Upon termination or retirement, a Participant must request a distribution in accordance with the options described in Section 9.01 or 9.02, as applicable. Until a distribution request is received by the Plan Administrator, or their designee, the vested value of the Participant's Accounts will remain invested in the same manner preceding termination or retirement. The Participant may continue to self direct investments receiving subsequent gains/losses until distribution of the Account has been made.~~

~~In no event will the entire interest of a Participant be distributed, or commence to be distributed later than the April 1 following the calendar year in which the Participant attains age 70 ½ or retires, whichever is later.~~

(b) Death

~~Subject to the requirements of Section 9.02, payment will be made within 30 days of receipt of a certified copy of the deceased Participant's death certificate and upon receipt of an application for benefits a distribution form from the Beneficiary but not later than five years from the Participant's death. Interest shall be earned on the Participant's and non-Participant's Accounts to the date of distribution.~~

~~REDLINE~~/STRIKEOUT VERSION OF  
401(k) PLAN AMENDMENTS

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

## 401(k) PLAN DOCUMENT

### ARTICLE XIII

#### MISCELLANEOUS

##### 13.09 Loan Program

A loan program for the benefit of employees will be established by January 1, 1997. The provisions of the Program will be added to the Plan when they have been established.

A Plan Participant may borrow an amount that does not exceed the lesser of 50% of their vested account balance or \$50,000, reduced by the excess, if any, of the highest outstanding balance of loans from any related plans during the one year period ending before the date on which such loan is made, including repaid loans during that period. The minimum loan amount is \$500. The Participant determines the length of repayment up to five years. The interest rate is determined monthly by the Plan Administrator and is based on the return rate that is comparable to interest rates charged by persons in the business of lending money for loans which would be made under similar circumstances. The interest rate is fixed for the term of the loan at the time the loan is approved. A participant may have one outstanding loan per Plan at a time. A \$50 loan setup fee will be deducted from the Participant's loan check. The Plan Administrator is the fiduciary responsible for administering the Plan's loan program.

A Participant's request to take a loan from the Plan will be approved if he or she is a current employee of the City and the Participant has a sufficient net bi-weekly pay to satisfy the anticipated bi-weekly loan payment deductions associated with the requested terms of the loan.

A Participant initiates a loan by calling the Third Party Administrator's Participant Services Line and requesting via a Service Representative or automated system. All loan requests are paperless. Spousal consent is not required.

The obligation of the borrowing participant shall be evidenced by a note which shall contain the terms of repayment and provisions covering default. The Third Party Administrator shall cause to be furnished to any participant receiving a loan any information required to be furnished pursuant to the Federal Truth in Lending Act, if applicable, or pursuant to any other applicable law. The Participant's vested accrued benefit portion of their account will serve as the collateral for the loan from the Plan.

The loan amount is withdrawn from the Participant's account pro rata by investment fund and by portion.

Repayment of the loan, and interest, is paid bi-weekly in substantially level payments through payroll deduction and applied to the Participant's account pro rata by portion. All loans will be amortized on a bi-weekly basis. The loan repayments are deducted after-tax and replace the contributions initially deducted for the loan. The loan payments are invested back into the accounts according to the participant's current investment election to the funds. Loans may be paid off early without penalty by lump sum payment. No partial payments of the loan is available. Any overpayment of a loan will be returned to the Participant.

The Plan Administrator has fiduciary responsibility to safeguard the Plan's assets and may deem a Participant's outstanding loan balance to be in default if:

- (i) the Participant dies;
- (ii) the Participant fails to make timely payments on his or her loan;
- (iii) there is a negative change in the Participant's financial affairs that in the opinion of the Plan Administrator impairs the security risk of the loan, or
- (iv) the Internal Revenue Service denies approval of the Plan's loan provisions or the tax qualified status of the Plan.

If a loan is not repaid for a period of 30 days or more after the date it would have been paid through payroll deduction, the Plan Administrator may consider the total outstanding loan balance to be in default. The Third Party Administrator will notify the Participant when a loan payment payroll deduction was not made. Terminated Participants, Participants with insufficient bi-weekly net pay to satisfy the bi-weekly loan payment payroll deduction, and Participants on Leave Without Pay must continue to repay their loans directly to the Third Party Administrator by cashiers checks or money order. There is no continuance of loan repayments upon a Participant's death. If the outstanding loan payment(s) is not received within thirty days from the date of the notice from the Third Party Administrator, the loan will be defaulted. The total outstanding loan balance will be deemed distributed and reported via a 1099-R for the calendar year in which the loan is defaulted. Once the loan has been defaulted, it will not continue to accrue interest. No further payment can be accepted on the loan after it has been defaulted. The Participant will be subject to personal and penalty taxes on the deemed distribution.

The defaulted loan balance will remain outstanding in the Participant's account until the loan has been paid or there has been a distributable event at which

R- 292049

time the loan balance can be offset against the account to satisfy the loan obligation. No withdrawals will be allowed until the defaulted loan is satisfied. Employee contributions and the earnings thereon that would normally be available to the Participant to make a once a year in-service withdrawal, will be applied toward the defaulted loan balance at the end of each calendar year until the loan has been satisfied in full. The Participant may not take any further loan from the Plan while the defaulted loan balance is outstanding.

401(k) PLAN DOCUMENT

ARTICLE VII

TERMINATION AND DEATH BENEFITS  
DISTRIBUTION OF BENEFITS

7.05 Small Benefits

Notwithstanding any provisions of the Article VII, if the vested value of a Participant's Account is \$5,000 or less as of retirement, disability, death, or termination of employment, then such benefit, at the discretion of the Plan Administrator, will be paid to the Participant, or Beneficiary if applicable, in a lump sum cash payment or in a direct rollover to an eligible retirement plan, pursuant to Section 7.06.



## 401(K) PLAN DOCUMENT

### ARTICLE VI

#### WITHDRAWALS WHILE EMPLOYED

##### 6.01 Hardship Withdrawals

At any time, upon 30 days written notice from submission of the necessary completed forms to the Plan Administrator and subject to the Plan Administrator's approval, a Participant may withdraw all or a part of his or her Deferral Contributions as of the last day of the calendar quarter immediately preceding his or her withdrawal request, plus the amount of his or her Deferral Contributions made since such date, plus any earning credited to the Employee Deferral Account as of December 31, 1988, to the extent necessary to meet a financial hardship. Earnings credited to the Employee Deferral Account after December 31, 1988, may not be withdrawn. For purposes of this Section, the term "financial hardship" means a severe financial hardship an immediate and heavy financial need that cannot be satisfied from other resources that are reasonably available to the Participant as defined by Internal Revenue Code Section 401(k) and the corresponding Treasury Regulations pertaining to that section. The Participant's resources are deemed to include those assets of the Participant's spouse and minor children that are reasonably available to the Participant.

The following types of distribution are deemed to be on account of an immediate and heavy financial need if the distribution is for:

- (i) expenses for necessary medical care previously incurred by the Participant, the Participant's spouse, children or dependents, or for expenses that are necessary for these persons to obtain medical care,
- (ii) costs directly related to the purchase of a Participant's principal residence (excluding mortgage payments),
- (iii) payments of tuition, related education fees and room and board expenses for the next 12 months of post-secondary education for the Participant, the Participant's spouse, children or dependents,
- (iv) payments necessary to prevent the eviction of the Participant from his or her principal residence or the foreclosure on the mortgage on that residence, or

R-292049

emergency that is beyond the Participant's control, such as but not limited to an unexpected illness or accident of the Participant, the Participant's spouse, children, or dependents, the loss or damage of the Participant's property due to casualty or any act of God, or the payment of funeral expenses for the Participant's spouse, children, dependents, or parents.

The determination as to whether a hardship withdrawal is necessary to satisfy an immediate and heavy financial need will be based on all the relevant facts and circumstances surrounding the Participant's request, ~~resulting from a sudden and unexpected illness or accident of the Participant or of a dependent (as defined in Section 152(a) of the Code) loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of event beyond control of the Participant. The circumstances that will constitute an unforeseeable emergency will depend upon the fact of each case,~~ but, in any case, payment may not be made to the extent that such hardship is or may be relieved:

- (i) through reimbursement or compensation by insurance or otherwise,
- (ii) by liquidation of the Participant's assets, to the extent such liquidation of such assets would not itself cause severe financial hardship,
- (iii) by cessation of Deferral Contributions under the Plan: ~~and all other City plans, or~~
- (iv) ~~by obtaining a loan that is available under the Plan and all other City plans.~~

The Plan Administrator shall make whatever inquiry it deems necessary to determine the existence of a financial hardship, and the decision of the Plan Administrator shall be final.

The standards established by the Plan Administrator for determination of financial hardship shall be uniformly applied to all Participants.

The amount withdrawn shall not be in excess of the amount necessary to meet the financial hardship including amounts necessary to pay federal, state, or local taxes, or penalties reasonably anticipated as a result from the withdrawal. The amount of such withdrawal shall be taken from the Participant's Employee Deferral Account and paid to the Participant in a single sum.

R- 292049

## 401(k) PLAN DOCUMENT

### ARTICLE I

#### DEFINITIONS

##### 1.07 Employee

"Employee" means any person who is directly employed by the City of San Diego. ~~on a salaried, full-time basis.~~

### ARTICLE II

#### PARTICIPATION

##### 2.01 Eligibility to Participate

Each Employee who is a Participant in the Plan on June 30, 1988, shall remain a Participant on July 1, 1988, provided he or she is employed by the Employer on such date.

Each other Employee shall be eligible to become a Participant ~~upon completion of 12 months of Service.~~ ~~in the Plan as soon as administratively possible~~

## 401(k) PLAN DOCUMENT

### ARTICLE VI

#### WITHDRAWALS WHILE EMPLOYED

##### 6.02 Withdrawal due to Disability

Once a Participant meets the definition of Permanently and Totally Disabled under the Plan as defined in Section 1.26, he or she may request a distribution of the Account in accordance with Section 7.03.

### ARTICLE I

#### DEFINITIONS

##### 1.26 Permanently and Totally Disabled

"Permanently and Totally Disabled" means (1) the Participant is certified by a licensed physician that he or she is unable to perform any and/or all duties of his or her present occupation during a twelve consecutive month income payout period and (2) after the twelve months of disability, the Participant is unable to engage in any gainful occupation or employment for which the Participant is or becomes reasonably fitted by education, training, or experience.

401(k) PLAN DOCUMENT

ARTICLE III

CONTRIBUTIONS

3.01 Participant Contributions

- (a) Each Participant may elect to contribute an amount which is not less than \$1.00 per pay period for amounts contributed through a Flexible Benefits Plan and not less than \$10.00 per pay period for amounts contributed through salary reduction. The total annual aggregated contributions to ~~GERS/1984 Pension Plan, Supplemental Pension Savings Plan, including City match, Supplemental Pension Savings Plan-Medicare and 401(k)~~ cannot exceed the total "Annual Additions" as defined by Section 4.03.

~~The following safe harbor maximum 401(k) deferral percentages have been established and will be adjusted when necessary in consideration of the above Annual Additions limitations.~~

<u>Classification</u>	<u>Maximum Percentage</u>
Safety Member	8%
Unclassified Employee not member of a City Retirement System	8%
General Member	2%
Legislative Member	2%

All such contributions shall be made either by payroll deduction, transfer from a Flexible benefits Plan or both. Contributions shall be credited to the Participant's Employee Deferral Account, and shall be referred to as Deferral Contributions.

## 401(k) PLAN DOCUMENT

### ARTICLE I

#### DEFINITIONS

##### 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, 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. 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.

## 401(k) PLAN DOCUMENT

### ARTICLE XI

#### TRUST AND THE CO-TRUSTEE

##### 11.01 Co-Trustees

The Co-Trustees shall be the City Treasurer, the City Manager Risk Management Director, the Retirement Administrator or their designees, and one Trustee elected by the combined active participants in the SPSP, SPSP-M, and SPSP-H Plans and one Trustee elected by the active 401(k) Plan Participants. The Co-Trustees may only delegate their duties under the Plan after unanimous agreement and 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 trustees and fiduciaries within the meaning of applicable federal and California trust law with respect to investment, management, and control of the trust Fund.

The Trust Fund may reimburse the Co-Trustees 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 specialist, provided that those costs and expenses reimbursed from the Trust Fund relate solely to administration of the Plan or Trust.

##### 11.02 Trustee Election by Plan Participants

The term for the Trustee elected by the Plan Participants shall be three (3) years. ~~There shall be a maximum of two terms, whether consecutive or non-consecutive, than any employee may serve.~~ The Plan Administrator shall be responsible for establishing and implementing necessary and appropriate procedure to conduct the elections for the Plan Participant Trustee in accordance with this provision. Nomination petitions for the position of Trustee shall be signed by ten active participants in the 401(k) Plan. ~~The nominee getting the most votes will be seated as the Trustee.~~ A majority of the votes, plus one, cast shall be necessary in order to be elected. Should no nominee receive a majority plus one of the votes cast, a runoff election between the two nominees receiving the most votes will be held with nominee receiving the majority of votes being appointed.

R- 292049

## 401(k) PLAN DOCUMENT

### ARTICLE VII

#### TERMINATION AND DEATH BENEFITS

##### 7.03 Distribution of Benefits

Amounts distributable pursuant to Sections 7.01 or 7.02 will be distributed to the Participant (or Beneficiary) in a single lump sum cash payment upon receipt of a completed distribution request by the Participant (or Beneficiary). Until a distribution request is received by the Plan Administrator, or their designee, the vested value of the Account will remain invested in the same manner preceding termination, retirement or death. The Participant (or Beneficiary) may continue to self direct investments receiving subsequent gains/losses until distribution of the Account is made. In the case of a distribution to a Beneficiary, payment must be made within five years of the Participant's death. Payment will be made as soon as practicable, but not later than 60 days following the end of the Plan Year in which the Participant attains age 65, or terminates employment, whichever is later. If a Participant has reached his or her Normal Retirement Age, the Participant may elect to delay receipt of his or her distribution until the Plan Year which follows the Plan Year in which he or she retired.

In no event will the entire interest of a Participant be distributed, or commence to be distributed, later than the April 1 following the calendar year in which the Participant attains age 70 1/2.

R-292049