

# **Exhibit 22**

Resolution No. 2016-12  
(Settlement with SBCPF and Fire Safety Bargaining Unit)

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3 **RESOLUTION NO. 2016-12**

4 **RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN**  
5 **BERNARDINO AUTHORIZING THE MAYOR TO EXECUTE A GLOBAL**  
6 **SETTLEMENT AGREEMENT WITH THE SAN BERNARDINO PROFESSIONAL**  
7 **FIREFIGHTERS UNION.**

8 **BE IT RESOLVED BY THE MAYOR AND COMMON COUNCIL OF THE CITY**  
9 **OF SAN BERNARDINO AS FOLLOWS:**

10 **SECTION 1.** The Mayor is hereby authorized to execute on behalf of the City the  
11 Global Settlement Agreement between the City of San Bernardino and the San Bernardino  
12 Professional Firefighters Union, attached hereto as Exhibit "A" and incorporated herein.

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**RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO AUTHORIZING THE MAYOR TO EXECUTE A GLOBAL SETTLEMENT AGREEMENT WITH THE SAN BERNARDINO PROFESSIONAL FIREFIGHTERS UNION.**

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 1<sup>st</sup> day of February, 2016, by the following vote, to wit:

<u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
MARQUEZ	<u>X</u>	_____	_____	_____
BARRIOS	<u>X</u>	_____	_____	_____
VALDIVIA	<u>X</u>	_____	_____	_____
SHORETT	<u>X</u>	_____	_____	_____
NICKEL	_____	_____	_____	<u>X</u>
JOHNSON	<u>X</u>	_____	_____	_____
MULVIHILL	<u>X</u>	_____	_____	_____

Georgeann Hanna  
Georgeann Hanna, CMC, City Clerk  
*by Linda Sutherland, Deputy*

The foregoing Resolution is hereby approved this 3<sup>rd</sup> day of February, 2016.

R. Carey Davis  
R. Carey Davis, Mayor  
City of San Bernardino

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

By: *[Signature]*

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**SETTLEMENT AGREEMENT AND RELEASE**

This Settlement Agreement and Release (the "Agreement") is effective as of the Effective Date which is defined below, and is made and entered into by and among: the City of San Bernardino, California (the "City"); the San Bernardino City Professional Firefighters, Local 891 (the "SBCPF") for itself and current and former SBCPF members who are or were represented by the SBCPF in collective bargaining and other administrative and judicial matters, except as explained below; current and former SBCPF members Gregory Parker, Sam Bashaw, Chris Nigg, Thomas Jeff English, Richard Lentine, Steve Tracy, and Kenneth Konior (together with SBCPF, the "Case No. 1119 Plaintiffs"); current and former SBCPF members Richard Scott Moss, Gregory Parker, Brian Crowell, Eric Chappell, Stephen Lopez, Michael Bush, Gerald L. Mohny, James F. McMullen, and Leslie Pompa (the "Case No. 1027 Plaintiffs"); current and former SBCPF members Bryan Crowell and Byron Kuhn (the "Case No. 1012967 Plaintiffs"); and current SBCPF member Richard Scott Moss (the "Case No. 1102415 Plaintiff"). The SBCPF, the Case No. 1119 Plaintiffs, the Case No. 1027 Plaintiffs, the Case No. 1012967 Plaintiffs and the Case No. 1102415 Plaintiff are sometimes referred to herein individually or collectively, as the context requires, as the "Plaintiffs." All of the individual Plaintiffs (meaning not including the SBCPF) are sometimes referred to collectively as the "Individual Plaintiffs." The City, the SBCPF and all of the Individual Plaintiffs are referred to collectively, as the "Parties." Some current and former union members are listed more than once as Parties only because they are Plaintiffs in more than one lawsuit.

The SBCPF's entry into and execution of this Settlement Agreement on behalf of its former members is only with respect to claims of former SBCPF members that arose while the SBCPF was the bargaining agent for those members and the members were employed as Fire Safety employees by the City; specifically, the SBCPF is not in this Agreement representing any former SBCPF members that are current or were City employees and represented by other City bargaining units, including, without limitation, the San Bernardino Fire Management Association. Any post-petition claims or liabilities by said former members are not included, in any way, in this Agreement and is specifically excluded from the terms and conditions of this Agreement.

This Agreement is not intended to and shall not impair the rights of City employees and retirees contained in any other agreement entered into by the City in connection with confirmation of the City's Chapter 9 Plan (defined below), including, without limitation, any agreement entered into by the City with the Official Committee of Retired Employees or the San Bernardino Fire Management Association in connection with the confirmation of the City's Chapter 9 Plan.

**Recitals**

A. **The Bankruptcy.** The City commenced its chapter 9 bankruptcy case (the "Bankruptcy Case") on August 1, 2012 (the "Petition Date") in the U.S. Bankruptcy Court for the Central District of California (the "Bankruptcy Court"). On November 25, 2015 the City filed its First Amended Plan for the Adjustment of Debts of the City of San Bernardino, California (as it may be amended from time to time, the "Chapter 9 Plan").

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**B. Prepetition and Post-petition Litigation.** The City is a defendant, debtor or charged party and the SBCPF and/or one or more of the other Plaintiffs are a plaintiff, claimant or charging party, in the matters set forth in this recital and described in 1-14 below, which matters are collectively referred to as the “Fire Union Claims.” The matters described in 1-9 were commenced or filed prior to the Petition Date or relate to prepetition claims (and are collectively referred to as the “Prepetition Litigation”) and the matters described in 10-15 were commenced or filed after the Petition Date or relate to post-petition claims or requests for payment of expenses (and are collectively referred to as the “Post-petition Litigation”).

1. An action filed on or about August 15, 2007, which is entitled *Richard Scott Moss v. City of San Bernardino, et al.*, which is pending in the United States District Court for the Central District of California (District Court), Case No. EDCV 07-1027-JTM. The complaint alleges that the City violated the Fair Labor Standards Act (“FLSA”), 29 U.S.C. § 201 *et seq.*, by failing to calculate and pay overtime correctly (the “Prepetition FLSA Claims”). The District Court, after summary judgment proceedings and a bifurcated trial, entered judgment in favor of the plaintiffs on liability, but damages were not determined because the Bankruptcy Case stayed the Prepetition FLSA Claims.
2. A petition for writ of mandate filed on or about June 3, 2010, which is entitled *SBCPF v. City of San Bernardino, et al.*, which is pending in the San Bernardino Superior Court, Case No. 1007708. This petition seeks declaratory relief related to layoff procedures as they relate to the City Charter.
3. A petition for writ of mandate filed on or about June 3, 2010, which is entitled *SBCPF v. City of San Bernardino, et al.*, which is pending in the San Bernardino Superior Court, Case No. CIVDS 1007709. This petition seeks declaratory relief and wages owed related to the City’s implementation of an 8.7% salary reduction.
4. An action filed on or about September 15, 2010, which is entitled *SBCPF Firefighters Brian Crowell and Byron Kuhn v. City of San Bernardino, San Bernardino City Civil Service Board, San Bernardino Fire Department and Fire Chief Michael Conrad, et al.*, which is pending in the San Bernardino Superior Court, Case No. 1012967. This action alleges violations of the Public Safety Officers Procedural Bill of Rights Act (Government Code §3300 *et seq.*) and violations of Civil Rights under 42 U.S.C. § 1983.
5. A petition for writ of mandate filed on or about February 23, 2011, which is entitled *SBCPF and Richard Scott Moss v. City of San Bernardino and the Common Council, et al.*, San Bernardino Superior Court, Case No. 1102415. This petition alleges violations of the San Bernardino City Charter, California Labor Code, the Peace Officers Procedural Bill of Rights Act and the Firefighters Procedural Bill of Rights Act based on the City’s unilateral implementation of salary reductions to cover general fund expenses of the City. The Court entered judgment against the City, and the City appealed, which is pending in the California Court of Appeal. The Bankruptcy Case stayed further proceedings.

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6. A 2011 Public Employees Relations Board (“PERB”) Unfair Practice Charge, Charge No. LA-CE-714-M, which alleges claims related to those referenced in Recitals B.(3) and B.(5). The SBCPF alleged a number of violations based on imposed concessions, including, but not limited to, wrongfully imposing an involuntary salary reduction; unlawful implementation of a provision wherein new employees would pay 9% of their EPMC cost; implementation of an unlawful two-tier PERS retirement benefit; implementation of unlawful changes regarding sell back of vacation and holiday; implementation of provisions regarding accrual of sick leave; and unlawful changes to the manner in which overtime was calculated and paid. PERB issued a formal complaint against the City, but the action has been stayed pending the Bankruptcy Case.
7. A 2012 PERB Unfair Practice Charge, Charge No. LA-CE-777-M, which alleges unilateral changes to past “union time off” practices.
8. A 2012 PERB Unfair Practice Charge, Charge No. LA-CE-778-M, which alleges unilateral action by the City to contract out fire services and other services provided by SBCPF members.
9. The SBCPF filed these three proofs of claim: (1) a proof of claim for SBCPF members (Claim No. 313-1); (2) a proof of claim for former SBCPF members (as defined above) (Claim No. 312-1); and (3) a proof of claim for the SBCPF (Claim No. 314-1). They are collectively referred to herein as the “Proofs of Claim.”
10. A 2012 PERB Unfair Practice Charge, Charge No. LA-CE-792-M, which alleges that the City unilaterally amended Rule 511 of the Civil Service Rules and Regulations for the Classified Civil Service and that the City unilaterally suspended payouts for employees’ accrued leave time, sell-backs and cash outs.
11. A 2012 PERB Unfair Practice Charge, Charge No. LA-CE-807-M, which alleges that the City unilaterally imposed changes to the terms and conditions of employment as part of the City’s Pre-Pendency Plan.
12. PERB Unfair Practice Charge, Charge No. LA-CE-[ \_\_\_\_]-M, which alleges that the City unilaterally changed and/or modified retirement benefits without meet and conferring.
13. An adversary proceeding filed on or about April 9, 2015, which is entitled *SBCPF v. City of San Bernardino*, which is pending in the Bankruptcy, Case No. 6:15-ap-01116-MJ (“AP 16”). The plaintiffs allege, among other things, that the City failed to comply with state law meet and confer requirements in connection with the City’s modifications to the terms and conditions of employment of SBCPF members during the Bankruptcy Case. The Bankruptcy Court entered an injunction prohibiting the City from contracting out the jobs of SBCPF members until further order of the Court (the “Injunction”).
14. An adversary proceeding filed on or about April 10, 2015, entitled *SBCPF, et al. v. City of San Bernardino, et al.*, and pending in the Bankruptcy Case as Case No.

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6:15-ap-01119-MJ (“AP 19”). The plaintiffs seek damages and equitable relief arising from, among other things, alleged: violations by the City of the Fair Labor Standards Act (the “Post-petition FLSA Claims”), taking of property by the City in violation of the plaintiffs’ federal civil rights (42 U.S.C. §1983), and City violations of the City Charter’s overtime provisions and other state statutory laws. This matter is pending in the Bankruptcy Court.

15. The SBCPF filed a request for allowance of administrative expenses (the “Administrative Expense Claim”).

The brief descriptions of the matters set forth above in this Recital B are used solely to identify the matters and are not intended to be comprehensive. The City denies the allegations made against it in the Fire Union Claims.

C. **Annexation.** The City and the San Bernardino County Fire Protection District (“County Fire District”) have filed a joint application to the San Bernardino County Local Agency Formation Commission (“LAFCO”) to annex the City into the County Fire District and its Valley Service Zone and Service Zone FP-5 so that the County Fire Department (“County Fire”) will provide fire suppression and emergency medical services to the City’s residents, replacing the current City Fire Department (“Annexation”). The Annexation proposal contemplated that, among other things:

1. County Fire will offer employment to all current Fire Safety employees that are SBCPF members subject to such members passing, at the sole determination of County Fire, the following: background check consisting of Life Scan, DMV; review of City personnel files, including review of training records and applicable certificates; for suppression personnel with 2 or less years of service, previous employers will be contacted and there may be additional background including interviews with neighbors; and pre-employment physicals including drug tests.
2. All SBCPF members offered employment will maintain their City service dates for the following purposes only: (i) the County Fire District’s retirement employee contribution, with the rate to be determined by the San Bernardino County Employee’s Retirement Association (“SBCERA”), recognizing that the reciprocal retirement contribution rate only applies if the employee does not elect retirement from City’s retirement plan and takes all actions necessary to establish reciprocity; (ii) participation and the level of District contribution to the Retiree Medical trust; and (iii) vacation accrual rates.
3. All SBCPF members offered employment by the County Fire District upon or shortly after the Annexation Date will be offered comparable assignments at a base salary (without incentives) and step, as effective March 1, 2016, that is closest in pay to the City fire department salary for that position, except in circumstances where the City salary is higher than the County Fire District’s top step for the position offered, in which case the County Fire District’s top step will apply.

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4. On or before the completion of the (annexation) reorganization, the City may transfer to the County Fire District the cash value of up to 96 hours of sick leave and up to 96 hours of vacation leave for each SBCPF member's accrued vacation and sick leave balances to the extent owing, of each of the hired employees.

D. **CalPERS Benefits.** On June 9, 2014, U.S. Bankruptcy Judge Gregg Zive issued his Mediator's Order, which contained the Interim Agreement between the City and CalPERS regarding the City's continued participation in the CalPERS pension benefit system (the "CalPERS Interim Agreement"). Among other things, the City agreed to ratify in full the City's relationship with CalPERS, (b) not impair the City's obligations to CalPERS, and (c) not reject the City's relationship with CalPERS. The Interim Agreement also provides that the City shall repay the deferred amount owed to CalPERS in full, with interest, in 24 equal installments beginning on July 1, 2014, and ending on the earlier of June 1, 2016 or a chapter 9 plan effective date.

E. The Parties wish to settle and fully and finally resolve, on the terms set forth herein, the Fire Union Claims, including without limitation, the Prepetition Litigation, the Post-petition Litigation, the Proofs of Claim, the Administrative Expense Claim, the Prepetition FLSA Claims, the Post-petition FLSA Claims, the claims involving the City's implementation of 50-50 cost sharing for the member's share of the normal cost of the CalPERS pension benefit, AP 16, AP 19, meet and confer obligations and any and all claims arising from or related to Annexation.

NOW, THEREFORE, in consideration of the foregoing and other mutual consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, and intending to be legally bound, the City, the SBCPF and each of the other Plaintiffs hereby agree as follows:

1. Each of the Recitals stated above is incorporated into and made a part of this Agreement.

2. This Agreement shall become effective upon its execution and delivery by all of the Parties hereto (such date being the "Effective Date" of this Agreement). Except with respect to the signature of the SBCPF, which shall be required, the City may, in its sole and absolute discretion, and upon written notice to the SBCPF, waive the requirement that the Agreement be executed by any particular Individual Plaintiff. In the event of such waiver, the Agreement shall be fully enforceable as to all other signatory Parties and those persons they represent.

3. The terms and conditions of this Agreement, including all payments to the SBCPF and its present and former members contemplated herein, are contingent upon approval and implementation of Annexation and the support of the SBCPF (and non-opposition of the Individual Plaintiffs) in getting to Annexation. If Annexation is not implemented, this Agreement shall be null and void and of no effect. Assuming Annexation is implemented, the settlements contained herein are not conditioned upon confirmation of the Chapter 9 Plan, with the exception of distributions on the \$14 million Fire Union General Unsecured Claim described and defined below. The amount, treatment and distributions upon the Fire Union General Unsecured Claim pursuant to this Agreement are entirely conditioned upon confirmation of the City's Chapter 9 Plan. If the City's Bankruptcy Case is dismissed prior to the confirmation and implementation of the Chapter 9 Plan, the agreements contained herein regarding the amount,

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treatment and distributions upon the Fire Union General Unsecured Claim shall not be effective and shall be null and void, none of the provisions of this Agreement regarding the Fire Union General Unsecured Claim shall be deemed admissions by any party hereto.

4. On the Effective Date, the SBCPF and the City shall execute a stipulation to lift the Injunction in AP 16, in the form attached as Exhibit A, so that the City may implement Annexation.

5. With the sole exception of workers compensation claims and disability claims made by members of SBCPF against the City, the SBCPF represents that, to the best of its knowledge, there are no matters (1) related to the terms and conditions of employment of SBCPF members pending in any state court or any federal court, (2) unfair practice charges pending at the PERB brought by the SBCPF or any SBCPF member or (3) claims by the SBCPF or any SBCPF member against the City pending at any state agency, federal agency or other administrative or adjudicative body, except those set forth in Recital B.

6. Support of Annexation and Chapter 9 Plan

- a. Upon the Effective Date of this Agreement, (a) the SBCPF agrees to publicly support annexation and the Individual Plaintiffs agree to not oppose Annexation, and (b) the SBCPF and the Case No. 1119 Plaintiffs agree to (and the other Individuals Plaintiffs agree not to oppose) a stay and standstill of all of their pending opposition to Annexation including, without limitation, any opposition to Annexation based upon meet and confer or other labor law requirements, other state or federal law, the City Charter, Municipal Code or Civil Service Rules (except that the Parties' agreement to lift the Injunction and seek Bankruptcy Court approval of the settlement of the Post-petition FLSA Claims shall not be stayed or be subject to the standstill). If there is an election called under the provisions of the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (as amended) related to the joint annexation application of the City and the County of San Bernardino to LAFCO, the SBCPF agrees to campaign for (and the Individual Plaintiffs agree not to oppose) the approval of Annexation in the election.
- b. The SBCPF and all of the Individual Plaintiffs agree to support confirmation of the City's Chapter 9 Plan and vote to accept the Chapter 9 Plan as long as the Chapter 9 Plan is consistent with this Agreement and the City has not breached this Agreement. Any remaining hours of Union Time available to the SBCPF may be utilized by designated SBCPF members prior to their employment with the County Fire District for the purposes of implementing this Agreement and assisting with the transition of SBCPF members to employment with the County Fire District. However, there will be no cash out of Union Time hours.
- c. Upon annexation, if the SBCPF is able to obtain an agreement with the County Fire District for the transfer of Union Time to the County Fire Union for use only by recognized SBCPF Board of Directors, the City shall transfer all remaining

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Union Time, as remain at the time of annexation, to the County Fire District at Fire Captain wage levels.

7. Treatment of Accrued Leave.
  - a. Within two business days after the effective date of Annexation (which is expected to be July 1, 2016) (the Annexation Date”), for employees currently represented by the SBCPF and hired by the City prior to August 1, 2012, the City shall cash out and pay to the employee any and all post-petition leave bank hours accrued for vacation, sick and/or holiday leave, but the employee will be given the option of transferring up to 48 hours of sick leave and up to 48 hours of vacation leave (in addition to the 48/48 hours listed in subsection “b.” below) to leave banks at the County Fire District.
  - b. Within two business days after the effective date of Annexation, for employees represented by the SBCPF and hired by the City prior to August 1, 2012, in addition to the time referenced in subsection “a,” above, the City shall fund and transfer to the County Fire District 48 hours of sick time and 48 hours of vacation time per employee. All leave time transferred to the County Fire District will be at the base rate of pay of the employee’s position with the County Fire District.
  - c. Within two business days after the effective date of Annexation, for employees hired by the City after August 1, 2012, each employee represented by the SBCPF shall be given the option of (1) cashing out and being paid for all accrued sick time and vacation time, (2) having their vacation and/or sick time accruals, up to a maximum of 96 hours of sick time and 96 hours of vacation time, transferred to the County Fire District, or (3) combining the cash-out and transfers options (with the transfer option being up to the limits stated in option (2)).
  - d. On February 1, 2016, and going forward until the date of annexation, the City will maintain two time accrual banks.
    - i. The first bank will include all post-petition vacation, sick time and holiday accruals (including any holiday leave that was frozen or unusable during the three years prior to this Agreement). All subsequent accruals of vacation, sick time, and holiday accruals shall be placed in this bank. This bank shall be subject to subsection “a.” above.
    - ii. The City will create a second time bank for each employee represented by the SBCPF, and hired by the City prior to August 1, 2012, entitled “concession leave bank.” The City, will upon creation of the concession leave bank, deposit in said bank forty-eight (48) hours of concession leave time, but only to extent there is available leave time in the employee’s prepetition leave banks (sick and/or vacation leave). Prior to annexation, concession leave may be used for any purpose, including but not limited to vacation, sick leave, or family medical care issues. Concession leave time

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shall not be subject to subsection "a" above, and upon annexation shall have no cash value.

- iii. Upon the creation and filling of the concession leave bank, the employees' ability to use prepetition leave accruals shall be terminated. All prepetition vacation and sick leave accruals that have not been used as of February 1, 2016, will be treated as General Unsecured Claims under the City's Chapter 9 Plan.

8. Within two business days after the Annexation Date, and in accordance with the payment methodology procedures contained in paragraph 13 below, the City shall transfer to the Trust Account (as defined in paragraph 13 below), a payment in the aggregate amount of \$1,562,187.00 for payments to SBCPF members who were employed by the City as Fire Safety employees on and after the Petition Date, in full settlement of the cost-sharing and other pension related claims of the SBCPF, the other Plaintiffs and the SBCPF's current and former members, as discussed above, for the period of time post-petition that such employees were employed as Fire Safety personnel. Upon the Effective Date of this Agreement, the City will reduce the current SBCPF's members' share of the normal cost of the CalPERS benefit to the statutory 9% rate, effective January 1, 2016.

9. Within two business days after the later of the Annexation Date or December 31, 2016, and in accordance with the payment methodology procedures contained in paragraph 13 below, the City shall transfer to the Trust Account a payment in the aggregate amount of \$1,142,000.00, for payments to SBCPF members who were employed by the City as Fire Safety employees on and after the Petition Date, in full settlement of all claims arising in or related to the Post-Petition Litigation (other than arising in connection with pension cost sharing, which is addressed in Paragraph 8, and Annexation, which is addressed in Paragraphs 7 and 10) including the Post-Petition FLSA Claims and the civil rights claims, and the request for payment of the Administrative Expense Claim. This settlement payment is conditioned upon the Bankruptcy Court entering a final order approving the settlement of the Post-petition FLSA Claims. The City will file a motion with the Bankruptcy Court to approve the settlement of the Post-petition FLSA Claims no later than 30 days after the Effective Date of this Agreement.

10. The City shall make two "salary comparability" payments to the Trust Account in accordance with the payment methodology procedures contained in paragraph 13 below, one payment to be made within two days after the Annexation Date, and the second payment to be made on the first anniversary of the Annexation Date, for payments to SBCPF members who were employed by the City as Fire Safety employees on the date of annexation. The City shall pay one lump sum of \$1,491,000.00 for the first payment and one lump sum of \$1,491,000.00 for the second payment. The two payments shall be in full settlement of all claims of Fire Safety employees who are SBCPF members arising in connection with the implementation of Annexation, including, without limitation, any wage or benefit claims asserting that County Fire pay and benefits are not comparable to that currently paid or provided by the City.

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11. General Unsecured Claim and Chapter 9 Plan.
  - a. The SBCPF and its current and former members shall have an aggregate allowed General Unsecured Claim (as defined in the City's Chapter 9 Plan) in the amount of \$14 million on account of the Prepetition Litigation, the Proofs of Claim and all other claims of the SBCPF and its current and former members, not paid in accordance with paragraphs 7 through 10 above, including without limitation all claims and expenses of the SBCPF and its members with respect to wages, pensions (including implementation of cost sharing and elimination of the EPMC benefit and certain retiree health care benefits), and other benefits and other terms and conditions of employment that arose (or are deemed to have arisen) prior to the Petition Date, including, without limitation, all claims arising from the City's changes to the terms and conditions of employment and the rejection of the prior Memorandum of Understanding (collectively, the "Fire Union General Unsecured Claim").
  - b. The procedures for voting on the Chapter 9 Plan shall provide that the SBCPF will vote the entirety of the \$14 million Fire Union General Unsecured Claim for itself and its current and former members, subject to the approval of the Bankruptcy Court. The SBCPF agrees to vote the \$14 million Fire Union General Unsecured Claim to accept the Chapter 9 Plan (and this Agreement is not intended to be a solicitation of votes to accept the Chapter 9 Plan prior to such Bankruptcy Court approval of the Disclosure Statement). The SBCPF shall (i) expressly support approval of the City's Disclosure Statement and confirmation of the Chapter 9 Plan as long as they are consistent with this Agreement, and (ii) not knowingly take any actions to support efforts of other creditors opposing approval of the Disclosure Statement and confirmation of the Chapter 9 Plan. This paragraph 11.b. is not intended to be a solicitation of votes for acceptance of the Chapter 9 Plan.
  - c. The City shall have the discretion to include the Fire Union General Unsecured Claim in the class for General Unsecured Claims (currently Class 15 in the Chapter 9 Plan) or to separately classify the Fire Union General Unsecured Claim. In either event, the distribution on the Fire Union General Unsecured Claim shall be the greater of (i) the distribution on General Unsecured Claims, or (ii) one percent (1%). The Plan currently estimates that the distribution on General Unsecured Claims will be approximately 1%. Distributions on the Fire General Unsecured Claim shall be paid to the Trust Account in accordance with the payment methodology procedures contained in paragraph 13 below unless the Bankruptcy Court requires otherwise.
  - d. If a Chapter 9 Plan for the City is not confirmed and the City's Bankruptcy Case is dismissed, the City's liability, if any, on account of the claims that comprise the Fire Union General Unsecured Claim shall revive as if the Bankruptcy Case had not been filed.
12. Reserved.

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13. Methodology for Payment. The methodology for payment by the City of all funds provided for in paragraphs 8 through 11 above, shall be as follows: All such payments shall be transferred and paid by the City to the SBCPF and placed in a Trust Account established by the SBCPF (the "Trust Account"). The SBCPF and its board members, officers and agents (the "SBCPF Parties") shall determine the allocation amounts and the distributions to current and former SBCPF members from the funds in the Trust Account. The City shall provide the SBCPF with all necessary accountings and other information in the City's possession (subject to any privacy rights of employees or similar requirements) needed to determine the allocation and make the distributions. The City shall not be liable to the SBCPF or its current and former members for the distribution of funds out of the Trust Account. The SBCPF shall indemnify and hold the City harmless from any and all claims, demands, suits, orders, judgments or other forms of liability that may arise out of or by reason of the actions or omissions taken by any of the SBCPF Parties as a result of the SBCPF Parties' administration of the payments to current and former SBCPF members described in this paragraph (the "Indemnity"), and the SBCPF's members entitled to such payments hereby release the City from any claims regarding any acts or omissions of the SBCPF Parties in respect of such payments. The City has the discretion to require the SBCPF to obtain or show evidence of a bond acceptable to the City in the amount of at least \$6 million to cover the indemnity provided for in this paragraph. If the City exercises this discretion, the City shall pay to the SBCPF a payment of \$50,000.00 for the bond and administration of this paragraph.

14. Additional Working Conditions Agreements

- a. The application process for employment with the County Fire District may begin as soon as February 2016. SBCPF members shall be provided a web link for County Fire District employment applications. Training records may be reviewed by the County in February or March 2016 for purposes of determining special pay. Backgrounds and physicals will likely begin only after the statutory protest period for Annexation approval by LAFCO is concluded, which is estimated to be in April 2016.
- b. The pre-employment physical requirement for employment with the County Fire District shall not include a physical agility test.
- c. Time employed by the City fire department, and the rank with the City fire dept., shall be counted for promotions. If the SBCPF reaches an agreement with the County Fire District, seniority based on time employed by the City fire department shall be used for seniority based selections and assignments after the initial transition/annexation assignments by the County Fire District.
- d. Retirement contributions to be paid by SBCPF members hired by the County Fire District will be determined on an annual basis by SBCERA. The beginning rates may range from 9% to 15.22%.
- e. Personnel files. Within fifteen (15) days after the Effective Date of the Agreement, and/or prior to any review by the County Fire District, all disciplinary actions imposed on or before January 31, 2014 and all performance evaluations

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given on or before 2011 will be purged from the personnel files. Each SBCPF member will be provided a copy of his/her personnel file that will be forwarded to the County Fire District.

- x. The City agrees that in the event any SBCPF member is not hired by the County as a result of the failure to pass a physical examination, with the exception of a drug test, the City shall apply to CalPERS on the member's behalf for a disability retirement. Any certification for either a non-industrial or industrial disability retirement must be consistent with the requirements of the Public Employees' Retirement Law Government Code § 21150 et seq. ("PERL"), shall be based upon competent medical evidence, and, any industrial causation issues may be submitted to the Workers' Compensation Appeals Board for determination in accordance with the PERL. The City reserves the right to contest employee applications for disability retirement that are not compliant with the PERL. If any employee is not hired by the County Fire District, this Agreement in no waives or releases said employee's rights related to that hiring decision.
  - xi. Historical Items. The City agrees to transfer certain historical items to the SBCPF for the sole purpose of preserving and maintain the historical significance of the San Bernardino City Fire Department. As conditions to such transfer, the City and the SBCPF shall inventory the items transferred and any transfer must be completed in compliance with applicable laws for the transfer of public property. The SBCPF agrees to work with the County Fire District to display the items.
  - xii. Provisions for addressing employees who are on temporary disability leave (Labor Code § 4850 time) and the responsibility for pre-existing medical conditions have been addressed by the City and the County Fire District in the Plan of Service.
15. Upon the occurrence of the Annexation Date, members of the SBCPF shall be allowed to keep: 1) their SBFDD Badge, 2) their SBFDD Helmet and Shield, and 3) SBFDD Turnout Jacket.
16. The City will make the CalPERS Interim Agreement part of its Chapter 9 Plan and perform its obligations thereunder, including obligations due in respect of unfunded liabilities.
17. Except for the rights and obligations under this Agreement, on the date that the City makes the last payment, and the funds become available for distribution, required under paragraphs 8 through 11 hereof (the "Last Payment Date"), the SBCPF for itself and its current and former members (with respect to its members to the fullest extent permitted under applicable law), and each of the Individual Plaintiffs, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, do hereby fully, finally and forever release the City and its current and former officers, agents, management personnel, consultants, advisors, insurers, reinsurers, attorneys, accountants and other representatives (including without limitation, Mayor R. Carey Davis, the Common Council, Allen Parker, Stradling Yocca Carlson &

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Rauth, P.C., Law Office of Linda L. Daube and Linda Daube, Management Partners and Urban Futures), from any and all claims, actions, causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, setoffs, recoupments, attorney's fees, awards, executions, and demands whatsoever, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims, that have been or could have been asserted in any forum by or on behalf of the SBCPF, the SBCPF's current and former members, and the Individual Plaintiffs arising from or relating to the subject matter of the Fire Union Claims, the Fire Union General Unsecured Claim, the Prepetition Litigation, the Post-petition Litigation, the Proofs of Claim, and the Administrative Expense Claim, the Prepetition FLSA Claims, the Post-petition FLSA Claims, the claims involving the City's implementation of 50-50 cost sharing for the member's share of the normal cost of the CalPERS pension benefit, AP 16, AP 19, and any and all claims arising from or related to Annexation, whether in law or in equity, upon or by reason of any matter, cause or thing whatsoever from the beginning of time through the Last Payment Date (individually and collectively the "Released Claims"). The SBCPF further agrees that it will not initiate any new litigation, charges or complaints based on past or current claims that may be in existence as of the effective date of this Agreement.

18. With respect to the release of the Released Claims provided for in paragraph 17 immediately above, the releasing parties stipulate and agree that upon the Last Payment Date, they shall have expressly waived the provisions, rights, and benefits of California Civil Code Section 1542, or any other similar state law, federal law, or principle of common law, which may have the effect of limiting the releases set forth above. Section 1542 of the California Civil Code provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

19. Notwithstanding anything to the contrary in the Agreement, the Released Claims shall not include a claim for enforcement of this Agreement. In addition, the release of claims provided for in the Agreement, including in paragraphs 17 and 18 above, shall not apply to any SBCPF member's workers compensation or disability claim against the City.

20. The Parties agree to a general standstill and continuing stay of all Pre-petition and Post-Petition Litigation until the Last Payment Date (except with respect to the lifting of the Injunction and approval of the Post-petition FLSA Claims settlement) and shall so inform the Bankruptcy Court; provided, however, that AP 16 shall be dismissed with prejudice upon the Annexation Date. Within two weeks after the Last Payment Date, the Plaintiffs, including the SBCPF and the Individual Plaintiffs, as applicable, shall file with the respective state and federal courts and the PERB and other regulatory and administrative bodies in which the Fire Union Claims are pending, executed dismissals, stipulations of dismissal or requests for dismissal as the applicable rules may require, in each case with prejudice. From the Effective Date through the Last Payment Date, the SBCPF (for itself and its current members) and the other Plaintiffs

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hereby covenant not to sue to enforce any of the claims included in the definition of Released Claims, provided, however, that such covenant not to sue shall not diminish the right of the SBCPF to sue to enforce this Agreement.

21. Each Party to the Agreement represents and warrants that it has the power and authority to enter into the Agreement and to carry out its obligations hereunder. Each Party to the Agreement further represents and warrants that he/it has not assigned, encumbered, hypothecated, or transferred any of the claims released by such Party hereunder.

22. Each Party to the Agreement represents and warrants that prior to executing the Agreement, he/it has made such inquiries, consulted such persons, and reviewed such documents as it deemed appropriate to enter into this Agreement and to consummate the transactions contemplated herein.

23. Each Party acknowledges that he/it has been represented by counsel and has received independent legal advice regarding the negotiation and execution of the Agreement. Each Party agrees that any rule of interpretation or construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation, construction or enforcement of the Agreement.

24. The interpretation, construction, and performance of this Agreement, and the rights and remedies of the Parties hereunder, shall be governed by the provisions of the Bankruptcy Code and, where not inconsistent, the laws of the State of California, without regard to principles of conflicts of laws.

25. Each Party hereto consents to the exclusive jurisdiction of the Bankruptcy Court as to any litigation or dispute that arises from or relates to the Agreement or any breach thereof.

26. Nothing in the Agreement or any negotiations or proceedings in connection therewith shall constitute or be deemed or claimed to be evidence of an admission of any liability by any Party, or of the merit or lack of merit of any claim or defense of any Party. All communications (whether oral or in writing) between and/or among the Parties, their counsel and/or their respective representatives relating to, concerning or in connection with this Agreement, or the matters covered herein, shall be governed and protected in accordance with Federal Rule of Evidence 408 to the fullest extent permitted by law.

27. Each Party agrees to cooperate fully and execute any and all necessary supplementary documents and to take all additional steps or actions that may be necessary or appropriate in order to give full force and effect to the terms and intent of the Agreement.

28. The headings contained in the Agreement are inserted for convenience only and shall not affect the interpretation of the Agreement.

29. The Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument. Facsimile signatures and e-mail shall be treated in all manner and respects as original signatures.

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30. Right to Seek Reasonable Attorney's Fees and Costs. Each of the Parties shall bear their own costs associated with the negotiation, implementation and enforcement of this Agreement, provided, however, that in the event that the SBCPF or the City brings an action to enforce this Agreement, then the prevailing Party in any such enforcement action shall be entitled to seek reasonable attorney's fees and related costs; provided further, however, that if the City or SBCPF brings an enforcement action, it shall not be entitled to prevailing party attorney's fees unless it gave the other party 30-days prior written notice of its intent to bring the action and an opportunity to cure during that 30-day notice period before bringing the action.

31. The Agreement sets forth the entire agreement between the Parties regarding the subject matter covered herein, and supersedes any and all prior oral or written communications between the Parties regarding the subject matter covered herein. The Agreement may not be modified or amended except in writing signed by each Party.

32. The Agreement shall be binding upon, and inure to the benefit of all Parties and their respective successors and assigns. The Agreement is not intended, and shall not be construed, to create rights in or confer benefits on any other persons or entities and there shall not be any third-party beneficiaries hereto except as expressly provided hereby.

33. All demands, notices, requests, consents and other communications hereunder shall be in writing and shall be deemed given if delivered personally, sent via facsimile (with confirmation), sent by electronic mail, mailed by registered or certified mail (return receipt requested) or delivered by an express courier (with confirmation) to the following addresses or such other addresses as the Parties may designate in accordance herewith:

If to the City:

Gary D. Saenz, City Attorney  
300 North "D" STREET, Sixth Floor  
San Bernardino, CA 92418  
Telephone: (909) 384-5355  
Facsimile: (909) 384-5238  
E-mail: saenz\_ga@sbcity.org

and

Paul R. Glassman, Esq.  
Fred Neufeld, Esq.  
Stradling Yocca Carlson & Rauth, P.C.  
100 Wilshire Blvd., 4th Floor  
Santa Monica, CA 90401  
Telephone: (424) 214-7000  
Facsimile: (424) 214-7010  
E-mail: pglassman@sycr.com  
fneufeld@sycr.com

and

CONFIDENTIAL SETTLEMENT DOCUMENT

Linda Daube, Esq.  
LAW OFFICE OF LINDA L. DAUBE  
438 First Street, 4th Floor  
Santa Rosa, California 95401  
Office: (707) 578-9530  
Business Cell: (707) 249-0189  
Facsimile: (707) 578-9534  
Email: ldaube@daubelaw.com

If to the SBCPF and other Plaintiffs:

Corey W. Glave  
Attorney at Law  
1042 2nd Street  
Hermosa Beach, California 90254  
Telephone: 323.547-0472  
SBCPFattorney@gmail.com

and

David M. Goodrich  
SulmeyerKupetz  
A Professional Corporation  
333 South Hope Street, Thirty-Fifth Floor  
Los Angeles, CA 90071  
Voice: 213.626.2311  
Fax: 213.629.4520  
E-Mail: dgoodrich@sulmeyerlaw.com

34. After Annexation is implemented, the City will continue to recognize the SBCPF as the bargaining agent for the former City employees that are or were SBCPF members, but solely for the purpose of implementation and enforcement of this Agreement.

35. The City shall not reject this Agreement in the Bankruptcy Case or any subsequent bankruptcy case, and the City's obligations hereunder may not be discharged pursuant to the claims discharge provisions of the Bankruptcy Code.

[remainder of page intentionally left blank]

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed.

Dated: February 3, 2016

City of San Bernardino

*R. Corey Lewis*  
By: Mayor of City of San Bernardino

Dated: February , 2016

City of San Bernardino

*Wendy Hanna*  
By: City Clerk

Dated: January , 2016

San Bernardino City Professional Firefighters, Local 891

By: \_\_\_\_\_  
Authorized Signer

Dated: January , 2016

By: \_\_\_\_\_  
Gregory Parker

Dated: January , 2016

By: \_\_\_\_\_  
Sam Bashaw

Dated: January , 2016

By: \_\_\_\_\_  
Byron Kuhn

Dated: January , 2016

By: \_\_\_\_\_  
Thomas Jeff English

CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Richard Lentine

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Steve Tracy

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Kenneth Konior

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Richard Scott Moss

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Brian Crowell

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Eric Chappell

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CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Stephen Lopez

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Michael Bush

Dated: January \_\_, 2016 By: \_\_\_\_\_  
James F. McMullen

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Leslie Pompa

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Chris Nigg

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Gerald L. Mohney

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CONFIDENTIAL SETTLEMENT DOCUMENT

IN WITNESS THEREOF, the Parties hereto have caused this Agreement to be duly executed.

Dated: January \_\_, 2016

City of San Bernardino

By: \_\_\_\_\_  
Mayor of City of San Bernardino

Dated: January \_\_, 2016

City of San Bernardino

By: \_\_\_\_\_  
City Clerk

Dated: January 22, 2016

San Bernardino City Professional Firefighters, Local 891

By: Thomas J. English President Local 891  
Authorized Signer

Dated: January 23, 2016

By: Gregory Parker  
Gregory Parker

Dated: January 23, 2016

By: Sam Bashaw  
Sam Bashaw

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Byron Kuhn

Dated: January 22, 2016

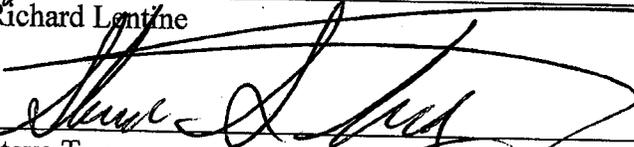
By: Thomas J. English  
Thomas Jeff English

CONFIDENTIAL SETTLEMENT DOCUMENT

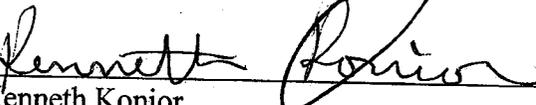
Dated: January 22, 2016

By:   
Richard Lentine

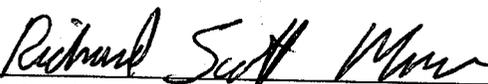
Dated: January \_\_, 2016

By:   
Steve Tracy

Dated: January 23, 2016

By:   
Kenneth Konior

Dated: January \_\_, 2016

By:   
Richard Scott Moss

Dated: January 22, 2016

By:   
Brian Crowell

Dated: January \_\_, 2016

By:   
Eric Chappell

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CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016

By:   
Stephen Lopez

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Michael Bush

Dated: January \_\_, 2016

By: \_\_\_\_\_  
James F. McMullen

Dated: January 23, 2016

By:   
Leslie Pompa

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Chris Nigg

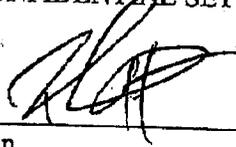
Dated: January \_\_, 2016

By: WAIVED BY CITY  
Gerald L. Mohny

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CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January 12, 2016

By:   
Byron Kuhn

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Richard Lentine

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Steve Tracy

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Kenneth Konior

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Richard Scott Moss

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Brian Crowell

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Eric Chappell

CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Stephen Lopez

Dated: January 25, 2016

By: Michael Q. Bush  
Michael Bush

Dated: January \_\_, 2016

By: \_\_\_\_\_  
James F. McMullen

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Leslie Pompa

Dated: January \_\_, 2016

By: \_\_\_\_\_  
Chris Nigg

Dated: January \_\_, 2016

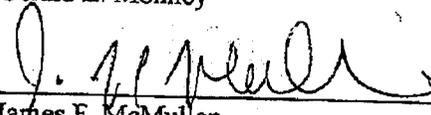
By: \_\_\_\_\_  
Gerald L. Mohney

CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Stephen Lopez

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Michael Bush

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Gerald L. Mohney

Dated: January 26, 2016 By:   
James F. McMullen

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Leslie Pompa

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Chris Nigg

CONFIDENTIAL SETTLEMENT DOCUMENT

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Stephen Lopez

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Michael Bush

Dated: January \_\_, 2016 By: \_\_\_\_\_  
James F. McMullen

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Leslie Pompa

Dated: January 24, 2016 By:   
Chris Nigg

Dated: January \_\_, 2016 By: \_\_\_\_\_  
Gerald L. Mohnrey

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