

MEMORANDUM OF LAW

DATE: March 21, 1988

TO: Doris Uzdavines, Employee Savings Plan
Administrator

FROM: City Attorney

SUBJECT: Supplemental Savings Plan - Spousal Signature

In a memorandum dated February 20, 1988, you asked this office if a spousal consent signature is required for benefit payments from the Supplemental Savings Plan (SPSP) or the Supplemental Savings Plan-M (SPSP-M), upon the termination or the retirement of an employee.

The plan documents for SPSP and SPSP-M both contain identical language concerning the manner in which benefits under the plan documents are distributed upon retirement or other type of termination. Section 9.01(b) of both plan documents provides that the normal form of benefit for a married participant who retires or terminates his or her employment with The City of San Diego shall be a qualified joint and survivor annuity. Section 9.02 of the plan documents authorizes the plan participant to elect an optional form of benefit which may be either a lump sum payment or a life annuity. That section indicates clearly that, "in the event a married participant elects to receive benefits in a form other than the normal form described in section 9.01(b), such election requires the consent of the participant's spouse in accordance with section 9.04." Section 9.04 requires that the spouse must indicate consent in writing witnessed by a representative of the plan or a notary public. The only exception to this procedure is found in Section 9.05 entitled "Small Benefits." That provision states as follows:

Notwithstanding any provision of Article IX, if the vested value of a participant's account as of retirement, disability, death, or termination of employment is \$3,500 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 payments payable under the plan to such participant or beneficiary.

Emphasis added.

We believe that the term, "vested value of a participant's account" as used in Section 9.05 relates to the participant's matching employer mandatory account and employer voluntary contribution account because plan participants are always 100 percent vested in their employee mandatory contribution account and employee voluntary contribution account. The separate reference to the employee's mandatory contribution account and voluntary contribution account in Section 9.05 reinforces this interpretation of that term.

Section 9.05, therefore, provides an exception to the spousal consent signature requirement found in Section 9.02 when the plan participant's employer matching mandatory contribution account and voluntary contribution account do not exceed a total of \$3,500.

JOHN W. WITT, City Attorney

By

John M. Kaheny

Deputy City Attorney

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