

Exhibit 33

Resolution No. 2016-68 (Adopting A Transition and Release Agreement Between the City of San Bernardino and the San Bernardino Fire Management Association)

RESOLUTION NO. 2016-68

RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO ADOPTING A TRANSITION AND RELEASE AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO AND THE SAN BERNARDINO FIRE MANAGEMENT ASSOCIATION.

WHEREAS, the City and the San Bernardino Fire Management Association (“SBFMA”) have met and conferred in good faith pursuant to California Government Code Section 3500 et seq. and have reached agreement on the transition of the SBFMA members to the County of San Bernardino Fire District as the result of Annexations proceedings through the San Bernardino Local Agency Formation Commission (LAFCO);

WHEREAS, as part of the Transition Agreement, the SBFMA members have agreed to release any and all claims that they may have regarding their employment at the City; and,

WHEREAS, the City and the SBFMA desire to memorialize such terms through the adoption of this Resolution incorporating the agreement.

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

SECTION 1. The City Manager is hereby authorized to execute the Transition and Release Agreement, attached hereto as Exhibit “A” and incorporated herein by this reference.

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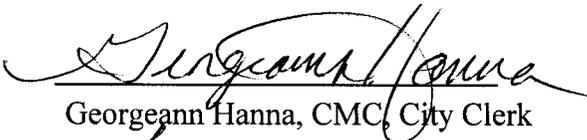
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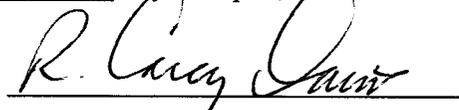
RESOLUTION OF THE MAYOR AND COMMON COUNCIL OF THE CITY OF SAN BERNARDINO ADOPTING A TRANSITION AND RELEASE AGREEMENT BETWEEN THE CITY OF SAN BERNARDINO AND THE SAN BERNARDINO FIRE MANAGEMENT ASSOCIATION.

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 4th day of April, 2016, by the following vote, to wit:

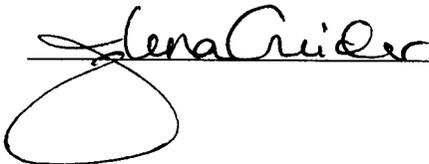
<u>Council Members:</u>	<u>AYES</u>	<u>NAYS</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
MARQUEZ	<u>X</u>	_____	_____	_____
BARRIOS	_____	<u>X</u>	_____	_____
VALDIVIA	_____	<u>X</u>	_____	_____
SHORETT	<u>X</u>	_____	_____	_____
NICKEL	<u>X</u>	_____	_____	_____
RICHARD	<u>X</u>	_____	_____	_____
MULVIHILL	<u>X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


Georgeann Hanna, CMC, City Clerk

The foregoing Resolution is hereby approved this 8th day of April, 2016.


R. Carey Davis, Mayor
City of San Bernardino

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

By: 

Transition and Release Agreement between City of San Bernardino (“City”) and the San Bernardino City Fire Department – Fire Management Association (“FMA”)

Preamble

This Transitional and Release Agreement (“Agreement”) is entered into by and between the City of San Bernardino (City) and the San Bernardino City Fire Department – Fire Management Association (FMA) on behalf of Battalion Chiefs, the Deputy Fire Chief, and the Fire Chief, excluding all other employees (hereinafter collectively referred to as “Parties”). The City and the County of San Bernardino (“County”) have filed a joint application to the San Bernardino Local Agency Formation Commission (“LAFCO”) to annex the City into the San Bernardino Fire Protection District (“County Fire District”) and its Valley Service Zone and Service Zone FP-5 for the purpose of the County Fire District providing fire suppression, fire prevention, dispatch, and emergency medical response services (“Annexation”). The Parties enter into this Agreement for purposes of transitioning from City employment to County employment following the annexation into the County Fire District and to release any and all existing claims. The date of the transition of FMA members to the County Fire District is expected to be July 1, 2016 (“Annexation Date”).

The Agreement defines certain wages, hours, terms and conditions of employment for the FMA members in connection with their transition to the County. The City and the FMA agree that all terms and conditions will be consistent with the *City of San Bernardino Annexation into the San Bernardino County Fire Protection District Plan of Service, dated December 2015* (“Plan”) and in the event that this Agreement is inconsistent with the Plan, the terms of the Plan shall supersede this Agreement. For purposes of this Agreement, the Plan is attached as Exhibit A.

NOW, THEREFORE, in consideration of the foregoing and for other mutual consideration, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

Article 1. Effective Date.

This Agreement will become effective upon its execution by the Parties and the approval by the Mayor and Common Council at a regularly noticed meeting. (“Effective Date”) The Parties agree that the Representations set forth above in the *Preamble* are true and correct and are incorporated into the Agreement.

Article 2. Representation.

For purposes of the transition to the County Fire District, only current incumbent employees holding positions as Battalion Chief, Deputy Fire Chief, and Fire Chief on March 1, 2016, are subject to the terms and conditions as set forth herein and are duly represented by the FMA bargaining association ("FMA employees" or "FMA members"). The FMA is an employee organization under the provisions of Government Code § 3501(a) and is formally acknowledged by the City that it represents members holding positions in one of the three classifications listed herein. As a condition to receiving salary mitigation benefits from the City under Article 7(a), *Salary Mitigation*, herein, FMA members will form a corporation or limited liability company ("SBCFMA") and will establish a trust account naming the FMA members as the beneficiaries of the City funds. Evidence of such incorporation and the establishment of the trust will be presented to City on or before June 1, 2016 and the City, in its sole discretion, shall determine whether FMA members have sufficiently satisfied all conditions of incorporation and the establishment of a trust. The City has the discretion to require the SBCFMA to obtain or show evidence of a bond acceptable to the City, in an amount to be determined by City, to cover indemnity as provided in Section 7(a) herein.

Article 3. Employment/Transition

a. All FMA employees will be offered employment with the County Fire District to the extent that each successfully passes, in the sole determination of the County Fire District, the background check, including review of their City personnel files, training records and applicable certificates, pre-employment physicals, and drug tests as required by the County Fire District.

b. Effective June 30, 2016, all FMA employees who are offered employment with the County Fire District will be laid-off by the City and on the Annexation Date will transition to employment with the County Fire District in accordance with the rules, collective bargaining agreements, policies and provisions administered by the County Fire District and that are consistent with the Plan. As of the Annexation Date, all FMA employees will become employees of the County Fire District and will no longer have any rights or privileges of employment with the City unless otherwise provided for in this Agreement.

Article 4. Rank

All FMA employees will be transferred to the County in accordance with the Plan, Section 7 (A)(6), which provides in pertinent part that:

Management Suppression Personnel that are offered employment will be placed at the salary rate of a top step Captain with County Fire. Within thirty (30) days of employment with County Fire, all City Fire

Management will be eligible to test for Chief Officer County Fire positions created through the annexation of the City of San Bernardino. All City Fire Management personnel successfully passing the testing process shall be placed on a promotional list that will be created on or about September 1, 2016. Such list shall be effective one (1) year from its creation or until there are no employees on the list, whichever occurs first.

Article 5. Seniority

All FMA employees will maintain their City service dates ("seniority") for the following purposes only: (i) County Fire District's employee retirement contribution, with the rate to be determined by the San Bernardino County Employees Retirement Association ("SBCERA") so long as the FMA employee does not elect retirement from the City's CalPERS plan and thereafter takes all actions necessary to establish reciprocity; (ii) participation in the County Retiree Medical Trust Fund; and (iii) vacation accrual rate. Further, time employed by the City will be counted for promotions requiring a minimum amount of time with the County Fire District or for achievement of a certain rank or position.

Article 6. Probation

All FMA employees who are on probation at the time of employment with the County Fire District shall serve the remaining time on probation with the County Fire District up to a twelve (12) month probationary period.

Article 7. Salary Mitigation

a. To address the difference between the current and future base salaries of FMA members and those base salaries of the positions being offered to these FMA members by the County Fire District, the City will transfer, on an annual basis, funds to the SBCFMA trust account ("salary mitigation funds"). The base salaries of the FMA members as of the Annexation Date are reflected in Exhibit A. The SBCFMA and its board members, officers, and agents shall determine the allocation amounts and the distributions to FMA members from funds in the trust account. The City shall make four lump sum payments to the SBCFMA trust account of \$300,000 per year for fiscal years 2016, 2017, 2018, and 2019. As a condition of receiving a payment of the total aggregate of \$300,000, for each of the four years, there must be seven (7) FMA members employed by the County Fire District on August 1st of that year. In the event that a FMA member retires from the County Fire District and/or leaves the service of the County Fire District and is not employed on August 1st of each year, the SBCFMA will provide to the City sufficient documentation, as determined by the City, in support of its request for salary mitigation funds. The amount of salary mitigation funds available to the SBCFMA shall not exceed \$300,000 in any one fiscal year. For fiscal year 2020, the amount of salary mitigation payments to be transferred to the SBCFMA trust account shall be determined by the City, in its sole discretion, based upon salary

information provided to it by the County Fire District. The salary mitigation payment for year five (5), fiscal year 2020, shall not exceed \$300,000. All payments by the City to the SBCFMA trust account shall be made on August 1st of each of the five (5) years. The City shall provide the SBCFMA 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 distribution to FMA members. The five payments shall be in full settlement of all claims of FMA employees against the City arising in connection with the implementation of the Annexation, including, without limitation, any wage or benefit claims asserting that County Fire District pay and benefits are not comparable to that currently paid or provided by City. The City shall not be liable to the SBCFMA or its current and former members for the distribution of funds out of the trust account. The SBCFMA shall 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 FMA members as a result of the SBCFMA's administration of the payments to current and former FMA members and the FMA members entitled to such payments hereby release the City from any claims regarding any acts or omissions of the SBCFMA with respect to such payments. The City retains the right to inspect SBCFMA records of payments and may withhold any and all payments in the event that improprieties in the administration of funds are discovered.

b. As an alternative to 7(a) above and/or in the event that FMA is unable to satisfy the City as to the sufficiency of its incorporation and establishment of the trust account as provided in Article 2 above, to address the differences between the current and future base salary of the FMA members and those base salaries of the positions being offered to these FMA members by the County Fire District, the City will provide five (5) lump sum payments not to exceed \$ 300,000 per year in the aggregate for all of the FMA members hired by and transitioned to the County Fire District for fiscal years 2016, 2017, 2018, 2019 and 2020. Salary mitigation payments will be determined by the City and the FMA Board and distributed to the FMA members on an annual basis on August 1st for each of the five years. The City and the FMA Board shall determine the amount of mitigation payments to be allocated to each FMA member based upon salary information provided to the City by the County Fire District. The five payments shall be in full settlement of all claims of FMA employees against the City arising in connection with the implementation of the Annexation, including, without limitation, any wage or benefit claims asserting that County Fire District pay and benefits are not comparable to that currently paid or provided by City. The City, on an annual basis, shall issue each former FMA employee receiving a salary mitigation payment a 1099 for the year that such payment is made. FMA employees who elect to retire from the City and/or who otherwise are not hired by the County Fire District shall not receive any salary mitigation payments. To be eligible to receive salary mitigation payments, an FMA member must be employed by the County Fire District on August 1st for each of the five (5) years that the City provides these salary mitigation payments.

Article 8. Transfer of Vacation and Sick Leave Balances

a. On or before the Annexation Date, for each FMA members employed by the County Fire District, the City will remit to the County Fire District the cash value of up to 48 hours of sick leave and up to 48 hours of vacation leave of each such FMA employee's accrued vacation and sick leave balances, but not to exceed the employee's actual accrued amounts. For purposes of such transfer, post-petition accruals will be transferred first and then any pre-petition leave accruals will be transferred in an amount capped at 48 hours of vacation and 48 hours of sick leave. Any sick leave hours remaining in a FMA member's Excess Sick Leave (ESL) bank on the Annexation Date will be considered to be pre-petition sick leave that may be used for purposes of transferring up to 48 hours to the County Fire District. After the transfer of hours to the County Fire District, any remaining unused pre-petition vacation or pre-petition sick leave will be treated as General Unsecured Claims under the City's Chapter 9 Plan ("BK Plan"). For purposes of this section, pre-petition leave shall be those leave accruals that were earned on or before August 1, 2012.

b. FMA employees may elect to transfer up to an additional 48 hours of vacation leave to the County Fire District in the event that an employee has post-petition vacation remaining following the transfer of the 48 hours as provided in Section 8(a) above. In the alternative, a FMA employee may elect to cash out any remaining post-petition vacation leave following the transfer of the 48 hours to the County Fire District as provided in Section 8(a). For the period between the Effective Date and the Annexation Date, in the event that a FMA employee has no post-petition accrued vacation leave, that employee may use pre-petition vacation leave so long as such use is in conformance with applicable City Fire Department rules and policies including, without limitation, the timely notification of requested use. All requests for use of pre-petition vacation leave must be authorized under applicable City Fire Department rules and policies and must be approved. There will be no cash-outs of pre-petition vacation leave. All unused vacation leave as of the Annexation Date that has not been included as part of the allocations above, shall be treated as General Unsecured Claims under the BK Plan.

c. For the period between the Effective Date and the Annexation Date, in the event that an FMA employee has no accrued post-petition sick leave, any pre-petition sick leave, including ESL banked hours, may be used but such use must conform to applicable City Fire Department rules and policies including, without limitation, proper notification of requested use. All requests for pre-petition sick leave use must be authorized under applicable City Fire Department rules and policies and must be approved. There will be no cash-outs of pre-petition sick leave; however, on or before the Annexation Date, the two (2) FMA members that have ESL banks will receive two quarterly payments of their ESL banks consistent with the January 28, 2013 agreement between the City and the FMA. Any cash outs of ESL banks and/or post-petition sick leave banks as of the Annexation Date will be in accordance with the January 28, 2013 agreement between the City and the FMA. All unused pre-petition sick leave on the Annexation Date shall have no cash value and shall be treated as

General Unsecured Claims under the BK Plan.

d. The City and the FMA have agreed to a schedule of: 1) leave usage between the Effective Date and the Annexation Date; and, 2) the number of vacation and sick leave hours to be transferred to the County Fire District. The schedule is consistent with the implementation measures set forth above. A copy of this schedule is attached to this Agreement as Exhibit B and is incorporated herein. All leave balance hours transferred to the County Fire District under this Article will be transferred with a cash value reflecting the rate of pay the employee will be receiving at the County Fire District in accordance with Section 7(A)(4) of the Plan. Any payouts for post-petition leaves will be at the FMA member's base rate of pay at the City and will include a higher acting pay rate where applicable and will be paid on or before July 15, 2016.

Article 9. Additional Leave Time

The City will cash out accrued but unpaid post-petition holiday time as of the Annexation Date. FMA members have the option to convert accrued but unused post-petition holiday time to either sick time and/or vacation time for purposes of transferring hours to the County. However, the total number of hours of vacation and sick leave that may be transferred to the County shall not exceed the hours established in the Plan.

Article 10. Pre-Petition Leave Banks

Except as otherwise provided for in this Agreement, claims based upon pre-petition leave bank accruals, including without limitation, vacation, sick leave, concession leave, and holiday leave, will be treated as General Unsecured Claims under the BK Plan. This position is consistent with the Recovery Plan filed with the Bankruptcy Court in November 2015. Under the City's Recovery Plan, all City employees are subject to these restrictions on pre-petition leaves.

All vacation leave balances, sick leave balances and holiday leave balances that all FMA employees had accrued as of August 1, 2012 ("pre-petition leave") will be separated from post August 1, 2012 leave accruals ("post-petition leave") in each of these leave categories.

With the exception of pre-petition concession leave accruals, pre-petition leave balances, including vacation leave, sick leave and holiday leave, may be utilized by employees in this bargaining group. However, FMA employees are *required* to first utilize all post-petition leave accruals in each category before they can utilize any pre-petition leave accruals in the same leave category. Pre-petition concession leave balances will not be available for use and will be treated as General Unsecured Claims under the City's BK Plan.

Upon separation from employment with the City, employees will *not* receive payment for any pre-petition leave balances. Claims based upon pre-petition leave balances will be treated as General Unsecured Claims under the BK Plan.

Article 11. Uniforms

The County Fire District will be solely responsible for the uniform transition(s) including all costs.

Article 12. Retirement Benefit

FMA employees may elect to transfer from CalPERS to the San Bernardino County Employee's Retirement Association ("SBCERA") by either: 1) selecting the option of "reciprocity" and transition to SBCERA as a legacy employee with City seniority; or, 2) elect to retire from the City's CalPERS system and start as a new employee without City seniority in the SBCERA system. Upon transition, employees who choose reciprocity will begin to accrue "Tier 1" County service retirement credit which is currently set at the 3% at age 50 service retirement benefit level. Prior to the transition to the County, the City will set up a meeting between FMA members and representatives from CalPERS and SBCERA to discuss how the transition affects each member. FMA employees shall transition from the City retirement to the County retirement system in accordance with applicable CalPERS and SBCERA laws and regulations. Member contribution rates for the SBCERA system will be based upon age of entry into the fire service and will be determined annually and may or may not include City seniority depending upon which transfer option is selected by the individual FMA employee.

Article 13. Retiree Health Benefits

The County Fire District has established a Retirement Medical Trust Fund to which it contributes up to 2.75% of the base biweekly salary for eligible employees. The percentage of contribution is based upon years of completed County service. For purposes of establishing years of service, the FMA employee's City service dates will be included in determining the level of the County Fire District's contribution.

Article 14. Health Benefits

All FMA employees offered employment and who transition to the County Fire District will be provided health and other benefits as provided under the applicable Memorandum of Understanding (MOU) that covers the position(s) offered. The City shall maintain all existing benefits related to medical, dental, and vision, for all FMA employees transitioning to the County Fire District until the earlier of (a) such time as the MOU benefits provided are no longer in effect or, (b)

for thirty (30) days after the Annexation Date.

Article 15. County Bargaining Unit

All FMA employees will be placed in the appropriate bargaining unit that is consistent with the rank that each FMA member is employed by the County Fire District. All FMA members will be afforded the compensation and benefits and will be subject to other terms and conditions of employment as are provided under the applicable MOU and other County Fire District rules, regulations, and policies.

Article 16. Equipment

On the Annexation Date, the FMA members may keep their City fire helmet, jackets, and badge for their current classification.

Article 17. Agreement

This Agreement constitutes the final, complete and exclusive agreement between the City and the FMA pertaining to the transfer of FMA employees to the County Fire District. It supersedes all prior oral and/or written communications between the Parties relating to the subject matter of this Agreement.

Article 18. No Third Parties

This Agreement is made solely between the City and the FMA, and no other person or entity shall have or acquire rights by virtue of it.

Article 19. Release of Claims.

Each FMA member who is transferring to the County Fire District pursuant to this Agreement shall execute an addendum to this Agreement that will provide as follows:

“In consideration for the promises and covenants contained in the Agreement, the receipt and sufficiency of which is hereby acknowledged, Employee fully, finally, irrevocably and unconditionally releases and discharges the City and its current and former officers, agents, employees, management personnel, consultants, advisors, insurers, reinsurers, attorneys, accountants and other representatives (including without limitation, Mayor R. Carey Davis, the Common Council, City Managers Allen Parker, Mark Scott and Jarrod Burguan, Stradling Yocca Carlson & Rauth, P.C., Law Office of Linda L. Daube and Linda Daube, Management Partners and Urban Futures), from any and all claims,

liabilities, obligations, causes of action, suits, debts, promises, damages, judgments, setoffs, recoupments, attorney's fees and demands of whatsoever kind or character, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims and claims suspected to exist and claims not suspected to exist, that have been or could have been asserted in any forum by or on behalf of Employee arising from or related or attributable to Employee's employment with the City, separation from employment with the City, employment with the County, the City's chapter 9 bankruptcy case or annexation into the County, whether in law or in equity, upon or by reason of any matter, cause or thing whatsoever from the beginning of time through the Annexation Date (individually and collectively the "Released Claims"). Employee further agrees that it will not initiate any litigation, charges or complaints based on the Released Claims.

Employee understands that the release and discharge of the Released Claims extends to all claims of every nature and kind, known or unknown, suspected or unsuspected. Employee acknowledges that any and all rights granted him/her under section 1542 of the California Civil Code, or any other analogous Federal or State law or regulation, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

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.

Employee further acknowledges that he/she is aware that after executing this Agreement, Employee or Employee's agents may discover claims or facts in addition to or different from those that he/she now knows of with respect to the subject matter of this Agreement, but it is Employee's intention to release all such claims.

The Released Claims do not include claims for enforcement of the Agreement, and do not include workers compensation or disability claims against the City."

Article 20. Additional Provisions to the Agreement

- a. This Agreement, including any settlement of claims, will become null and void and of no further effect if the City's BK Plan is not approved by the

Bankruptcy Court and/or the City and County annexation proceedings are not successfully completed.

- b. Except as otherwise provided above, all claims and expenses of the FMA and its members with respect to wages, pensions (including implementation of cost sharing and elimination of the Employer Paid Member Contributions (“EPMC”) benefits), other benefits and other terms and conditions of employment that arose prior to the date of the confirmation of the BK Plan, including, without limitation, all claims arising from the City’s changes to the terms and conditions of employment and/or rejection of the prior MOU, and the implementation of Annexation, (collectively the “FMA Claims”) shall be treated as General Unsecured Claims under the BK Plan, and the City and its officers shall be discharged from such FMA Claims upon confirmation of the BK Plan, provided, however, that the discharge shall not apply to the right of the Parties to enforce the Agreement. The BK Plan currently contemplates an approximate 1% distribution on General Unsecured Claims.
- c. The FMA shall support confirmation of the BK Plan that incorporates this Agreement and shall not oppose annexation.
- d. The City and the FMA shall stipulate and agree on the amount of the FMA Claims. The FMA shall vote the full amount of the FMA Claims in favor of the BK Plan and shall support confirmation of the BK Plan.
- e. The FMA Settlement is not a solicitation by the City, and the FMA’s agreement to vote the FMA Claims in favor of the BK Plan is not effective until the Court approves a Disclosure Statement that incorporates the FMA Transition and Release Agreement.
- f. This 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 email shall be treated in all manner and respects as original signatures. As a courtesy to the City, the FMA will provide the City with an original signature.
- g. 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/she/it has not assigned, encumbered, or transferred any of the claims released by such Party hereunder.
- h. The interpretation, construction, and performance of this Agreement, and the rights and remedies of the Parties, 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.

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.

Article 21. Signatures/Agreement

For City of San Bernardino:

For Fire Management Association:

Mark Scott, City Manager

Thomas Hannemann, President

Date

Date

Approved as to Form:



Gary Saenz, City Attorney

Attest:

Georgeann Hanna, City Clerk

**Transition and Release Agreement between City of San Bernardino (“City”) and
the San Bernardino City Fire Department – Fire Management Association
 (“FMA”)**

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All FMA employees who are on probation at the time of employment with the County Fire District shall serve the remaining time on probation with the County Fire District up to a twelve (12) month probationary period.

Article 7. Salary Mitigation

a. To address the difference between the current and future base salaries of FMA members and those base salaries of the positions being offered to these FMA members by the County Fire District, the City will transfer, on an annual basis, funds to the SBCFMA trust account ("salary mitigation funds"). The base salaries of the FMA members as of the Annexation Date are reflected in Exhibit A. The SBCFMA and its board members, officers, and agents shall determine the allocation amounts and the distributions to FMA members from funds in the trust account. The City shall make four lump sum payments to the SBCFMA trust account of \$300,000 per year for fiscal years 2016, 2017, 2018, and 2019. As a condition of receiving a payment of the total aggregate of \$300,000, for each of the four years, there must be seven (7) FMA members employed by the County Fire District on August 1st of that year. In the event that a FMA member retires from the County Fire District and/or leaves the service of the County Fire District and is not employed on August 1st of each year, the SBCFMA will provide to the City sufficient documentation, as determined by the City, in support of its request for salary mitigation funds. The amount of salary mitigation funds available to the SBCFMA shall not exceed \$300,000 in any one fiscal year. For fiscal year 2020, the amount of salary mitigation payments to be transferred to the SBCFMA trust account shall be determined by the City, in its sole discretion, based upon salary

information provided to it by the County Fire District. The salary mitigation payment for year five (5), fiscal year 2020, shall not exceed \$300,000. All payments by the City to the SBCFMA trust account shall be made on August 1st of each of the five (5) years. The City shall provide the SBCFMA 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 distribution to FMA members. The five payments shall be in full settlement of all claims of FMA employees against the City arising in connection with the implementation of the Annexation, including, without limitation, any wage or benefit claims asserting that County Fire District pay and benefits are not comparable to that currently paid or provided by City. The City shall not be liable to the SBCFMA or its current and former members for the distribution of funds out of the trust account. The SBCFMA shall 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 FMA members as a result of the SBCFMA's administration of the payments to current and former FMA members and the FMA members entitled to such payments hereby release the City from any claims regarding any acts or omissions of the SBCFMA with respect to such payments. The City retains the right to inspect SBCFMA records of payments and may withhold any and all payments in the event that improprieties in the administration of funds are discovered.

b. As an alternative to 7(a) above and/or in the event that FMA is unable to satisfy the City as to the sufficiency of its incorporation and establishment of the trust account as provided in Article 2 above, to address the differences between the current and future base salary of the FMA members and those base salaries of the positions being offered to these FMA members by the County Fire District, the City will provide five (5) lump sum payments not to exceed \$ 300,000 per year in the aggregate for all of the FMA members hired by and transitioned to the County Fire District for fiscal years 2016, 2017, 2018, 2019 and 2020. Salary mitigation payments will be determined by the City and the FMA Board and distributed to the FMA members on an annual basis on August 1st for each of the five years. The City and the FMA Board shall determine the amount of mitigation payments to be allocated to each FMA member based upon salary information provided to the City by the County Fire District. The five payments shall be in full settlement of all claims of FMA employees against the City arising in connection with the implementation of the Annexation, including, without limitation, any wage or benefit claims asserting that County Fire District pay and benefits are not comparable to that currently paid or provided by City. The City, on an annual basis, shall issue each former FMA employee receiving a salary mitigation payment a 1099 for the year that such payment is made. FMA employees who elect to retire from the City and/or who otherwise are not hired by the County Fire District shall not receive any salary mitigation payments. To be eligible to receive salary mitigation payments, an FMA member must be employed by the County Fire District on August 1st for each of the five (5) years that the City provides these salary mitigation payments.

Article 8. Transfer of Vacation and Sick Leave Balances

a. On or before the Annexation Date, for each FMA members employed by the County Fire District, the City will remit to the County Fire District the cash value of up to 48 hours of sick leave and up to 48 hours of vacation leave of each such FMA employee's accrued vacation and sick leave balances, but not to exceed the employee's actual accrued amounts. For purposes of such transfer, post-petition accruals will be transferred first and then any pre-petition leave accruals will be transferred in an amount capped at 48 hours of vacation and 48 hours of sick leave. Any sick leave hours remaining in a FMA member's Excess Sick Leave (ESL) bank on the Annexation Date will be considered to be pre-petition sick leave that may be used for purposes of transferring up to 48 hours to the County Fire District. After the transfer of hours to the County Fire District, any remaining unused pre-petition vacation or pre-petition sick leave will be treated as General Unsecured Claims under the City's Chapter 9 Plan ("BK Plan"). For purposes of this section, pre-petition leave shall be those leave accruals that were earned on or before August 1, 2012.

b. FMA employees may elect to transfer up to an additional 48 hours of vacation leave to the County Fire District in the event that an employee has post-petition vacation remaining following the transfer of the 48 hours as provided in Section 8(a) above. In the alternative, a FMA employee may elect to cash out any remaining post-petition vacation leave following the transfer of the 48 hours to the County Fire District as provided in Section 8(a). For the period between the Effective Date and the Annexation Date, in the event that a FMA employee has no post-petition accrued vacation leave, that employee may use pre-petition vacation leave so long as such use is in conformance with applicable City Fire Department rules and policies including, without limitation, the timely notification of requested use. All requests for use of pre-petition vacation leave must be authorized under applicable City Fire Department rules and policies and must be approved. There will be no cash-outs of pre-petition vacation leave. All unused vacation leave as of the Annexation Date that has not been included as part of the allocations above, shall be treated as General Unsecured Claims under the BK Plan.

c. For the period between the Effective Date and the Annexation Date, in the event that an FMA employee has no accrued post-petition sick leave, any pre-petition sick leave, including ESL banked hours, may be used but such use must conform to applicable City Fire Department rules and policies including, without limitation, proper notification of requested use. All requests for pre-petition sick leave use must be authorized under applicable City Fire Department rules and policies and must be approved. There will be no cash-outs of pre-petition sick leave; however, on or before the Annexation Date, the two (2) FMA members that have ESL banks will receive two quarterly payments of their ESL banks consistent with the January 28, 2013 agreement between the City and the FMA. Any cash outs of ESL banks and/or post-petition sick leave banks as of the Annexation Date will be in accordance with the January 28, 2013 agreement between the City and the FMA. All unused pre-petition sick leave on the Annexation Date shall have no cash value and shall be treated as

General Unsecured Claims under the BK Plan.

d. The City and the FMA have agreed to a schedule of: 1) leave usage between the Effective Date and the Annexation Date; and, 2) the number of vacation and sick leave hours to be transferred to the County Fire District. The schedule is consistent with the implementation measures set forth above. A copy of this schedule is attached to this Agreement as Exhibit B and is incorporated herein. All leave balance hours transferred to the County Fire District under this Article will be transferred with a cash value reflecting the rate of pay the employee will be receiving at the County Fire District in accordance with Section 7(A)(4) of the Plan. Any payouts for post-petition leaves will be at the FMA member's base rate of pay at the City and will include a higher acting pay rate where applicable and will be paid on or before July 15, 2016.

Article 9. Additional Leave Time

The City will cash out accrued but unpaid post-petition holiday time as of the Annexation Date. FMA members have the option to convert accrued but unused post-petition holiday time to either sick time and/or vacation time for purposes of transferring hours to the County. However, the total number of hours of vacation and sick leave that may be transferred to the County shall not exceed the hours established in the Plan.

Article 10. Pre-Petition Leave Banks

Except as otherwise provided for in this Agreement, claims based upon pre-petition leave bank accruals, including without limitation, vacation, sick leave, concession leave, and holiday leave, will be treated as General Unsecured Claims under the BK Plan. This position is consistent with the Recovery Plan filed with the Bankruptcy Court in November 2015. Under the City's Recovery Plan, all City employees are subject to these restrictions on pre-petition leaves.

All vacation leave balances, sick leave balances and holiday leave balances that all FMA employees had accrued as of August 1, 2012 ("pre-petition leave") will be separated from post August 1, 2012 leave accruals ("post-petition leave") in each of these leave categories.

With the exception of pre-petition concession leave accruals, pre-petition leave balances, including vacation leave, sick leave and holiday leave, may be utilized by employees in this bargaining group. However, FMA employees are *required* to first utilize all post-petition leave accruals in each category before they can utilize any pre-petition leave accruals in the same leave category. Pre-petition concession leave balances will not be available for use and will be treated as General Unsecured Claims under the City's BK Plan.

Upon separation from employment with the City, employees will *not* receive payment for any pre-petition leave balances. Claims based upon pre-petition leave balances will be treated as General Unsecured Claims under the BK Plan.

Article 11. Uniforms

The County Fire District will be solely responsible for the uniform transition(s) including all costs.

Article 12. Retirement Benefit

FMA employees may elect to transfer from CalPERS to the San Bernardino County Employee's Retirement Association ("SBCERA") by either: 1) selecting the option of "reciprocity" and transition to SBCERA as a legacy employee with City seniority; or, 2) elect to retire from the City's CalPERS system and start as a new employee without City seniority in the SBCERA system. Upon transition, employees who choose reciprocity will begin to accrue "Tier 1" County service retirement credit which is currently set at the 3% at age 50 service retirement benefit level. Prior to the transition to the County, the City will set up a meeting between FMA members and representatives from CalPERS and SBCERA to discuss how the transition affects each member. FMA employees shall transition from the City retirement to the County retirement system in accordance with applicable CalPERS and SBCERA laws and regulations. Member contribution rates for the SBCERA system will be based upon age of entry into the fire service and will be determined annually and may or may not include City seniority depending upon which transfer option is selected by the individual FMA employee.

Article 13. Retiree Health Benefits

The County Fire District has established a Retirement Medical Trust Fund to which it contributes up to 2.75% of the base biweekly salary for eligible employees. The percentage of contribution is based upon years of completed County service. For purposes of establishing years of service, the FMA employee's City service dates will be included in determining the level of the County Fire District's contribution.

Article 14. Health Benefits

All FMA employees offered employment and who transition to the County Fire District will be provided health and other benefits as provided under the applicable Memorandum of Understanding (MOU) that covers the position(s) offered. The City shall maintain all existing benefits related to medical, dental, and vision, for all FMA employees transitioning to the County Fire District until the earlier of (a) such time as the MOU benefits provided are no longer in effect or, (b)

for thirty (30) days after the Annexation Date.

Article 15. County Bargaining Unit

All FMA employees will be placed in the appropriate bargaining unit that is consistent with the rank that each FMA member is employed by the County Fire District. All FMA members will be afforded the compensation and benefits and will be subject to other terms and conditions of employment as are provided under the applicable MOU and other County Fire District rules, regulations, and policies.

Article 16. Equipment

On the Annexation Date, the FMA members may keep their City fire helmet, jackets, and badge for their current classification.

Article 17. Agreement

This Agreement constitutes the final, complete and exclusive agreement between the City and the FMA pertaining to the transfer of FMA employees to the County Fire District. It supersedes all prior oral and/or written communications between the Parties relating to the subject matter of this Agreement.

Article 18. No Third Parties

This Agreement is made solely between the City and the FMA, and no other person or entity shall have or acquire rights by virtue of it.

Article 19. Release of Claims.

Each FMA member who is transferring to the County Fire District pursuant to this Agreement shall execute an addendum to this Agreement that will provide as follows:

“In consideration for the promises and covenants contained in the Agreement, the receipt and sufficiency of which is hereby acknowledged, Employee fully, finally, irrevocably and unconditionally releases and discharges the City and its current and former officers, agents, employees, management personnel, consultants, advisors, insurers, reinsurers, attorneys, accountants and other representatives (including without limitation, Mayor R. Carey Davis, the Common Council, City Managers Allen Parker, Mark Scott and Jarrod Burguan, Stradling Yocca Carlson & Rauth, P.C., Law Office of Linda L. Daube and Linda Daube, Management Partners and Urban Futures), from any and all claims,

liabilities, obligations, causes of action, suits, debts, promises, damages, judgments, setoffs, recoupments, attorney's fees and demands of whatsoever kind or character, whether based on federal, state, local, statutory or common law or any other law, rule or regulation, including both known and unknown claims and claims suspected to exist and claims not suspected to exist, that have been or could have been asserted in any forum by or on behalf of Employee arising from or related or attributable to Employee's employment with the City, separation from employment with the City, employment with the County, the City's chapter 9 bankruptcy case or annexation into the County, whether in law or in equity, upon or by reason of any matter, cause or thing whatsoever from the beginning of time through the Annexation Date (individually and collectively the "Released Claims"). Employee further agrees that it will not initiate any litigation, charges or complaints based on the Released Claims.

Employee understands that the release and discharge of the Released Claims extends to all claims of every nature and kind, known or unknown, suspected or unsuspected. Employee acknowledges that any and all rights granted him/her under section 1542 of the California Civil Code, or any other analogous Federal or State law or regulation, are hereby expressly waived. Section 1542 of the California Civil Code reads as follows:

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.

Employee further acknowledges that he/she is aware that after executing this Agreement, Employee or Employee's agents may discover claims or facts in addition to or different from those that he/she now knows of with respect to the subject matter of this Agreement, but it is Employee's intention to release all such claims.

The Released Claims do not include claims for enforcement of the Agreement, and do not include workers compensation or disability claims against the City."

Article 20. Additional Provisions to the Agreement

- a. This Agreement, including any settlement of claims, will become null and void and of no further effect if the City's BK Plan is not approved by the

Bankruptcy Court and/or the City and County annexation proceedings are not successfully completed.

- b. Except as otherwise provided above, all claims and expenses of the FMA and its members with respect to wages, pensions (including implementation of cost sharing and elimination of the Employer Paid Member Contributions ("EPMC") benefits), other benefits and other terms and conditions of employment that arose prior to the date of the confirmation of the BK Plan, including, without limitation, all claims arising from the City's changes to the terms and conditions of employment and/or rejection of the prior MOU, and the implementation of Annexation, (collectively the "FMA Claims") shall be treated as General Unsecured Claims under the BK Plan, and the City and its officers shall be discharged from such FMA Claims upon confirmation of the BK Plan, provided, however, that the discharge shall not apply to the right of the Parties to enforce the Agreement. The BK Plan currently contemplates an approximate 1% distribution on General Unsecured Claims.
- c. The FMA shall support confirmation of the BK Plan that incorporates this Agreement and shall not oppose annexation.
- d. The City and the FMA shall stipulate and agree on the amount of the FMA Claims. The FMA shall vote the full amount of the FMA Claims in favor of the BK Plan and shall support confirmation of the BK Plan.
- e. The FMA Settlement is not a solicitation by the City, and the FMA's agreement to vote the FMA Claims in favor of the BK Plan is not effective until the Court approves a Disclosure Statement that incorporates the FMA Transition and Release Agreement.
- f. This 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 email shall be treated in all manner and respects as original signatures. As a courtesy to the City, the FMA will provide the City with an original signature.
- g. 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/she/it has not assigned, encumbered, or transferred any of the claims released by such Party hereunder.
- h. The interpretation, construction, and performance of this Agreement, and the rights and remedies of the Parties, 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.

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.

Article 21. Signatures/Agreement

For City of San Bernardino:

For Fire Management Association:

Mark Scott
Mark Scott, City Manager

Thomas Hannemann
Thomas Hannemann, President

4-11-16
Date

4.12.2016
Date

Approved as to Form:

Gary Saenz
Gary Saenz, City Attorney

Attest:

Georgeanna Hanna
Georgeanna Hanna, City Clerk