

RESOLUTION NO. 2013-239

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2 **RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN**  
3 **BERNARDINO APPROVING TERMS AND CONDITIONS OF EMPLOYMENT FOR**  
4 **THE MIDDLE MANAGEMENT UNIT EMPLOYEES REPRESENTED BY THE SAN**  
5 **BERNARDINO PUBLIC EMPLOYEES ASSOCIATION (SBPEA), CONSISTENT**  
6 **WITH CERTAIN PROVISIONS OF THE CITY'S PENDENCY PLAN, ADOPTED BY**  
7 **THE MAYOR AND COMMON COUNCIL ON NOVEMBER 26, 2012 BY**  
8 **RESOLUTION NO. 2012-278.**

9 WHEREAS, in meeting its commitments to the citizens of the City of San  
10 Bernardino to maintain a safe and secure community while providing access to  
11 cultural, recreational and governmental activities and institutions for all citizens, the  
12 City has employed a workforce; and

13 WHEREAS, most City employees are entitled to collectively bargain with the  
14 City regarding terms and conditions of employment; and

15 WHEREAS, as nearly two-thirds of the City's General Fund is tied directly to  
16 the salaries and benefits paid to City employees, the City's labor costs for the 2012-  
17 2013 Fiscal Year (FY) exceeded the City's projected revenues; and

18 WHEREAS, despite cost savings measures previously taken by the City, the  
19 City's financial situation is dire with no available cash to meet on-going operating  
20 expenses, including payroll, and no revenue or other funding sources are available to  
21 balance the City's budget and address prior years' deficits; and

22 WHEREAS, on July 18, 2012, the Mayor and Common Council directed the  
23 filing of a Petition under Chapter 9 of the United States Bankruptcy Code following  
24 the adoption of a Declaration of a Fiscal Emergency in the City of San Bernardino.  
25 These actions were in response to findings that the financial state of the City is such  
26 that the health, safety, and well-being of the residents of the City will be jeopardized  
27 absent Chapter 9 bankruptcy protection; and

28 WHEREAS, on November 26, 2012, the Mayor and Common Council adopted  
the Pendency Plan, Resolution 2012-278, which included the Fiscal Year 2012/13  
and Fiscal Year 2013/14 General Fund Budgets which incorporated by reference the  
Pre-Pendency Plan including the 9-Point Adjustment Plan adopted on September 5,  
2012, and the revised Fire Department adjustments adopted on October 1, 2012; and

1 WHEREAS, since the filing of the Declaration of Fiscal Emergency on July 18,  
2 2012 and the filing of the Petition under Chapter 9 of the United States Bankruptcy  
3 Code, the City's negotiating team met with the SBPEA and provided bargaining  
4 proposals, financial and other information responsive to the SBPEA's numerous  
5 requests in an attempt to meet and negotiate in good faith concerning modifications  
6 to the terms and conditions of employment consistent with the provisions in the  
Pendency Plan; and,

7 WHEREAS, on January 15, 2013, the City's Chief Negotiator sent a letter to  
8 the Attorney for the SBPEA requesting a meeting to negotiate and informing the  
9 SBPEA that as the City's Pendency Plan contemplated an implementation date of  
10 January 1, 2013, the City's negotiating team would be recommending to the Common  
11 Council that the following provisions of the City's Pendency Plan be timely  
12 implemented: 1) 9.304% employee pick-up of the CalPERS normal benefit costs  
13 [Pendency Plan #5]; 2) All vacation, sick leave, holiday paid time off payments (cash-  
14 out and sell-back) be suspended through June 30, 2014 [Pendency Plan # 13]; 3)  
15 limit accrued sick leave to 1040 hours; and, 4) Elimination of retiree medical benefits  
for all employees hired on or after January 1, 2013 [Pendency Plan #8]; and,

16 WHEREAS, based upon the SBPEA's failure to respond to the City's January  
17 15, 2013, letter, and the failure of the City and the SBPEA to reach agreement  
18 regarding the implementation of certain Pendency Plan provisions necessary for the  
19 City to continue to provide services, on January 28, 2013, the Common Council  
20 adopted Resolution No. 2013-18 declaring fiscal emergency within the meaning of  
21 the Meyers-Milias-Brown Act, Government Code § 3504.5, and, implementing certain  
provisions of its Pendency Plan; and,

22 WHEREAS, in accordance with Government Code § 3504.5, the City and the  
23 SBPEA have an obligation to continue to negotiate following the adoption of  
24 Resolution No. 2013-18; and,

25 WHEREAS, the City and the SBPEA representatives have met and have  
26 reached agreement on certain terms and conditions set forth below.  
27  
28

1           **NOW THEREFORE, be it resolved by the Mayor and Common Council of**  
2           **the City of San Bernardino as follows:**

3           **SECTION 1.** The following terms and conditions of employment for bargaining  
4           unit members represented by the SBPEA are adopted for implementation effective  
5           February 1, 2013:

- 6           1.     CalPERS Retirement Formulas: For all employees employed on or  
7           before 10/3/11, 2.7% @ 55; employees hired on or after 10/4/11 to  
8           12/31/12, 2% @ 55; employees hired on or after 1/1/13, 2% @ 62.
- 9           2.     Cost Sharing of CalPERS Benefits: All bargaining unit employees  
10           represented by the SBPEA hired on or before 12/31/12 shall contribute  
11           9.304% of reportable income [8% Employee Contribution plus 1.304%  
12           of the Employer Contribution] to the California Public Employee  
13           Retirement System (CalPERS) retirement benefit which represents fifty-  
14           percent (50%) of the normal costs of benefits as determined by  
15           CalPERS for the 2013-2014 fiscal year. Employees hired on or after  
16           January 1, 2013, shall contribute 50% of the normal contribution  
17           consistent with the provisions of the Public Employees Pension Reform  
18           Act of 2013 (PEPRA). The provisions of Section 414(h)(2) of the  
19           Internal Revenue Code (IRC) as implemented by the Mayor and  
20           Common Council on September 22, 1999 by Resolution No. 1999-235,  
21           are applicable to contributions designated as employee contributions  
22           made by the City of San Bernardino to the CalPERS and are hereby  
23           incorporated herein. [Pendency Plan # 5].
- 24           3.     Salary Concessions: All salary concessions previously agreed to by the  
25           City and the SBPEA shall be reversed and all bargaining unit  
26           employees will resume working a forty (40) hour week. Bargaining unit  
27           members who are so entitled shall continue to receive forty (40) hours  
28           per fiscal year of administrative leave.
4.     Education Tuition Assistance: Educational reimbursement shall  
          continue in accordance with Article IV, Section 3 – Tuition

1 Reimbursement, of the *Memorandum of Understanding (MOU) Middle*  
 2 *Management Employees*, July 1, 2006 to June 30, 2009, as amended.

3 In addition, during the term of this interim agreement, the City must  
 4 reimburse bargaining unit members for job-related courses, programs,  
 5 training, conferences, classes, and memberships in professional  
 6 organizations as follows: Employees with 5-10 years of service = up to  
 7 \$500; employees with 11-15 years of service = up to \$1,000;  
 8 employees with 16 or more years of service = up to \$1,500.

9 Article IV, Section 3 – Tuition Reimbursement, of the *Memorandum of*  
 10 *Understanding (MOU) Middle Management Employees*, July 1, 2006 to  
 11 June 30, 2009, is being amended herein to add Subsection (E),  
 12 *Reimbursement for Job-Related Professional Activities*, as follows:

13 E. Reimbursements for Job-Related Professional Activities

14 Purpose

- 15 1. To encourage the employees of the City of San Bernardino to  
 16 attend job-related courses, programs, training, conferences,  
 17 classes, and memberships in professional organizations that will  
 18 better enable them to perform their present duties and prepare  
 19 them for increased responsibilities.  
 20 2. To provide financial assistance to eligible employees for job  
 21 related training and professional development.  
 22 3. To establish eligibility requirements, conditions and procedures  
 23 whereby such assistance may be provided.

24 Eligibility

- 25 1. Applications for reimbursement will be considered only from unit  
 26 members/employees who have completed at least 5 years of  
 27 service with the City.  
 28 2. Applications will be approved only for courses, conferences, and  
 memberships directly related to the employee's job or directly

1 related to a promotional position in the employee's occupational  
2 specialty.

- 3 3. Any reimbursement under this section must be preapproved in  
4 accordance with the procedures set forth below. In order to be  
5 eligible for reimbursement under this section, employees must  
6 complete appropriate documentation on forms provided by  
7 Human Resources.

#### 8 Reimbursement

9 The City shall reimburse bargaining unit members for job-related  
10 courses, programs, training, conferences, classes, and  
11 memberships in professional organizations as follows:

12 Employees with 5-10 years of service = Up to \$ 500;

13 Employees with 11-15 years of service = Up to \$ 1,000;

14 Employees with 16 or more years of service = Up to \$ 1,500.

#### 15 Procedures

16 To qualify for reimbursement, employees shall comply with the  
17 procedures set forth below:

- 18 1. An employee who desires to seek reimbursement under the  
19 provisions of this Article must complete a Request for  
20 Reimbursement form generated and approved by the Human  
21 Resources Department and submit it to his/her Department Head  
22 for advance approval.
- 23 2. The Department Head will recommend approval or disapproval  
24 based on job relatedness and will forward the Request form to  
25 the Human Resources Division Manager or designee. The  
26 Human Resources Division Manager shall review the form and  
27 forward to the City Manager a recommendation for approval or  
28 disapproval for final action. If the request is approved, it shall be  
sent to the Finance Department with authorization for

1 reimbursement. The decision of the City Manager as to the  
2 employee's eligibility shall be final and binding.

- 3 5. Post-Retirement Medical Benefits: Employees hired on or after 1/1/13  
4 shall not be eligible to receive payments for retiree medical benefits. With  
5 respect to all employees, the City shall reserve all rights to modify retiree  
6 medical plans and the amount of contributions paid by the City.
- 7 6. Deferral of Payments for Accrued Leaves: All payments for accrued sick  
8 leave, holiday, and vacation leave to which employees may be entitled  
9 prior to separation from employment (sell-backs) shall remain suspended in  
10 accordance with the action of the Mayor and the Common Council on  
11 August 6, 2012. All payments for cash-outs upon separation for accrued  
12 sick, holiday, and vacation leave shall remain suspended in accordance  
13 with the action of the Common Council on August 6, 2012. [Pendency Plan  
14 # 13]
- 15 7. Sick Leave Accrual Caps: Effective February 1, 2013, all bargaining unit  
16 employees may only accrue a maximum of 1040 hours of sick leave. All  
17 bargaining unit employees with accrued sick leave hours in excess of 900  
18 hours on August 1, 2013, will have those excess hours converted to a  
19 separate excess sick leave bank (ESL). In addition, any net accruals  
20 beyond 1040 hours occurring from February 1 to July 31, 2013 will be  
21 allocated to the accrued sick leave bank. Effective October 1, 2013, 24  
22 hours from the ESL shall be cashed out each quarter of a fiscal year until  
23 the ESL is extinguished or until the employee separates from service. Fifty  
24 percent (50%) of any remaining balances in the ESL at the time of  
25 separation shall revert to a PEHP trust. Sick leave earned on or after  
26 February 1, 2013, is subject to the 1040 hour cap. At the time of  
27 separation, any employee having six (6) or more years of service, shall  
28 convert unused sick leave earned after February 1, 2013 to a PEHP trust  
as follows: 288 hours or less accrued = no conversion; 289-479 hours =

1 20% of accrued sick leave; 480-959 hours = 25%; 960 or more hours =  
2 35%.

3 8. Term: The terms and conditions set forth herein shall be in effect from  
4 February 1, 2013 through June 30, 2014. The City and the SBPEA agree  
5 to reopen negotiations in January 2014 with the intent of concluding a  
6 comprehensive agreement on both economic and non-economic issues.

7 9. Family Sick Leave: SBPEA bargaining unit members may use unlimited  
8 accrued sick leave for the care of an immediate family member. Immediate  
9 family member means husband, wife, grandmother, grandfather, mother,  
10 father, sister, brother, son, daughter, mother-in-law, father-in-law, sister-in-  
11 law, brother-in-law, daughter-in-law, son-in-law, or domestic partner.

12 10. Favored Nations Clause: If any miscellaneous unit does not agree to the  
13 implementation of the retirement pick-up, or if any safety group does not  
14 agree to, or the Common Council does not implement Items #3, #4, or #9  
15 of the Pendency Plan, the SBPEA will not be required to implement the  
16 pick-up concession and the parties agree to reopen negotiations solely on  
17 this item.

18 11. Bankruptcy Reservation of Rights: The Memorandum of Understanding  
19 and any amendment(s) thereof (collectively, the "MOU") shall continue to  
20 apply except as expressly set forth herein. Nothing in this Resolution is  
21 intended to or constitutes an assumption or rejection (as those terms are  
22 used in the Bankruptcy Code) of the MOU or any other agreement between  
23 the SBPEA and the City. The City reserves the right to take any such  
24 action at any time in the future. The parties hereto reserve all other rights  
25 for bankruptcy purposes or otherwise.

26 **SECTION 2.** On August 1, 2013, the SBPEA membership ratified the  
27 terms and conditions of the interim agreement as set forth herein.  
28

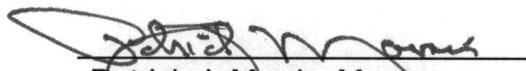
RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO APPROVING TERMS AND CONDITIONS OF EMPLOYMENT FOR THE MID-MANAGEMENT UNIT EMPLOYEES REPRESENTED BY THE SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION (SBPEA), CONSISTENT WITH CERTAIN PROVISIONS OF THE CITY'S PENDENCY PLAN, ADOPTED BY THE MAYOR AND COMMON COUNCIL ON NOVEMBER 26, 2012 BY RESOLUTION NO. 2012-278.

I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor and Common Council of the City of San Bernardino at a joint regular meeting thereof, held on the 5th day of August, 2013, by the following vote, to wit:

Council Members:	AYES	NAYS	ABSTAIN	ABSENT
MARQUEZ	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
JENKINS	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
VALDIVIA	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
SHORETT	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
KELLEY	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
JOHNSON	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>
MCCAMMACK	<u>X</u>	<u>      </u>	<u>      </u>	<u>      </u>

  
Georgeann Hanna, City Clerk

The foregoing Resolution is hereby approved this 6<sup>TH</sup> day of August, 2013.

  
Patrick J. Morris, Mayor  
City of San Bernardino

Approved as to form:  
JAMES F. PENMAN,  
City Attorney  
By: 