

RESOLUTION NO. 2015-217

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RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO APPROVING A SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO AND THE GENERAL UNIT EMPLOYEES REPRESENTED BY THE INTERNATIONAL UNION OF OPERATING ENGINEERS (IUOE) EXTENDING THE TERMES AND CONDITIONS OF EMPLOYMENT.

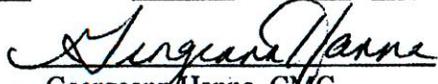
BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNADINO AS FOLLOWS:

SECTION 1. The City Manager and the Deputy City Manager of the City of San Bernardino are hereby authorized and directed to execute on behalf of said City a Side Letter Agreement to Resolution No. 2011-207 and Resolution No. 2013-024, where both Resolutions remain in effect with the exception of the agreed upon terms and conditions of employment detailed in Exhibit A and Attachment 1 to this resolution.

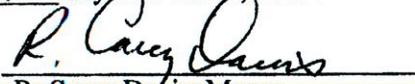
1 **RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF**
 2 **SAN BERNARDINO APPROVING A SIDE LETTER AGREEMENT BETWEEN THE**
 3 **CITY OF SAN BERNARDINO AND THE GENERAL UNIT EMPLOYEES**
 4 **REPRESENTED BY THE INTERNATIONAL UNION OF OPERATING**
 5 **ENGINEERS (IUOE) EXTENDING THE TERMES AND CONDITIONS OF**
 6 **EMPLOYMENT.**

7 I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor
 8 and Common Council of the City of San Bernardino at a joint regular meeting thereof, held on
 9 the 5th day of October, 2015, by the following vote, to wit:

8 <u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
9 MARQUEZ	<u>X</u>	_____	_____	_____
10 BARRIOS	<u>X</u>	_____	_____	_____
11 VALDIVIA	<u>X</u>	_____	_____	_____
12 SHORETT	<u>X</u>	_____	_____	_____
13 NICKEL	<u>X</u>	_____	_____	_____
14 JOHNSON	<u>X</u>	_____	_____	_____
15 MULVIHILL	_____	_____	_____	<u>X</u>

16
 17 
 18 Georgeann Hanna, CMC
 19 City Clerk

20 The foregoing Resolution is hereby approved this 9th day of October, 2015.

21 
 22 R. Carey Davis, Mayor
 23 City of San Bernardino

24 Approved as to form:
 25 Gary D. Saenz, City Attorney

26 By: 
 27
 28

Side Letter Agreement between the City of San Bernardino ("City") and the General Unit Employees represented by the International Union of Operating Engineers (IUOE) extending the terms and conditions of employment.

The following sets forth the Amendments to Resolution 2011-207 and Side Letter Resolution 2013-24 for full-time, non-safety, General Unit employees. Both resolutions remain in effect with the following changes:

ARTICLE VII – GENERAL PROVISIONS

SECTION 4 – Term of Side Letter to Memorandum of Understanding (MOU)

The term of this Side Letter begins on July 1, 2015 and extends through June 30, 2017. If negotiations regarding an MOU are in progress at the time this Side Letter expires or if the parties are at impasse, the terms of this Side Letter shall remain in effect until a successor MOU or Side Letter Agreement is adopted by the Mayor and Common Council.

ARTICLE III – COMPENSATION

SECTION 1 – Salaries

Effective July 1, 2015, all General Unit employees will receive a Cost of Living Adjustment of 2% to their current salary ranges/steps.

Effective July 1, 2016, all General Unit employees will receive an additional Cost of Living Adjustment of 2% to their salary ranges/steps.

If any Miscellaneous Bargaining Unit, as a whole, within the City of San Bernardino receives a Cost of Living salary adjustment above 2% during the term of this MOU Side Letter Agreement, the City shall grant the General Unit employees the same percentage salary adjustment. This section does not apply if individual classifications within any Miscellaneous Bargaining Unit are adjusted during the term of this MOU Side Letter Agreement, e.g. salary adjustments as a result of a departmental restructuring.

ARTICLE I – ADMINISTRATION

SECTION 5 – Safety Committee

IUOE shall appoint three (3) members from the General Unit to the Safety Committee and also 3 alternate members to the Safety Committee. The appointments should not include more than one member and one alternate from each City Department. The Board will review all recordable accidents, both City equipment and personal injury of City employee, and make recommendations to

the City Manager or his/her designee for all corrective actions in establishing better job safety.

The remaining paragraphs under Article I – Section 5 remain unchanged.

ARTICLE II – EMPLOYER-EMPLOYEE RELATIONS

SECTION 8 – Personnel Files

Paragraph F – Employees may request that any documents contained in the file of a derogatory nature will be purged from their files after a period of twenty-four (24) months if no further actions have occurred similar in nature. The department head shall review said request and notify the employee and IUOE of his/her decision in writing within seven (7) calendar days. After review by the Department Head, if employee is not satisfied with the outcome, employee may request that the City Manager or his/her designee review all requests to purge negative items from personnel files. The City Manager or his/her designee shall have final say on what will be purged from personnel files.

The remaining paragraphs under Article II – Section 8 remain unchanged.

ARTICLE III - COMPENSATION

SECTION 6 – Call-Back/Standby Assignment & Pay

An employee who is free to engage in his/her own pursuits while off duty, subject only to carrying a pager or to the understanding that the employee leave word at his/her home or with the Department Head or designee where the employee can be reached, is not working while on standby. If called back, the employee shall be paid for the time actually worked in accordance with Article III, Section 3 (Overtime).

If a Department Head places an employee on standby, defined as the employee being in a state of readiness and immediate availability to come to work outside of their normal work hours, the IUOE and the City hereby agree that the following is compensation in full for the hours of work of the employee when in such standby status:

<u>Standby Status</u>	<u>Hours Compensated</u>
For the employee's five (5) work days during their work week (or prorate at 3.0)	15 work hours
For the employee's two (2) non-work days during their work week (or prorate at 2.5)	5 work hours

AND,

<p>For any holiday, as described in this MOU, Side Letter during which the employee stands by for all per holiday - added or any portion of the 24 hour day</p>	<p>2.5 extra work hours to the above</p>
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Payment for hours described above shall be compensated per FLSA regulations.

General Unit Call-Back Pay: An employee cannot be in standby status and call-back status at the same time.

Employees not formally assigned to standby status may still be called back to work. If reached by their supervisor and called back to work, the employee will be paid for actual hours of work at the FLSA overtime rate of time-and-one-half (1-1/2) unless the employee has worked less than thirty-six (36) hours in the work week due to use of paid or unpaid sick time, vacation, holiday, and compensatory time. In such cases, employee will be paid straight time. Department Heads may, however, pay at the overtime rate of time-and-one half (1-1/2) regardless of leave time taken in unusual circumstances at their discretion. An employee called back to work shall be paid for a minimum of 3.0 hours of work.

The General Unit employees covered by this MOU Side Letter are not so severely restricted in their activities while in standby status as to be "working while on call" as that term is used in the Fair Labor Standards Act 29 CFR 785.17.

Departments and Divisions, which utilize call-back/standby, shall prepare a qualified list of employees. Department/Division Heads will consider the following factors in establishing and maintaining call-back and standby lists: employee seniority, special qualifications and skills.

All Animal Control Officers within the Animal Control Division shall rotate by being placed on the standby list. No Animal Control Officer shall be left out of standby rotation.

ARTICLE III – COMPENSATION

SECTION 8 – Personal Tool Replacement Allowance

The City shall provide a tool replacement allowance for damaged, lost or stolen personal tools in an amount not to exceed \$500 per year, per employee. Only those employees in the following position classifications shall be entitled to such allowance:

<u>Department/Division</u>	<u>Classification(s)</u>
1. Fleet Division	Mechanics & Lead Worker
2. Engineering	Traffic Signal Electricians
3. Public Works	Maintenance Personnel (includes Plumbers) & Electricians I & II
4. Fire Department-Maintenance Shop	Mechanics

The remaining paragraphs under Article III – Section 8 remain unchanged.

ARTICLE III – COMPENSATION

SECTION 10 – Bilingual Pay

General Unit employees, as designated by the City Manager and who meet the certification and eligibility requirements as developed by the City, shall be compensated at the rate of seventy-five dollars (\$75) per month. The duties of the employee receiving bilingual pay may be reviewed annually to determine that bilingual duties assigned to an employee are being performed on a regular and frequent basis. The designated employees may be tested annually for certification and recertification.

Not more than forty (40) General Unit employees may be designated to receive bilingual pay. The City Manager or designee will retain the right to select the forty (40) eligible employees and to determine the departments where use of employee bilingual skills would be best served. The City shall reserve the right to determine languages for which testing will be conducted.

ARTICLE IV – FRINGE BENEFITS

SECTION 1 – Health/Life Insurance

A. Effective January 1, 2016, the City will contribute:

- \$415.00 per month towards the purchase of health care premiums for "Employee with No Dependents."
- \$555.00 per month towards the purchase of health care premiums for "Employee Plus One or More Dependents."

Any employee who chooses not to enroll in any health care plan offered by the City, must provide evidence of group health care insurance coverage and execute a Waiver of Benefits and Release Agreement, releasing the City from

any responsibility or liability to provide health care insurance coverage on an annual basis. Employees who do not enroll in a City health care plan during open enrollment and execute the forms above, shall receive a stipend of \$2,500.00 on December 15 of each year covered by this MOU Side Letter Agreement. Employees participating in this option are required to waive all medical, dental and vision insurance coverage provided by the City.

The remaining paragraphs under Article IV – Section 1 remain unchanged.

ARTICLE V – LEAVES

SECTION 2 – Holidays

Effective January 1, 2016, all full-time employees within the bargaining unit shall be entitled to twelve (12) City-designated holidays, the equivalent of one hundred eight (108) holiday hours each year for those employees on a regular work schedule (8 hours per day Monday through Friday) or a 9/80 work schedule. Those employees on a 4/10 work schedule shall be entitled to twelve (12) City-designated holidays, the equivalent of one hundred twenty (120) holiday hours each year.

Holiday Bank Hours - The terms and conditions regarding accrued holiday leave as adopted by the Mayor and Common Council by Resolution Number 2013-108 are incorporated herein for the duration of the Side Letter Agreement.

Effective June 17, 2013, General Unit employees may carry over up to ninety-six (96) hours of accrued holiday. Any holiday bank hours over ninety-six (96) will be forfeited. This increased carryover will have no impact on the current cash-out cap for separating employees, nor shall it affect the suspension of pay outs adopted via Resolution 2012-214.

The remaining paragraphs under Article V – Section 2 remain unchanged.

ARTICLE V – LEAVES

SECTION 12 – Jury Duty

Paragraph 7 shall read: The City will pay for all working days in a calendar year of a covered employee who is required to serve jury duty.

The remaining paragraphs under Article V – Section 12 remain unchanged.

ARTICLE V – LEAVES

NEW SECTION – Pre-Petition Leave Balances

The monetary value of all pre-petition leave bank accruals, including without limitation, vacation, sick leave, concession leave, and holiday leave, will be the

subject of distribution as part of the bankruptcy unsecured creditors' pool. All leave balances accrued on or before August 1, 2012 (pre-petition leave) shall be placed in the unsecured creditor pool and will not be available for use by the General Unit (IUOE) members. This position is consistent with the Recovery Plan adopted by the City Council on May 18, 2015. Under the City's Recovery Plan, all City employees are subject to these restrictions on pre-petition leaves. With the exception of post-petition vacation accrual, all post-petition leave accruals will be deferred pending the final approval and effective date of a Plan of Adjustment by the Bankruptcy Court.

ARTICLE VII – GENERAL PROVISIONS

NEW SECTION – Support of City's Plan of Adjustment

The General Unit (IUOE) members shall support confirmation of the Plan of Adjustment that incorporates this agreement.

Additionally, the City has agreed to include in the writing of comprehensive personnel policies the following items:

- o Performance Evaluation Guidelines
- o Promotion Guidelines
- o Reprisal Guidelines
- o Meals and Break Period Guidelines

Date: October 17, 2015

For the City:

Slena Crider
City Attorney

[Signature]
Deputy City ~~Attorney~~
Manager

[Signature]
City Manager

For the IUOE:

Paul P. Flou

APPENDIX "A" to MOU Side Letter – Bankruptcy Provisions and Release of Claims:

1. The MOU Side Letter will become effective upon execution by the parties, provided however that the MOU Side Letter will become null and void and of no further effect if the City's Plan of Adjustment is not approved by the Bankruptcy Court.
2. The City will append the MOU Side Letter to its Plan of Adjustment, and the Plan and confirmation order shall provide for Court approval of the MOU Side Letter.
3. Under the Plan all claims of the General Unit (International Union of Operating Engineers) and its members with respect to wages, pensions (including implementation of cost sharing), other benefits and other terms and conditions of employment that arose prior to the date of the confirmation of the Plan, including, without limitations, all claims arising from the City's changes to the terms and conditions of employment (collectively the "Employment Related Claims"), shall be treated as general unsecured claims under the Plan, and the City and its officers shall be discharged from such Employment Related Claims upon confirmation of the Plan; provided, however, that any claims arising under the MOU Side Letter after it is executed by the City and the General Unit (IUOE) (e.g. grievances) shall not be discharged as long as (a) the General Unit (IUOE) complies with the terms of the MOU Side Letter, including this Appendix "A," and (b) the Court confirms the Plan.
4. The General Unit (IUOE) shall support confirmation of the Plan that incorporates the MOU Side Letter (including this Appendix "A").
5. The City and the General Unit (IUOE) shall stipulate and agree on the amount of the Employment Related Claims. The General Unit (IUOE) shall vote the full amount of the Employment Related Claims in favor of the Plan and shall file a brief in support of confirmation of the Plan.
6. This MOU Side Letter, including this Appendix "A," is not a solicitation by the City, and the General Unit (IUOE)' commitment to vote the Employment Related Claims in favor of the Plan is not effective until the Court approves a Disclosure Statement that incorporates this MOU Side Letter.