

**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM --
PRESERVATION OF BENEFIT PLAN AND TRUST**

EMPLOYER: CITY OF SAN DIEGO, CALIFORNIA

Effective January 1, 2007

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**SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM
PRESERVATION OF BENEFIT PLAN AND TRUST**

ARTICLE I.

ESTABLISHMENT OF PLAN AND TRUST

1.01. Establishment Of Plan and Trust. The "San Diego City Employees' Retirement System Preservation of Benefit Plan and Trust" ("this Plan") was established effective as of April 18, 2001.

1.02. Purpose. The purpose of this Plan is solely to provide the part of a Participant's Retirement Benefit that would otherwise have been payable by the San Diego City Employees' Retirement System ("SDCERS") from the Employer's qualified plan, except for the limitations of Code Section 415(b). This Plan is intended to be a "qualified governmental excess benefit arrangement" within the meaning of Code Section 415(m)(3) and must be interpreted and construed consistently with that intent. This Plan is deemed a portion of the Employer's qualified plan solely to the extent required under, and within the meaning of, Code Section 415(m)(3) and Article IX of the San Diego City Charter.

This Plan is an "exempt governmental deferred compensation plan" described in Code Section 3121(v)(3). Code Sections 83, 402(b), 457(a) and 457(f)(1) do not apply to this Plan. With respect to Code Section 457(a), the maximum amount that may be deferred under this Plan on behalf of any Participant for the taxable year may exceed both the amount in Code Section 457(b)(2) (as adjusted for cost of living increases) and the percent of the participant's includable compensation referred to in that Code Section. SDCERS will not hold any assets or income under this Plan in trust for the exclusive benefit of participants or their beneficiaries.

ARTICLE II.

DEFINITIONS AND CONSTRUCTIONS

2.01. Definitions. When the initial letter of a word or phrase is capitalized herein, it has the same meaning as defined below:

- (a) "**Actuary**" means the actuary selected by the Board from time to time.
- (b) "**Administrator**" means SDCERS and includes any person with whom SDCERS contracts to provide services to the Plan.
- (c) "**Airport Retirement Plan**" means the San Diego City Employees' Retirement System First Amended Retirement Plan for Airport Authority Employees as administered under the First Amended Agreement to Administer Retirement Plan between San Diego City Employees' Retirement System and San Diego County Regional Airport Authority, or a subsequent retirement plan established by the Airport.
- (d) "**Beneficiary**" means an individual receiving joint and survivor benefits from SDCERS.
- (e) "**Board**" means the Board of Administration of SDCERS established under Section 144 of the San Diego City Charter.
- (f) "**City**" means the City of San Diego, California.
- (g) "**Code**" means the Internal Revenue Code of 1986, as amended, as applicable to a governmental plan, or corresponding provisions of any subsequent federal income tax law.
- (h) "**Employer**" means the City.
- (i) "**Excess Benefit**" means the benefit determined in accordance with Section 4.01 of this Plan.
- (j) "**Participant**" means a Retiree or Beneficiary who is entitled to benefits under this Plan.

(k) "**Plan**" means the "San Diego City Employees' Retirement System Preservation of Benefit Plan" established pursuant to Section 24.1601 through 24.1608 of the San Diego Municipal Code.

(l) "**Plan Year**" means the calendar year.

(m) "**Port Retirement Plan**" means the San Diego City Employees' Retirement System Retirement Plan for San Diego Unified Port District Employees as administered under the First Amended Agreement to Administer Retirement Plan between San Diego City Employees' Retirement System and San Diego Unified Port District, or a subsequent retirement plan established by the Port.

(n) "**Retiree**" means a former member of SDCERS who is receiving a Retirement Benefit from SDCERS.

(o) "**Retirement Administrator**" means the SDCERS Retirement Administrator who is appointed by the Board under Board Rule 4.00.

(p) "**Retirement Benefit**" means the amount of retirement income payable to a Retiree of SDCERS, or the benefit payable to a Beneficiary, without regard to any limitations on that retirement income or benefit under Code Section 415(b).

(q) "**Retirement Fund**" means the special fund established by Section 145 of the San Diego City Charter.

(r) "**SDCERS**" means the San Diego City Employees' Retirement System.

(s) "**State**" means the State of California.

(t) "**Trust Fund**" means the trust fund established pursuant to City Ordinance 0-18930, March 19, 2001 and Article VI of this Plan, which fund constitutes a valid trust under the law of the State.

(u) **"Trustees"** mean the members of the Board.

2.02. Construction.

(a) Words used in this Plan in the masculine gender include the feminine gender where appropriate, and words used in this Plan in the singular or plural include the plural or singular where appropriate.

(b) Whenever any actuarial present value or actuarial equivalency is to be determined under the Plan to establish a benefit, it will be based on reasonable actuarial assumptions approved by the Board in its sole discretion, and will be determined in a uniform manner for all similarly situated Participants.

ARTICLE III.

PARTICIPATION

All Retirees and Beneficiaries of SDCERS are eligible to participate in this Plan if their Retirement Benefits from SDCERS for a Plan Year are or have been since April 18, 2001, limited by Code Section 415(b). The Board determines for each Plan Year which Retirees and Beneficiaries are eligible to participate in the Plan. Participation in the Plan begins each Plan Year once a Retiree or Beneficiary has an Excess Benefit in that Plan Year. Participation in the Plan ends for any portion of a Plan Year in which the Retirement Benefit of a Retiree or Beneficiary is not limited by Code Section 415(b) or when all benefit obligations under the Plan to the Retiree or Beneficiary have been satisfied.

ARTICLE IV.

PAYMENT OF BENEFITS

4.01. Benefit Amount.

(a) A Participant in the Plan will receive a benefit equal to the amount of retirement income that would have been payable to, or with respect to, a Participant by SDCERS that could

not be paid because of the application of the limitations on his retirement income under Code Section 415(b). An Excess Benefit under the Plan will be paid only if and to the extent the Participant is receiving Retirement Benefits from the Retirement Fund.

(b) Where the Administrator pays a blended benefit to a Participant pursuant to Section 0400 of the Port Retirement Plan or Section 0400 of the Airport Retirement Plan, the Excess Benefit payable from this Plan under Section 4.01 will be an amount bearing the same proportion to the total Excess Benefit payable under all plans administered by the Administrator as the Participant's years of service credit with the City bear to the Participant's total years of service credit with all employers sponsoring plans administered by the Administrator.

4.02. Time for Payment; Form of Benefit. The Excess Benefit will be paid at the same time and in the same manner as the Retirement Benefit payable under SDCERS, and the timing of the Excess Benefit must take into account the existence of monthly deductions from the Retirement Benefit. No election is provided at any time to the Participant, directly or indirectly, to defer compensation under this Plan.

ARTICLE V.

CONTRIBUTIONS AND FUNDING

5.01. Funding. The Plan is, and will remain, unfunded and the rights, if any, of any person to any benefits under the Plan are limited to those specified in the Plan. The Plan constitutes a mere unsecured promise by the Employer to make benefit payments in the future.

5.02. Contributions.

(a) The Board will determine the amount necessary to pay the Excess Benefit under the Plan for each Plan Year. The Retirement Administrator will provide an estimate of the Excess Benefit to the Employer on or before February 28 of each year. The required contribution will be the aggregate of the Excess Benefits payable to all Participants for the Plan

Year and an amount determined by the Board to be a necessary and reasonable expense of administering the Plan. The Employer will contribute the amount the Board determines, from time to time, to be necessary to pay the Excess Benefit of the Participant and administrative expenses of the Plan, and these payments will be made before the Employer deposits are credited to the Retirement Fund. The Employer's required contribution will be due no later than July 1 of each year; provided, however, that the Board may establish an earlier due date with respect to contributions necessary to fund the Excess Benefit of any Participant who will exceed the Code Section 415(b) limitations prior to July 1 of that year. Under no circumstances will Employer contributions to fund the Excess Benefits be credited to the Retirement Fund. Any contributions not used to pay the Excess Benefit for a current Plan Year, together with any income accruing to the Trust Fund, will be used to pay the administrative expenses of the Plan for the Plan Year. Any contributions not used to pay the Excess Benefit for the current Plan Year that remain after paying administrative expenses of the Plan for the Plan Year will be used to fund administrative expenses or benefits of Participants in future Plan Years.

(b) If a Participant is employed by more than one employer at the time of the Participant's retirement, the Administrator will determine the appropriate amount of contributions to be paid by each employer to fund the Excess Benefit, and the Excess Benefits will also be paid from the Employer's separate Plans accordingly.

(c) SDCERS will account separately for the amounts the Board determines to be necessary to provide the Excess Benefit under the Plan for each Participant. But, this separate accounting will not be deemed to set aside these amounts for the benefit of a Participant. Benefits under this Plan will be paid from the Trust Fund.

(d) The consultants, independent auditors, attorneys, and actuaries performing services for SDCERS may also perform services for this Plan; but, any fees attributable to services performed with respect to this Plan will be payable solely by the Employer or from the Trust Fund.

ARTICLE VI.

TRUST FUND

6.01. Establishment of Trust Fund. An "Excess Benefit Trust Fund" (the "Trust Fund") was established pursuant to City Ordinance 0-18930, March 19, 2001, separate from the Retirement Fund, to hold contributions of the Employer. Contributions to this Trust Fund will be held separate and apart from the funds comprising the Retirement Fund and will not be commingled with assets of the Retirement Fund, and must be accounted for separately.

6.02. Trust Fund Purpose. The Trust Fund is maintained solely to provide benefits under a qualified governmental excess benefit arrangement within the meaning of Code Section 415(m), and pay administrative expenses of this arrangement.

6.03. Trust Fund Assets. All assets held by the Trust Fund to assist in meeting the Employer's obligations under the Plan, including all amounts of Employer contributions made under the Plan, all property and rights acquired or purchased with these amounts and all income attributable to these amounts, will be held separate and apart from other funds of the Employer and will be used exclusively for the uses and purposes of Participants and general creditors as set forth in this Plan. Participants have no preferred claim on, or any beneficial interest in, any assets of the Trust Fund. Any rights created under the Plan are unsecured contractual rights of Participants against the Employer. Any assets held by the Trust Fund are subject to the claims of the Employer's general creditors under federal and state law in the event of insolvency.

6.04. Grantor Trust. The Trust Fund is intended to be a grantor trust, of which the Employer is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code, and will be construed accordingly. This provision will not be construed to create an irrevocable trust of any kind.

6.05. Trust Fund Income. Income accruing to the Trust Fund under the Plan constitutes income derived from the exercise of an essential governmental function upon which the Trust is exempt from tax under Code Section 115, as well as Code Section 415(m)(1).

ARTICLE VII.

ADMINISTRATION

7.01. Administrative Authority. The Board has the exclusive authority to control and manage the operation and administration of the Plan. The Board has the same rights, duties and responsibilities respecting the Plan as it has with respect to the Retirement Fund pursuant to Section 24.1605 of the San Diego Municipal Code. The Administrator has the same duties and authority respecting the Plan as the Administrator has with respect to the Retirement Fund.

(a) The Board has the power and authority (including discretion with respect to the exercise of that power and authority) necessary, advisable, desirable or convenient to enable it:

(1) to establish procedures to administer the Plan not inconsistent with the Plan and the Code, and to amend or rescind these procedures;

(2) to determine, consistent with the Plan, applicable law, rules or regulations, all questions of law or fact that may arise as to eligibility for participation in the Plan and eligibility for distribution of benefits from the Plan, and the status of any person claiming benefits under the Plan;

(3) to make payments from the Trust Fund to Participants pursuant to Article IV of the Plan,

(4) to contract with a third party to perform designated administrative services under this Plan;

(5) to construe and interpret the Plan as to administrative issues and to correct any defect, supply any omission or reconcile any inconsistency in the Plan with respect to same, subject to and consistent with the Code.

(b) Any action by the Board that is not found to be an abuse of discretion will be final, conclusive and binding on all individuals affected thereby. The Board may take any such action in such manner and to such extent as the Board in its sole discretion may deem expedient, and the Board will be the sole and final judge of such expediency.

(c) The Board may delegate any of its authority to the Administrator with respect to the Trust Fund.

(d) The Board will seek appropriate rulings from the Internal Revenue Service with regard to the status of the Plan under the Code.

7.02. Advice. The Board may employ one or more persons to render advice with regard to its responsibilities under the Plan.

7.03. Payment of Benefits. If in doubt concerning the correctness of their action in making a payment of a benefit, the Board may suspend payment until satisfied as to the correctness of the payment or the person to receive the payment.

7.04. Delegation by Administrator. The Administrator will handle the day-to-day operation of the Plan and may delegate certain functions to a third party.

ARTICLE VIII.

PLAN AMENDMENTS

The Board from time to time may amend, suspend, or terminate any or all of the provisions of this Plan as may be necessary to comply with Code Section 415(m) and to maintain the Plan's or the Retirement Fund's qualified status under the Code.

ARTICLE IX.

NONASSIGNABILITY AND EXEMPTION FROM TAXATION AND EXECUTION

The interests of Participants under this Plan are exempt from any state, county, municipal or local tax, and are not subject to execution, garnishment, attachment, or any other process of law whatsoever, and are unassignable and nontransferable, except as otherwise provided by Section 24.1604 of the San Diego Municipal Code.

ARTICLE X.

MISCELLANEOUS

10.01. Federal and State Taxes. The Board, the Employer, and the Administrator, if any, do not guarantee that any particular Federal or State income, payroll, or other tax consequence will occur because of participation in this Plan.

10.02. Investment. The Board may hold a portion of the Plan uninvested as it deems advisable for making distributions under the Plan, or may invest assets of the Plan pending the Excess Benefit payments in short-term investment grade instruments as otherwise permitted by law.

10.03. Conflicts. In resolving any conflict between provisions of the Plan, and in resolving any other uncertainty as to the meaning or intention of any provision of the Plan, the prevailing interpretation will be the one that (i) causes the Plan to constitute a qualified governmental excess benefit arrangement under the provisions of Code Section 415(m) and the

Trust Fund to be exempt from tax under Code Sections 115 and 415(m), (ii) causes the Plan and SDCERS to comply with all applicable requirements of the Code, and (iii) causes the Plan and SDCERS to comply with all applicable State and City laws.

10.04. Limitation on Rights. Neither the establishment or maintenance of the Plan, nor any amendment to the Plan, nor any act or omission under the Plan (or resulting from the operation of the Plan) may be construed:

(a) as conferring upon any Participant or any other person a right or claim against the Board, Trustees, Employer, or Administrator, if any, except to the extent that the right or claim is specifically expressed and provided in the Plan;

(b) as creating any responsibility or liability of the Employer for the validity or effect of the Plan;

(c) as a contract between the Employer and any Participant or other person;

(d) as being consideration for, or an inducement or condition of, employment of any Participant or other person, or as affecting or restricting in any manner or to any extent whatsoever the rights or obligations of the Employer or any Participant or other person to continue or terminate the employment relationship at any time; or

(e) as giving any Participant the right to be retained in the Employer's service or to interfere with the Employer's right to discharge any Participant or other person at any time.

10.05. Erroneous Payments. Any benefit payment that should not have been made, according to the terms of the Plan and the benefits provided hereunder, may be recovered as provided by law.

10.06. Release. Any payment to any Participant will, to the extent thereof, be in full satisfaction of the Participant's claim being paid thereby, and the Board may condition the

payment on the delivery by the Participant of the duly executed receipt and release in a form determined by the Board.

10.07. Liability. The Board, Trustees, or Administrator, if any, will not incur any liability in acting upon any paper or document or electronic transmission believed by the Board, Trustees, or Administrator to be genuine or to be executed or sent by an authorized person.

The Plan will hold harmless and indemnify the Board, the Trustees, and the Administrator, and the officers and employees thereof, from financial loss arising out of any claim, demand, suit or judgment by reason of alleged negligence or other act by that board member, trustee, officer or employee, provided that the board member, trustee, officer or employee at the time of the alleged negligence or act was acting in the discharge of his duties and within the scope of his employment and that the damages did not result from a willful and wrongful act of gross negligence of the board member, trustee, officer or employee, and provided further that the board member, trustee, officer or employee will, within five days of the time he is served with any summons, complaint, process, notice, demand or pleading, deliver the original or a copy thereof to the Administrator's legal advisor.

The Board may obtain insurance to provide coverage for any liabilities that may arise as described by this Section.

10.08. Governing Laws. The San Diego Municipal Code and the laws of the City and the State of California apply in determining the construction and validity of this Plan.

10.09. Necessary Parties to Disputes. The only party necessary to any accounting, litigation or other proceedings relating to the Plan is the Administrator. The settlement or judgment in any case in which the Administrator is duly served will be binding upon all affected

Participants in the Plan, their beneficiaries, estates and upon all persons claiming by, through or under them.

10.10. Severability. If any provision of the Plan is held by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions of the Plan will continue to be fully effective.

IN WITNESS WHEREOF, the undersigned has caused this Preservation of Benefit Plan and Trust to be executed as of this _____ day of February, 2007.

BOARD OF ADMINISTRATION OF THE SAN
DIEGO CITY EMPLOYEES' RETIREMENT
SYSTEM AS TRUSTEES

By: _____

Title: _____