

RESOLUTION NUMBER R- 307148

DATE OF FINAL PASSAGE NOV 30 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AND RATIFYING AN AGREEMENT BETWEEN THE CITY AND THE INTERNATIONAL BROTHERHOOD OF TEAMSTERS, LOCAL 911, REGARDING THE SPSP WAIVER ELECTION.

WHEREAS, in Fiscal Years 2010 and 2011, under agreement between the City of San Diego and the San Diego Municipal Employees' Association (MEA), MEA-represented employees who were eligible for the Supplemental Pension Savings Plan (SPSP) were given an "election" between a 3% salary reduction and waiving their 3% employer matching contribution to SPSP, which was a match on the SPSP employee mandatory contribution; and

WHEREAS, employees currently represented by the International Brotherhood of Teamsters, Local 911 (Teamsters) were given an election between a 3% salary reduction and waiving their 3% employer matching contribution to the SPSP Plan in Fiscal Years 2010 and 2011, because these employees were in the MEA bargaining unit in Fiscal Year 2010; and

WHEREAS, the SPSP Waiver Election was first available to MEA-represented employees, including employees currently represented by the Teamsters, effective the pay period ending July 24, 2009; and

WHEREAS, in March 2011, tax counsel advised the City that the SPSP Waiver Election constitutes a "cash or deferred arrangement" (CODA) under federal tax laws; and

WHEREAS, because the SPSP Plan did not have the required Internal Revenue Code (IRC) section 401(k) provisions and did not have provisions allowing employees to waive the employer matching contribution, the SPSP Waiver Election was a non-qualified CODA and also conflicted with the SPSP Plan document; and

WHEREAS, the affected Teamsters-represented employees are not responsible for the creation of the non-qualified CODA and had no notice that their non-waived SPSP employer contributions would become taxable; and

WHEREAS, to preserve the SPSP Plan's tax qualification, the San Diego City Council (City Council) adopted San Diego Resolution R-306805 (R-306805) on May 10, 2011, approving prospective and retroactive amendments to the SPSP Plan document allowing employees to waive the mandatory employee contribution and the matching employer contribution in compliance with IRC section 401(k); and

WHEREAS, R-306805 also approved the filing of a Voluntary Correction Program (VCP) application with the Internal Revenue Service (IRS) Employee Plans Compliance Resolution System (EPCRS) to seek IRS approval for the retroactive plan amendments; and

WHEREAS, as a result of the SPSP Plan amendments, the employer matching contribution (made on behalf of employees who chose not to waive the contribution) is treated as an "elective deferral" in the same manner as an employee contribution to the City's 401(k) Plan; and

WHEREAS, the City must now issue corrected 2009 and 2010 W-2s to the employees who chose not to waive the employer matching contributions in those years, except for employees who: (1) are not covered by Medicare, and also (2) did not exceed the IRC section 402(g) limit in either year; and

WHEREAS, unlike employer contributions to a qualified retirement plan, elective deferrals under IRC section 401(k) are subject to Medicare taxes; and

WHEREAS, therefore, the corrected 2009 and 2010 W-2s issued to Teamsters-represented employees who chose not to waive the SPSP employer matching contribution will report additional wages subject to Medicare taxes; and

WHEREAS, the City wishes to compensate the affected Teamsters-represented employees for the adverse effects caused by these unforeseeable Medicare taxes; and

WHEREAS, from October 25, 2011, through November 4, 2011, the City's representatives met and conferred with the Teamsters regarding the manner in which the City would compensate Teamsters-represented employees affected by the City's correction of the tax failures arising out of the SPSP Waiver Election; and

WHEREAS, on November 4, 2011, the City's representatives and representatives of the Teamsters reached agreement regarding the manner in which the City would compensate Teamsters-represented employees regarding the manner in which the City would compensate Teamsters-represented employees affected by the City's correction of the tax failures arising out of the SPSP Waiver Election (Agreement); and

WHEREAS, the Agreement incorporates by reference and is to be read with the Memorandum of Understanding between the City and the Teamsters approved by the City Council by San Diego Resolution R-305919 on June 21, 2010, and the Addendum between the City and the Teamsters approved by the City Council by San Diego Resolution R-307057 on October 17, 2011; and


WHEREAS, the Agreement is not binding upon the City Council until it is approved by the City Council by resolution; and

WHEREAS, the Agreement is now being submitted to the City Council for determination; NOW, THEREFORE,

BE IT RESOLVED, that the Council of the City of San Diego approves the "Agreement between the City of San Diego and the International Brotherhood of Teamsters, Local 911 Regarding the Supplemental Pension Savings Plan Waiver Election," which is on file in the Office of the City Clerk as Document No. RR-307.148

BE IT FURTHER RESOLVED, that the City Council authorizes the expenditure of necessary funds to implement the Agreement.

APPROVED: JAN I. GOLDSMITH, City Attorney

By 
Roxanne Story Parks
Deputy City Attorney

RSP:ccm
11/7/2011
Or.Dept:Human Resources
Doc. #273627

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of NOV 15 2011.

ELIZABETH S. MALAND
City Clerk

By 
Deputy City Clerk

Approved: 11-30-11
(date)


JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor