



Good Neighbors

San Diego  
Housing Commission

## REPORT

**DATE ISSUED:** May 6, 2005

**ITEM 102**

**REPORT NO.:** HCR05-45  
For the Agenda of May 20, 2005

**SUBJECT:** Approval of Memorandum of Understanding with S.E.I.U. Local 535, Personnel Policies Revisions and the Section 457 Deferred Compensation Plan

### SUMMARY

**Issue 1:** Should the Housing Commission approve and forward for Housing Authority adoption the revised Memorandum of Understanding (MOU) for represented employees pursuant to the re-opener provision, extend the same benefit changes to non-represented and Executive and Management Service employees and approve revisions to the SDHC Personnel Policies?

**Recommendation 1:** Recommend Housing Authority adoption of the following:

1. Revisions to MOU between the Housing Commission and Service Employees International Union, Local 535 (Union) for FY06 and FY07 including an increase in Flex Credits; a Housing Commission contribution to employees' 457 accounts of 1% of salary and up to a 1.5% of salary Housing Commission match of employee contributions to 457 accounts;
2. Revisions to Personnel Policies (PO102.000), including the same benefit changes for non-represented employees and Executive/Management Service employees as recommended for employees represented by the Union; and
3. Conversion of sick leave hours to annual leave hours for two long term employees.

**Issue 2:** Should the Housing Commission approve and authorize the President & Chief Executive Officer (President & CEO) to revise the Section 457 Deferred Compensation Plan Document and Service Agreement to implement corresponding benefit changes?

**Recommendation 2:** That the Housing Commission authorizes the President & CEO to implement corresponding revisions to the Section 457 Deferred Compensation Plan Document and Service Agreement.

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**Fiscal Impact:** The additional cost of the proposed FY06 benefits is estimated to be approximately \$375,000. Funding for the additional cost is provided for in the FY06 Budget.

**Previous Related Action(s):** On June 4 and June 15, 2004, the Housing Commission and Housing Authority, respectively, approved changes to the Memorandum of Understanding for FY05, FY06, and FY07 to include a Letter of Understanding to re-open negotiations on wages subject to non-participation in California Public Employees Retirement System (CalPERS).

On October 8, 2004, the Housing Commission established an Ad Hoc Retirement Committee (The Committee) to evaluate a potential change to the retirement program. On February 4, 2005, the Housing Commission approved the Committee's recommendations to: 1) not implement any changes to the current defined contribution plan; and 2) that the Committee, with the assistance of special and General Counsel, open labor negotiations and report back to the full board with its recommendation.

On April 8, 2005, the Housing Commission approved and forwarded for Housing Authority adoption at the May 24, 2005 meeting, to 1) authorize the President & CEO to implement all future mandatory legislative compliance revisions to the 457 Plan Document, and 2) to delegate to the Housing Commission the approval of future optional changes to the Plan. (See Attachment 4, HCR05-022 Section 457 Deferred Compensation Plan Revision & Authorization).

**Environmental:** This activity or action is "not a project" under the applicable provisions of the California Environmental Quality Act (CEQA).

## **BACKGROUND**

The current Memorandum of Understanding covers fiscal years FY05, FY06, and FY07 and includes a Letter of Understanding addressing the possibility of Housing Commission participation in a defined benefit retirement system through CalPERS as an alternative to the Housing Commission's Defined Contribution Plan. If efforts to participate in CalPERS were not realized, the Housing Commission and Housing Authority approved a re-opener to renegotiate wages for the contract term.

The Housing Commission established a three (3)-person Ad Hoc Retirement Committee (The Committee) to independently study and evaluate the adequacy of the Defined Contribution Pension Plan, study other pension plan options that would better serve the Housing Commission, and make recommendations to the Housing Commission Board with respect to retirement benefits. The Committee included Commissioners Adams-Brooks, Tumminia and Yip. A workshop, open to the public, was conducted by the Committee on October 29, 2004. The opportunity for full public discussion was provided at the Housing Commission meeting of November 19, 2004.

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The Committee recommended the Housing Commission not offer employees the opportunity to participate in the CalPERS Retirement System and to defer future consideration of a defined benefit program for a minimum of two years. The Committee also recommended that labor negotiations be re-opened with the assistance of special and General Counsel.

The renegotiation process with Local 535 began on March 24, 2005, concluding after four meetings on April 21, 2005. For the purpose of the re-opener, parties agreed that "wages" would include Flex Credits as well as other benefits (Attachment 1, Scope of Renegotiation). A Union ratification meeting was successfully held on May 4, 2005.

## **DISCUSSION**

Negotiations were conducted with the Union in good faith with both parties seeking to find a mutually acceptable alternative for salaries and benefits in lieu of the ability to offer a defined benefit plan. The recommendation to increase Flex Credits by \$200 and \$166, in FY06 and in FY07, respectively, (Attachment 2, Article 25, Insurance) meets the needs of employees experiencing higher health care costs and the objective of the Housing Commission to control employee salaries and staffing levels. Funds are available in the FY06 budget as a result of salary savings (several budgeted positions have not been filled) and budgetary control management. These actions are planned to continue through FY07.

Over the last six years, Housing Commission employees have received an average of 2.5% in annual wage increases. This is below the average wage increase for most local public employers.

Rather than recommend a wage increase, the Housing Commission has been seeking ways to assist employees to plan for their future retirement security. In addition to a deferred contributions plan, the Housing Commission offers a voluntary deferred compensation 457 Plan, currently funded exclusively with employee pre-tax contributions. Providing an employer contribution to deferred compensation plans is a common practice among public employers. A Housing Commission contribution of 1% and up to a 1.5% employer match in FY06 and FY07 (Attachment 3, Article 27, Retirement System) addresses the current concerns expressed by Local 535 and is a positive resolution in meeting the terms of the contract. Further, the employee contribution and employer match will serve as an incentive to enhance participation in the plan providing improved retirement potential without converting to a defined benefit plan. Per prior approval as adopted by the Housing Authority, appropriate revisions would be made to the Section 457 Plan (Attachment 4, HCR05-022 Section 457 Deferred Compensation Plan Revision & Authorization).

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FY05 MOU Re-opener, Personnel Policies, & 457 Plan Revisions

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Consistent with prior labor agreements and Housing Commission practices, wages and benefits extended to represented employees would be similarly extended to non-represented and Executive and Management Service employees.

At its inception, the Housing Commission provided two types of leave: sick/medical leave and vacation leave. On July 1, 1990, the Housing Commission eliminated the provision of sick/medical leave for employees. Rather, Housing Commission employees began to earn "Annual Leave." This time is used by employees for all excused absences.

In July 1990, employees were allowed to retain the sick leave balances they had earned. Currently, only two employees still have sick leave hours. To bring all employee leave balances into conformity, the sick leave balances for the two employees could be credited to their respective annual leave accounts at a ratio of 1:2, i.e., one annual leave hour for every two hours of earned sick leave.

In addition, it is recommended that the hours credited to the annual leave balances be exempted from the maximum allowable annual leave balance (650 hours).

All other provisions of the MOU and Personnel Policies remain as approved by the Housing Commission and Housing Authority in June 2004.

#### **ALTERNATIVES**

- 1) Provide direction to the CEO and Chief Labor Negotiator to implement or defer specific benefits for employees.
- 2) Extend provisions of the report to union-represented employees only.
- 3) Continue to account for sick leave balances or adopt a different conversion ratio.

Although any one of the alternatives could be implemented, full implementation as recommended is consistent with good faith bargaining; the alternatives above would not be in the best interest of the labor negotiation process and are therefore not recommended.

Respectfully submitted,

**Signature on File  
With Original Document**

Carrol M. Vaughan

Executive Vice President & Chief Operating Officer

May 20, 2005

FY05 MOU Re-opener, Personnel Policies, & 457 Plan Revisions

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Attachment 1: Scope of Renegotiation

Attachment 2: Article 25, Insurance

Attachment 3: Article 27, Retirement System

Attachment 4: HCR05-022 Section 457 Deferred Compensation Plan Revision &  
Authorization

**Attachment 1**

SDHC Proposal # : 1  
Date/Time Proposed : 4/21/05

**Scope of Renegotiation Referenced in 5/17/04 Letter of Understanding**

On May 17, 2004 the Union and the Commission executed a Letter of Understanding indicating that if participation in the CALPERS retirement systems was not implemented by the Commission that negotiation of the issue of "wages" would be reopened. For the purposes of the reopener, the parties agree that "wages" may include Flex Credits as well as other benefits.

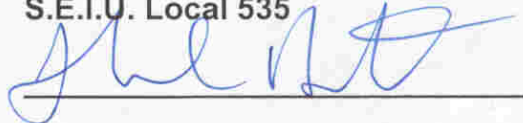
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**TENTATIVE AGREEMENT**

**San Diego Housing Commission**

**S.E.I.U. Local 535**

  
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4/21/05 9<sup>50</sup> a.m.  
Date & Time

April 21, 2005 9:45 am  
Date & Time

## Attachment 2

SDHC Proposal #: 2  
Date Proposed: 4/21/05  
Date Modified: 4/21/05

### ARTICLE 25: INSURANCE

The Commission shall provide eligible employees with a cafeteria-style benefits program in accordance with Section 125 of the Internal Revenue Service Code. Prior to making a change in medical and/or dental plans, the Housing Commission will discuss recommendations with the Union/Management Committee.

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The Commission provides employer-paid "core benefits" which include:

Basic Term Life & AD/D Insurance - Equal to the employee's annual salary with a minimum of \$15,000.

Long Term Disability Plan - Long Term Disability benefits after 60 days of continuous disability of 60% of an employee's basic monthly pay, and when combined with other income, 70% of pay to a maximum of \$7,500 per month.

Flex Credits - The Commission will contribute Flex Credits effective on July 1 (beginning with the first pay day in July) in the amount of:

\$5,164 effective July 1, 2004  
\$5,694 effective July 1, 2005  
\$6,000 effective July 1, 2006

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Amounts are per eligible full-time employee, prorated for part-time employees, for allocation by employee for employee and eligible dependent benefit options including:

A. Medical Insurance:

1. Kaiser
2. Sharp
3. No medical coverage if employee provides written verification of other coverage.

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B. Dental Insurance:

1. PacifiCare - Prepaid Dental Plan
2. PacifiCare PPO/Indemnity Plan

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- C. Voluntary Life and Accidental Death and Dismemberment Insurance for Employee / Spouse / Dependents.
- D. Set-aside for flexible spending accounts:
  - 1. Health expense account
  - 2. Dependent Care account

If the employee does not allocate the entire contribution, the remaining balance may be received in taxable cash. If the cost of coverage elected exceeds the Flex Credits, the employee may contribute the balance from their paycheck.

NOTE: Coverage for "dependent" refers to a family member, significant other or same sex partner as defined and when provided by the Plan.

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**TENTATIVE AGREEMENT**

San Diego Housing Commission

S.E.I.U. Local 535

*Carol Verba*  
4/21/05 11:05 am  
Date & Time

*Sheryl Sult*  
4/28/04 11am  
Date & Time

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**Attachment 3**

SDHC Proposal # : 3  
Date/Time Proposed : 4/21/05

**ARTICLE 27. RETIREMENT SYSTEM**

The Commission shall offer its employees a retirement system, with benefits no less than those outlined by HUD. The Commission's current contribution is 14 percent.

Notwithstanding the language of Article 3, the Commission retains the right to notify the Union at any time of any proposed changes or modifications to its retirement system. Upon ten (10) days written notice given by the Commission to the Union, the Commission and Union agree to meet and confer upon the changes or modifications proposed by the Commission to its retirement system. The meet and confer process shall be conducted in accordance with California law.

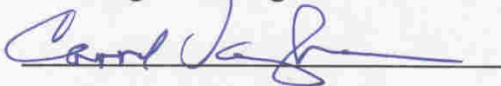
For the Memorandum of Understanding each Fiscal Year beginning 2006 (July 1, 2005-June 30, 2006) and Fiscal Year 2007 (July 1, 2006-June 30, 2007), the San Diego Housing Commission will make a one per cent (1%) of annual salary contribution to each represented employee's 457 Plan account. If an employee does not have a 457 account, an account will be established and one percent (1%) of annual salary will be deposited on behalf of the employee.

In addition to the above contribution, the San Diego Housing Commission will also match an amount equal to an employee's 457 contribution up to a maximum of one and one-half percent (1.5%) of annual salary in FY 2006 and FY 2007.

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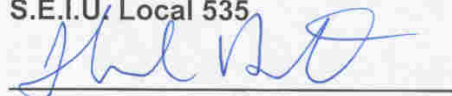
**TENTATIVE AGREEMENT**

**San Diego Housing Commission**



4/21/05 11:35 a.m.  
Date & Time

**S.E.I.U. Local 535**



4/21/05 11:35 am  
Date & Time

## ATTACHMENT 4



Good Neighbors  
San Diego  
Housing Commission

# REPORT

**DATE ISSUED:** April 1, 2005 **ITEM 100**

**REPORT NO.:** HCR05-22  
For the Agenda of April 8, 2005

**SUBJECT:** Section 457 Deferred Compensation Plan Revision & Authorization

### SUMMARY

**ISSUE 1:** Should the Housing Commission approve and forward for Housing Authority adoption selected optional changes to the San Diego Housing Commission (SDHC) Section 457 Deferred Compensation Plan (Plan) for implementation by the President and Chief Executive Officer (President & CEO)?

**RECOMMENDATION 1:** Recommend the Housing Commission approve and then Housing Authority adopt and authorize the President & CEO to implement optional Plan changes as provided for in the Economic Growth and Tax Relief Reconciliation Act (EGTRRA) of 2001 and Final Treasury Regulations to include: a) An In-Service Transfer provision allowing transfer of 457 Plan assets to a governmental defined benefit plan for purchase of permissible service; b) Addition of a "Roll-in" provision to the Plan from other employer-sponsored plans or personal traditional IRAs; and, further, to implement additional Service Agreement administrative options to include: c) A Self-Directed Brokerage Account (SDB) through HarrisDirect; d) Designate GreatWest Retirement Services as the IRA Provider for mandatory cash out of small account balances, and e) Implement outsourcing of Qualified Domestic Relations Orders (QDRO) processing with a participant service fee.

**ISSUE 2:** Should the Housing Commission approve and forward for Housing Authority adoption the delegation of authority to the Housing Commission and President & CEO for implementation of mandatory legislative compliance Plan changes?

**RECOMMENDATION 2:** Recommend a) Housing Commission and Housing Authority authorize the President & CEO to implement all future mandatory legislative compliance revisions to the Plan Document with submission to the IRS as appropriate, and to the

Service Agreement provided proposed changes are only to bring the Plan into compliance with IRS requirements; and b) Housing Authority approve and delegate to the Housing Commission future optional changes to the Plan.

**FISCAL IMPACT:** None

**PREVIOUS RELATED ACTION(S):** In July 1988, the Housing Commission authorized the President & CEO (current title) to negotiate and implement a voluntary Section 457 Deferred Compensation Plan and execute an investment contract for assets of the Plan. In July 1991, a separate, mandatory Section 457 Deferred Compensation Plan was implemented in lieu of Social Security for non-regular employees providing a 3.75% match of the employee's required contribution. In February 1998, the Housing Commission granted the President & CEO authority to implement administrative and legislative changes pursuant to the Small Business Job Protection Act of 1996. In December 2001, the Housing Commission authorized the President & CEO to implement required and selected optional changes pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001.

**FUTURE RELATED ACTION(S):** If approved by the Housing Commission, this item will be docketed for adoption by the Housing Authority at its April 19, 2005 meeting.

## **BACKGROUND**

Following exclusion of public employers from participating in 401(k) plans, the President & CEO received authorization to negotiate and implement a Section 457 Deferred Compensation Plan with plan assets to be invested similarly to the Defined Contribution Pension Plan established in 1979. In November 1988, a Section 457 Plan was implemented providing employees the opportunity to voluntarily contribute a maximum of one-third of salary up to \$7,500 annually on a tax-deferred basis, with plan assets invested through Great-West Life and Annuity Insurance Company.

In February 1998, the Housing Commission authorized the President & CEO to implement required changes pursuant to the Small Business Job Protection Act of 1996 (the primary purpose of which for the first time was to hold assets in trust for participants and beneficiaries), to provide for automatic future increases in deferral limits for cost of living adjustments (deferral limit increased from \$7,500 to \$8,000), to comply with the Conforming Equitable Distribution Orders for former spouses and dependents, amend the

group annuity contract, and implement recommended administrative modifications and optional changes.

In January 2000, the Tax Code increased the annual maximum 457 Plan contribution amount from \$8,000 to \$8,500. This increase and subsequent legislative increases have continued to be implemented by the President & CEO in accordance with authorization previously approved by the Housing Commission. The current maximum contribution amount is \$14,000.

## **DISCUSSION**

Proposed changes to the Plan and to the Service Agreement with Great-West Retirement Services have been reviewed by Housing Commission Pension Consultant Rick Roeder of Gabriel, Roeder, Smith & Co. for compliance with EGTRRA of 2001 and for compliance with the Plan's existing qualified status provisions.

### **Recommendation 1:**

The proposed designation of Great West Retirement Services as the IRA Provider for small account balances of less than \$5,000 provides an efficient and streamlined administrative business solution to implement a mandated requirement for employers. The outsourcing of QDRO orders with specific QDRO requirements for distribution, with a processing fee shared by participants and alternative payee, enhances previously approved QDRO provisions under the Plan and has been reviewed by General Counsel. These enhancements and service features do not involve the direct investment of Plan assets by SDHC nor do they impact the IRS Private Letter Ruling issued for this Plan. The recommended changes enhance options and current services under the Plan. Recommended changes are summarized on Attachment 1 to this report.

### **Recommendation 2:**

The administration of deferred compensation programs requires compliance with stringent IRS regulations and legislative mandates, and requires complex review and advice from Housing Commission pension and legal advisors. Housing Commission staff and SDHC Pension Investment Committee regularly seek guidance from Pension Consultant and General Counsel to address legislative, fiduciary, and administrative responsibilities on behalf of the Commission prior to proposed change recommendations. The Pension Investment Committee serves in an advisory capacity to the President & CEO and is comprised of financial, administrative, management, and union and non-union represented employees as established by Policy PO000.401. In accordance with Policy, pension and related deferred compensation matters are addressed by the Pension Investment Committee in public forum, in accordance with public notice requirements under the Brown Act.

The 457 Plan requires mandatory participation for all temporary employees and is a voluntary Plan for regular benefited employees. Due to precedence, these mandated and optional 457 Plan changes are presented for Housing Commission approval and Housing Authority adoption although by previous 1988 Board action, authorization to negotiate and implement a Section 457 Plan and to execute an investment contract for Plan assets was delegated to the President & CEO. Historically, all staff recommendations have been approved and adopted without modification.

In keeping with Commission focus to streamline processes and improve efficiencies while maintaining Plan integrity and Commission fiduciary responsibilities, it is planned that all future matters pertaining to mandated legislated changes to the 457 Plan Document, with submission to the IRS as appropriate, and to the Service Agreement where there are no discretionary or optional selected changes by the Plan Sponsor, be delegated to the President & CEO for adoption and implementation by the President & CEO as previously authorized and approved at the inception of the Plan. The delegation of administrative and optional Plan changes is recommended to be delegated to the Housing Commission to avoid the potential or perception of a conflict of interest, involving the financial or economic interest of any Housing Commission employee in any manner. Delegation of administrative and optional Plan changes to the Housing Commission ensures public review of issues impacting employee and Housing Commission interest.

## **ALTERNATIVES**

1. Do not approve optional changes or selectively approve one or more changes. However, it should be noted that Plan recommendations are made considering the best interest of the Housing Commission and its employees, with Pension Investment Committee input to include Union representation from S.E.I.U., Local 535.
2. Authorize the President & CEO to implement all mandated and optional administrative changes with notice to the Housing Commission and Housing Authority. While this alternative is an efficient approach for administering and implementing Plan Sponsor changes, it may be perceived negatively as a potential conflict of interest.
3. Instruct staff to make no change in process. Continue to bring forward all mandatory and optional changes. While this alternative permits the Housing Authority to continue oversight of optional Plan changes, it does not comply with prior authorization to negotiate and implement the Plan to the President & CEO.

For the Agenda of April 8, 2005  
Section 457 Deferred Compensation Plan  
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Respectfully submitted,

Approved by,

**Signature on File  
With Original Document**

C. Terry Whitesides,  
Director of Business Services

Elizabeth C. Morris  
President & Chief Executive Officer

Attachment 1: Summary of Recommendations

Distribution of these attachments may be limited. Copies available for review during business hours at the Housing Commission offices at 1625 Newton Avenue.

## ATTACHMENT 1

### SUMMARY OF RECOMMENDATIONS

#### Recommendation # 1:

- a) EGTRRA permits a 457 Plan to allow participants to request a trustee-to-trustee transfer of assets from their 457 Account to a governmental defined benefit plan for purchase of permissible service credit. Adopting this provision requires a plan amendment pursuant to Code Section 457(e)(17). This optional provision was not previously adopted as it was not applicable nor was a defined benefit plan considered or anticipated as an alternative. Adding this provision would enhance opportunities for employees to purchase prior or optional service on a pre-tax basis under a defined benefit plan if such a plan were to be offered at some future time. Inclusion of this provision is non-binding.
  
- b) EGTRRA permits a 457 Plan to accept roll-in contributions from previous employer plans including 401(a), 401(k) and 403(b) plans, and personal traditional IRA's. Adopting this provision requires a Plan amendment to separately account for dollars rolled into the plan for purposes of determining allowable distributions from the rolled-in accounts. Under current IRS regulations, rolled over accounts are subject to the 10% penalty tax for premature (i.e.; pre-age 59-1/2) distributions. Assets held in the 457 Plan through employee payroll deduction continue to be limited to in-service distributions under IRS hardship rules and will continue to receive favorable tax treatment for distributions prior to age 59-1/2 under current legislation. This roll-in option was not previously recommended to minimize employee confusion between SDHC Pension Plan and 457 Plan options. With the addition of options permissible under 401 (a), 401 (k), 403 (b), and 457 plans, the adoption of this provision provides maximum flexibility for plan participants and potential for greater account growth with choices in either the San Diego Housing Commission Pension Plan 401 (a) plan, or the 457 Deferred Compensation Plan.

#### Additional Optional Changes:

- c) The addition of a Self Directed Brokerage Account option similar to that offered under SDHC Pension Plan through Diversified Investment Advisors, Inc., allows employees knowledgeable in investment strategy and interested in actively managing their investment portfolio to do so through HarrisDirect brokerage firm, a properly registered broker-dealer, in accordance with the Securities Exchange Act of 1934. Participants may establish an account with options from eligible investments including mutual funds, and stocks and bonds allowed by the Plan. A copy of administrative provisions and fund options may be requested from the Housing Commission, Human Resources Office or Great West Retirement Services.

- d) The mandatory cash-out of small account balances greater than \$1,000, but less than \$5,000 in the form of a rollover to an IRA to avoid facing a tax consequence on the affected employee was adopted in 2001. New Treasury regulations require an IRA Provider be designated for implementation by March 2005. Approval of Great West Retirement Services as the IRA Provider will ensure plan compliance and administrative efficiency with no impact to the employee.
  
- e) A Qualified Domestic Relations Orders (QDRO) provision under EGTRRA was adopted effective in 2002 to permit the Plan to accept QDROs pursuant to amended IRC Section 414 (p)(11) to transfer all or a portion of a Participant's account to an Alternate Payee pursuant to divorce. The Plan provides for immediate payments to Alternate Payees and tax report such distribution to former spouse Alternate Payees.

Outsourcing QDRO services instructs Great West Retirement Services to receive and review all domestic relations orders provided they meet specific requirements for qualifications approved by Great West and SDHC General Counsel and to recover a fee per Order processed of \$250.00 which shall be charged one-half (\$125.00) against the Participant's remaining account. In the event that Alternate Payee is awarded 100% of the Participant's account balance pursuant to the QDRO, the entire processing fee shall be charged to the Alternate Payee's account. If there are not sufficient funds in either party's account to pay that party's respective share of the fee, the difference shall be charged to the account of the other party.