

#100E
10/29/19

(R-2020-108)

RESOLUTION NUMBER R- **312724**
DATE OF FINAL PASSAGE **OCT 31 2019**

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO AUTHORIZING THE AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND SAN DIEGO DEPUTY CITY ATTORNEYS ASSOCIATION (DCAA) RELATED TO THE INTERNAL REVENUE SERVICE (IRS) VOLUNTARY CORRECTION PROGRAM (VCP) FILING FOR THE CITY'S SUPPLEMENTAL PENSION SAVINGS PLAN (SPSP).

WHEREAS, by San Diego Resolution R-255609 (January 4, 1982), the San Diego City Council (Council) approved and established the Supplemental Pension Savings Plan (SPSP) for eligible employees; and

WHEREAS, on September 21, 1992, the Council approved Resolution R-280703, which amended the SPSP to change its definition of "Compensation" to exclude all deferrals to the City's 457(b) Deferred Compensation Plan (457 Plan) based on certain changes to the Internal Revenue Code's definition of "Compensation" for pension plan tax-qualification purposes; and

WHEREAS, in late 2018, the City determined that the 1992 amendment to the SPSP excluding 457 Plan deferrals from the definition of "Compensation" was discretionary and required a vote of the participants under section 9.01 of the SPSP plan document; and

WHEREAS, the City subsequently discovered no such vote of the participants occurred and, therefore, the 457 Plan deferrals should never have been excluded from the SPSP definition of "Compensation" due to the improperly adopted amendment; and

WHEREAS, to avoid any adverse tax consequences to the SPSP and its participants due to the improperly adopted amendment, the City's outside tax counsel recommended that the City submit a VCP filing to the IRS identifying the problem with the amendment and proposing a correction; and

WHEREAS, by Resolution R-312536 (June 27, 2019), the Council approved and ratified a Memorandum of Understanding between the City of San Diego (City) and the San Diego Deputy City Attorneys Association (DCAA), setting forth the terms and conditions of employment for DCAA-represented employees for Fiscal Year 2019 (MOU); and

WHEREAS, the MOU provides certain DCAA-represented employees are eligible to participate in SPSP; and

WHEREAS, on May 30, 2019, the City's Negotiating Team met and conferred with the six recognized employee organizations and reached tentative agreement on July 8, 2019 to submit a VCP filing to the IRS regarding the SPSP; and

WHEREAS, the VCP filing provides that effective June 1, 2019, 457 Plan deferrals are included in the SPSP's definition of "Compensation"; and

WHEREAS, the City's VCP filing's proposed correction further provides the City will make missed Employer and Employee contributions to the SPSP retroactive to 2004 on all 457 Plan deferrals; and

WHEREAS, IRS correction procedures require the City to make 100% of missed Employer "matching" contributions, 50% of missed Employee mandatory contributions, and 40% of missed Employee voluntary contributions, plus interest on those contributions; and

WHEREAS, the City will deposit all missed contribution, plus interest, into a separate account under the SPSP for each affected participant; and

WHEREAS, this Agreement has been negotiated pursuant to the Meyers-Milias-Brown Act (MMBA) and Council Policy 300-06 and is subject to Council approval to take effect; and

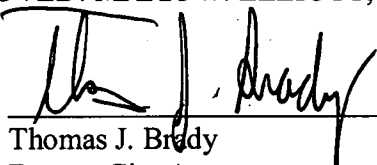
WHEREAS, the Council desires to approve and ratify the Agreement; NOW
THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that pursuant to the MMBA and Council Policy 300-06, the Council approves and ratifies the Agreement between the City and DCAA, related to the IRS VCP filing for the SPSP, on file with the Office of the City Clerk as Document No. RR-312724

BE IT FURTHER RESOLVED, that the Chief Financial Officer is authorized to expend \$2.36 million plus earnings on missed contributions to the SPSP for the purpose of executing this agreement contingent upon furnishing one or more certificates certifying that the funds necessary for expenditure are, or will be, on deposit with the City Treasurer. The total amount is estimated to be \$3.68 million based on preliminary earnings as of July 29, 2019 and is dependent on the final earnings calculation which can be completed following IRS approval of the VCP filing.

BE IT FURTHER RESOLVED, that the Chief Financial Officer is also authorized to pay filing fees for the VCP application, which are estimated to be \$3,000.00

APPROVED: MARA W. ELLIOTT, City Attorney

By 
Thomas J. Brady
Deputy City Attorney

TJB:sc:jvg
09/03/2019
Or.Dept: Human Resources
CC No.: N/A
Doc. No.: 2112253

I certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of OCT 29 2019.

ELIZABETH S. MALAND
City Clerk

By Linda Irwin
Deputy City Clerk

Approved: 10/31/19
(date)

Kevin L. Faulconer
KEVIN L. FAULCONER, Mayor

Vetoed: _____
(date)

KEVIN L. FAULCONER, Mayor

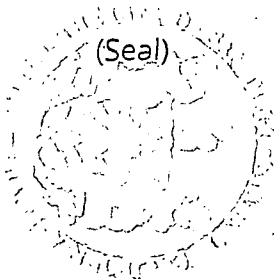
Passed by the Council of The City of San Diego on OCT 29 2019, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Barbara Bry	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Jennifer Campbell	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Ward	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Monica Montgomery	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Vivian Moreno	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Georgette Gómez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage OCT 31 2019.

(Please note: When a resolution is approved by the Mayor, the date of final passage is the date the approved resolution was returned to the Office of the City Clerk.)

AUTHENTICATED BY:



KEVIN L. FAULCONER
Mayor of The City of San Diego, California.

ELIZABETH S. MALAND
City Clerk of The City of San Diego, California.

By _____, Deputy

Office of the City Clerk, San Diego, California
Resolution Number R- **312724**