

Exhibit 32

Resolution No. 2015-173
(APPROVING SETTLEMENT AGREEMENT WITH THE
SAN BERNARDINO POLICE OFFICERS ASSOCIATION)

RESOLUTION NO. 2015-173

RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO APPROVING A SETTLEMENT AGREEMENT WITH THE SAN BERNARDINO POLICE OFFICERS' ASSOCIATION (SBPOA).

WHEREAS, on July 18, 2012, the Mayor and Common Council of the City of San Bernardino declared a fiscal emergency; and

WHEREAS, on August 1, 2012, the City filed an emergency voluntary petition for Chapter 9 Bankruptcy with the United States Bankruptcy court for the Central District of California, Riverside Division; and

WHEREAS, on November 26, 2012, the Mayor and Common Council adopted the Pendency Plan, Resolution 2012-27; and

WHEREAS, on January 28, 2013, the Mayor and Common Council adopted Resolution No. 2013-19, imposing terms and conditions of employment for the SBPOA; and

WHEREAS, since the adoption of the Pendency Plan in November 2012, the City's negotiating team has been meeting with the SBPOA and in November 2013, the City and the SBPOA agreed to confidential mediation proceedings with the Honorable Judge Gregg Zive; and

WHEREAS, the City and the SBPOA have met on numerous occasions through the confidential mediation process and have exchanged bargaining proposals, financial and other information responsive to requests in an attempt to resolve all outstanding issues; and

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1 **WHEREAS**, the City and the SBPOA representatives have reached agreement on
2 terms and conditions set forth in attached Settlement Agreement, Exhibit "A"; and

3 **WHEREAS**, the Settlement Agreement has been ratified by the members of
4 SBPOA on July 29, 2015.

5 **NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COMMON**
6 **COUNCIL OF THE CITY OF SAN BERNARDINO AS FOLLOWS:**

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8 **SECTION 1:** The Settlement Agreement attached hereto and incorporated herein,
9 marked as Exhibit "A" is hereby approved.

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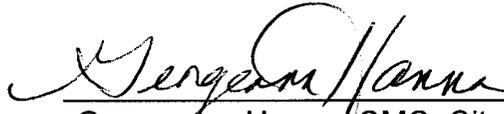
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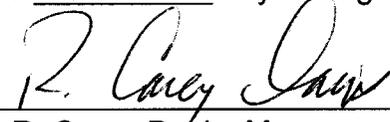
1 RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN
2 BERNARDINO APPROVING A SETTLEMENT AGREEMENT WITH THE SAN
3 BERNARDINO POLICE OFFICERS' ASSOCIATION (SBPOA).

4 I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the Mayor and
5 Common Council of the City of San Bernardino at a joint regular meeting thereof, held on
6 the 3rd day of August, 2015, by the following vote, to wit:

8 Council Members:	AYES	NAYS	ABSTAIN	ABSENT
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>	_____	_____	_____

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Georgeann Hanna, CMC, City Clerk

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20 The foregoing resolution is hereby approved this 7th day of August, 2015.

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R. Carey Davis, Mayor
City of San Bernardino

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

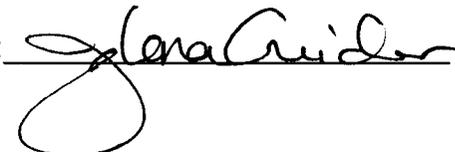
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26 By: 
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Exhibit "A"

***Terms of Settlement between the
City of San Bernardino (City) and the
San Bernardino Police Officers Association (SBPOA)***

July 2015 Final Settlement Terms

1. Provisions in the Successor Agreement:

Unless otherwise modified or eliminated as per agreement by the City and the SBPOA, the language in the prior (and rejected) Memorandum of Understanding (MOU) will be incorporated into the new Agreement including the following provisions:

- a) **Article I, *Administration: Section 1 - Definition of Terms; Section 2 – Management Rights; Section 3 – Mutual Aid; Section 4 – Agency Personnel Rights; Section 5 – Employees’ Rights***
- b) **Article II, *Employer-Employee Relations: Section 1 - Recognition; Section 2 – No Strike; Section 3 – Payroll Deductions; Section 4 – Grievance Procedure; Section 5 – Employee Representative; Section 7 – No Discrimination; Section 8 – Personnel Files; Section 9 – Political Activity; Section 10 – Use of City Resources; Section 11 – Employer-Employee Relations Committee***

2. Article II, *Employer-Employee Relations, Section 6 – Investigative Rights*

For disciplinary appeals, the member may request that a neutral hearing officer hear the matter and submit a proposed decision to the City's Civil Service Board. The Board shall review the decision and recommended discipline and either adopt the findings and the disciplinary action in its entirety, modify the recommended disciplinary action, and/or request additional findings from the hearing officer. The Board shall retain jurisdiction over final disposition of the disciplinary action.

Exhibit "A"

3. Article III, Compensation, Section 1 – Salaries.

For each year that this Agreement is in effect, the monthly salaries of local safety members of the San Bernardino Police Department shall be increased by 3.5%. In addition, salary surveys shall be conducted annually, in accordance with the City Charter, Article X, Section 186 and consistent with the interpretation and methodology currently utilized by the City. In the event that the annual salary adjustment for each classification surveyed exceeds 3.5%, the higher amount shall determine the salary for that classification. Salary increases shall be effective August 1 in accordance with the City Charter. The provisions of this section shall continue during the term of this Agreement regardless of whether City Charter Section 186 is repealed or otherwise modified.

4. Article III, Compensation, Section 2 – PERS/Retirement Plan.

- a) Retirement formulas: 1) Employees hired prior to September 1, 2011 shall receive a 3% @ 50 retirement benefit; 2) Employees hired between September 1, 2011 and December 31, 2012 shall receive a 3% @ 55 retirement benefit; 3) Employees hired between January 1, 2013 and December 31, 2015 shall receive a 2.7% @ 57 retirement benefit in accordance with the Public Employees' Pension Reform Act (PEPRA); 4) Employees hired on or after January 1, 2016 shall receive a 2.5% @ 57 retirement benefit in accordance with PEPRA.
- b) Contributions/Cost Sharing: As of the effective date of this Agreement, legacy or classic employees as defined under CalPERS law shall contribute 9% for the first two years of the Agreement and for the next three years, legacy or classic employees shall contribute 12% (9% employee share and 3% employer share). PEPRA employees shall contribute 50% of the normal cost as defined under the Act.
- c) Section F of the prior MOU regarding 9% EMPC shall be removed from the new Agreement.
- d) The "post survivors retirement" benefit in accordance with § 21624 and § 21635 of the Public Employees' Retirement Law (PERL) that is currently provided by the City in its contract with CalPERS agreement will be referenced in the new MOU.

Exhibit "A"

5. Article III, Compensation, Section 3 – Overtime

The language in the prior MOU shall be incorporated into the new Agreement with the exception of Section 3(c) regarding compensatory time. Effective July 1, 2015, all compensatory time shall be capped at 240 hours. Any compensatory time in excess of 240 hours shall be placed in a separate bank (Excess Comp Time Bank "ECT") and shall be cashed out as follows:

- October 15, 2015 paycheck = 25%
- January 15, 2016 paycheck = 25%
- April 15, 2016 paycheck = 25%
- July 15, 2016 paycheck = 25%

Any SBPOA unit members who separate prior to July 15, 2015, shall be paid for all unused compensatory time in full. For the October 15, 2015 payment, the City Manager has the discretion to cash out more than 25% so long as it does not bring the SBPOA member below the 240 hour cap. All accumulated compensatory time shall be paid to a unit member upon promotion of the member.

6. Article III, Compensation.

The following provisions in Article III Compensation of the prior MOU will be incorporated into the new Agreement:

- a) Section 4 – *Assignment to Higher Position*
 - b) Section 5 – *On-Call/Call-Back/Standby*
 - c) Section 6 – *Educational Incentive*
 - d) Section 7 – *Court Fines*
 - e) Section 8 – *Bilingual Pay*
-

Exhibit "A"

7. Article IV Fringe Benefits, Section 1 – Health/Life Insurance – Active Employees

The following sections of the existing language in Section 1 will be modified as follows:

- A. For Plan Year or calendar year 2015, the City shall contribute \$855.38 per month toward health premiums for the Employee Plus One dependent or Family Coverage. For calendar year 2015, the City shall contribute \$ 508.21 per month toward health premiums for employees with Employee Only coverage.

In Plan Year (Calendar Year) 2016, the City's contribution toward health care premiums will be paid at 100% (Employee Only), 85% (Employee + 1), and 75% (Employee + family), using the Kaiser premiums then in effect. Thereafter the City and the SBPOA will share 50-50 of the dollar increase to the Kaiser premiums for the next two years of the Agreement. During years four and five of the Agreement, the 50-50 cost sharing of the increased Kaiser premiums would be continued, however, the City's contribution during the last 2 years of the Agreement would be capped at 3% per year. At the end of the Agreement, the 3% cap would sunset, unless otherwise modified by the City and the SBPOA.

The amount of the City's contribution is based on the selection of the "medical" enrollment category. If an employee elects "employee only" medical coverage, then the "employee only" allowance is given to the employee. Any contribution not utilized by the employee shall revert to the City.

Sections B, C, D, E, F, G, and H will be included in the new Agreement. The following provisions shall also be included:

I. An employee who does not want 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. For calendar year 2015, employees who waive the City's health care insurance shall receive a stipend of \$ 2,000 on December 15th, 2015. Such payment is not considered compensation for purposes of CalPERS and is subject to state and federal taxes. Employees participating in this option are required to waive all medical, dental, and vision insurance coverage from the City.

J. The SBPOA agrees to participate in the City's Joint Labor-

Exhibit "A"

Management Health Benefits Committee ("Committee") to evaluate, on an annual basis, City-wide plan designs for health care. All plan designs and City contributions shall be effective January 1st annually.

K. Employees must be in a paid status for fifteen (15) consecutive days in any given month to receive the benefits of this Article, unless the employee is on a qualifying approved leave, such as Family Medical Leave, and is eligible for benefit continuation under applicable State or Federal law.

8. Article IV *Fringe Benefits*, Section 2 – Post Retirement Medical Benefits

This section will be eliminated in the new Agreement.

9. Article IV, *Fringe Benefits*.

The following provisions will be included in the new Agreement:

- a) Section 3 – *Rain Gear/Utility Uniforms*
- b) Section 4 – *Books and Tuition Allowance*
- c) Section 5 – *Deferred Compensation*
- d) Section 6 – *Safety Equipment*
- e) Section 7 – *Replacing/Repairing Personal Property*

10. Article V, *Leaves*

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 SBPOA members. This position is consistent with the Recovery Plan

Exhibit "A"

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.

11. Article V, Leaves, Section 1 – Vacations

Vacation leave will continue to accrue in accordance with Section A of the prior MOU. Prior to the final approval and the effective date of the City's Plan of Adjustment by the Bankruptcy Court, all post-petition vacation accruals shall be paid in accordance with Resolution 2014-158, adopted by the Mayor and Common Council on June 16, 2014.

12. Article V, Leaves, Section 2 – Holidays

All provisions in Section 2 regarding City-designated holidays shall be incorporated into the new Agreement.

13. Article V, Leaves, Section 3 – Sick Leave

Sick leave will be defined as post-petition sick leave earned after August 1, 2012.

An employee may only accrue a maximum of 1040 hours of sick leave.

Any disability conversion of sick leave will be in accordance with State law.

At the time of separation from service, any employee having 15 years of continuous service with the City of San Bernardino, may cash out up to

Exhibit "A"

50% of unused post-petition sick leave. At the time of separation from service, any employee having 20 years of continuous service with the City of San Bernardino, may cash out up to 75% of unused post-petition sick leave.

Time off with pay for sick leave shall be considered as time worked for purposes of the accrual of sick leave only. Sick leave shall not accumulate during periods of leave of absence without pay. Employees will not be allowed to use unearned sick leave.

14. Article VI, Working Conditions

The following Sections of the prior MOU will be included in the new Agreement:

- a) Section 1 – *Work Schedule*
- b) Section 2 – *Shift Change*
- c) Section 3 – *Probationary Period*
- d) Section 4 – *Seniority*
- e) Section 5 - *Reemployment*
- f) Section 6 – *Physical Examinations*

15. Article VII, General Provisions

This Article is replaced in its entirety by the following:

- a) Term: The Term of this Agreement shall be five (5) years, commencing on July 1, 2015. The dates of this Agreement shall be: 2015-2016; 2016-2017; 2017-2018; 2018-2019; and 2019-2020.
- b) In January 2020, either Party may submit to the other, a written request to bargain for a successor agreement, including a list of proposals on economic or non-economic issues.
- c) Housing Incentives. During the term of this Agreement, the City shall provide HUD housing incentives to officers

Exhibit "A"

wishing to purchase homes within the City of San Bernardino ("Community Revitalization Program"). Such incentives shall represent a 50% discount from the list price of the home. All participants in this program must commit to live in the property for three (3) years. The City shall provide to the SBPOA a summary of the terms of this Community Revitalization Program.

- d) Recruitment Obligations. The City and the SBPOA acknowledge that there has been significant attrition of police safety members and that coming to an agreement on the essential terms and conditions of employment is the first step in stabilizing the San Bernardino Police Department. In recognition of the need to rebuild the Department, the SBPOA agrees that, as a condition of an agreement to the economic terms, it will actively participate in the formulation and implementation of an aggressive recruitment campaign to attract new hires and lateral police officers.
- e) CalPERS 13.989% Cost Sharing Imposition. The SBPOA agrees to release any and all claims regarding the January 28, 2013 imposition of the 13.989% cost sharing amount to the CalPERS contribution.
- f) Per Diem policy shall be included as part of the new Agreement.
- g) Dispute Resolution. The Parties acknowledge that there are terms and conditions set forth above which may not be resolved by mutual agreement. The Parties agree that in the event any disputes cannot be resolved, such disputes shall be submitted to Judge Zive for resolution.

The following provisions have been reviewed and agreed to by the City's and the SBPOA's bankruptcy counsel:

The SBPOA Settlement will provide that:

1. The MOU will become effective upon execution by the parties, provided however that the MOU 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 to its Plan of Adjustment, and the Plan and confirmation order shall provide for Court approval of the MOU.

Exhibit "A"

3. Under the Plan all claims of the SBPOA and its members with respect to wages, pensions (including implementation of cost sharing and elimination of the EPMC benefit), 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 and/or rejection of the prior MOU (collectively the "Police Claims"), shall be treated as general unsecured claims under the Plan, and the City and its officers shall be discharged from such Police Claims upon confirmation of the Plan; provided, however, that any claims arising under the MOU after it is executed by the City and the SBPOA (e.g. grievances) shall not be discharged as long as (a) the SBPOA complies with the terms of the SBPOA Settlement, and, (b) the Court confirms the Plan.
4. The SBPOA shall support confirmation of the Plan that incorporates the SBPOA Settlement.
5. The City and the SBPOA shall stipulate and agree on the amount of the Police Claims. The SBPOA shall vote the full amount of the Police Claims in favor of the Plan and shall file a brief in support of confirmation of the Plan.
6. The SBPOA Settlement is not a solicitation by the City, and the SBPOA's commitment to vote the Police Claims in favor of the Plan is not effective until the Court approves a Disclosure Statement that incorporated the SBPOA Settlement.