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333
12/02

Office of
The City Attorney
City of San Diego
MEMORANDUM
MS 59

(619) 236-6220

DATE: September 9, 2008
TO: Scott Chadwick/Thom Harpole
FROM: City Attorney
SUBJECT: Return of Local 127 Member 1.9 Percent Salary Reduction Monies (2005-2008 MOU)

Pursuant to Thom's email request of September 3, 2008, this confirms in writing our prior oral advice provided to you pertaining to the return of the Local 127 salary reduction monies negotiated in the 2005-2008 Local 127/City MOU. The following is premised upon two important representations made to us: (1) that the negotiated term that the 127 increased employee salary reductions be used in their entirety for a leveraged mechanism to reduce the UAAL was not facilitated; and (2) 127 has proposed the return of their members' salary reductions via a cash payout from the City.

As we orally advised you previously, we see no legal preclusion to 127's proposal, if certain legal dictates are met. As the proposed cash payout would be from City funds and not pension funds, there would be no violation of the "non-diversionary" of pension assets rule. First, as a cash payout from the City, as the employer, to the represented members, as employees, such would meet the definition of employment compensation, and therefore would require proper withholdings and deduction of taxes. Second, any such cash payout would not be pensionable as it is simply a return of employee salary the previous withholding of which did not correspond with a reduction in pension credit accrual. Each represented and affected employee accrued pension credit for actual time employed independently of the salary reduction and thus should not be altered in any way by a return of any salary reduction. To allow the return payout to be pensionable would result in an increase of pension credit for time not worked.

Any written agreement to facilitate the return of the salary reduction monies via a cash payout must contain an indemnification and hold harmless provision in favor of the City. Further, any agreement reached must be ratified by Council as well as the 127 general membership in order to make it binding.

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EXCLUDED EMPLOYEES

Attachment 2

Billingslea, Steven
Cancino, Tomas
Castro De Torres, Rosalia
Ciaramitaro, Michael
Conners Jr., Lonnie
DePrada, Raul
Figueroa, Carlos
Galley, James
Guzman, Jaime
Marruffo, Jose
Morales, Arthur
Nettles, George
Owen, Christopher
Rodriguez, Gabriel
Russell, John
Saavedra, Francisco
Sayles Jr., Samuel
Stanley, Tilo
Stevens, Kevin
Thomas, Monroe
Williams Jr., Wesley
Wilson, Paulette

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REQUEST FOR COUNCIL ACTION
CITY OF SAN DIEGO

1. CERTIFICATE NUMBER (FOR AUDITOR'S USE) 333
12/02

TO: CITY ATTORNEY

2. FROM (ORIGINATING DEPARTMENT): LABOR RELATIONS

3. DATE: 11/19/08

4. SUBJECT:

Negotiated Settlement Agreement of Language and Remedy Contained in the City-AFSCME Local 127 Memorandum of Understanding, Article 44, Section A2

5. PRIMARY CONTACT (NAME, PHONE & MAIL STA.)
Scott Chadwick, 65587, MS 56L

6. SECONDARY CONTACT (NAME, PHONE & MAIL STA.)
Abby Jarl, 65964, MS 56L

7. CHECK BOX IF REPORT TO COUNCIL IS ATTACHED

8. COMPLETE FOR ACCOUNTING PURPOSES

FUND				
DEPT.				
ORGANIZATION				
OBJECT ACCOUNT				
JOB ORDER				
C.I.P. NUMBER				
AMOUNT				

9. ADDITIONAL INFORMATION / ESTIMATED COST:

10. ROUTING AND APPROVALS

ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED	ROUTE (#)	APPROVING AUTHORITY	APPROVAL SIGNATURE	DATE SIGNED
1	ORIGINATING DEPARTMENT	<i>[Signature]</i>	11/19/08	8	COO	<i>[Signature]</i>	11-19-08
2	COMPTROLLER	<i>[Signature]</i>	11/19/08	9	CITY ATTORNEY	<i>[Signature]</i>	11-19-08
3	CFO	<i>[Signature]</i>	11/19/08	10			
4	Liaison	<i>[Signature]</i>	11/19/08	11			
5				DOCKET COORD: _____ COUNCIL LIAISON: <i>[Signature]</i>		11-19-08	
6				✓	COUNCIL PRESIDENT <input type="checkbox"/> SPOB <input type="checkbox"/> CONSENT <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/>		
7					<i>[Signature]</i> <input type="checkbox"/> REFER TO: _____ COUNCIL DATE: 12/2/08		

11. PREPARATION OF: RESOLUTION(S) ORDINANCE(S) AGREEMENT(S) DEED(S)

1. Adopt the resolution to ratify and approve the negotiated agreement between the City and AFSCME Local 127, relating to language and remedy contained in Article 44, Section A2 of the MOU. Direct staff to prepare necessary changes to Employee Retirement Contribution Offset Rates for AFSCME Local 127-represented Groups in Section 14 of the FY09 Salary Ordinance and any other changes and actions necessary to implement the terms of the negotiated agreement, and bring them through the public review process for future City Council consideration.

11A. STAFF RECOMMENDATIONS:
Adopt the resolution

12. SPECIAL CONDITIONS:

COUNCIL DISTRICT(S): N/A

COMMUNITY AREA(S): N/A

ENVIRONMENTAL IMPACT: This activity is "not" a project and is therefore not subject to CEQA pursuant to State Guidelines Section 15060(c)(3)

HOUSING IMPACT: N/A

OTHER ISSUES: N/A

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EXECUTIVE SUMMARY SHEET
CITY OF SAN DIEGO

DATE ISSUED: November 19, 2008 REPORT NO:
ATTENTION: Council President and City Council
ORIGINATING DEPARTMENT: Labor Relations
SUBJECT: Negotiated Settlement Agreement of Language and Remedy
Contained in the City-AFSCME Local 127 Memorandum of
Understanding, Article 44, Section A.2
COUNCIL DISTRICT(S): None
CONTACT/PHONE NUMBER: Scott Chadwick, 236-6313

REQUESTED ACTION:

Adopt the resolution to ratify and approve the negotiated agreement between the City and AFSCME Local 127, relating to language and remedy contained in Article 44, Section A.2 of the MOU. Direct staff to prepare necessary changes to Employee Retirement Contribution Offset Rates for AFSCME Local 127-represented Groups in Section 14 of the FY09 Salary Ordinance and any other changes and actions necessary to implement the terms of the negotiated agreement, and bring them through the public review process for future City Council consideration.

STAFF RECOMMENDATION:

Adopt the resolution

EXECUTIVE SUMMARY:

On or about March 20, 2008 AFSCME Local 127 filed a grievance, alleging a violation of Article 44, Section A.2 of the Memorandum of Understanding (MOU) in effect from July 1, 2008 through June 30, 2008. This provision of the MOU is entitled "Use of City Savings Generated by Salary Reduction".

The City and AFSCME Local 127 met and conferred in a good faith effort to resolve this grievance, and tentatively agreed to the terms enumerated in the Negotiated Grievance Settlement Agreement, which include:

- Except for 22 former employees (attachment 2) who have left the City after June 30, 2008, any employee who was represented by AFSCME Local 127 during all or any part of the period between July 1, 2005 and June 30, 2008 shall receive a refund of the 1.9% salary reduction.
 - This refund remedy is in lieu of the MOU provision. The parties agree that this not involve or require the re-establishment of the former Employee Contribution Rate Reserve initially established in 1998 and exhausted in 2006.
 - Interest will be added to the amount of any employee's refund and compounded annually: FY06 3.397%, FY07 4.75% and FY08 4.969%.
 - This refund constitutes ordinary income for tax purposes. This extra payment will be identified on pay checks as "127 1.9% refund". These checks will be directed deposited no later than December 30, 2008, except for those that are out of the work place or separated employment with the City. The checks will be mailed to the home addresses on file.

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- The amount paid will not constitute pensionable salary for any purpose related to the administration of SDCERS pension plan.
- Employee that does not have a valid home address or separated from the City needs to contact the Labor Relations Department no later than June 30, 2009 to received a refund check.

FISCAL CONSIDERATIONS:

Funds that were earmarked for the benefit of funding the Pension System now go to employees – approximately, \$4.53 million.

PREVIOUS COUNCIL and/or COMMITTEE ACTION:

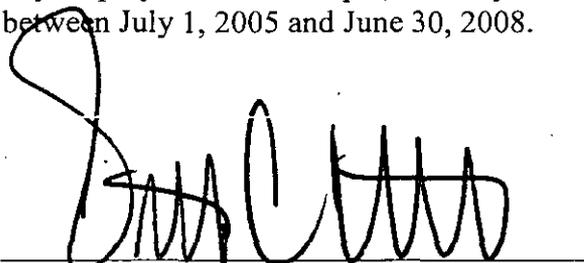
None

COMMUNITY PARTICIPATION AND PUBLIC OUTREACH EFFORTS:

None

KEY STAKEHOLDERS AND PROJECTED IMPACTS:

Except for the 22 former employees (attachment 2), who have left the City after June 30, 2008, any employee who was represented by AFSCME Local 127 during all or any part of the period between July 1, 2005 and June 30, 2008.



Scott Chadwick
Labor Relations Department Director



Jay M. Goldstone
Chief Operating Officer

RESOLUTION NUMBER R-_____

DATE OF FINAL PASSAGE _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AND RATIFYING THE NEGOTIATED SETTLEMENT AGREEMENT RELATING TO THE LANGUAGE AND REMEDY CONTAINED IN ARTICLE 44, SECTION A.2 OF THE MEMORANDUM OF UNDERSTANDING EFFECTIVE JULY 1, 2005 THROUGH JUNE 30, 2008, BETWEEN THE CITY OF SAN DIEGO AND AFSCME LOCAL 127.

WHEREAS, the City of San Diego by and through the Mayor, has met and conferred with AFSCME Local 127, and has reached an agreement relating to the language and remedy contained in Article 44, Section A.2 of the Memorandum of Understanding effective July 1, 2005 through June 30, 2008 between the City of San Diego and AFSCME Local 127; NOW THEREFORE,

BE IT RESOLVED, by the Council of the City of San Diego, that pursuant to these negotiations, the Management Team and AFSCME Local 127 have agreed to the provisions contained in the Negotiated Settlement Agreement, a copy of which is on file in the office of the City Clerk as Document Number RR - _____, and that the City Council does hereby approve, ratify, and adopt the negotiated settlement agreement.

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BE IT FURTHER RESOLVED, that staff is directed to prepare necessary changes to the Employee Retirement Contribution Offset Rates for AFSCME Local 127-represented Groups in Section 14 of the FY09 Salary Ordinance for future City Council consideration, and any other changes and actions necessary to implement the terms of the Negotiated Settlement Agreement.

APPROVED: MICHAEL J. AGUIRRE, City Attorney

By: 
Alan S. Hersh
Chief Deputy City Attorney

ASH:jdf
11/19/08
Or.Dept: Labor
R-2009-687

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of _____.

ELIZABETH S. MALAND
City Clerk

By _____
Deputy City Clerk

Approved: _____
(date)

JERRY SANDERS, Mayor

Vetoed: _____
(date)

JERRY SANDERS, Mayor

NEGOTIATED SETTLEMENT AGREEMENT

This Negotiated Settlement Agreement is entered into between the City of San Diego ("City") and the American Federation of State, County Municipal Employees Local 127 ("Local 127") as a full and final resolution of Local 127's grievance related to the terms of article 44 of the memorandum of understanding in effect from July 1, 2005, through June 30, 2008.

The City reduced salaries of City employees in the bargaining unit represented by Local 127 by 1.9% each pay period from July 2, 2005, through June 30, 2008. The City was unable to fully leverage all monies, therefore, the monies are being returned as indicated below. On or about March 20, 2008, Local 127 filed a grievance with the City's Labor Relations Department, alleging a violation of MOU Article 44. The City indicated that it would be unable to fully comply with the terms specified in the agreement, and the 1.9% salary reduction would cease on July 1, 2008. On and after August 15, 2008, the City and Local 127 began meeting and conferring over the disposition of the 1.9% salary reduction monies.

On September 9, 2008, at the request of the parties, the City Attorney issued a legal opinion (attachment 1).

In reliance on the foregoing, the parties agree to the following terms:

The parties have met and conferred in a good faith effort to resolve issues surrounding the above referenced contract provision. This action by both parties will satisfy the contractual terms as modified below and is meant to avoid further proceedings or litigation related to the interpretation and enforcement of this contractual provision, and agree to the following terms subject to the approval and ratification contingencies identified below.

1. Except for the 22 former employees who have left the City after June 30, 2008 (attachment 2), any employee who was represented by AFSCME Local 127 during all or any part of the period between July 1, 2005 and June 30, 2008 shall receive a refund of the 1.9% salary reduction.
 - (A) This refund remedy is in lieu of the MOU provision which would otherwise require these same monies to be transferred from the encumbered "UAAL account" to an Employee Contribution Rate Reserve within the San Diego City Employees' Retirement system and used to reduce Local 127-represented active employees' pension contributions on a going-forward basis until exhausted. Accordingly, the parties agree that this negotiated settlement will not involve or require the re-establishment of the former Employee Contribution Rate Reserve initially established in 1998 and exhausted in February 2006.

- (B) Interest will be added to the amount of any employee's refund and compounded annually. The interest will be paid out based on the City's pooled investment rate for each fiscal year as follows:
- FY06: 3.397%
FY07: 4.75%
FY08: 4.969%
- (C) The parties acknowledge that this refund to an employee will constitute ordinary income for tax purposes. Since this amount will be a special extra payment to each eligible employee, it will be commingled with regular payroll. This extra payment will be listed on individual employee pay checks as "127 1.9% refund". These checks will be direct deposited no later than December 30, 2008, except as to those employees who are out of the workplace or separated employment with the City in the manner specified above. Those individuals will have their checks mailed to the home addresses that the City has on file.
- (D) The amount of the refund paid to any eligible employee will not constitute pensionable salary for any purpose, including but not limited to the calculation of an employee's high one year.
- (E) Any employee for whom the City does not have a valid home address and had a 1.9% salary deduction during the period of July 1, 2005 through June 30, 2008 and has separated from the City must contact the Labor Relations Department no later than June 30, 2009 to receive a refund check.
2. The City shall provide Local 127 with a full accounting of the amounts deducted, the dates of deductions, and interest calculations.
 3. The City shall agree to provide release time of up to one (1) hour for employees to vote on the negotiated settlement agreement.
 4. This Negotiated Settlement Agreement will be final and binding upon the parties, upon its approval by the Mayor and City Council and upon its ratification by a majority of Local 127 members. Both parties agree to support its approval by these respective bodies.

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Dated: _____

CITY OF SAN DIEGO:

AFSCME LOCAL 127

By: _____
Jay Goldstone
Chief Operating Officer

By: _____

By: _____

By: _____
Scott Chadwick
Labor Relations Director

By: _____

By: _____