

Exhibit 1

EXHIBIT 5 TO VCP – QUALIFIED PLAN

July 12, 2005

WRITER'S DIRECT NUMBER: (317) 236-2413
DIRECT FAX: (317) 592-4616
INTERNET: BRAITMAN@ICEMILLER.COM

WRITER'S DIRECT NUMBER: (317) 236-2110
DIRECT FAX: (317) 592-4713
INTERNET: TERRY.MUMFORD@ICEMILLER.COM

WRITER'S DIRECT NUMBER: (317) 236-2468
DIRECT FAX: (317) 592-4702
INTERNET: KATRINA.CLINGERMAN@ICEMILLER.COM

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 - (c) Municipal Code §§ 24.0100 – 24.1809, which are added, amended and repealed by Ordinances adopted by the City Council (attached as Exhibit C);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

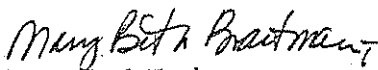
Consideration is requested with regard to Code Section 401(h), in addition to other matters under Code Section 401(a). Pursuant to Rev. Proc 2005-6, Section 16.02, we have included a completed Part I of the checklist in the Rev. Proc 2005-6 Appendix intended to satisfy the requirement for providing the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

CLOSING

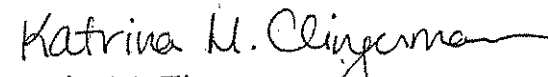
If an adverse determination is contemplated, a conference is hereby requested. If you have any questions regarding this application, please call one of us pursuant to the enclosed Power of Attorney. Please issue a copy of the determination letter to one of us at the above address.

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.

San Diego City Employees' Retirement System

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.

San Diego City Employees' Retirement System

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

San Diego City Employees' Retirement System

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).

San Diego City Employees' Retirement System

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.

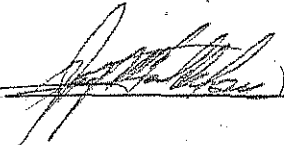
San Diego City Employees' Retirement System

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>
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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.)

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

7. CHECK BOX IF REPORT TO
COUNCIL IS ATTACHED

Betsy Kinsley 236-66687

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

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: X 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?
Ray Enacted

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.

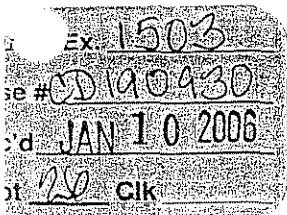
In 1989, the then President of POA was allowed to purchase service credit in CERS through the normal process for purchasing LWOP service. In addition, the POA was allowed to pay normal retirement contributions, both employee and employer, on behalf of its President on an ongoing basis. These contributions 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

