

ITEM # 4-c

February 12, 2013

Deferred Compensation Plan
Meeting of the Board

RE: Alternate Payee Hardship Distributions

Members of the Board,

Under current Qualified Domestic Relations Order ("QDRO") provisions, Alternate Payees, unlike the plan participants, cannot obtain hardship withdrawals from the Plan. This measure is meant to allow Alternate Payees to obtain QDRO payouts. The City Attorney prepared revisions to Master Agreement and the Administrative Rules, allowing for hardship withdrawals to Alternate Payees.

PROPOSED MOTION:

Motion to recommend the Board approve changes to the Administrative Rules and Master Agreement, as prepared by the City Attorney, allowing for hardship distributions to Alternate Payees.

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January 14, 2013

Mr. Witold Dziadowicz
Executive Director
Deferred Compensation Plan
Room 404 – City Hall

Re: City of Milwaukee Deferred Compensation Plan – Alternate Payee
Hardship Distributions and Amendment to Master Agreement

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Dear Mr. Dziadowicz:

At its meeting on December 5, 2012, requested that we prepare amendments to the Master Plan Agreement for the City of Milwaukee Deferred Compensation Plan that would permit hardship distributions to Alternate Payees in the event of unforeseeable emergencies. The Board also requested that we address the legality of such distributions under federal tax law.

The federal tax code regulations, at 26 C.F.R section 1.457-10(c), specifically recognize the ability of a Section 457 plan to make distributions pursuant to a domestic relations order, even if that distribution occurs before the date on which the participant from whom the alternate payee's account is funded would be entitled to a distribution:

(c) Qualified domestic relations orders under eligible plans—(1) General rule. An eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a qualified domestic relations order as defined in section 414(p), including an order requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under §1.457-6. If a distribution or payment is made from an eligible plan to an alternate payee pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to the distribution or payment.

OFFICE OF THE CITY ATTORNEY

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Moreover, the Internal Revenue Service has long recognized the ability of a section 457 plan to both permit and to prohibit unforeseeable emergency hardship distributions to alternate payees. In PLR 200122009, dated June 1, 2001, the Service approved a plan with a specific provision that both participants and alternate payees could file requests for withdrawals due to unforeseeable emergencies based on severe financial hardship. In PLR 199952042, dated December 30, 1999, the Service approved a plan which prohibited such distributions to alternate payees.

Amendment of the Master Agreement to allow for such distributions is permitted under federal tax law governing the Plan.

Implementation of the amendment will require that the following provisions be amended in the Master Agreements for the City of Milwaukee, the City of Milwaukee Employees' Retirement System, the Housing Authority of the City of Milwaukee, the Redevelopment Authority of the City of Milwaukee, and the Wisconsin Center District. Each of these separate Master Agreements contains identical provisions, so the identical amendments should be adopted for each of them.

Section 9, paragraph (g) should be amended to provide as follows:

Section 9

(g) Distributions for Unforeseeable Emergencies. A distribution of Deferred Compensation credited to a Participant's or Alternate Payee's account shall be permitted in the event the Participant or Alternate Payee experiences an unforeseeable emergency creating severe financial hardship as a result of sudden and unexpected illness or accident of the Participant or Alternate Payee, or of a dependent of the Participant or Alternate Payee, loss of the Participant's or Alternate Payee's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant or Alternate Payee. Payment may not be made to the extent that such hardship is or may be relieved (1) through reimbursement or compensation by insurance or otherwise, (2) by liquidation of the Participant's or Alternate Payee's assets to the extent the liquidation of those assets would not itself cause severe financial hardship, or (3) by cessation of deferral under the Plan. The need to send a child to college or the desire to purchase a new home shall not be considered unforeseeable emergencies. All distributions under this subparagraph shall be permitted

only to the extent reasonably needed to satisfy the emergency need, taking into account the amount of any income tax withholding or other income tax liability resulting from the distribution. Applications for distributions under this subparagraph must be approved by the Board.

Section 16, paragraph (c) should be amended to provide as follows:

Section 16

(c) Benefits shall be paid to such Alternate Payee (or the Beneficiary of same, if applicable: from the Alternate Payee's account in accordance with Section 9, and such benefits shall be paid at the time so provided under the Domestic Relations Order upon deliver by the Alternate Payee and approval by the Administrator of the appropriate forms for distribution otherwise required by the Plan and its Rules; provided, however, except for distributions pursuant to paragraph (g) of Section 9, in no event shall payment of benefits of an Alternate Payee be made prior to the date on which the Participant is entitled to a distribution pursuant to paragraph (a) of Section 9.

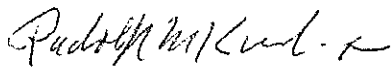
Finally, section VII.3.i. of the Administrative Rules should be amended to provide as follows:

- i. Upon determining that a Domestic Relations Order is valid, the TPA shall create a separate account for the Alternate Payee and transfer into it from the Plan Participant's account assets sufficient to satisfy the ordered assignment. Each Alternate Payee with a separate MDC account shall be treated as a MDC participant, including the receipt of gains and losses on the account, except that the MDC may restrict the Alternate Payee's access to joint and survivor annuity benefits and no Alternate Payee account may subsequently be divided by a Domestic Relations Order or merged with any other MDC account, and in no event other than a hardship distribution pursuant to the terms of the MDC plan document shall payment of benefits of an Alternate Payee Account be made prior to the date on which the Participant is entitled to a distribution pursuant to the terms of the MDC plan document. An Alternate Payee who is the Participant's current or former spouse will be responsible for any taxes due upon distribution made to the Alternate Payee.

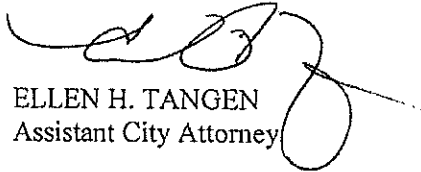
Witold Dziadowicz
January 14, 2013
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Redlined versions of the proposed amendments are enclosed to precisely illustrate the specific changes to be made by the amendments. Assistant City Attorney Ellen Tangen will attend the January 17, 2013 Executive Finance Committee meeting to address any questions in this matter.

Very truly yours,



GRANT F. LANGLEY
City Attorney



ELLEN H. TANGEN
Assistant City Attorney

Enclosure

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1073-2012-2682:188156

Section 9

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Section 16

(c) Benefits shall be paid to such Alternate Payee (or the Beneficiary of same, if applicable: from the Alternate Payee's account in accordance with Section 9, and such benefits shall be paid at the time so provided under the Domestic Relations Order upon deliver by the Alternate Payee and approval by the Administrator of the appropriate forms for distribution otherwise required by the Plan and its Rules; provided, however, except for distributions pursuant to paragraph (g) of Section 9, in no event shall payment of benefits of an Alternate Payee be made prior to the date on which the Participant is entitled to a distribution pursuant to paragraph (a) of Section 9.

Section VII.3.i. of Administrative Rules

i. Upon determining that a Domestic Relations Order is valid, the TPA shall create a separate account for the Alternate Payee and transfer into it form the Plan Participant's account assets sufficient to satisfy the ordered assignment. Each Alternate Payee with a separate MDC account shall be treated as a MDC participant, including the receipt of gains and losses on the account, except that the MDC may restrict the Alternate Payee's access to joint and survivor annuity benefits and no Alternate Payee account may subsequently be divided by a Domestic Relations Order or merged with any other MDC account, and in no event other than a hardship distribution pursuant to the terms of the MDC plan document shall payment of benefits of an Alternate Payee Account be made prior to the date on which the Participant is entitled to a distribution pursuant to the terms of the MDC plan document. An Alternate Payee who is the Participant's current or former spouse will be responsible for any taxes due upon distribution made to the Alternate Payee.