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RESOLUTION NUMBER R- 306805

DATE OF FINAL PASSAGE MAY 18 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING RETROACTIVE AND PROSPECTIVE AMENDMENTS TO THE SUPPLEMENTAL PENSION SAVINGS PLAN AND AUTHORIZING STAFF TO FILE A VOLUNTARY CORRECTIONS PROGRAM APPLICATION FOR INTERNAL REVENUE SERVICE APPROVAL OF THE RETROACTIVE AMENDMENTS.

WHEREAS, the City of San Diego sponsors and maintains the City of San Diego Supplemental Pension Savings Plan as amended and restated effective as of January 1, 2010 (Plan); and

WHEREAS, the Memorandum of Understanding (MOU) between the City and the San Diego Municipal Employees' Association (MEA) covering July 1, 2009 through June 30, 2011, allowed employees in the MEA bargaining unit to choose, once per fiscal year, between taking a three percent pay cut and waiving the City's three percent tax-deferred Matching Contribution for the Mandatory Employee Contribution to the Supplemental Pension Savings Plan (SPSP); and

WHEREAS, when the MOU was entered into, the MEA bargaining unit included employees in the lifeguard bargaining unit, and therefore employees in the lifeguard bargaining unit were given the choice between the pay cut and waiving the SPSP employer Matching Contributions in Fiscal Years 2010 and 2011; and

WHEREAS, the waiver option was also extended to unrepresented employees by the salary ordinances for Fiscal Years 2010 and 2011; and

WHEREAS, employees who waived the City's three percent Matching Contribution to SPSP were also allowed to waive their post-tax SPSP Mandatory Employee Contributions; and

WHEREAS, the tentative agreement between the City and MEA for Fiscal Year 2012 allows employees in the MEA bargaining unit to choose between waiving their SPSP Employer Matching Contribution and taking 52 hours of unpaid furlough; and

WHEREAS, employees in the lifeguard bargaining unit are no longer part of the MEA bargaining unit, and do not have this choice for Fiscal Year 2012; and

WHEREAS, the pending Fiscal Year 2012 Salary Ordinance extends unrepresented employees the choice between taking a three percent pay cut and waiving their SPSP Employer Matching Contribution; and

WHEREAS, the SPSP Plan document has not been amended to allow Plan Participants to elect to waive the employee mandatory contributions or the employer's matching contributions; and

WHEREAS, the Plan also does not include the required provisions to satisfy Internal Revenue Code (IRC) section 401(k), to allow a Participant to make a qualified "cash or deferred election" between receiving taxable income and having a tax-deferred contribution made to the SPSP Plan on their behalf; and

WHEREAS, the City desires to amend the Plan retroactively to be consistent with past operations and the terms of MOU between the City and MEA for Fiscal Years 2010 and 2011 and the salary ordinances for those years, which would: (1) provide for individual Participant elections to waive (a) Employer Matching Contributions on the Participant's Mandatory Contributions and (b) the Participant's Mandatory Contribution, all in lieu of, and in exchange for, an otherwise commensurate reduction in compensation; and (2) to comply with IRC section 401(k) requirements for a qualified cash or deferred election within the Plan; and

WHEREAS, the City also desires to amend the Plan prospectively to allow the above Participant elections through Fiscal Year 2012; and

WHEREAS, each eligible Plan Participant who waives the City's Matching Contributions for the Participant's Mandatory Contributions for Fiscal Year 2012 will sign and submit to the City an individual election form choosing this opinion; and

WHEREAS, the Internal Revenue Service's (IRS) Employee Plans Compliance Resolution System provides that the retroactive amendments covering Fiscal Years 2010 and 2011 require a Voluntary Correction Program (VCP) application, payment of a \$25,000 user fee, and IRS approval; and

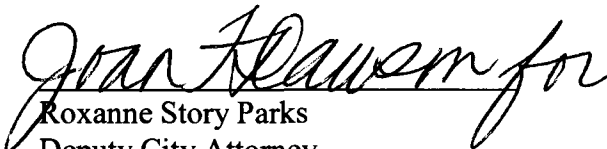
WHEREAS, the proposed amendments to the SPSP Plan document are not subject to a vote of the Participants because the amendments are necessary to bring the operation of the Plan into compliance with applicable tax law, and because each Participant is required to make an individual election in order to waive any mandatory contribution under the Plan; NOW, THEREFORE, the Plan is amended as follows, effective July 1, 2009:

BE IT RESOLVED, that the Council of the City of San Diego (City Council) approves the Amendment to the Supplemental Pension Savings Plan (Amended and Restated Effective as of January 1, 2010), which is on file in the Office of the City Clerk as Document No. ^{RR-}306805, to allow an eligible Participant to waive the Employer Matching Contribution to the Mandatory Employee Contributions on a fiscal year basis for Fiscal Years 2010, 2011, and 2012.

BE IT FURTHER RESOLVED, that the City Council authorizes the Mayor to file a VCP application with the IRS seeking approval of the retroactive amendments. (The retroactive application of the amendments, effective from July 1, 2009 through June 30, 2011, is subject to IRS approval.)

BE IT FURTHER RESOLVED, that the City Council authorizes the Mayor to expend an amount not to exceed \$25,000 from accounts described in the FY 2011 FTE Allocation attached to this Resolution as Attachment A, for payment of the IRS user fee required to file the VCP application, contingent upon the Chief Financial Officer first certifying funds are available.

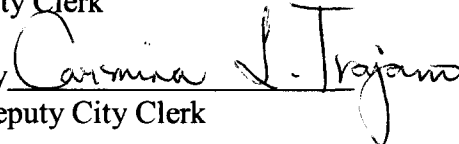
APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Roxanne Story Parks
Deputy City Attorney

RSP:ccm
4/28/2010
5/5/2011 COR. COPY
5/6/2011 COR. COPY 2
Or.Dept:CityAtt'y.

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of MAY 10 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 5-18-11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

FY11 FTE Allocation

Total Cost : \$25,000

Fund	Fund Title	Percentage	Cost Center	Commitment Item	Cost Per Fund
100000	General Fund	75.81%	1500000001	512059	\$18,955
700000	MUNI SEWER REVENUE	4.45%	2000110001	512042	\$1,112
700001	METRO SEWER UTILITY	4.83%	2000110001	512042	\$1,206
700011	WATER UTILITY OPERATING	6.88%	2000110001	512042	\$1,720
700033	AIRPORTS ENTERPRISE	0.19%	2111000001	512059	\$48
700036	PLANNING & DEVEL REV ENTR FUND	4.17%	1611000016	512059	\$1,043
700043	GOLF COURSE ENTERPRISE FUND	0.93%	1714160001	512059	\$231
700039	REFUSE DISPOSAL ENTERPRISE	0.08%	2115110001	512042	\$19
700039	REFUSE DISPOSAL ENTERPRISE	1.35%	2115120001	512042	\$337
700039	REFUSE DISPOSAL ENTERPRISE	0.18%	2115000001	512042	\$45
700039	REFUSE DISPOSAL ENTERPRISE	0.06%	2115130001	512042	\$16
700048	RECYCLING ENTERPRISE FUND	0.11%	2115120001	512042	\$28
700048	RECYCLING ENTERPRISE FUND	0.80%	2115130001	512042	\$201
700048	RECYCLING ENTERPRISE FUND	0.03%	2115110001	512042	\$8
700048	RECYCLING ENTERPRISE FUND	0.13%	2115000001	512042	\$31
				Total Cost:	\$25,000
		100.00%			