

# SUGARMAN & SUSSKIND

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June 17, 2013

Board of Trustees  
City of Dania Beach Police & Firefighters' Retirement System  
c/o Cathy David, Administrator  
113 S.W. 1<sup>st</sup> Street  
Dania Beach, Florida 33004

*Re: City of Dania Beach Police & Firefighters' Retirement System  
Post Favorable IRS Determination Ordinance Amendment*

Dear Trustees,

We write to explain the various amendments contained within the IRS compliance ordinance that we recently prepared for you.

The favorable determination letter that you recently received is subject to the adoption of the amendments contained within the ordinance. In other words, the amendments are required in order for the letter to remain valid.

None of the amendments should have any effect on the funding or operations of the plan or on the contributions to the plan or the benefits paid by the plan. This is because the plan has already been operating in accordance with the requirements of the Internal Revenue Code (for instance, the plan does not pay benefits in excess of the Section 415 limits). The Code requires, however, not only that the plan be operated in accordance with its Code, but also that the plan document contain certain Code requirements in writing.

## Definition of Earnings

For the purpose of improving the readability of the plan, the amendment deletes certain language from the definition of earnings, and moves it to the IRS compliance section.

You may recall that the previous compliance ordinance that we drafted for you added certain language to the definition of earnings, as it relates to Sections 415 and 401(a)(17) of the Code.

Since, as set forth below, the IRS requested certain amendments to the 415 compliance section in your plan, we decided to move the language to that section. We hope that this will simplify your reading of the plan.

#### Amendment for HEART ACT

The HEART Act provided for certain benefits for survivors of participants who die while in USERRA-qualified military service.

Under HEART, survivor benefits are determined as though the person returned to work and died immediately thereafter. Also, for vesting purposes with respect to survivor benefits, credit is given for the time during which the person was in USERRA-qualified service.

#### 415 Limitations

This is the most voluminous of the amendments contained within the proposed ordinance.

In April 2007, the IRS issued new, final regulations relating to Section 415 of the Code. Section 415 limits the amount of benefits that a participant can receive each year under the plan (the current amount of the limitation is \$205,000). The regulations included certain transitional rules relating to the calculation of benefits for years prior to 2007.

The compliance ordinance that we prepared for you prior to the filing of the determination letter provided for prospective compliance with the regulations. The IRS requested, however, that the retroactive, transitional language be included, as well.

The new provision contains all required retroactive and prospective language.

#### Amendments to the minimum distribution requirements under 401(a)(9) of the Code

Section 401(a)(9) of the code provides for certain rules relating to the time frame and manner in which benefits must be paid under the plan. Recent changes in the law amended some of those requirements.

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The compliance ordinance that you previously adopted provided for full compliance with Section 401(a)(9). The guidance that the IRS had published relating to this requirement, however, contained some typographical errors made by the IRS.

The ordinance rectifies the errors contained in the IRS publications.

Amendments to provisions relating to Rollover Distributions

Recent changes in the law amended the definition of Rollover Distributions to provide for rollovers to Roth IRAs, as well as rollovers into IRAs by non-spousal beneficiaries.

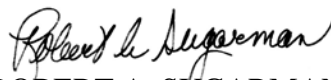
The ordinance amends the plan provisions relating to Rollover Distribution in order to provide for full compliance with the recent changes.

Uniformed Services Employment and Reemployment Rights Act (USERRA)

This amendment provides for compliance with all requirements under USERRA. The IRS Code does not mandate that said requirements be detailed in the plan document. Rather compliance by reference is satisfactory. This amendment provides for compliance with all of the Code requirements relating to USERRA.

Please feel free to contact us should you have any questions.

Yours truly,



ROBERT A. SUGARMAN

Board Certified Labor & Employment Lawyer

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