

Exhibit 1

EXHIBIT 5 TO VCP – QUALIFIED PLAN

July 12, 2005

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VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Internal Revenue Service
Attention: T:EP:RA:VC
P.O. Box 27063
McPherson Station
Washington, DC 20038

**RE: Application for Determination for Employee Benefit Plan with Respect to the
San Diego City Employees' Retirement System
EIN: 20-1800126**

Dear Sir or Madam:

ENCLOSURES

Enclosed are the following documents relating to the request by the San Diego City Employees' Retirement System ("System") for a determination on the qualified status of the System, including a request under Rev. Proc. 2005-6, Section 16.02, for an IRS ruling with regard to Code Section 401(h), in conjunction with all other Code Section 401(a) matters:

1. Form 8717, User Fee for Employee Plan Determination Letter Request, and a check in the amount of \$700.00 in payment of the required user fee;
2. Form 5300, Application for Determination for Employee Benefit Plan, for the System, together with the required attachments;
3. Form 2848, Power of Attorney, regarding the System (see Exhibit 6 to the VCP filing);
4. A copy of the following plan documents that relate to SDCERS:
 - (a) California Constitution Article XVI, Section 17 (attached as Exhibit A);

- (b) City Charter Article IX, Sections 141 – 149 (attached as Exhibit B);
 - (c) Municipal Code §§ 24.0100 – 24.1809, which are added, amended and repealed by Ordinances adopted by the City Council (attached as Exhibit C);
 - (d) Earnings Code Document (attached as Exhibit D);
 - (e) City Council Resolution 297212, adopted 10/21/02 (attached as Exhibit E);
 - (f) Article 15 of the Memorandum of Understanding between the City and the San Diego Municipal Employees' Association effective July 1, 2002 through June 30, 2005 (attached as Exhibit F);
 - (g) Article 47 of the Memorandum of Understanding between the City and International Association of Firefighters, Local 145 effective July 1, 2002 through June 30, 2005 (attached as Exhibit G);
 - (h) Article 65 of the Memorandum of Understanding between the City and the San Diego Police Officers' Association effective July 1, 2003 through June 30, 2005 (attached as Exhibit H);
 - (i) (applicable solely to Airport employees) Airport Agreement to Administer (attached as Exhibit I);
 - (j) (applicable solely to Airport employees) Airport Retirement Plan (attached as Exhibit J);
 - (k) (applicable solely to Port employees) Port Agreement to Administer (attached as Exhibit K); and
 - (l) (applicable solely to Port employees) Port Retirement Plan (attached as Exhibit L).
5. A copy of the Board minutes for May 20, 2005 (attached as Exhibit M) and a copy of Resolution 05-01 (attached as Exhibit N);
6. A copy of the current rates applicable to City General Members (attached as Exhibit O), City Safety Members (attached as Exhibit P), Port General Members (attached as Exhibit Q), Port Safety Members (attached as Exhibit R), and Airport Members (attached as Exhibit S); and

7. A copy of the completed Part I of the checklist in the Rev. Proc 2005-6 Appendix intended to satisfy the requirement for providing the location of the plan provisions that satisfy the Code Section 401(h) requirements.

This letter and the enclosed materials constitute a request for determination on the qualified status of the System in its entirety under Section 401(a) of the Internal Revenue Code of 1986, as amended, pursuant to Revenue Procedure 2005-6. We would envision that the amendment dates for the determination letter would be stated as follows: "This determination letter is applicable for SDCERS as in effect on May 20, 2005. This determination letter is also subject to your adoption of the proposed amendments submitted in your letter dated July 12, 2005."

The System has been amended to comply with the Economic Growth Tax Relief and Reconciliation Act of 2001 ("EGTRRA"), effective on and after the first day of the plan year beginning after December 31, 2001, based on model amendments provided under Internal Revenue Service Notice 2001-57. The amendments to the System are intended as good faith compliance with the requirements of EGTRRA. In the event the Internal Revenue Service expands the determination letter program to review of the requirements under EGTRRA while this request is pending, we request that the determination letter be issued taking into account the requirements of EGTRRA.

401(h) RULING PROCEDURES

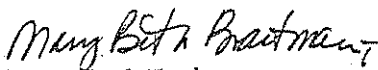
Consideration is requested with regard to Code Section 401(h), in addition to other matters under Code Section 401(a). Pursuant to Rev. Proc 2005-6, Section 16.02, we have included a completed Part I of the checklist in the Rev. Proc 2005-6 Appendix intended to satisfy the requirement for providing the location of the plan provisions that satisfy the Code Section 401(h) requirements. See enclosed CHECKLIST - 401(h) Account.

CLOSING

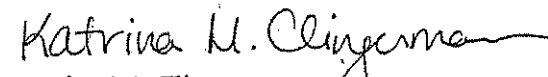
If an adverse determination is contemplated, a conference is hereby requested. If you have any questions regarding this application, please call one of us pursuant to the enclosed Power of Attorney. Please issue a copy of the determination letter to one of us at the above address.

Very truly yours,

ICE MILLER


Mary Beth Braitman


Terry A. M. Mumford


Katrina M. Clingerman

MBB/TAMM/KMC/GW

Enclosures

cc: Lawrence B. Grissom (with bound copy)
Loraine E. Chapin (with bound copy)
Roxanne Story Parks (with bound copy)

Exhibit 2

INTERNAL REVENUE SERVICE
VOLUNTARY CORRECTION PROGRAM
COMPLIANCE STATEMENT

Date: _____
(to be completed by IRS)

Re: San Diego City Employees' Retirement System
SE:T:EP:RA Control Number: 911659038
Employer Identification Number: 20-1800126
Plan No.: 001

I. APPLICANT'S DESCRIPTION OF QUALIFICATION FAILURE(S)

The City of San Diego ("Plan Sponsor") is the principal sponsor of the San Diego City Employees' Retirement System ("Plan"). In accordance with state and local laws, the Board of Administration For The San Diego City Employees' Retirement System ("the Applicant") is responsible for the daily administration in regard to the Plan, and has submitted a request to the Internal Revenue Service ("the Service") under the Voluntary Correction Program for a compliance statement relating to various qualification failures under section 401(a) of the Internal Revenue Code ("Code") that they have identified. The Plan uses the twelve-month period that ends on June 30 as its plan year. The Plan is a multiple employer defined benefit pension plan that has also been adopted by the San Diego Unified Port District and the San Diego County Regional Airport Authority. The Plan is also considered a governmental plan under Code section 414(d).

Failure #1

The Plan was not amended to comply with all of the applicable requirements of the Tax Reform Act of 1986 ("TRA '86"), the Unemployment Compensation Amendments of 1992 ("UCA"), and the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93") by the required dates in accordance with section 401(b) of Code and regulations thereunder.

Failure #2

The Plan was not amended to comply with all of the applicable requirements of the Uruguay Round Agreements Act; the Uniformed Services Employment and Reemployment Rights Act of 1994; the Small Business Job Protection Act of 1996; the Taxpayer Relief Act of 1997; the Internal Revenue Service Restructuring and Reform Act of 1998; and the Community Renewal Tax Relief Act of 2000 (collectively known as "GUST") by the required dates in accordance with section 401(b) of the Code and regulations thereunder.

San Diego City Employees' Retirement System

Failure #3

The Plan was not amended to incorporate the interim amendments required for compliance with the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA") by the required date(s) in accordance with section 401(b) of the Code and regulations thereunder.

Failure #4

During the plan years that ended in 1989 through 2008, the terms of the Plan provided special retirement benefits to past and current union presidents of the San Diego Municipal Employees' Association, Police Officers' Association, and Local 145, the International Association of Fire Fighters AFL-CIO ("Unions") that were not permitted by the Code. Under Code section 401(a), retirement benefits in a qualified plan can only be provided to employees of an employer and such benefits are generally based solely on service with and compensation paid by such employer. Specifically, the following problems were noted:

- (a) The Presidential Leave Program allowed former city employees who were no longer paid employees of the Plan Sponsor to continue to participate in the Plan as active participants and have their service as union presidents counted as credited service in determining retirement benefits under the Plan.
- (b) From 1989 through February 2004, the Plan accepted employee and employer contributions (based upon compensation paid by the Unions) that were paid by the Unions even though they had not adopted the Plan as participating employers.
- (c) Starting in 2002, the Incumbent President Program allowed compensation that was paid to the union presidents by the Unions to be counted in the determination of retirement benefits under the Plan, and such amounts would be combined with any other compensation paid by the Plan Sponsor subject to a specified dollar cap.

Failure #5

Starting in the plan year that ended in 2003 the terms of the Plan were amended to provide for an impermissible cash or deferred arrangement in violation of the Code section 401(a) in regard to the Cashless Leave Conversion Program that was offered to participants who were members of San Diego Firefighters Local 145 bargaining unit.

Failure #6

During the plan years that ended in 1983 through 1991 retiree health benefits were paid by the Plan even though the terms of the Plan did not provide for such benefits. Also, the Applicant represents that the Plan is owed additional funds from the Plan Sponsor relating to unreimbursed administrative expenses associated with the administration of the retiree health benefit account from 1993 through 2006. Both actions were in

San Diego City Employees' Retirement System

violation of Code section 401(a)(2). The Applicant represents that the accumulated amount of improper payments (plus interest) associated with this failure is \$33,830,251.

Failure #7

During the plan years that ended in 1998 through 2005 the terms of the Plan and its operation did not comply with all of the requirements of Code sections 401(a)(2) and 401(h) as they relate to retiree health benefits because the terms of the Plan provided that earnings of the trust would ultimately be used to fund these benefits resulting in the underfunding of the Plan. While retiree health benefits were paid from the Plan's retiree health account as required by the Code, the flow of funds was structured in a manner which made it extremely difficult, if not impossible to resolve that there was no inappropriate use of the Plan's assets.

Failure #8

During the plan years that ended in 1989 through 2004 the Applicant did not comply with the provisions of Code section 401(a)(9) with respect to required minimum distributions in regard to Plan participants who were owed a lump sum or a partial lump sum distribution. With respect to this failure, the Applicant requests a waiver of the excise tax under Code section 4974.

Failure #9

During the plan years that ended in 2000 through 2005 the Applicant allowed the retirement benefits for three participants to be determined using participant compensation that exceeded the limits imposed by the provisions of Code section 401(a)(17).

Failure #10

During the plan years that ended in 2002 through 2006 the Applicant did not comply with the provisions of Code section 401(a)(31) in regard to those participants who received eligible rollover distributions from the Plan.

Failure #11

During the plan years that ended in 2001 through 2006 the Applicant did not follow the terms of the Plan when the Applicant increased disability retirement benefits in regard to disabled plan participants by increasing their final compensation amount by 10% and using this revised figure to determine disability benefits. The Applicant represents that overpayments were made to 146 participants and that the accumulated amount of overpayments plus interest associated with this failure is \$1,221,543.

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Failure #12

During the plan years that ended in 1996 through 2007 the Applicant did not comply with the provisions of the Code when it allowed the Plan to pay out benefits that exceeded the limits imposed by Code section 415(b). The Applicant represents that overpayments were made to approximately 58 participants and that the accumulated amount of overpayments plus interest associated with this failure is approximately \$4,209,221.

Failure #13

From January 1, 2005, through the present, the Applicant has allowed the Plan to provide spousal death benefits to registered domestic partners even though such benefits are not provided for under the terms of the Plan.

Failure #14

Starting on July 26, 2004, the Plan Sponsor has made contributions to the Plan that exceeded what was called for under the terms of the Plan section 24.0801 as set forth in the Memoranda of Understanding (November 18, 2002) between the Plan Sponsor and the Applicant. These payments resulted from the settlement of a class action court lawsuit (Gleason v. City of San Diego) involving the Plan Sponsor and the Applicant regarding the level of contributions that needed to be paid to the Plan.

II. APPLICANT'S CORRECTION

Failures #1 & 2

The Plan Sponsor and each participating employer will correct the qualification failure by adopting amendments in the form of a city ordinance that will allow the terms of the Plan to fully comply with all of the requirements of TRA '86, UCA, OBRA '93 and GUST retroactively to the effective dates of the specific provisions contained in the amendments. To assist in this matter, the proposed amendment will include draft Board rules that will be adopted by the Applicant.

Failure #3

The Plan Sponsor and each participating employer will correct the qualification failure by adopting interim amendments that satisfy the requirements of EGTRRA retroactively to the applicable effective dates of the specific provisions contained in the amendments.

Failure #4

The Plan Sponsor will amend the Plan retroactively to remove any provisions relating to Presidential Leave, including the Incumbent President Program. The resulting changes to the Plan will indicate that benefits and participation under the Plan are limited to employees of the Plan Sponsor and any other participating employers that have adopted the Plan and that retirement benefits would be based solely on paid compensation and service associated with the Plan Sponsor or other participating employers.

In regard to any employee contributions that were either paid to the Plan directly by the Unions or derived from compensation paid by the Unions such funds will be returned to the affected plan participants along with accumulated interest. The distribution of these monies will be a taxable distribution to each affected participant and such distribution will not be subject any favorable tax treatment under the Code. The Applicant will send a letter to each participant informing the participant that the corrective distribution is taxable, not eligible for favorable tax treatment and cannot be rolled over as normally allowed under Code section 402(c). The Applicant also agrees that the distribution will be reported on Form 1099-R for the calendar year in which the distribution is made to the affected participants. The Applicant will return to the Unions the employer contributions that were paid to the Plan to by the Unions.

For all impacted participants, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced benefits and service credits. Retirement benefits under the Plan, including the Deferred Retirement Option Plan ("DROP"), will be determined without using any compensation paid by the Unions and any union service will also be disregarded in any computations unless such service has already been purchased by the participants under the Plan's regular service purchasing provisions. For those impacted participants who are in retirement status, the monthly annuity that is currently being paid by the Plan will be reduced to the recalculated amount. The Applicant will recover any overpayments that have been paid to affected participants via an offset against the return of employee contributions mentioned in the preceding paragraph, by direct repayment to the Plan by the affected participants or by a special actuarial reduction to the corrected monthly pension benefit on a going forward basis.

Failure #5

The Plan Sponsor will amend the Plan retroactively to remove any provisions relating to the Cashless Leave Conversion Program. This change will remove the impermissible cash or deferred arrangement from the Plan.

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For all plan participants who took part in the Cashless Leave Conversion Program, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced benefits and service credits. Retirement benefits under the Plan, including DROP, will be determined without regard to cashless leave amounts. For those impacted participants who are in retirement status, the monthly annuity that is currently being paid by the Plan will be reduced to the recalculated amount. The Applicant will recover any overpayments that have been paid to retired plan participants by reducing the revised monthly pension benefit further on a going forward basis via a special actuarial reduction that allows the overpayment to be recouped over the participant's remaining payment period.

Failure #6

The Applicant and Plan Sponsor have represented to the Service that the Plan Sponsor has fully corrected this failure by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory actuarial required contributions ("ARC").

Failure #7

The Applicant and Plan Sponsor agree that in order to comply with all of the requirements of Code sections 401(a) and 401(h) the payment of retiree health benefits must be funded by separately designated employer contributions and cannot be funded (directly or indirectly) from pension assets, including plan earnings. Effective as of July 1, 2005, retiree health benefits were no longer paid out of the Plan's 401(h) account. Instead, such benefits were paid directly by the Plan Sponsor without the involvement of the Plan. To codify this action, the Plan Sponsor will amend the Plan to retroactively to remove these provisions effective as of July 1, 2005.

Failure #8

The Applicant represents that no annuity payments were paid in violation of the required minimum distribution requirements. The Applicant represents that the lump sum or partial lump sum payments have been made to all affected participants who were past their required minimum distribution date. The distribution amounts included additional amounts for interest relating to the delayed payment.

Failure #9

In terms of one affected participant who terminated without a vested pension, the Applicant represents that the failure only resulted in the computation of excess employee contributions and that no additional action needs to be taken since the excess amounts of \$420.89 were paid out as a lump sum in 2002 that was not rolled over.

In terms of the other two affected participants, the Applicant will recalculate their benefits under the Plan and the Plan's records will be updated to reflect reduced

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benefits. Retirement benefits under the Plan, including DROP, will not be determined using participant compensation that exceeds the limits imposed by Code section 401(a)(17). The Applicant will distribute the employee contributions associated with the excess compensation plus interest to the affected participants. The Applicant will send a letter to each participant informing them that the corrective distribution is taxable, not eligible for favorable tax treatment and cannot be rolled over as normally allowed under Code section 402(c). The Applicant also agrees that the distribution will be reported on forms 1099-R for the calendar year in which the distribution is made to the affected participants.

Failure #10

The Applicant has proposed to take no action in regard to the past distributions that were made during the period of failure. As noted previously for Failure #1, the Plan Sponsor will amend the Plan to contain language that allows it to meet the statutory requirements of Code section 401(a)(31). The Applicant has changed its administrative procedures in order to ensure that all future eligible lump sum distributions paid out by the Plan will comply with the requirements of Code section 401(a)(31).

Failure #11

The Applicant has stopped paying out excess disability benefits that are not authorized by the terms of the Plan and the 10% compensation adjustment is no longer applied in computing these benefits. In regard to the overpayments that were paid out during the period of failure, the Applicant and Plan Sponsor have represented to the Service that the Plan Sponsor has fully reimbursed the Plan by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory ARC contributions.

Failure #12

The testing methodology that was used by the Applicant to determine an individual's limit under Code section 415(b) during the period of failure is set forth within the document entitled "San Diego City Employees Retirement System 415(b), (c) and (n) Compliance Strategy Report" with a revision date of December 5, 2007 prepared by the Applicant's representative, Ice Miller as supplemented by Exhibits A and B with the same revision date prepared by the actuary, Cheiron. These documents are considered attached to and made a part of this compliance statement.

The Applicant has agreed that payments from the Plan during this current limitation year will not exceed the limits of Code section 415(b). If necessary, the payments being made to current retirees and/or beneficiaries will be reduced by the Applicant in order to ensure that the benefits paid out by the Plan do not exceed the applicable limits of Code section 415(b).

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The Applicant and Plan Sponsor have represented to the Service that repayments of the overpayments should not come from the affected participants since the Plan Sponsor is obligated to pay these excess benefits due to the existence of a Code section 415(m) plan and the laws of State of California. The Applicant and Plan Sponsor have also represented to the Service that the Plan Sponsor has fully reimbursed the Plan in regard to the overpayments plus interest by having made supplemental contributions to the Plan during the plan years ending in 2006, 2007 and the current plan year that exceeded the amounts specified by the Plan's actuary in regard to the mandatory actuarial required contributions ("ARC").

Failure #13

The Plan Sponsor will retroactively amend the terms of the Plan to conform to the Plan's operation in regard to this matter.

Failure #14

The Plan Sponsor will retroactively amend the Plan to indicate that the amount of employer contributions that must be paid to the Plan by the Plan Sponsor will no longer be based upon any Memoranda of Understanding between the Plan Sponsor and the Applicant. The amendment will be effective as of July 26, 2004 and it will allow the terms of the Plan to conform to the Plan's operation in regard to this matter.

III. APPLICANT'S REVISION OF ADMINISTRATIVE PROCEDURES

Failures #1, 2 & 3

The Applicant is working with outside tax counsel who will advise them in regard to changes in the Code that require amendments to be made to the Plan. The Applicant and Plan Sponsor will work together to ensure that the Plan document is updated in a timely manner for tax law changes. The Applicant has indicated that it will apply for a Cycle C determination letter in accordance with the applicable timeframes currently set forth in Revenue Procedure 2007-44.

Failure #4

The Applicant no longer permits the Unions to make any contributions to the Plan. Only contributions from the Plan Sponsor and participating employers will be accepted. The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) requirements.

Failure #5

The Plan Sponsor will not adopt any future amendments to the Plan that result in a cash or deferred arrangement. The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) requirements.

San Diego City Employees' Retirement System

Failure #6

The Applicant has changed its procedures and it and the Plan Sponsor now realize that retiree health benefits cannot normally be paid by the Plan and that the expense of administering retiree health benefits cannot come from the Plan's assets.

Failure #7

The Applicant has hired outside tax counsel who will assist in ensuring that future changes to the Plan are in compliance with Code section 401(a) and other applicable requirements under the Code.

Failure #8

The Applicant has implemented a new annual monitoring system that will ensure that all required minimum distributions begin on a timely basis and include benefits under the Plan with respect to all types of Plan participants and beneficiaries.

Failure #9

The Applicant has revised its software, testing protocols and internal reports to monitor participant compensation and cut it off when it reaches the appropriate limits under Code section 401(a)(17). Employee contributions will be cutoff and no retirement benefits will be based on the excess compensation.

Failure #10

The Applicant has educated its workforce in regard to the various benefits of the Plan that are subject to Code section 401(a)(31) by creating a detailed chart. Formal, detailed procedures that reflect how the Plan will comply with Code section 401(a)(31) have been written and the Applicant will use these documents when administering the Plan in regards to this matter.

Failures #11, 13 & 14

The Applicant agrees not to administer the Plan and/or provide benefits in a manner that is not explicitly authorized by the Plan. If the Applicant believes that the Plan's operation needs to be changed it will work with its tax counsel and the Plan Sponsor to have the Plan amended before changing the Plan's operation.

Failures #12

The Applicant has revised its administrative procedures for ensuring the Plan's compliance with the limits of Code section 415(b) as detailed within the previously referenced document entitled "San Diego City Employees Retirement System 415(b), (c) and (n) Compliance Strategy Report" with a revision date of December 5, 2007 prepared by the Applicant's representative, Ice Miller as supplemented by Exhibits A and B with the same revision date prepared by the actuary, Cheiron.

IV. APPLICANT'S PAYMENT

The Plan Sponsor and Applicant will neither attempt to nor otherwise amortize, deduct, or recover from the Service any compliance fee paid in connection with this compliance statement, nor receive any Federal tax benefit on account of payment of such compliance fee.

V. ENFORCEMENT RESOLUTION

The Service will not pursue the sanction of plan disqualification on account of the qualification failure(s) described in Part I. The Service will waive the excise taxes under Code section 4974 on account of the qualification failure(s) described in Failure 8.

The Service will treat the amendment(s) described in Failure number 3 as if they had been timely adopted for the purpose of making available the extended remedial amendment period currently set forth in Revenue Procedure 2007-44, 2007-28 I.R.B. 54. However, this compliance statement does not constitute a determination as to whether any such plan amendment(s), as drafted, complies with the applicable change in qualification requirements.

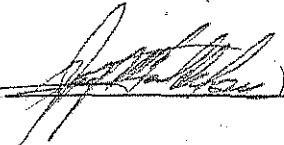
San Diego City Employees' Retirement System

This compliance statement considers only the acceptability of the correction method(s) and the revision(s) to administrative procedures described in the submission and does not express an opinion as to the accuracy or acceptability of any calculations or other material submitted with the application. In no event may this compliance statement be relied on for the purpose of concluding that the Plan or Plan Sponsor (as defined in the applicable revenue procedure setting forth the Employee Plans Compliance Resolution System) was not a party to an abusive tax avoidance transaction. The compliance statement should not be construed as affecting the rights of any party under any other law, including Title I of the Employee Retirement Income Security Act of 1974.

This compliance statement is conditioned on (1) there being no misstatement or omission of material facts in connection with the submission, and (2) the completion of all corrections described in Parts II and III within one hundred fifty (150) days of the date of the compliance statement.

By signing this compliance statement, the Plan Sponsor and Applicant hereby agree to its terms.


The City of San Diego

By: 

Title: COO

Date: 12/20/07

Board of Administration For The San Diego City Employees' Retirement System

By: 

Title: President, Board of Administration

Date: 12/20/07

Approved: _____

Joyce Kahn, Manager
Employee Plans Voluntary Compliance
Tax Exempt and Government Entities Division

<p>Contact information: Paul C. Hogan SE:T:EP:RA:VC: Group 7554 915 2nd Ave.- Mail Stop 510 Seattle, WA 98174 206-220-6085</p>
--

Exhibit 3

000595

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER
(FOR AUDITOR'S USE ONLY)

331

TO: City Attorney

2. FROM (ORIGINATING DEPARTMENT):
Council President Scott Peters

3. DATE: 1/22/2008 2:15

4. SUBJECT:
Retention of Outside Counsel Services - Presidential Leave

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Betsy Kinsley 236-66687

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND					9. ADDITIONAL INFORMATION / ESTIMATED COST:
DEPT.					
ORGANIZATION					
OBJECT ACCOUNT					
JOB ORDER					
C.I.P. NUMBER					
AMOUNT					

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	Council District one	E. Angelita Kinsley	1/24/08	8	DCOO/COO		
2							
3							
4							
5							
6							
7							

DOCKET COORD: _____ COUNCIL LIAISON: _____

COUNCIL PRESIDENT SPOB CONSENT ADOPTION

ms REFER TO: _____ COUNCIL DATE: 2/5/08

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Authorize the Mayor to negotiate an amendment to the current agreement with Foley and Lardner, outside legal counsel, for the sole purpose of reviewing and advising the Mayor and City Council on legal issues associated with the elimination of the Presidential Leave Program pension benefits in response to the IRS Voluntary Correction Program Compliance Statement.

11A. STAFF RECOMMENDATIONS:

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S):

COMMUNITY AREA(S):

ENVIRONMENTAL IMPACT:

HOUSING IMPACT:

OTHER ISSUES:

000597

EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: January 23, 2008 REPORT NO:
ATTENTION: Members of the City Council
ORIGINATING DEPARTMENT: Office of the Council President
SUBJECT: Retention of Outside Legal Services – Presidential Leave
Program
COUNCIL DISTRICT(S): All
CONTACT/PHONE NUMBER:
REFERENCE: IRS Voluntary Correction Program Compliance Statement

REQUESTED ACTION:

City Council authorization for the Mayor to negotiate and execute an amendment to the retention agreement with the law firm Foley and Lardner for the sole purpose of reviewing and advising the City on legal issues associated with the elimination of Presidential Leave Program pension benefits in response to the IRS Voluntary Correction Program Compliance Statement.

EXECUTIVE SUMMARY:

The Internal Revenue Service has recently issued a Compliance Statement in response to the Voluntary Correction Program filings initiated by San Diego City Employee Retirement System (SDCERS). The IRS Compliance Statement describes changes which must be made to the City's Retirement Plan in order for the Plan to come into compliance with IRS codes and to maintain its qualified status under federal law. The Compliance Statement includes a determination that the Presidential Leave Program violates IRS requirements. The Compliance Statement requires that Presidential Leave Plan elements be retroactively removed from the plan document and specifies other corrective actions including the return of contributions and the reduction of benefits and service credits for Presidential Leave Program participants. (See attachment for the full compliance statement finding and direction regarding the Presidential Leave benefit).

On January 8th the City Council authorized retention of the law firm Foley and Lardner to advise the Mayor and City Council on the terms and conditions of the IRS Compliance Statement and to review the draft ordinance which would incorporate the Municipal Code changes necessary to bring the SDCERS Plan document into compliance. Today's action would authorize an amendment to the scope of work with the firm to include reviewing and advising the Mayor and Council on legal issues associated with the elimination of the Presidential Leave Program benefit.

FISCAL CONSIDERATIONS:

The initial \$50,000 authorization for Foley and Lardner, which was approved on January 8, may be sufficient to cover the costs for these additional legal services. If not, a future funding authorization action will be necessary.

Council President Scott Peters

Exhibit 4

Retirement Office
City of San Diego
MEMORANDUM

533-4660

Date: February 17, 1989
To: Ed Ryan, Auditor and Comptroller
From: Lawrence Grissom, Retirement Administrator
Subject: PRESIDENTIAL LEAVE

Lawry

60011 Fd

This is to confirm a variety of items on this subject which we covered in and after our meeting on February 16, 1989. Presidential Leave is an approved leave and, as such, buy back is covered by Municipal Code Section 24.0313.

*2/L
Sec 1 #10*

The cited code section provides that an employee may request to buy back service credit for approved leave. Such request must be made within sixty (60) days of return to service. The cost to buy back is broken down into two basic categories, as follows:

66 SAFETY
9133 9135

I. PERIODS OF ONE YEAR OR LESS. Employee must pay the amount of employee contribution, plus interest, only. The City pickup is a portion of the employee contribution paid on behalf of the employee and is, thus, a part of the employee contribution.

9165 *9165*

II. PERIODS IN EXCESS OF ONE YEAR. Employee must pay the employee contributions described above, and, in addition, must pay the employer contribution, plus interest.

Ron Newman, President of the POA, will be returning to active duty effective March 4, 1989. I have provided him with a buy back cost based on the above.

We agreed that employees on presidential leave would be allowed to pay their contributions on a pay-period-by-pay-period basis prospectively. The basis for the calculation of these contributions will be exactly as described above; i.e., employer contributions will not be charged for the first year, but will for any period over one year. In addition, since we will be receiving contributions each pay period, we will not charge interest. I have discussed this with Jack Katz, and he agrees that this procedure is legally correct.

What pickup is the contribution?
What pickup is the employer?
What did we already do with Ron Newman?
Buy back cost?
What was the position?
What was the position?
What was the position?

MAR 3 1989

AUD-ERY-083-0114

Ed Ryan
February 17, 1989
Page Two

I have also informed POA of this. I understand that Harry Eastus will be replacing Ron Newman, effective March 4, 1989.

We also agreed that the above is applicable to other employee organization presidents. I will volunteer to handle communicating this to those individuals and organizations.

Please advise me as soon as possible of any special procedural steps necessary in the processing of the biweekly payments.

cc: Jan Beaton
Jack Katz
Bob Ferrier
Ron Newman

Exhibit 5

SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
MEMORANDUM

FILE: WAEXECBDJUDIE
DATE: October 9, 1997
TO: Retirement Board, via Business Procedures Committee
FROM: Lawrence B. Grissom, Retirement Administrator *Lawrence B. Grissom*
SUBJECT: Request for Waiver of Interest on Purchase by Judie Italiano

BACKGROUND

Judie Italiano is the President/General Manager of the MEA (Municipal Employees Association). Prior to being appointed to that position in 1986, she was a City employee. She took a leave of absence from her City employment to assume the MEA position. She is requesting that you waive interest on the purchase of her LWOP (Leave Without Pay) in the amount of \$19,809.50.

Her position as it relates to membership in CERS is analogous to the President of the POA (Police Officer's Association). That position is also filled by a City employee who has taken a leave of absence to assume the position. Both the MEA and POA pay their Presidents a salary.

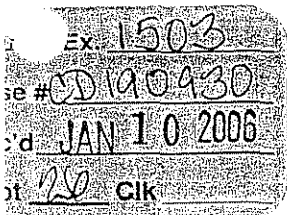
In 1989, the then President of POA was allowed to purchase service credit in CERS through the normal process for purchasing LWOP service. In addition, the POA was allowed to pay normal retirement contributions, both employee and employer, on behalf of its President on an ongoing basis. These contributions are based on the age at enrollment into CERS and the salary received as President. This procedure has been in place since 1989.

This procedure is only applicable to the Presidents of the MEA and POA. The heads of the other two employee organizations, Local 127, and Firefighters Local 145, each have different employment arrangements.

Apparently Ms. Italiano made a request for similar treatment at some time prior to 1989 and was denied by the City Manager. She contacted Staff on this issue in 1996 and the ensuing discussions resulted in purchase cost calculations and the request before you.

The purchase costs are outlined in the attached letter from Staff to Ms. Italiano dated August 28, 1997. The amount of interest she is requesting you to waive is for the purchase of LWOP only, in the amount of \$19,809.50.

The provision for enrollment of the President of an employee organization is in the Municipal Code at Section 24.0201 (3). The provision for the purchase of LWOP is at Section 24.1307.



OCTOBER 9, 1997

PAGE 2

RECOMMENDATION

The Board has very broad authority under the Municipal Code to establish procedures, including cost calculations, for purchase of service. SDMC 24.1301 -- Purpose and Intent -- states, "Subject to procedures established by the Board, ...". Further, SDMC 24.1310 -- Purchase of Service Credit Payment Options -- states, "To purchase service credit, a Member must elect to pay and thereafter pay, ... an amount, including interest, determined by the Board."

The sections cited above would appear to give the Board the authority to waive interest as requested, should you elect to do so.

Attachments

LBG:siz

Exhibit 6

1 ANN MARIE SMITH,
2 THE DEFENDANTS' WITNESS, HAVING BEEN FIRST DULY SWORN,
3 TESTIFIED AS FOLLOWS:
4

5 THE COURT: MS. SMITH, IF YOU WOULD COME UP AND HAVE
6 A SEAT.

7 MS. HAHN, YOU HAVE HAD THIS COLD FOR TWO MONTHS.
8 WHAT IS UP WITH YOU? YOU HAD BETTER GO TO THE DESERT OR
9 SOMETHING.

10 MS. HAHN: I SHOULD.

11 THE COURT: PUT THIS ON YOUR JACKET UP NEAR THE
12 COLLAR.

13 THANK YOU.

14 THE COURT CLERK: PLEASE STATE YOUR FULL NAME AND
15 SPELL YOUR LAST NAME FOR THE RECORD.

16 THE WITNESS: ANN MARIE SMITH, S-M-I-T-H.

17 THE COURT CLERK: THANK YOU.
18

19 DIRECT EXAMINATION
20

21 BY MR. ROSE:

22 Q. GOOD AFTERNOON, MS. SMITH.

23 WHAT IS YOUR OCCUPATION?

24 A. I AM AN ATTORNEY.

25 Q. HOW MANY YEARS IN PRACTICE HAVE YOU BEEN?

6 A. SINCE 1985.

7 Q. ARE YOU A MEMBER OF THE CALIFORNIA BAR?

8 A. I DO.

1 AFTER HER LEAVE BEGAN?

2 A. NOT INITIALLY.

3 Q. DO YOU RECALL A REQUEST THAT MEA'S PRESIDENT BE
4 PERMITTED, THAT IS MS. ITALIANO BE PERMITTED TO CONTINUE
5 PARTICIPATING IN SDCERS WHILE ON UNPAID LEAVE?

6 A. THAT REQUEST WAS MADE TO THE CITY WHEN HER LEAVE OF
7 ABSENCE, UNPAID APPROVED LEAVE OF ABSENCE, FIRST BEGAN AND THE
8 REQUEST WAS DENIED.

9 Q. YOU SAID THAT WAS 1987?

10 A. YES.

11 Q. AND WAS HER REQUEST APPROVED THEN?

12 **THE COURT:** IT WAS DENIED.

13 **MR. ROSE:** OH, SORRY.

14
15 **BY MR. ROSE:**

16 Q. AND SO HER REQUEST AT THAT TIME WAS DENIED?

17 A. THAT'S RIGHT.

18 Q. OKAY. SO HOW LONG DID MS. ITALIANO CONTINUE AS
19 PRESIDENT OF MEA ON UNPAID LEAVE BUT NOT PARTICIPATING IN
20 SDCERS?

21 A. UNTIL LATE 1997.

22 Q. WHAT HAPPENED AT THAT TIME?

23 A. AT SOME POINT PRIOR TO OCTOBER OF 1997, MY BEST
24 RECOLLECTION BEING THAT IT WAS SOMETIME DURING 1996,
25 MS. ITALIANO BECAME AWARE THAT ALTHOUGH HER REQUEST TO
26 CONTINUE TO PARTICIPATE IN THE PENSION PLAN ONCE ON AN
27 APPROVED LEAVE OF ABSENCE TO SERVE AS UNION PRESIDENT HAD BEEN
28 DENIED, THAT THE PRESIDENT OF THE POLICE OFFICERS ASSOCIATION

1 HAD BEEN ALLOWED BY THE CITY TO CONTINUE TO PARTICIPATE IN THE
2 PENSION PLAN, AND THAT RAISED THE RED FLAG THAT AN INEQUITY
3 HAD OCCURRED AND THAT WHAT HAD BEEN GRANTED TO POA'S PRESIDENT
4 HAD BEEN DENIED TO MEA'S PRESIDENT, AND THAT ISSUE WAS BROUGHT
5 TO THE CITY FOR REDRESS.

6 MR. ROSE: LET ME SEE IF I CAN MARK A COUPLE OF
7 EXHIBITS, YOUR HONOR, AND I'LL DO THEM ALL AT ONE TIME, THE
8 NEXT NUMBERS IN ORDER.

9 (AN OFF-THE-RECORD DISCUSSION IS HELD.)

10
11 BY MR. ROSE:

12 Q. I'M GOING TO HAND YOU SOME EXHIBITS THAT WE'RE GOING
13 TO BE LOOKING AT, MS. SMITH.

14 THE COURT: HERE IS A NEW PERSON. HER EARS WERE
15 BURNING.

16 (COURT'S EXHIBIT 1502, TWO-PAGE MEMORANDUM
17 DATED 2/17/89, IS MARKED FOR IDENTIFICATION.)

18
19 BY MR. ROSE:

20 Q. 1502 IS THE ONE I'M LOOKING AT FIRST.

21 THE COURT: WHICH ONE IS THAT?

22 MR. ROSE: THAT'S A TWO-PAGE MEMO DATED
23 FEBRUARY 17TH, 1989.

24 THE COURT: THAT'S 1502.

25 MR. HANNA: THANK YOU.

26
27 BY MR. ROSE:

28 Q. OKAY. DO YOU HAVE BEFORE YOU 1502, MS. SMITH?

1 A. I DO.

2 Q. DO YOU RECOGNIZE THAT MEMO?

3 A. YES, I DO.

4 Q. WHEN DID YOU FIRST SEE IT?

5 A. I BELIEVE THAT I FIRST SAW THIS MEMORANDUM IN -- IN
6 2004.

7 Q. THIS IS A SUBJECT OF PRESIDENTIAL LEAVE, DOES THIS
8 PERTAIN TO THE ISSUE WE HAVE JUST BEEN TALKING ABOUT?

9 A. YES, IT DOES.

10 Q. BUT AT THE TIME THAT IT APPARENTLY WAS GENERATED IN
11 FEBRUARY OF '89, YOU DID NOT HAVE IT?

12 A. I DID NOT.

13 Q. YOU DID NOT HAVE IT IN ROUGHLY 1996 WHEN
14 MS. ITALIANO MADE HER REQUEST?

15 A. I DID NOT.

16 Q. DID THE DISCOVERY OF THE PRESIDENTIAL LEAVE POLICY
17 FOR THE POLICE OFFICERS ASSOCIATION CAUSE THERE TO BE A CHANGE
18 IN MS. ITALIANO'S STATUS?

19 A. YES, IT DID.

20 Q. WHAT WAS THE CHANGE?

21 A. THE CHANGE WAS THAT THE CITY ACKNOWLEDGED THAT IT
22 HAD CREATED AN INEQUITY THROUGH INADVERTANCE AND THAT ITS
23 DENIAL TO MS. ITALIANO OF THE OPPORTUNITY TO CONTINUE TO
24 PARTICIPATE IN THE SDCERS PLAN WHILE ALLOWING POA'S PRESIDENT
25 TO DO IT HAD BEEN UNFAIR, AND THE CITY HAD AGREED TO REDRESS
26 THAT BY PERMITTING MS. ITALIANO TO BEGIN TO PARTICIPATE AGAIN
27 IN THE SDCERS PLAN AND TO MAKE CONTRIBUTIONS BASED ON HER
28 UNION-PAID SALARY, WHICH IS WHAT THE POA PRESIDENT WAS DOING,

1 BUT WITH THE UNDERSTANDING THAT HER CONTRIBUTIONS NEEDED TO
2 INCLUDE NOT ONLY WHAT SHE WOULD BE REQUIRED TO CONTRIBUTE AS
3 AN EMPLOYEE, THE FULL AMOUNT, BUT ALSO THAT SHE WOULD NEED TO
4 PAY WHAT THE CITY WOULD OTHERWISE BE REQUIRED TO PAY BASED ON
5 THAT UNION-PAID SALARY. SO SHE HAD TO ACCEPT RESPONSIBILITY
6 TO PAY BOTH SIDES OF THE CONTRIBUTION IN ORDER TO BECOME A
7 PARTICIPANT AT THAT POINT.

8 AND THE CITY REFERRED HER TO THE RETIREMENT SYSTEM
9 TO ADDRESS THE ISSUE OF HOW TO PAY FOR THE SERVICE THAT
10 BRIDGED THE GAP IN TIME BETWEEN WHEN SHE WAS DENIED THE RIGHT
11 TO PARTICIPATE AND THIS DATE IN OCTOBER OF 1997 WHEN IT WAS
12 BROUGHT BEFORE THE RETIREMENT BOARD.

13 Q. WAS THERE SOME LEGISLATION INVOLVED TO EFFECT THE
14 CHANGE?

15 A. THERE WAS -- TO THE BEST OF MY RECOLLECTION, THERE
16 WAS A PROVISION INCLUDED IN AN ORDINANCE EARLIER IN 1997 AT
17 THE TIME THAT THERE WAS AT LEAST TWO ORDINANCES ADOPTED THAT
18 RELATED TO THE NEW IMPROVEMENTS IN THE PENSION PLAN THAT CAME
19 OUT OF THE WHOLE MP-1 SET OF ISSUES, AND THAT THERE WAS AT
20 LEAST A LINE ITEM REFERENCE IN THAT ORDINANCE THAT ALLOWED THE
21 UNION PRESIDENT TO PARTICIPATE.

22 Q. IF YOU WOULD LOOK AT THE SECOND PAGE OF EXHIBIT 1502
23 AT THE SECOND PARAGRAPH, THIS MEMO SEEMS TO RELATE TO A
24 VARIETY OF ITEMS THAT OCCURRED AT A MEETING BETWEEN
25 MR. GRISSOM AND MR. RYAN. THE SECOND PARAGRAPH INDICATES, "WE
26 ALSO AGREED THAT THE ABOVE IS APPLICABLE TO OTHER EMPLOYEE
27 ORGANIZATION PRESIDENTS."

28 NOW, THIS IS A MEMO DATED 1989. DID YOU HAVE ANY

1 IDEA IN 1989 THAT THERE WAS A PROCEDURE APPLICABLE TO OTHER
2 EMPLOYEE ORGANIZATION PRESIDENTS OTHER THAN -- WITH REGARD TO
3 ANY?

4 A. NO.

5 Q. AND WHEN YOU FIRST BECAME AWARE OF THIS MEMO IN
6 2004, WAS IT CONSISTENT WITH WHAT YOU HAD COME TO LEARN IN THE
7 YEARS BEFORE?

8 A. YES, IT WAS. UM, IT WAS CONSISTENT WITH WHAT WAS
9 DISCOVERED PRIOR TO 1997 AND CONSISTENT WITH THE WAY IN WHICH
10 THE MATTER WAS REDRESSED IN 1997. I JUST HAD NEVER SEEN THIS
11 EARLIER MEMO. AND CONTRARY TO WHAT MR. GRISSOM'S STATED
12 INTENTION WAS, HE DID NOT GIVE NOTICE OF THIS TO MS. ITALIANO
13 BACK AT THAT TIME IN 1989, WHICH OF COURSE WOULD HAVE LED TO A
14 DIFFERENT RESULT IN 1989, AND WE WOULDN'T HAVE WAITED AS LONG
15 AS WE DID BEFORE DISCOVERING THE INEQUITY.

16 Q. SO WITH RESPECT TO THE NEXT SENTENCE OF THAT SAME
17 SECOND PARAGRAPH, WHEN MR. GRISSOM WROTE "I WILL VOLUNTEER TO
18 HANDLE COMMUNICATING THIS TO THOSE INDIVIDUALS AND
19 ORGANIZATIONS," YOU WERE NOT AWARE OF THAT EVER HAVING BEEN
20 DONE?

21 A. I WAS NOT.

22 Q. THERE ARE SOME CC'S ON THIS MEMO.

23 DO YOU RECOGNIZE THOSE INDIVIDUALS AND WHAT THEY DID
24 AT THE TIME?

25 A. I DO. JAN BEATON WAS IN A STAFF ADMINISTRATIVE
26 CAPACITY WITHIN THE RETIREMENT OFFICE.

27 JACK KATZ WAS A DEPUTY CITY ATTORNEY AT THIS POINT
28 IN TIME IN 1989, LATER BECAME A TRUSTEE ON THE RETIREMENT

Handled
AS
7/23/04
Ask
Grissom

1 BOARD REPRESENTING RETIRED EMPLOYEES.

2 BOB FARRIOR (PHONETIC) AT THIS TIME IN 1989 WAS THE
3 LABOR RELATIONS MANAGER FOR THE CITY.

4 AND RON NEWMAN WAS AN IMMEDIATE PAST PRESIDENT OF
5 THE POA, WHO IS ALSO REFERENCED WITHIN THE TEXT OF THIS MEMO.

6 Q. DO YOU HAVE ANY INFORMATION AT ALL AS TO WHETHER
7 ANYONE WAS KEEPING THIS INFORMATION A SECRET FOR THE YEARS
8 BETWEEN 1989 AND 1996?

9 A. I DON'T HAVE ANY REASON TO BELIEVE THAT ANYONE
10 INTENDED EITHER TO KEEP IT A SECRET OR INTENDED -- OR IN
11 PARTICULAR THAT MR. GRISSOM INTENDED NOT TO FOLLOW THROUGH
12 ON -- ON WHAT HE SAYS IN THE MEMORANDUM. BUT IN THE IMPERFECT
13 WORLD IN WHICH WE LIVE, IT DIDN'T -- IT SIMPLY DIDN'T HAPPEN
14 WHEN IT SHOULD HAVE.

15 (COURT'S EXHIBIT 1503, ONE-PAGE MEMORANDUM
16 FROM MR. GRISSOM DATED 10/09/97, IS MARKED
17 FOR IDENTIFICATION.)

18
19 **BY MR. ROSE:**

20 Q. NOW, LET ME ASK YOU TO TAKE A LOOK AT THE NEXT
21 EXHIBIT THAT'S MARKED, WHICH IS 1503, WHICH IS A ONE-PAGE
22 MEMORANDUM.

23 DO YOU SEE THAT, MS. SMITH?

24 A. I DO.

25 Q. DO YOU RECOGNIZE THIS MEMO?

26 A. YES, I DO.

27 Q. WHAT IS IT?

28 A. THIS IS THE MEMORANDUM FROM LARRY GRISSOM, AS

1 RETIREMENT ADMINISTRATOR, WHICH ACCOMPANIED MS. ITALIANO'S
2 REQUEST WHICH WAS PUT BEFORE THE RETIREMENT BOARD FIRST
3 THROUGH A BUSINESS AND PROCEDURES COMMITTEE AND THEN BEFORE
4 THE FULL BOARD FOR HANDLING IN 1997. AND AS I BELIEVE IS
5 THEIR PROTOCOL, MR. GRISSOM WROTE THIS ACCOMPANYING MEMORANDUM
6 TO GIVE THE BOARD THE BACKGROUND ON THE ISSUE AND THE REASON
7 FOR THE REQUEST THAT WAS GOING TO BE COMING BEFORE THEM.

8 Q. YOU HAVE READ THROUGH THIS, HAVE YOU NOT?

9 A. I HAVE.

10 Q. DOES IT ACCURATELY STATE THE STATE OF AFFAIRS AS OF
11 OCTOBER OF 1997?

12 A. YES, IT DOES.

13 Q. SO AT THE TIME OF THIS MEMORANDUM, HAD MS. ITALIANO
14 RESUMED HER PARTICIPATION IN SDCERS?

15 A. NOT AT THE TIME OF THE MEMORANDUM. THERE WERE TWO
16 ACTIONS THAT WERE GOING TO TAKE PLACE. ONE OF THEM WAS THE
17 GOING-FORWARD ACTION WHEREBY SHE WAS GOING TO MAKE
18 CONTRIBUTIONS TO THE RETIREMENT SYSTEM BASED ON HER UNION-PAID
19 SALARY, JUST AS THE POA PRESIDENT WAS DOING, ON THE CONDITIONS
20 AS I EARLIER STATED; THAT SHE PAY BOTH THE EMPLOYEE
21 CONTRIBUTION AND THE CITY'S CONTRIBUTION. BUT THE BOARD
22 NEEDED TO ACT ON THE ISSUE OF THE PAST SERVICE CREDIT AND WHAT
23 WAS OWED FOR THAT PERIOD OF TIME, AND THAT WAS EXCLUSIVELY
24 WITHIN THE PURVIEW OF THE RETIREMENT BOARD. IT WAS NOT THE
25 CITY'S JURISDICTION TO ADDRESS THAT.

26 SO SHE WAS REFERRED TO THE RETIREMENT BOARD, BROUGHT
27 HER ACTION TO THEM, IT WAS HANDLED IN OPEN SESSION, IT WAS
28 VOTED ON IN OPEN SESSION UNANIMOUSLY BY ALL PRESENT AT THAT

Get open session, in case transcripts?

1 TIME, WHICH INCLUDED DIANN SHIPIONE.

2 Q. SO SINCE THAT TIME, THEN, HAS MS. ITALIANO, AS MEA
3 PRESIDENT, CONTRIBUTED TO SDCERS?

4 A. YES.

5 Q. SHE DRAWS HER SALARY FROM THE UNION, NOT FROM THE
6 CITY?

7 A. SHE DOES.

8 Q. DID SHE HAVE TO MAKE SOME CONCESSIONS TO THE CITY TO
9 GET THAT BENEFIT?

10 A. NO.

11 Q. DID YOU BELIEVE THAT THE CHANGE THAT WAS MADE IN
12 LATE 1997 THEN PUT HER AS THE MEA PRESIDENT IN THE SAME
13 POSITION AS THE POA PRESIDENT WITH RESPECT TO RETIREMENT
14 PARTICIPATION?

15 A. IT DID. IT PUT HER IN THE SAME POSITION AND GAVE
16 HER THE SAME TERMS AND CONDITIONS AS ALL GENERAL MEMBERS OF
17 THE RETIREMENT SYSTEM ENJOYED. IN OTHER WORDS, THIS WAS NOT A
18 SPECIAL RETIREMENT PLAN FOR HER, NOR WAS IT FOR THE POA
19 PRESIDENT. THE ONLY ISSUE WAS WHAT IS THE SALARY GOING TO BE
20 ON THE BASIS OF WHICH CONTRIBUTIONS WILL BE MADE.

21 **THE COURT:** SHE WAS PUT ON THE SAME EQUAL FOOTING AS
22 THE POA PRESIDENT AS FAR AS THAT IS CONCERNED.

23 **THE WITNESS:** THAT'S EXACTLY RIGHT.

24 **THE COURT:** THAT'S THE QUESTION.

25
26 **BY MR. ROSE:**

27 Q. AND THEN LOOKING AT THE THIRD PARAGRAPH OF
28 EXHIBIT 1503 AT THE LAST SENTENCE, IT STATES -- THIS IS FROM

1 MR. GRISSOM TO THE BOARD, "THIS PROCEDURE HAS BEEN IN PLACE
2 SINCE 1989."

3 DID YOU CONFIRM, ONCE YOU BECAME AWARE OF THIS
4 OCTOBER '97 MEMO, THAT, IN FACT, THAT HAD BEEN THE PROCEDURE
5 FOR POA SINCE 1989?

6 A. I DO NOT KNOW WHAT I DID, IF ANYTHING, TO CONFIRM
7 IT. I DO NOT THINK I HAD ANY REASON TO DOUBT THE ACCURACY OF
8 WHAT MR. GRISSOM WAS STATING AT THE TIME MS. ITALIANO'S
9 REQUEST WAS BEFORE THE BOARD. BUT WHETHER I DID ANYTHING
10 INDEPENDENT OF ACCEPTING HIS REPRESENTATION OR NOT, I DON'T
11 NOW RECALL.

12 Q. AFTER THE CHANGE WAS MADE IN OCTOBER OF '97, DID YOU
13 BELIEVE THAT THE POA AND THE MEA PRESIDENTS WERE ON EQUAL
14 FOOTING AS FAR AS RETIREMENT PARTICIPATION?

15 A. I DID.

16 Q. DID MS. ITALIANO'S UNION SALARY INCREASE IN THE
17 YEARS AFTER 1997?

18 A. THERE WERE PERIODIC INCREASES IN HER SALARY THAT
19 WERE EXCLUSIVELY WITHIN THE JURISDICTION OF THE BOARD OF
20 DIRECTORS, WHICH IS ELECTED FROM THE CITY WORKFORCE, 70-ODD
21 MEMBERS OF THE BOARD OF DIRECTORS. THEY SET HER SALARY AND
22 FROM TIME TO TIME THERE WERE INCREASES. AND WHEN THERE WAS AN
23 INCREASE, THE PROCEDURE WAS THAT HER OFFICE WOULD NOTIFY THE
24 RETIREMENT BOARD ADMINISTRATIVE STAFF OF THE CHANGE IN SALARY,
25 AND THAT STAFF WOULD CONFIRM THE NEW AMOUNT OF THE INCREASE IN
26 CONTRIBUTIONS THAT WOULD NEED TO BE SENT TO THE RETIREMENT
27 OFFICE.

28 THE COURT: DO ME A FAVOR, MOVE THAT BOOK FOR A

1 SECOND. NO, NO. MOVE IT.

2 WHAT DOES IT SAY?

3 THE WITNESS: "PLEASE ANSWER QUESTIONS YES OR NO."

4 THE COURT: THANK YOU. THE ANSWER IS "YES."

5 NEXT QUESTION.

6 EVERY LAWYER THAT COMES UP HERE DOES THE EXACT SAME
7 THING.

8 THE WITNESS: I'LL TRY.

9 THE COURT: GO AHEAD.

10 THE WITNESS: I'LL TRY NOT TO EXPLAIN.

11 THE COURT: THAT'S ALL RIGHT.

12
13 BY MR. ROSE:

14 Q. MS. SMITH, YOU HAVE BEEN IN ATTENDANCE THROUGHOUT
15 THIS PRELIMINARY HEARING; IS THAT CORRECT?

16 A. FOR ALMOST ALL OF IT, YES.

17 Q. WE HAVE HAD SOME TESTIMONY, YOU MAY HAVE HEARD IT,
18 ABOUT PICKUP PAYMENTS BY THE CITY. AS I RECALL, MR. RHODES
19 SAID HE BEGAN RECEIVING PICKUP PAYMENTS EFFECTIVE
20 JULY 1, 2002.

21 COULD YOU EXPLAIN FOR US WHAT THAT PHRASE MEANS,
22 "PICKUP PAYMENTS FROM THE CITY"?

23 A. EACH EMPLOYEE, AS A PARTICIPANT IN SDCERS, HAS A
24 CONTRIBUTION OBLIGATION. AND THAT AMOUNT IS DETERMINED BASED
25 ON THE AGE OF THAT EMPLOYEE AT THE TIME HE OR SHE BECAME A
26 PARTICIPANT IN THE SYSTEM. AND IT ALSO DEPENDS ON WHETHER
27 THAT EMPLOYEE IS A SAL- -- IS A SAFETY MEMBER OF THE SYSTEM OR
28 A GENERAL MEMBER OF THE SYSTEM, OR A LEGISLATIVE OR ELECTED

1 DO YOU RECOGNIZE THAT AS THE RESOLUTION THAT WAS
2 ADOPTED BY THE CITY COUNCIL?

3 A. I DO.

4 Q. YOU SAW IT AT ABOUT THE TIME, OCTOBER 21, 2002, IN
5 ITS FINAL FORM?

6 A. I PROBABLY SAW IT BEFORE THAT DATE IN ITS FINAL
7 FORM, BUT SOMETIME CLOSE IN TIME TO THAT DATE.

8 Q. AND CAN YOU RECALL ANYTHING AT ALL THAT CAME UP
9 ABOUT THE SUBJECT OF A CAP ON THE UNION PRESIDENT RETIREMENT
10 CALCULATION BETWEEN MR. KELLEY BRINGING IT UP THAT ONE DAY
11 BETWEEN YOU AND MS. ITALIANO AND OCTOBER 21, 2002?

12 A. TO THE BEST OF MY RECOLLECTION, THERE WAS NOT A
13 SINGLE OTHER REFERENCE TO IT DURING ALL OF THAT TIME UNTIL THE
14 DRAFT RESOLUTION CAME TO ME, AS I SAID, BEFORE OCTOBER.

15 Q. DID MS. ITALIANO RECEIVE ANY MONETARY BENEFIT BY
16 AGREEING TO MR. KELLEY'S PROPOSAL?

17 A. NO.

18 Q. NOW TAKING A LOOK AT EXHIBIT 1504, DID THIS OR I
19 SHOULD SAY DOES THIS ACCURATELY DEPICT THE AGREEMENT THAT YOU
20 AND MS. ITALIANO REACHED WITH THE CITY CONCERNING HER
21 RETIREMENT CALCULATION?

22 A. YES, IT DOES. UM -- THAT --

23 Q. IF YOU LOOK AT PAGE 3 AT THE BOTTOM, AFTER WE GET
24 PAST ALL OF THE WHEREASES, IT HAS WHAT IS BEING RESOLVED THAT
25 IS APPROVED BY COUNCIL.

26 DO YOU SEE THAT?

27 A. YES.

28 Q. LOOKING AT THE LAST PARAGRAPH OF PAGE 3, DID -- DID

1 THIS RESOLUTION ACCURATELY DESCRIBE WHAT IT WAS THAT
2 MS. ITALIANO HAD AGREED TO SOME MONTHS BEFORE IN RESPONSE TO
3 MR. KELLEY'S PROPOSAL?

4 A. YES, IT DID. MY ONLY HESITATION IS TO MAKE CLEAR ON
5 THE RECORD THAT WHAT WAS MEMORIALIZED HERE WAS, IN FACT,
6 EXCEPT FOR THE IMPOSITION OF THE CAP, WHICH WAS NOT ARGUABLY
7 FAVORABLE TO MS. ITALIANO, BUT WHAT WAS MEMORIALIZED HERE HAD
8 ALREADY BEEN THE AGREEMENT IN EFFECT AND BEING EXECUTED SINCE
9 LATE 1997. IT WAS NOT A NEW BENEFIT FOR MS. ITALIANO AS IT
10 WAS LATER PROCLAIMED TO BE BY CERTAIN PEOPLE.

11 Q. OKAY. SO IN THE FIVE YEARS THAT TRANSPIRED AFTER
12 OCTOBER OF 1997, IS THIS THE FIRST TIME THE PROCEDURE FOR
13 MS. ITALIANO AS THE MEA PRESIDENT WAS MEMORIALIZED IN WRITING
14 BY THE CITY?

15 A. IN THIS RESOLUTION FORM, YES.

16 Q. WHEN IT WAS MEMORIALIZED, IT WAS THE SAME AS IT HAD
17 BEEN ALL THE WAY BACK IN 1997?

18 A. EXACTLY. EXCEPT FOR THE CAP. THAT WAS NEW.

19 Q. LOOKING AT THIS LAST PARAGRAPH OF PAGE 3 NEAR THE
20 END, WHERE THE SENTENCE CONCLUDES THAT "THE FORMULA SHALL BE
21 BASED ON THEIR RESPECTIVE COMBINED CITY AND UNION SALARY, NOT
22 TO EXCEED THE ANNUAL BASE SALARY OF THE CITY'S LABOR RELATIONS
23 MANAGER. "

24 DID THIS MAKE AVAILABLE TO MS. ITALIANO, IF
25 CIRCUMSTANCES CHANGED, THAT SHE COULD RECEIVE TWO SALARIES AND
26 USE THAT FOR HER ULTIMATE RETIREMENT FORMULA?

27 A. BEAR WITH ME ON THIS NOW. THE -- THE NEW ARTICLE 15
28 THAT I HAVE DESCRIBED FOR PRESIDENTIAL LEAVE, THE NEW PROGRAM

*inc
any
form?*

1 ON A GOING-FORWARD BASIS, WAS GOING TO BE THE ONLY WAY FOR A
2 NEWLY-ELECTED PRESIDENT OF MEA TO PARTICIPATE IN SDCERS.
3 HOWEVER, THAT PROGRAM WAS AVAILABLE TO MS. ITALIANO, EVEN
4 THOUGH SHE WAS INCUMBENT UNION PRESIDENT, SHOULD HER UNION
5 WISH TO INVOKE IT; MEANING THAT AS OF JULY 1, 2002 WHEN THAT
6 WENT INTO EFFECT, HAD HER BOARD OF DIRECTORS WANTED HER TO DO
7 SO, SHE COULD HAVE GONE BACK ON THE CITY PAYROLL, RECEIVED THE
8 PAY AND BENEFITS OF HER PRIOR POSITION, WHICH WAS THE JOB TO
9 BE SAVED ON THE APPROVED LEAVE OF ABSENCE, AND IN ADDITION
10 RECEIVED WHATEVER SALARY THE UNION DEEMED APPROPRIATE TO PAY
11 HER FOR HER SERVICES, AND PAID CONTRIBUTIONS TO SDCERS ON THAT
12 UNION-PAID SALARY IN ADDITION TO THE CONTRIBUTIONS THAT WOULD
13 BE PAID ON HER CITY-PAID SALARY. THAT WOULD HAVE SAVED THE
14 UNION MONEY, COST THE CITY MONEY, AND THE MEA BOARD OF
15 DIRECTORS DETERMINED IN 2002 NOT TO INVOKE THAT THOUGH THEY
16 COULD HAVE.

17 Q. DID THIS RESOLUTION AFFECT ANYONE OTHER THAN
18 MS. ITALIANO?

19 THE COURT: YOU THINK I UNDERSTAND THAT, YOU GOT
20 ANOTHER THING COMING.

21 (LAUGHTER.)

22 MR. ROSE: WOULD YOU READ BACK THE LAST ANSWER?

23 THE COURT: NO, DON'T.

24 MR. ROSE: WOULD THAT MAKE IT BETTER?

25 THE COURT: WHAT I SAID? OH, YEAH. MARK THAT SPOT.
26 GO AHEAD.

27 ///

28 ///

Exhibit 7

RECEIVED JUL 25 1997

MEMORANDUM

SAN DIEGO MUNICIPAL EMPLOYEES ASSN.

4185 Home Avenue San Diego, CA 92105
264-6632 / FAX 264-0405 / MS-126

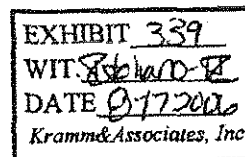
DATE: July 25, 1997
TO: Cathy Lexin, Labor Relations Manager
FROM: Judie Italiano, President/General Manager
RE: Judie Italiano's City Retirement

Per our previous discussions, I am outlining for you what I feel would be a fair settlement of my claim that I was denied the opportunity to participate in the CERS plan while on negotiated presidential leave.

In August of 1986 I requested a leave of absence to perform the duties of MEA's President on a full time basis. At the time of that leave, MEA's General Manager, Dick Barker, made a request to the Labor Relations office that I be allowed to continue my City benefits while on leave and that arrangements be made for payment. The response from the Labor Relations office, which cited Attorney John Kaheney, was that there were no provisions to allow for this type of arrangement and the appearance of allowing someone to continue benefits while being compensated by the union might be seen as a "misuse or gift of public funds" (a phrase that Kaheney was famous for).

Consequently I was unable to pay into my City retirement during my leave of absence. My SPSP and deferred compensation were frozen and I was unable to continue my health insurance.

Early 1996 I learned that for many years the City had been allowing Police Officers on presidential leave to continue City benefits including retirement. At that time I voiced my concern that I had been unfairly denied the same access to City benefits that other employee organizations had been provided. I made this known to you, Larry Grissom, and Jack McGrory.



339.1

MEA 3608

0339-0001



Now that I have all the numbers from the Retirement office I am making a request to make myself whole in retirement for the time I was denied the opportunity to participate by use of the following method:

A. I would make a formal request to the Retirement Board to "forgive" all interest owed due to my ability to pay being unfairly denied.

B. I would make full payment for all "employee" contributions owed by a transfer from SPSP.

C. Have the Manager's office make arrangements to take responsibility for full payment of the "employer" portion that is owed.

D. I would begin immediate direct payments to the Retirement office for both the employee and employer portion of my retirement while I continue on presidential leave.

I would appreciate your immediate response on this issue so we can stop the clock on the amount owed. The method of repayment I have requested to right this wrong is, in my estimation, a fair one considering this large bill would not be owed had I been granted the same opportunity to pay as POA presidents were granted.

cc: Ann Smith

339.2

MEA 3609

0339-0002



Exhibit 8

MEMORANDUM

SAN DIEGO MUNICIPAL EMPLOYEES ASSN.

4185 Home Avenue San Diego, CA 92105
264-6632 / FAX 264-0405 / MS-126

DATE: August 21, 1997

TO: Larry Grissom, Retirement Administrator

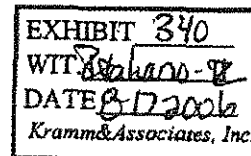
FROM: Judie Italiano, President/General Manager

RE: Direct payment of Retirement contribution.

I am most anxious to stop the clock on the accumulating balance I owe for my retirement buy-back. To do that I must know the amount of the employer plus the employee portion of my contribution. I am requesting that you provide me that information along with the procedure for making a direct payment as quickly as possible.

It is my goal to make September be the first month I make a payment (I mean September of 1997!) and your assistance would be most appreciated.

cc Casey Lupin



MEA 3610

0340-0001



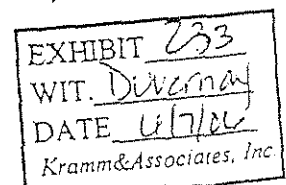
Exhibit 9

233

(O-97-75)

ORDINANCE NUMBER O- 18383 (NEW SERIES)ADOPTED ON FEB 25 1997

AN ORDINANCE AMENDING CHAPTER II, ARTICLE 4, OF THE SAN DIEGO MUNICIPAL CODE BY AMENDING DIVISION 1 BY AMENDING SECTION 24.0103, REPEALING SECTIONS 24.0104 AND 24.0104.1; BY AMENDING DIVISION 2 BY AMENDING SECTION 24.0201, REPEALING SECTION 24.0201.1, RETITLING AND AMENDING SECTION 24.0202, REPEALING SECTION 24.0202.1, RETITLING SECTION 24.0203, REPEALING SECTION 24.0209, AND AMENDING SECTION 24.0211; BY AMENDING DIVISION 3 BY AMENDING SECTION 24.0301, RETITLING AND AMENDING SECTION 24.0302, REPEALING SECTION 24.0304, RENUMBERING SECTIONS 24.0305 AND 24.0306 TO SECTIONS 24.0304 AND 24.0305, REPEALING SECTION 24.0307, RENUMBERING SECTION 24.0308 TO SECTION 24.0306, AMENDING AND RENUMBERING SECTION 24.0308.5 TO SECTION 24.0307, AND RENUMBERING SECTION 24.0309 TO SECTION 24.0308; BY AMENDING DIVISION 4 BY AMENDING SECTIONS 24.0402 AND 24.0403 RETROACTIVELY APPLICABLE TO JANUARY 1, 1997, AND AMENDING SECTION 24.0404; BY AMENDING DIVISION 5 BY AMENDING SECTION 24.0503, RENUMBERING SECTION 24.0503.1 TO SECTION 24.0504, AMENDING AND RENUMBERING SECTION 24.0504.1 TO SECTION 24.0505, RENUMBERING SECTION 24.0505.1 TO SECTION 24.0506, REPEALING SECTIONS 24.0514 AND 24.0516 RETROACTIVELY TO THE DATE OF OCTOBER 1, 1987, AND AMENDING SECTIONS 24.0521 AND 24.0532; BY AMENDING DIVISION 6 BY REPEALING SECTION 24.0608.1; BY AMENDING DIVISION 7 BY AMENDING SECTION 24.0706, RETITLING AND AMENDING SECTION 24.0709, AND AMENDING SECTION 24.0710.2; BY AMENDING DIVISION 9 BY AMENDING AND RENUMBERING 24.0907.1 TO SECTION 24.0907; BY AMENDING DIVISION 10 BY AMENDING SECTION 24.1005 TO REFLECT RENUMBERING OF SECTION 24.0308 TO SECTION 24.0306 WITHIN THE TEXT OF THAT SECTION, AND ADDING SECTION 24.1014; BY AMENDING DIVISION 11 BY AMENDING SECTION 24.1101, AND AMENDING SECTION 24.1114 TO REFLECT RENUMBERING OF SECTION 24.0907.1 TO SECTION 24.0907 WITHIN THE TEXT OF THAT SECTION; BY AMENDING DIVISION 12 BY AMENDING THE TITLE THEREOF, BY REPEALING SECTIONS 24.1201, 24.1202, 24.1203, 24.1204, 24.1205 AND 24.1206, AND BY REENACTING SECTIONS 24.1201, 24.1202, 24.1203, 24.1204, 24.1205,



AND 24.1206, AND ADDING SECTION 24.1207; BY AMENDING DIVISION 13 BY RETITLING AND AMENDING SECTION 24.1302, AMENDING SECTIONS 24.1304, 24.1305, AND 24.1307, AND REPEALING AND REENACTING SECTION 24.1312, ALL RELATING TO THE CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, on June 5, 1996, the Management Team of The City of San Diego and the San Diego Police Officers Association (POA) reached tentative agreement regarding changes to the retirement benefits provided by the City Employees' Retirement System ("CERS"); and

WHEREAS, on July 2, 1996, the Council of The City of San Diego approved Resolution No. R-287582 approving tentative agreements with Local 145 of the International Association of Fire Fighters ("Local 145"), the San Diego Municipal Employees' Association ("MEA"), and Local 127 of the American Federation of State, County and Municipal Employees' Association ("Local 127") regarding wages, hours, and other terms and conditions of employment for Fiscal Year 1998, and proposed benefit increase changes to CERS for all four employee organizations contingent upon an affirmative vote of the participants, and subject to approval of the City Council, CERS Board of Administration, and subject to the occurrence of various contingencies contained with the Manager's Retirement Proposal; and

WHEREAS, on June 21, 1996, the CERS Board of Administration approved the concept of funding employer contribution rates partially funded from CERS Surplus Undistributed Earnings by establishing a reserve from those Surplus Undistributed Earnings; and

WHEREAS, on June 21, 1996, the CERS Board of Administration deferred approval of funding retiree health insurance from CERS Surplus Undistributed Earnings until the affirmative passage of Proposition D on the November 5, 1996, Municipal Ballot authorizing CERS to

"Retirement System" or "this System" means the City Employees Retirement System as created by this Article, and the "1981 Pension System" means the Employees Retirement System as created by Chapter II, Article 4, Division 11.

"Undistributed Earnings Reserve" shall mean the balance remaining in the account to which the earnings to the fund are credited, after the annual distribution to the employee and employer reserve accounts in accordance with interest assumption rates established by the Board, plus accumulated earnings which have not been so distributed.

Section 2. That Chapter II, Article 4, Division 1, of the San Diego Municipal Code be and the same is hereby amended by repealing Sections 24.0104 and 24.0104.1.

Section 3. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0201, to read as follows:

SEC. 24.0201 Contribution of General Members

For General Members, the Board of Administration shall provide:

1. [No change in text.]
2. The normal rates of contribution for each Member, except Safety Members, shall be such as will provide an average Annuity at age 57½ equal to 1/120th of the Member's Final Compensation, according to the tables adopted by the Board of Administration for each year of service rendered after entering the System.
3. An employee who is granted a special leave of absence without pay in order to serve as the duly elected president of a recognized employee labor

organization, shall be permitted, if he or she so elects, to continue making contributions during the period of presidential leave in an amount prescribed in accordance with this Section 24.0201.

Section 4. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0201.1.

Section 5. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by retitling and amending Section 24.0202, to read as follows:

SEC. 24.0202 Adoption of General Member Contribution Rates

The Board of Administration, based upon the advice of the Actuary, shall periodically adopt the rate of contribution of each General Member according to age at the time of entry into the Retirement System.

Section 6. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0202.1.

Section 7. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by retitling Section 24.0203, to read as follows:

SEC. 24.0203 Maximum and Minimum Rates for General Members

[No change in text.]

Section 8. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by repealing Section 24.0209.

Section 9. That Chapter II, Article 4, Division 2, of the San Diego Municipal Code be and the same is hereby amended by amending Section 24.0211, to read as follows:

Exhibit 10

REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER:

TO: CITY ATTORNEY

2. FROM: (ORIGINATING DEPARTMENT)
Labor Relations/City Manager

3. DATE
June 11, 1996

4. SUBJECT: FY 98 Labor Contract Extensions and Retirement System Changes

5. FOR INFORMATION, CONTACT: (NAME & MAIL STA.)
Cathy Lexin, 9A

6. TELEPHONE NO.
236-6313

7. CHECK HERE IF BOX 1472A, "DOCKET SUPPORTING INFORMATION," HAS BEEN COMPLETED ON PAGE 2:

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NO.				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:
Unknown at this time.

RECEIVED
96 JUN 13 AM 8:03
CITY CLERK'S OFFICE
SAN DIEGO, CA

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	DEPARTMENT DIRECTOR	<i>Cathy Lexin</i>	6/11/96		CITY MANAGER	<i>[Signature]</i>	6-11-96
	EOCP	<i>NR</i>	6/11/96		AUDITOR		
					CITY ATTORNEY		
					ORIGINATING DEPARTMENT	<i>Cathy Lexin</i>	6/11/96
					MGR. DOCKET COORD.	<i>aw</i>	6/12/96
					RULES COMMITTEE	<i>[Signature]</i>	6/25/96

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

Authorizing FY 98 Labor Contract Extensions and Retirement System Changes.

11a. MANAGER'S RECOMMENDATIONS: Approve the Resolution

12. SPECIAL CONDITIONS (REFER TO A.R. 3.20 FOR INFORMATION ON COMPLETING THIS SECTION.)
City Charter Section 143.1 provides that adoption of an ordinance affecting retirement benefits is subject to approval by a majority vote of the members of the system. This action will be subject to an affirmative vote of the members of the system, which shall be scheduled for August 1998.

R- 287582 JUL 02 1996

The Management Team of the City of San Diego has met and conferred with Local 145 of the International Association of Firefighters (Local 145), with the Municipal Employees' Association (MEA), and with Local 127 of the American Federation of State, County and Municipal Employees' Association (Local 127) regarding wages, hours and other terms and conditions of employment for the respective employees that each represents. Pursuant to these negotiations, the Management Team has agreed to the provisions summarized in the tentative agreements attached hereto with each of these three labor organizations for FY98 Memorandum Of Understanding extensions.

In addition, the Management Team has met and conferred with POA, Local 145, MEA and Local 127 regarding changes to the San Diego City Employees' Retirement Systems (CERS). All four labor organizations have tentatively agreed to the terms of this proposal subject to various contingencies contained therein. Subsequent to this approval by the City Council, and an affirmative vote of the retirement system members, related to retirement benefits, the terms of these agreements will be incorporated into Memorandum of Understanding language for Council approval, and the retirement systems changes will be incorporated into Municipal Code revisions for approval of necessary Ordinances by the Council.

Fiscal Impact: Unknown at this time.

R 287582

SUBJECT: FY 98 Labor Contract Extensions and Retirement System Changes

BY LINE: (CITY MANAGER / DEPT. HEAD / AUTHOR INITIALS)

SIGNATURES:

Cathy Lepore

 ORIGINATING DEPT. HEAD

[Signature]

 CITY MANAGER
 (FOR MANAGERIAL DEPARTMENTS ONLY)

(R-96-1593)

RESOLUTION NUMBER R- 287582ADOPTED ON JUL 02 1996

WHEREAS, the Management Team of The City of San Diego has met and conferred with Local 145 of the International Association of Fire Fighters ("Local 145"), the San Diego Municipal Employees' Association ("MEA"), and Local 127 of the American Federation of State, County and Municipal Employees' Association ("Local 127"), regarding wages, hours, and other terms and conditions of employment, and

WHEREAS, the Management Team has reached a tentative agreement on changes to the existing Memorandum of Understanding ("MOU") with each of the employee organizations; and

WHEREAS, the tentative agreement with each organization will result in extensions to the existing MOU's through Fiscal Year 1998; and

WHEREAS, the Management Team also met with the Police Officers Association ("POA"), Local 145, MEA and Local 127, regarding changes to increase the retirement benefits provided by the City Employees' Retirement System ("CERS"); and

WHEREAS, each of the four (4) employee organizations has tentatively agreed to the proposed benefit increase changes subject to the occurrence of various contingencies contained within the proposal; and

WHEREAS, subject to approval of the City Council, CERS Board of Administration, and an affirmative vote of the participants of CERS, the terms of the retirement proposal will be incorporated

into the MOU with each of the four (4) employee organizations,
and into the San Diego Municipal Code where necessary; NOW,
THEREFORE,

BE IT RESOLVED, by the Council of The City of San Diego,
that the Council approves the tentative agreements with Local
145, MEA and Local 127 regarding wages, hours, and other terms
and conditions of employment for Fiscal Year 1998.

BE IT FURTHER RESOLVED, that the Council approves the
proposed benefit increase changes to CERS contingent on an
affirmative vote of the participants.

APPROVED: JOHN W. WITT, City Attorney

By Sharon A. Marshall
Sharon A. Marshall
Deputy City Attorney

SAM:jrl
06/11/96
Or.Dept:Mgr.
R-96-1593
Form=r-t

Management Proposal to MEA for a FY98 Extension of MOU

Following is Management's Proposal related to a one year extension of the current MOU between the City of San Diego and the Municipal Employees Association (MEA). This proposal is conditioned upon MEA also accepting the terms of the Manager's Proposal of CERS Retirement System Changes Dated June 4, 1996, attached hereto (CERS Proposal); conditioned upon the support of MEA for the CERS Proposal when the proposal is considered by the CERS Board and City Council; support of MEA when the CERS Proposal is presented to CERS Plan Participants for a Vote; conditioned upon confirmation by the CERS Actuary as to the costs of changes contained in the Proposal, and approval of the CERS Fiduciary Council, City Attorney and City Fiduciary Council including among other issues IRS 415 issues; and final approval of the CERS proposal and this proposal by the City Council.

1. Salary: +4% 12/27/97

+5% for Legal Secretaries, Sr. Legal Secretaries,
Executive Secretaries and Principal Clerks effective 1/1/98.
2. Flex Article: Reopener in FY98 on Flex Value and design including discussions regarding the use of Retiree Health Insurance Trust
3. EMT Pay: Effective July 1, 1997, all Lifeguard II, Lifeguard III, Lifeguard Sergeants and Lifeguard Lieutenants who are EMT certified will receive an additional 2% of base pay. Effective July 1, 1997, a random drug/alcohol testing program comparable to Fire Department's design will be implemented.
4. Annual Leave:
 - a. Cease to accrue language effective 7/1/97 modified to address circumstances in which employee was not able to reduce leave balance, after selling back maximum allowed hours, due to having requests for leave denied.
 - b. Eliminate minimum hrs required to sell 125 hrs pay in lieu
 - c. Increase maximum accumulation for hires after 7/1/93 from 250 hrs to 350 hrs
8. Employee's retirement contribution: General Members increases by .55% on 12/27/97 and by .55% on the date of MEA's general salary increase in FY99 to pay employee's half of normal cost of retirement formula improvements going into effect on January 1, 1997. Lifeguard Members retirement contribution increases by .245% on 12/27/97 and by .245% on the date of MEA general salary increase if FY99.

9. 4/10 Work Schedules for Lifeguards

The City agrees to develop a plan to implement 4/10 work schedules for Lifeguards with the understanding that any such work schedule would have no cost impact to the City, nor negative impact on service level. If such a plan can be agreed to, the City will implement a pilot 4/10 schedule. The City will retain the unilateral right to return to the prior schedule should costs or service levels be negatively impacted.

10. Article 10 - Personnel Practices

E.

1. Performance Reports: Add - The approval for late EPR's should be submitted to employee in writing, and include reasons for the delay and approval.

City rejects MEA proposal that approvals for late EPR's are not to be granted for EPR's for less than satisfactory ratings.

2. Add: An employee shall only be rated by the immediate supervisor. If the first line supervisor is unavailable, the next higher level supervisor will be the rater. The rater should consult with the OCA supervisor(s) during the rating period for input.

City generally agrees to MEA proposal that employees have a Performance Plan Conference when employee is assigned to a new supervisor, however this should apply only when a new permanent supervisor is assigned (not for temporary assignments, light duty assignments, short term OCA's etc).

City accepts MEA proposal that Performance Development Plans for Satisfactory or better employees must be subject to mutual agreement.

The City agrees to a joint committee to discuss guidelines and trainings related to incorporation of performance based measurements into EPR's. MEA shall have three representatives on this committee.

11. Special Salary Adjustments: MEA proposals to the Civil Service Commission for studies of special salary increases may only be submitted with Management concurrence.

12. Article 28: Flexible Benefits

City agrees to continue to pay the Flex Allocation up to 12 months for employees on TTD or Vocational Rehabilitation, however only for employees on internal TTD or Vocational Rehab.

13. Article 38: Transportation Programs
Mileage reimbursement rate shall be \$.32 effective 7/1/96 and \$.33 effective 7/1/97.

City agrees to providing mileage checks within 2 weeks of submitting timely and accurate requests.
14. Article 57: Overtime
City and MEA will prepare a *Scheduled Overtime Distribution Procedure* for the Bureau of Lifeguard Services by June 30, 1996.
15. Article 59: LTD/Industrial Leave
City agrees to base LTD benefit on earnings of employee at time employee is removed from work due to disability.
16. Article 81: Training Reimbursement
City agrees to MEA proposal providing increased flexibility of tuition reimbursement to cover training situations not currently covered.
17. Article 88 (new): Voluntary Certification Pay
The City and MEA agree to meet and confer regarding the City's proposed voluntary certification program. If agreement is not reached, there shall be no implementation of the program through the term of this MOU.
18. Article 89 (new): Pilot Performance Management Program
The City and MEA agree to meet and confer regarding the City's proposed Pilot Performance Management Program. If agreement is not reached, there shall be no implementation of the program through the term of this MOU.
19. 5% Special Assignment Pay: Effective July 1, 1997, Water Utility Supervisors who are assigned to confined space entry teams for each pay period in which the employee was required to assist with, supervise and/or make one or more confined space entries. It is also the City's intent to provide dry suits and Hepatitis B shots for these employees July 1, 1996.

Cathy Lepin
City of San Diego

6/5/96
Date

Jonathan Galano 6/5/96
MEA Date

City Employees Retirement System

June 4, 1996

Proposal

It is the City Manager's intent to recommend changes to the City Employees Retirement System related to: (1) retiree health insurance, (2) retirement plan benefits, (3) employer contribution rates, and (4) retirement system reserves. These proposed changes to plan benefits, retiree health insurance, employer rates and system reserves will require approval of the City Council, CERS Board of Administration as well as an affirmative vote of plan members. The City Manager's proposal is being reviewed by outside fiduciary counsel engaged through the City Attorney's Office and has been presented to the CERS Board's fiduciary counsel and actuary for review and advice to the Board. All proposed changes are conditioned upon and subject to final approval by fiduciary counsel, City Council approval, Retirement Board approval, vote of plan participants, and confirmation of cost estimates by the System's actuary.

The interrelationship of these various issues to each other necessitate that the entire proposal be considered and acted upon concurrently. Furthermore, the substantial financial implications to the City compel that certain actions occur in time for Fiscal Year 1997 budget decisions. Necessary ordinances can be prepared for formal amendments to the Municipal Code subsequent to actions by appropriate bodies (City Council, CERS Board, Plan Participants, Employee Unions). Following are the proposed changes.

Issue No. 1 - RETIREE HEALTH INSURANCE

- A. Move the Retiree Health Insurance from the City to CERS no later than June 30, 1997.
- B. Pay for Retiree Health Insurance for FY 97 from the Retiree Health Insurance Trust.
- C. Increase cap for POA and Local 145 Retiree Health Plans from \$4500/year to \$4995 only for FY97.
- D. Establish Pre-1980 Retiree Health Insurance as a permanent benefit at a level of \$600 per year.
- E. During FY97, a Task Force of City Manager, CERS Board and Labor Organizations working with actuaries, consultants and legal counsel can develop the necessary documentation to design a tax exempt health insurance benefit to be effective July 1, 1997. The Task Force will recommend benefit level subject to approval by CERS, City Council, and issue an RFP for selection of a common provider. POA and Local 145 will assume full responsibility for any incurred claims under existing health insurance policies.
- F. The existing City Health Insurance Trust (@ \$12.5m) will be used to pay for FY96 Retiree Health Insurance.

- G. CERS will establish a Health Insurance Reserve within CERS. Each year, the upcoming year's projected cost of retiree health insurance will be transferred from undistributed earnings and credited to the Health Insurance Reserve.
- H. Actual premium costs and administrative charges will be charged to the Health Insurance Reserve on a pay-as-you-go basis and will not be actuarially funded.

Issue No. 2 - CERS BENEFIT CHANGES

- A. Eliminate the existing requirement to offset Disability Income.
- B. **Purchase of Service Credit:** Continue the existing service credit provisions related to refunds, probationary periods, 1981 Plan waiting period and Military & Veteran Code; incorporate all others into a new general provision of a five (5) year purchase of service credit feature, which would also be available to 1/2 time and 3/4 time employees. Employees would pay into the retirement fund an amount, including interest, equivalent to the employee and employer full cost of such service.
- C. Increase the calculation of the 13th Check for Pre-10/6/80 retirees from \$30 per creditable year of service to \$60 per creditable year of service, and to \$75 per creditable year of service for Pre-12/31/71 retirees.
- D. Increase the benefit to General Members for industrial disability retirements from 33-1/3% to 50%; and increase the General Member formula as described below.

General Member Formula

Age	Present Factor	Proposed Factor
55	1.48%	2.00%
56	1.56%	2.00%
57	1.63%	2.00%
58	1.72%	2.00%
59	1.81%	2.08%
60	1.92%	2.16%
61	1.99%	2.24%
62	2.09%	2.31%
63	2.20%	2.39%
64	2.31%	2.47%
65+	2.43%	2.55%

Cost of General Member Improvements:

	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+1.11%	+1.10%	+2.21%
<u>Past Liability</u>	<u>+1.43%</u>	<u> </u>	<u>+1.43%</u>
TOTAL COST	+2.54%	+1.10%	+3.64%

Past liability for these two benefit improvements will be paid for by the City through excess earnings.. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's share will be added to the actuarial rate (PUC) calculations beginning mid-year FY97. The employee's share will be paid from excess earnings for FY97, and by increasing the employee's contribution in FY98 and FY99 as follows: +.55% on 12/27/97 and +.55% effective the earliest date in FY99 that General Employees receive a salary increase.

- E. Improve Lifeguard Safety Member Formula as follows and establish a 90% cap. Any employee's who are eligible for a percentage above 90% on 4/1/97, the effective date of implementation of the DROP will be frozen at their rate in effect on 4/1/97. Past liability for this benefit improvement will be paid for by the City through excess earnings. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's shall will be added to the actuarial rate (PUC) calculations beginning mid-year FY97. The employee's share will be paid from excess earnings in FY97, and by increasing the employee's contribution in FY98 and FY99 as follows: +.245% on 12/27/97 and +.245% effective the earliest date in FY99 that Lifeguard employees receive a salary increase.

Age	Present Factor	Proposed Factor
50	2.00%	2.20%
51	2.10%	2.32%
52	2.22%	2.44%
53	2.34%	2.57%
54	2.47%	2.72%
55+	2.62%	2.77%

Cost of Lifeguard Safety Member Improvements:

	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+. 49%	+. 49%	+. 98%
<u>Past Liability</u>	<u>+. 53</u>	<u> </u>	<u>+. 53%</u>
TOTAL COST	+1.02%	+. 49%	+1.51%

- F. Improve Police and Fire Safety Member Formula as follows and establish a 90% cap. Any employee's who are eligible for a percentage above 90% on 4/1/97, the effective date of implementation of the DROP will be frozen at their rate in effect on 4/1/97. Past liability for this benefit improvement will be paid for by the City through excess earnings. Normal cost (prospective costs) will be paid for equally by employee and employer. The employer's shall will be added to the actuarial rate (PUC) calculations beginning mid-year FY97.

Age	Fire Factor	Police Factor	Proposed Factor for Fire & Police
50	2.20%	2.50%	2.50%
51	2.32%	2.54%	2.60%
52	2.44%	2.58%	2.70%
53	2.57%	2.62%	2.80%
54	2.72%	2.66%	2.90%
55+	2.77%	2.70%	2.9999%

Cost of Safety Member Improvements:

<u>FIRE</u>	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+ .73%	+ .72%	+1.45%
<u>Past Liability</u>	<u>+ .91%</u>		<u>+ .91%</u>
Total	+1.64%	+ .72%	+2.36%

Fire employees will pay one-half of the normal cost over two years as follows: +.36% on 4/1/98 and +.36% on 1/1/99.

<u>POLICE</u>	<u>Employer-Paid</u>	<u>Employee-Paid</u>	<u>Total Cost</u>
Normal Cost	+ .47%	+ .47%	+ .94%
<u>Past Liability</u>	<u>+ .91%</u>		<u>+ .91%</u>
Total	+1.38%	+ .47%	+1.85%

Police employees will pay one-half of the normal cost over two years as follows: +.235% on 1/1/98 and +.235% on 1/1/99.

- G. The City agrees to implementation of a *Deferred Retirement Contribution Plan* (DROP) effective April 1, 1997, on the condition that such a plan is approved by the City Attorney's Office as legal under applicable Federal, State and Local laws and regulations, and that such a plan would have no cost impact to the City nor CERS. Employees may participate in this program for up to five (5) years. At the end of three (3) years the evaluate the impact of this program and reserves the unilateral right to prospectively terminate the program. Employee's who elect to participate in DROP will cease participation in CERS, and will participate in SPSP-type plan with a mandatory 3.05% employee contribution matched by 3.05% employer contribution.

Issue No. 3 - EMPLOYER CONTRIBUTION RATES

- A. Employer rates will be calculated using the Projected Unit Credit (PUC) method. For FY96 and FY97, the City will pay the budgeted rates (bifurcated rate) of 7.08% (blended rate) and 7.33% respectively, and increase the rate paid by 0.50% each year until the rate paid reaches the EAN calculated rate. At such time as the PUC and Entry Age Normal (EAN) rates are equal, the System will convert to EAN.

Employer Contribution Rate Stabilization Plan

Period	PUC Rate	City Paid Rate	Difference %	Difference \$
FY96	8.60%	7.08%	1.52%	\$5.33m
FY97	10.87%	7.33%	3.79%	\$13.88m
FY98	12.18%	7.83%	4.35%	\$16.67m
FY99	12.18%	8.33%	3.85%	\$15.40m
FY2000	12.18%	8.83%	3.35%	\$14.00m
FY2001	12.18%	9.33%	2.85%	\$12.45m
FY2002	12.18%	9.83%	2.35%	\$10.72m
FY2003	12.18%	10.33%	1.85%	\$8.82m
FY2004	12.18%	10.83%	1.35%	\$6.73m
FY2005	12.18%	11.33%	.85%	\$4.43m
FY2006	12.18%	11.83%	.35%	\$1.91m
FY2007	12.18%	12.18%	-0-	-0-
FY2008	13.00	13.00%	-0-	-0-
TOTAL				\$110.35*

*\$110.35 million paid from excess earnings includes \$71.31 million in contributions as a result of benefits improvements recommended herein.

- B. The City will pay the agreed to rates shown above for FY96 through FY2007. The difference between the actuarially calculated rate and the agreed to rate would be transferred from the Stabilization Reserve to the Employers Contribution Reserve. If the amount in the Stabilization Reserve is insufficient to pay the difference in contributions or the funded ratio of the System falls by more than 10% below the funded ratio calculated at the June 30, 1996 valuation, this plan will sunset the year following the actuarial valuation which shows this funded ratio.
- C. There will be no changes in actuarial assumptions or actuarial methodology which would impact employer contribution rates prior to July 1, 2007. If the CERS Board feels its fiduciary responsibility requires a change to actuarial assumptions prior to that date due to extraordinary circumstances, the increase in rate will be added to the PUC rate to be achieved through the phased-in rate increases.

Issue No. 4 - SURPLUS UNDISTRIBUTED EARNINGS AND RESERVES

- A. Create a Contingency Reserve not to exceed 1% of System assets at market value. If undistributed earnings are insufficient, funds from the Contingency Reserve will be used, in priority order after crediting the employee and employer reserves and funding the Systems budget, to: (1) pay the insurance premium, (2) pay the 13th check. If the Health Insurance reserve and the contingency reserve were insufficient, the city would be responsible for that year's health insurance premium.
- B. Create a Stabilization Reserve not to exceed \$75 million, as follows: (1) close and transfer the existing "earnings stabilization reserve (\$10.7 million), (2) credit this reserve annually with 50% of "surplus" undistributed earnings. All surplus undistributed earnings will be transferred to the employer contribution reserve when and if the \$75 million limit is reached. These assets will be held outside of assets used for actuarial valuation.

Exhibit 11

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May 17, 1996

Via Facsimile: 236-6067
Ms. Cathy Lexin
Labor Relations Manager
City of San Diego
202 C Street, 9th Floor
San Diego, CA 92101

Re: MEA'S PROPOSAL FOR RESOLUTION OF RETIREMENT SYSTEM ISSUES
AND CONTRACT EXTENSION COVERING FY98

Dear Ms. Lexin:

What follows is the proposal which MEA's Negotiating Team has authorized me to submit for the CITY's consideration in connection with the on-going discussions regarding retirement system issues and the invitation to discuss an extension of the current MOU for FY98.

Since this submittal is written, certain preliminary remarks are in order as would be made in connection with an oral presentation.

I cannot state strongly enough how committed MEA's leadership and Negotiating Team are to the following outcomes: (1) a vast improvement in the retirement formula for general members in view of the resources available to the system [which resources constitute participants' money], and in view of the richness of the present and projected benefits for safety members by comparison; and (2) parity in general salary increases for all CITY employees regardless of job classification.

I also cannot over-emphasize that the level of employee scepticism and distrust regarding any tampering with funding methods related to the retirement system is enormous and will require a yeoman's effort by every person associated with MEA to overcome. MEA will not undertake this formidable task unless the gains in benefit levels for the employees MEA represents are clearly respectable and credible rather than de minimus. Frankly, at this juncture, the proposal to increase the general member's formula from 1.48% to 1.75% at age 55 is de minimus when contrasted with a proposed safety formula of 3% at age 55 and 2.74% at age 50.

The Negotiating Team has taken all of the foregoing into consideration in formulating the proposal which follows, as well as the reality that CITY has agreed to spend an additional \$3 million

from the FY 97 general fund in order to give police officers a 3% general salary increase 6 months ahead of the same increase for the employees we represent, and in order to give the vast majority of CITY's police officers a shift differential which represents a significant "general salary increase."

PROPOSAL

(1) Retirement

* Formula for general members to be improved to a factor of 2.24% at age 55, with proportionate increases for each additional year through age 65;

* Past and prospective liability for the cost of this formula improvement to be borne entirely by CITY and/or system;

* No cap on amount of retirement benefit;

* Formula for lifeguards and amount of offset to be increased to same level as enjoyed by firefighters now and in the future;

* All other improvements in benefits as proposed in CITY's May 2nd document, including but not limited to those additional benefits not therein described which CITY extends to safety members (except as to formula);

* MEA's active participation in Task Force re health insurance issues.

(2) General Salary Increase

* 4% effective July 1, 1997

(3) Other Issues [Note: These are not stated in "priority" order.]

* No restrictions for FY 97-98 on MEA's right to bring forward special salary adjustment/new class requests to the Civil Service Commission for action;

* Increase in mileage reimbursement to be proposed based on analysis in progress; reimbursement checks must be presented to employee within 2 weeks of employee's submittal to supervisor;

Dates
* Reopener for FY98 regarding Flexible Benefit Plan dollar value and reopener to permit MEA to offer plan design/benefit changes related to the plans MEA sponsors;

* Add cost of bicycle lockers as permissible subsidy under transportation incentives;

