

FIRST AMENDMENT TO THE SIDE LETTER AGREEMENT BETWEEN THE CITY  
OF SAN DIEGO AND THE SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION RELATED TO  
PAYMENT OF INTEREST TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

This First Amendment to the Side Letter Agreement related to the payment of interest to the San Diego City Employees' Retirement System (SDCERS) (First Amendment) is made and entered into between the City of San Diego (City) and the San Diego Municipal Employees Association (MEA), collectively referred to herein as the "Parties."

On April 13, 2016, the City passed Ordinance Number O-20636, otherwise known as "An Ordinance of the Council of the City of San Diego Approving and Ratifying a Side Letter Agreement Between the City of San Diego and the San Diego Municipal Employees Association Related to Payment of Interest to the San Diego City Employees' Retirement System" (Attachment 1). The Side Letter Agreement signed on July 26, 2016 (Attachment 2) provides the following main provisions:

1. An Eligible Claimant, who receives a notification from SDCERS, dated on or after January 1, 2016, that they have either underpaid a required employee contribution to SDCERS or been overpaid a benefit as a result of an error by SDCERS or City staff, may submit a claim for payment of interest to SDCERS;
2. The City will indemnify the Eligible Claimant for any interest charges associated with the underpayment or overpayment correction, unless the City determines that the Eligible Claimant knew or should have known that they were underpaying contributions or being overpaid a benefit, or intentionally or willfully contributed to the error;
3. The City's obligations relate solely to interest charges added to the amount of any underpaid contributions or overpaid pension benefits; however, the amount an Eligible Claimant owes SDCERS for the principal amount of these underpaid employee contributions or overpaid pension benefits is solely the Eligible Claimant's responsibility and will not be reimbursed by the City; and,
4. The City will expeditiously process claims dated from January 1, 2016 to "an Occurrence Date (now determined to be April 9, 2021), with the intent to resolve claims within sixty days of the Occurrence Date. For claims filed after the Occurrence Date, the City will process and pay or deny claims within thirty days following City's receipt of an Eligible Claimant's claim.

The purpose of this First Amendment is to preserve all of the substantive rights and obligations established by the Parties' Side Letter for handling the indemnification of an Eligible Claimant when an SDCERS' notification or correction letter is issued while amending the administrative process to eliminate the need for a claims procedure and thereby make the process more efficient.

The Parties agree to the following:

1. The Parties have met and conferred in good faith in accordance with the Meyers-Miliias-Brown Act and Council Policy 300-06 on the subject matter of this First Amendment.

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2. On April 9, 2021 ("Occurrence Date"), a final judgment was entered by a court of competent jurisdiction, after the exhaustion of all appeals available to the Parties, declaring Proposition B, including Charter section 141.2, to be unlawful and invalid.
3. For purposes of this First Amendment, Eligible Claimants include all MEA-represented employees who were on the City payroll or on an approved leave of absence from City employment on or after January 1, 2016, regardless of their City status (e.g., active, separated, DROP, retired) at the time a claim arose or arises in the future, so long as the employee did not intentionally or willfully contribute to the error which led to the underpayment or overpayment.
4. For Eligible Claimants who received SDCERS' notification or correction letter dated between January 1, 2016 and April 9, 2021, in connection with the underpayment of contributions or the overpayment of pension benefits as a result of an error by SDCERS or City employee, their claims will be processed as follows:
  - a. For Eligible Claimants who are currently on the City's active payroll and who have already paid the interest charges noted on the SDCERS' correction letter:
    - 1) They will receive a notice from the Department of Finance (DoF) explaining that the City will reimburse them for the interest amount they paid to SDCERS as stated in SDCERS' correction letter plus any additional interest charges SDCERS has added as of June 30, 2021, and that this reimbursement will be included in the Eligible Claimant's paycheck within 30 calendar days and shown on their pay stub or paper check as "EE REIMB NON TAXABLE."
  - b. For Eligible Claimants who have already paid the interest charges noted on the SDCERS' correction letter but who are no longer on City's active payroll,
    - 1) They will receive an explanatory notice from DoF with a reimbursement check mailed to whatever last known address the Eligible Claimant has left on file with the City or SDCERS. In the event this correspondence is returned to City as undeliverable, City will notify MEA to request any assistance MEA can provide in locating a current mailing address for the Eligible Claimant.
  - c. For Eligible Claimants who have not yet paid the interest charges on the SDCERS' correction letter and have also not entered into a payment plan with SDCERS to pay these interest charges:
    - 1) They will receive a notice from DoF explaining that the City will automatically process and pay directly to SDCERS within 30 calendar days of the notice date all interest charges noted on the SDCERS correction letter, including any interest charges SDCERS has added to the amounts stated in its original correction letter as of June 30, 2021.
  - d. For the one Eligible Claimant who is on a payment plan until December 28, 2021:

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- 1) They will receive a notice from DoF explaining that the City will reimburse them for all interest amounts they paid to SDCERS as stated in SDCERS' correction letter and accrued under the payment plan, and that this reimbursement will be made within 30 calendar days after completion of their payment plan and notification from SDCERS to the City of such completion, and will be shown on their pay stub or paper check as "EE REIMB NON TAXABLE."
  - e. These notices to Eligible Claimants will make clear that the City's obligation is limited to interest charges only and that it is the City's obligation and intent to reimburse the Eligible Employee or pay directly to SDCERS any and all interest charges, whenever posted by SDCERS' to the Eligible Claimant's account, if these interest charges became due and payable as a result of the error documented in SDCERS' correction letter.
5. Following the notice from DoF and any direct payment of interest charges to SDCERS, where applicable, an Eligible Claimant will also receive a letter directly from SDCERS providing the Eligible Claimant with an update on any amount still owed.
    - a. Any and all principal amounts owing remain the Eligible Claimant's responsibility; however, any remaining interest charges will be the City's obligation if they were incurred as a result of the initial correction demand by SDCERS. If, after the City has paid SDCERS directly for interest charges owed, the Eligible Claimant does not pay all of the principal amount owed for underpaid contributions or for overpaid pension benefits, further interest charges incurred will be the Eligible Claimant's sole responsibility. Eligible Claimants in this position are advised to check with SDCERS to confirm whether additional interest charges can be avoided by full payment of any principal amounts owing before June 30, 2022.
  6. After April 9, 2021, the claims of all Eligible Claimants who receive an SDCERS' correction letter due to the underpayment of contributions or the overpayment of pension benefits as a result of an error by SDCERS or City employee, will be processed as follows:
    - a. The City will automatically process and pay the interest charges identified on the SDCERS' correction letter directly to SDCERS within 30 calendar days of the date of SDCERS' correction letter. The principal amounts owing for underpaid contributions or overpaid pension benefits are and remain the Eligible Claimant's sole responsibility.
    - b. Eligible Claimants will receive a notice from DoF, with a copy to SDCERS, stating that the interest charges noted on the SDCERS' correction letter have been settled by the City directly with SDCERS.
    - c. The Eligible Claimants will also receive a letter from SDCERS, following the notice from DoF, providing the Eligible Claimant with an update on the amounts they still owe, if any. If additional interest charges accrue beyond the amount stated in SDCERS' initial correction letter due to the Eligible Claimant's failure to make timely re-payment of the principal amount owed or their decision to enter into a repayment plan, these separate additional interest

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charges are deemed a matter of the Eligible Claimant's discretion, are not the City's responsibility to reimburse, and remain the Eligible Claimant's sole responsibility.

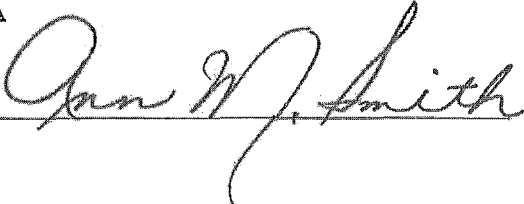
7. Interest payments made by the City directly to SDCERS will be treated as employer contributions.
8. Active MEA-represented employees who believe they have rights as an Eligible Claimant under the Parties' original Side Letter or this First Amendment, which rights have not been recognized by the City, may file a Step 5 Grievance with the City's HR Department per MEA's Memorandum of Understanding, Article 5. A separated or retired employee who does not have access to this MOU Grievance Procedure may contact the City's Human Resources Department at 619-236-6313 for a resolution.
9. The provisions of this Agreement do not limit or supersede any Eligible Claimant's right to challenge SDCERS's determination that an underpayment or overpayment has occurred or otherwise limit or supersede the Eligible Claimant's right to challenge, on any available legal or equitable ground, SDCERS's demand for payment of the principal amount claimed or any interest the City declines to pay.
10. The Parties agree that the City's performance under the terms of this First Amendment constitutes full satisfaction of City's obligations in the SDCERS interest matter addressed by the Parties' original Side Letter dated July 26, 2015, and that no other City obligations arise under or will be asserted by MEA in relation to PERB's Decision in MMBA Case No. 2462-M (2015) related to the Proposition B charter amendments.
11. Unless expressly covered in this First Amendment, all MEA-represented employees' wages, hours, and other terms and conditions of employment, whether stated in an MOU, Personnel Regulation, Administrative Regulation, or in any other enforceable document, remain in full force and effect.
12. This First Amendment is intended to be read in conjunction with the MOU, and where in conflict on the specific issue covered by this First Amendment, this First Amendment will control.
13. This First Amendment is intended to remain in effect until modified through further negotiations in accordance with the MMBA and City Council Policy 300-06.

ATTACHMENTS:


1. Ordinance Number O-20636 dated April 13, 2016
2. Side Letter Agreement dated July 26, 2016

This First Amendment is executed by the following authorized representatives of each party:

MEA

  
\_\_\_\_\_

City of San Diego

  
\_\_\_\_\_

FIRST AMENDMENT TO THE SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE MUNICIPAL EMPLOYEES ASSOCIATION RELATED TO PAYMENT OF INTEREST TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM

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Ann M. Smith  
Lead Negotiator

August 14, 2021  
Date

Tim Davis  
Lead Negotiator

August 16, 2021  
Date

*Abby Jarl-Veltz*

Abby Jarl-Veltz  
Assistant Director  
Human Resources Department

August 16, 2021  
Date

*Jonnabelle Domingo*

Jonnabelle Domingo  
Senior Human Resources Officer  
Human Resources Department

August 16, 2021  
Date

Approved as to form this 14th day of August, 2021

MARA W. ELLIOTT, City Attorney

By: *Thomas Brady*  
Thomas Brady  
Deputy City Attorney

ORDINANCE NUMBER O- 20636 (NEW SERIES)

DATE OF FINAL PASSAGE APR 13 2016

AN ORDINANCE OF THE COUNCIL OF THE CITY OF SAN DIEGO APPROVING AND RATIFYING A SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND THE SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION RELATED TO PAYMENT OF INTEREST TO THE SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM.

WHEREAS, by letters dated March 27, 2014 and January 15, 2015, the San Diego Municipal Employees Association (SDMEA) notified the City of San Diego (City) of SDMEA's allegations that the City unilaterally modified a mandatory subject of bargaining, when the San Diego City Employee's Retirement System (SDCERS or Retirement System) amended its Overpayments and Underpayments Policies; and

WHEREAS, SDMEA also alleged that the City refused to bargain issues related to the Overpayments and Underpayments Policies; and

WHEREAS, under the Overpayments and Underpayments Policies, SDCERS requires City employees to pay interest in addition to any underpaid employee contributions and City retirees to pay interest in addition to overpaid benefits, to make the Retirement System Fund whole for the underpaid contributions and overpaid benefits; and

WHEREAS, the City disputes SDMEA's allegations, in part because the San Diego City Charter (Charter), at section 141.2 specifically, prohibits the City from paying, capping the employee contribution rate, or otherwise compensating for any portion of a contribution to the Retirement System; and

WHEREAS, the City Council desires to resolve the dispute without the need to litigate SDMEA's allegations by entering into a Side Letter Agreement that authorizes the payment of interest in the event that Charter section 141.2 is invalidated as it applies to SDMEA-represented

employees by a court of competent jurisdiction following exhaustion of all appeals or in the event Charter section 141.2 is modified through a Charter amendment and the City Council then authorizes payment of interest in a manner consistent with the Charter amendment; and

WHEREAS, it is unknown at this time whether or when either of the occurrences that trigger payment of interest will happen; this Side Letter Agreement, by its terms, may extend for multiple years and beyond five years, within the meaning of Charter sections 11.2 and 99; therefore, the procedural requirements of these Charter sections are being applied; and

WHEREAS, the Council, in approving this Side Letter Agreement, finds that it is in the best interests of the City to enter into this multiple-year agreement to indemnify MEA-represented employees for interest payments related to errors by SDCERS employees, when the MEA-represented employees, detrimentally impacted by the errors of SDCERS, are not at fault and the City is lawfully able to pay the interest accrued as a result of the errors; and

WHEREAS, this Side Letter Agreement is intended to resolve the dispute between the City and SDMEA that could have resulted in lengthy and costly litigation; and

WHEREAS, the Side Letter Agreement has been negotiated pursuant to the MMBA and City Council Policy 300-06 and is subject to City Council approval to take effect; and

WHEREAS, the negotiated Side Letter Agreement must be approved by a two-thirds majority vote of this Council and by ordinance noticed and adopted in accordance with San Diego Charter sections 11.2 and 99; NOW, THEREFORE,

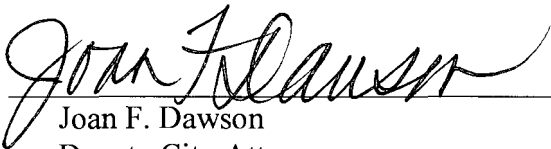
BE IT ORDAINED, by the Council of the City of San Diego, as follows:

Section 1. That pursuant to the Meyers-Milias-Brown Act and City Council Policy 300-06, the City Council approves and ratifies the Side Letter Agreement between the City and the SDMEA, related to payment of interest to SDCERS, on file in the office of the City Clerk as Document No. 00-20636.

Section 2. That a full reading of this ordinance is dispensed with prior to its passage, a written or printed copy having been made available to the City Council and the public prior to the day of its passage, in accordance with Charter section 99.

Section 3. That this ordinance shall take effect and be in force on the thirtieth day from and after its final passage.

APPROVED: JANI I. GOLDSMITH, City Attorney

By   
Joan F. Dawson  
Deputy City Attorney

JFD:cm  
March 1, 2016  
Or.Dept: Human Resources  
Doc. No.: 1231855



I certify that this ordinance was passed by the Council of the City of San Diego, at this meeting of APR 05 2016.

ELIZABETH S. MALAND  
City Clerk

By   
Deputy City Clerk

Approved: 4/11/16  
(date)

  
KEVIN L. FAULCONER, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
KEVIN L. FAULCONER, Mayor

Passed by the Council of The City of San Diego on APR 05 2016, by the following vote:

Councilmembers	Yeas	Nays	Not Present	Recused
Sherr Lightner	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Lorie Zapf	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Todd Gloria	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Myrtle Cole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Mark Kersey	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Chris Cate	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Scott Sherman	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
David Alvarez	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marti Emerald	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Date of final passage APR 13 2016

AUTHENTICATED BY:

KEVIN L. FAULCONER  
Mayor of The City of San Diego, California.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Sty Brady, Deputy

I HEREBY CERTIFY that the foregoing ordinance was not finally passed until twelve calendar days had elapsed between the day of its introduction and the day of its final passage, to wit, on

MAR 22 2016, and on APR 13 2016.

I FURTHER CERTIFY that said ordinance was read in full prior to passage or that such reading was dispensed with by a vote of five members of the Council, and that a written copy of the ordinance was made available to each member of the Council and the public prior to the day of its passage.

(Seal)

ELIZABETH S. MALAND  
City Clerk of The City of San Diego, California.

By Sty Brady, Deputy

Office of the City Clerk, San Diego, California  
Ordinance Number O- 20636

**SIDE LETTER AGREEMENT  
BETWEEN THE  
CITY OF SAN DIEGO AND  
THE SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION  
RELATED TO PAYMENT OF INTEREST TO THE  
SAN DIEGO CITY EMPLOYEES' RETIREMENT SYSTEM**

Pursuant to the provisions of the Meyers-Milias-Brown Act (MMBA), this Side Letter Agreement (Agreement) is entered into between the City of San Diego (City) and the San Diego Municipal Employees Association (MEA) related to the payment of interest to the San Diego City Employees' Retirement System (SDCERS). The City and MEA are collectively referred to as the "Parties." The Parties have met and conferred in good faith in accordance with the MMBA and have reached the following Agreement:

- I. This Agreement modifies the terms and conditions of employment for employees represented by MEA as specified, and is intended to be read in conjunction with the Memoranda of Understanding (MOUs) covering the term July 1, 2013 to June 30, 2018, approved by the City Council by San Diego Resolution R-308481 (Oct. 15, 2013), and covering the term July 1, 2016 to June 30, 2020, approved by Resolution R-310148 (Dec. 16, 2015) (MOUs). This Agreement will hereafter be adopted by ordinance approved by two-thirds vote of the City Council in accordance with San Diego Charter sections 11.2 and 99.
- II. This Agreement is intended to resolve a dispute between the City and MEA related to MEA's ongoing demand for the City to pay interest charges arising from errors committed by SDCERS, as referenced in the Tolling Agreement executed by the City and MEA effective September 22, 2015, which is attached to this Agreement as Attachment A and incorporated by this reference. With the execution of this Agreement, MEA waives its right to file an unfair labor practice charge over the City's alleged failure and refusal to meet and confer before making a unilateral change in its policy and practice regarding the payment of interest charges associated with SDCERS's errors in plan administration.
- III. The City's obligation to indemnify MEA-represented employees in accordance with the provisions of this Agreement will take effect on the earlier of the following occurrences which will hereafter be called the "Occurrence Date": (1) upon the City Council's adoption of an ordinance to implement a Charter amendment authorizing the City to pay all or any portion of underpaid employee contributions to SDCERS or overpaid benefits by SDCERS, or interest payments related to such underpaid contributions or overpaid benefits; or (2) upon a final judgment entered by a court of competent jurisdiction, after the exhaustion of all appeals available to the parties, declaring Proposition B, including Charter section 141.2, to be unlawful or invalid as to MEA-represented employees.
- IV. This Agreement is intended to remain in effect until modified through further negotiations in accordance with the MMBA and City Council Policy 300-06. If no Occurrence Date triggers the obligations of this Agreement, and the Agreement has not otherwise been modified through negotiations, then the City and MEA will reopen negotiations on the subject matter of this Agreement.

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**March \_\_, 2016**

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V. Upon the Occurrence Date, the terms in this Section V will cover all MEA-represented employees who were on the City payroll or on an approved leave of absence from City employment on or after January 1, 2016. Such a covered employee will be deemed an Eligible Claimant under this Section V regardless of his or her status (e.g., active, separated, DROP, retired) at the time a claim arises.

### **A. Claim for Payment of Interest on Underpaid Contributions or Overpaid Benefits**

1. An Eligible Claimant who receives a notification from SDCERS, dated on or after January 1, 2016, that he or she has either underpaid a required employee contribution to SDCERS or been overpaid a benefit, as a result of an error by SDCERS or the City, may submit a claim to the City's Department of Human Resources (Department) for review. Any claim submitted before the Occurrence Date defined in Section III will be deemed denied.
2. The Eligible Claimant is solely responsible for paying the required employee contribution to correct the underpayment or for repaying the principal amount of the overpaid benefit. However, the City will indemnify the Eligible Claimant for any interest charges associated with the underpayment or overpayment correction, unless the City determines that the Eligible Claimant knew or should have known that he or she was underpaying contributions or being overpaid a benefit, or intentionally or willfully contributed to the error.
3. The City will request written notice from SDCERS regarding each such error notification and payment demand, and will assist MEA in identifying and notifying the affected Eligible Claimant.
4. To assist the City in processing a claim, the Eligible Claimant will furnish all information requested by the City. By written authorization, the Eligible Claimant will also allow the City to obtain in writing all relevant information from SDCERS and the City will provide the claimant with a copy of this information.
5. The City's denial of a claim filed by an Eligible Claimant, who is an active employee at the time the claim is made, may be adjudicated through the Grievance Procedure, set forth in Article 5 of the MOU. The City's denial of a claim filed by an Eligible Claimant, who is separated from City service or retired at the time the claim is made, is not subject to the Grievance Procedure; however, the Department will provide a written statement of reasons for denial of the claim with supporting documentation and an opportunity to be heard by the Department either alone or through a representative.

### **B. Claims Processing Timeline**

If and when the provisions of Section V, paragraph A above take effect, the City will expeditiously process claims dated from January 1, 2016 to the Occurrence Date, with the intent to resolve claims within sixty days of the Occurrence Date. For

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March \_\_, 2016

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claims filed after the Occurrence Date, the City will process and pay or deny claims within thirty days following City's receipt of an Eligible Claimant's claim.

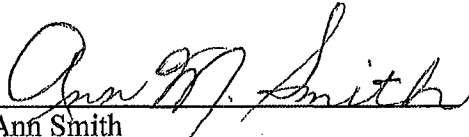
VI. The provisions of this Agreement do not limit or supersede any Eligible Claimant's right to challenge SDCERS's determination that an underpayment or overpayment has occurred or otherwise limit or supersede the Eligible Claimant's right to challenge, on any available legal or equitable ground, SDCERS's demand for payment of the principal amount claimed or any interest the City declines to pay.

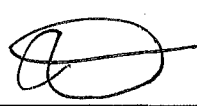
VII. Specific provisions in this Agreement supersede any previous agreements, whether oral or written, regarding the subject matter of this Agreement. However, all wages, hours, and other terms and conditions of employment presently enjoyed by SDMEA-represented employees, and in the MOU, remain in full force and effect.

**This Agreement is executed, by the following authorized representatives of each party:**

**San Diego Municipal Employees Association**

**City of San Diego**

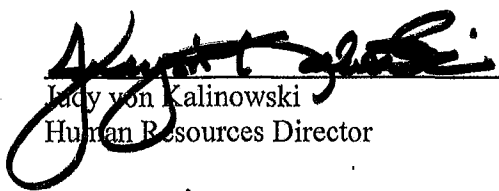
By:   
Ann Smith  
Lead Negotiator

By:   
Timothy Davis  
Lead Negotiator

Date: March 4, 2016

Date: 3-7-16

By:   
Michael Zucchet  
General Manager


  
Lucy von Kalinowski  
Human Resources Director

Date: 3/4/2016

Date: 3/7/16

Approved as to form this 26<sup>th</sup> day of July, 2016.

IAN I. GOLDSMITH, City Attorney

By:   
Joan F. Dawson  
Deputy City Attorney