

RESOLUTION NO. 2013-239

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 E. Reimbursements for Job-Related Professional Activities

14 Purpose

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

24 Eligibility

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

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

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

8 Reimbursement

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

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

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

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

15 Procedures

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

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

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

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

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

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

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

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

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

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

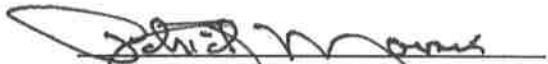
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WITH CERTAIN PROVISIONS OF THE CITY'S PENDENCY PLAN, ADOPTED BY
THE MAYOR AND COMMON COUNCIL ON NOVEMBER 26, 2012 BY
RESOLUTION NO. 2012-278.

5 I HEREBY CERTIFY that the foregoing Resolution was duly adopted by the
6 Mayor and Common Council of the City of San Bernardino at a
7
8 joint regular meeting thereof, held on the 5th day of August,
9 2013, by the following vote, to wit:

10 Council Members:	AYES	NAYS	ABSTAIN	ABSENT
11 MARQUEZ	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
12 JENKINS	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
13 VALDIVIA	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
14 SHORETT	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
15 KELLEY	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
16 JOHNSON	<u>X</u>	<u> </u>	<u> </u>	<u> </u>
17 MCCAMMACK	<u>X</u>	<u> </u>	<u> </u>	<u> </u>

20 
21 Georgeann Hanna, City Clerk

22 The foregoing Resolution is hereby approved this 6TH day of August,
23 2013.

24 
25 Patrick J. Morris, Mayor
City of San Bernardino

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