



Office of the City Manager

CONSENT CALENDAR
June 22, 2010

To: Honorable Mayor and Members of the City Council
From: *PK* Phil Kamlarz, City Manager
Submitted by: David W. Hodgkins, Director of Human Resources
Subject: Side Letter of Agreement – Public Employees Union Local 1

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement Side Letters of Agreement with Public Employees Union Local 1 to mitigate the full effects of a reduction in force for the first 10 months of Fiscal Year 2011. The Side Letter of Agreement allows an employee to: 1) voluntarily take time off without pay or 2) to voluntarily reduce his or her work schedule to part time of not less than 85% time.

FISCAL IMPACTS OF RECOMMENDATION

The Fiscal Year 2011 Budget projects revenue shortfalls in several funds including, but not limited to, the General Fund and the Public Health Fund. There are 3.6 full time equivalent positions represented by Public Employees Union Local 1 that are currently vacant and will be eliminated as a result of adoption of the Budget. There are 7.95 full time equivalent positions that are filled and some of these positions will be eliminated by transferring the incumbent in those positions into a vacant position or demoting the incumbent to a lower classification through implementation of the Layoff Procedure. The elimination of the remainder of the filled positions would result in people being separated from employment with the City. The value of the filled positions scheduled for layoffs is approximately \$895,000 in all funds. In discussions with the City, the Union has identified several voluntary methods for Union employees to contribute savings to cover the costs of those positions for 10 months. The cost savings attributable to the voluntary contributions offered by employees represented by Public Employees Union Local 1 are approximately \$467,215 in all funds as follows:

Public Employees Union Local 1	
Reduced Percentage of Time Worked	\$123,267
Increased Voluntary Time Off Days	\$343,948
Total	\$467,215

CURRENT SITUATION AND ITS EFFECTS

The City Manager's proposed Fiscal Year 2011 Budget projected a revenue shortfall of \$16.2 million. The projected shortfall includes, but is not limited to, a \$6.5 million in the General Fund, \$3.9 million in the Refuse Fund, \$2.7 million in the Public Health Fund and \$1.7 million in the Permit Service Center Fund. One of the measures recommended to fill this shortfall is to eliminate 89.39 positions and as part of an effort to improve efficiency, add 11.92 positions. The proposed reduction in force is therefore an aggregate of 77.39 positions. Approximately 47 positions are vacant and approximately 30 of the positions are filled.

Under the City's Layoff Procedure, which is contained in each of the City's labor contracts, the City is obligated to provide at least thirty days advance notice of the City's intent to implement a reduction in force. Initial Layoff Notices were mailed to 79 temporary and career employees on May 14, 2010. The reason for sending over twice as many Layoff Notices than the number of filled positions being recommended for elimination is that an employee's entitlement to exercise retreat rights into positions in the same classifications in other departments or to a lower level classification in a classification series often results on several people being affected by the elimination of one position. It is not unusual for a cut of one filled position to generate three separate Layoff Notices.

Representatives of the City, including the City Manager, have met with representatives of Public Employees Union Local 1 in an effort to reach an agreement on voluntary actions employees could take to eliminate the need for the implementation of a reduction in force that results in career employees being terminated from employment. The parties have reached tentative agreement on several voluntary actions that will eliminate the need to terminate employees for the first ten months of Fiscal Year 2011. The City agreed not to require the Union come up with Fund specific savings. The City agreed to absorb those Fund specific impacts for the 10 month period. This reflects the parameters of the Agreement reached with SEIU Local 1021.

BACKGROUND

Public Employees Union Local 1 represents approximately 154 employees in the regular career service. The City Manager's proposed budget recommends elimination of approximately 11.55 Full Time Equivalent position represented by Public Employees Union Local 1 of which 7.95 Full Time Equivalent positions are filled and 3.60 Full Time Equivalent positions are vacant. All of the reductions are in the Public Health Division of the Health Department. The affect of the layoffs has resulted in a mutual desire on the part of the City and the union to discuss alternatives to reduce costs to mitigate the necessity of having employees being laid off and being terminated from employment.

The City and the Union began discussions in early May and discussions extended into early June. As a result of these meetings, the City and the Union have been able to reach a tentative agreement on a Side Letter of Agreement on specific voluntary

methods individual employees could take to mitigate the effects of the implementation of the Layoff Procedure. The specific components of the Side Letter are as follows:

Reduced Work Schedule: An employee would voluntarily reduce his or her work schedule from 100% to 95%, 90% or 85%. Seniority and leave accruals would be prorated for an employee working a less than full time schedule. An employee would continue to have full medical and dental coverage based on the provisions of Section 35.1 and 35.2 of the Memorandum of Understanding.

Voluntary Time Off Without Pay: An employee will agree to take a pre-designated number of VTO Days off without pay during Fiscal Year 2011. These pre-designated VTO Days are in addition to the number of VTO Days the employee has taken without pay in Fiscal Year 2010. This will be administered by closing non-essential City services and offices to the general public as follows: July 9, 23 and 30, 2010; August 13 and 27, 2010; September 10 and 24, 2010; October 8 and 22, 2010; November 12 and 24, 2010; December 10, 23, 27, 28, 29, and 30, 2010; January 14 and 28, 2011; February 10 and 25, 2011; March 11 and 25, 2011; April 8 and 22, 2011; May 13 and 27, 2011; June 10 and 24, 2011, for a total of 29 VTO Days.

RATIONALE FOR RECOMMENDATION

The purpose of the agreement with Public Employees Union Local 1 is to continue to deliver important public services to the citizens of Berkeley and to avoid, for almost one year, the necessity of terminating the employment of employees represented by Public Employees Union Local 1.

ALTERNATIVE ACTIONS CONSIDERED

The alternative is to administer the Layoff Procedure set forth in the labor contracts with a result that approximately 5 employees represented by Public Employees Union Local 1 would be terminated from employment on June 26, 2010 and 2 employees demoted to lower level classifications.

CONTACT PERSON

David W. Hodgkins, Director of Human Resources, 981-6805

Attachments:

1: Resolution

Exhibit A: Side Letter of Agreement between the City of Berkeley and Public Employees Union Local 1

RESOLUTION NO. ##,###-N.S.

Side Letter of Agreement – Public Employees Union Local 1

WHEREAS, on May 4, 2010, the City Manager presented his Fiscal year 2011 Budget that projected a \$16.2 million shortfall in City revenue for the new fiscal year including a gap of approximately \$6.2 million in the General Fund; and

WHEREAS, in order to reduce the shortfall and balance the City's Fiscal Year 2011 Budget the City manager has proposed eliminating an aggregate of 77.39 positions Citywide of which 24 positions are funded by the General Fund; and

WHEREAS, of the 77.31 positions to be eliminated, Public Employees Union Local 1 represent 11.55 of the positions of which 7.95 FTE positions are filled and 3.60 FTE positions are vacant; and

WHEREAS, the City Manager and staff have met with representatives of Public Employees Union Local 1 in an effort to discuss a variety of alternative actions to avoid layoffs that result in permanent career employees being terminated from employment in Fiscal Year 2011; and

WHEREAS, representatives of Public Employees Union Local 1 expressed an intent not to reopen the existing Memorandum of Understanding that is in effect until June 23, 2012 and rejected any attempts to negotiate permanent changes to wages, hours and other terms and conditions of employment.

WHEREAS, representatives of the City and the Public Employees Union Local 1 have met and have reached tentative agreement on several voluntary methods of reducing costs in Fiscal Year 2011 which will avoid the necessity to implement layoffs that result in employees being terminated from employment, the terms of which are set forth in a Side Letter of Agreement that are included as Exhibit "A" to this resolution and made a part hereof.

NOW THEREFORE, BE IT RESOLVED by the Council of the City of Berkeley that the City Manager is authorized to execute and implement a Side Letter of Agreement with Public Employees Union Local 1 that assures the continuation of critical public services, and protects, to the fullest extent possible, the positions, wages, hours, and terms and conditions of employment of City employees represented by the Union for the first 10 months of Fiscal Year 2011.

BE IT FURTHER RESOLVED, that the Council of the City of Berkeley authorizes the City Manager to implement a program of "Save Pay" in Fiscal Year 2011 whereby an employee demoted as a result of implementation of the Layoff Procedure retains the salary of the classification from which the employee is demoted for a period of one year.

Exhibits

A: Side Letter of Agreement between the City of Berkeley and Public Employees Union
Local 1

**SIDE LETTER AGREEMENT
BETWEEN THE CITY OF BERKELEY AND
PUBLIC EMPLOYEES UNION - LOCAL ONE**

The parties to this Side Letter Agreement are the City of Berkeley (the "City"), and Public Employees Union, Local One (the "Union").

This Agreement is the result of discussions between the parties which began because the City notified the Union of increasing budgetary difficulties which would negatively affect the delivery of services to the citizens of the City and, as well, would result in the layoffs of employees represented by the Union. The parties have conferred and consulted with one another concerning these difficulties, and have entered into this Side Letter Agreement in a good faith effort to deal with these difficulties, in order to assure the continuation of critical public services, and as well, to protect, to the fullest extent possible, the positions, wages, hours, and terms and conditions of employment of City employees represented by the Union.

This Side Letter Agreement ("Agreement") runs parallel to, and is an integral part of the existing Memorandum of Understanding ("MOU") now in effect between the City and Public Employees Union Local One, which covers the period of June 29, 2008 through June 23, 2012 ("the MOU"). The terms of this Agreement shall be effective for one year only, from July 1, 2010 through June 30, 2011.

In consideration of the foregoing, the parties agree as follows:

1. Reduction to Part Time Status

The bargaining unit employees in Attachment A, which is incorporated by reference herein, shall have their employment status changed and reduced from full time to part time status at the percentages (i.e., 85%, 90% or 95%) indicated in Attachment A. The City will generate for each of the employees identified in Attachment A an Employee Transaction Form reducing each employee's employment status from full time to the percentage indicated in Attachment A and said employees' salaries will be reduced accordingly and leave accruals prorated, for the period from June 27, 2010 through June 25, 2011. Per Section 35.1 of the MOU, the City will pay these employees' medical plan coverage at the rate they would have received if they were still full time employees.

The Union agrees to deliver to the City by close of business June 21, 2010 signed agreements from each of the bargaining unit employees listed in Attachment A agreeing to the part-time status.

2. Voluntary Time Off (VTO)

The bargaining unit employees listed in Attachment B, which is incorporated by reference herein, shall reduce their salary in Fiscal Year 2011 by not working on a set number of VTO Fridays and/or any other VTO day established by the City

(collectively "VTO Days") and taking the 8 hours off as leave without pay. Attachment B contains the names of bargaining unit employees who will participate in this budget reduction plan and the specific number of 8 hour VTO Days each employee is agreeing to take without pay. The Union has represented to City that implementing the provisions of this paragraph will provide salary savings to the City that may avoid the necessity to layoff bargaining unit employees. This provision is only effective, however, if the bargaining unit employees in Attachment B agree to take the VTO Days as 8 hours of leave without pay. Thus, to ensure that the City will have salary savings from this provision, the Union agrees to deliver to the City by close of business June 21, 2010 signed agreements from each of the bargaining unit employees listed in Attachment B that identifies the specific number of VTO Days each employee will take as 8 hours of leave without pay.

The City agrees that the following dates will be VTO Days in Fiscal Year 2011: July 9, 23 and 30, 2010; August 13 and 27, 2010; September 10 and 24, 2010; October 8 and 22, 2010; November 12 and 24, 2010; December 10, 23, 27, 28, 29, and 30, 2010; January 14 and 28, 2011; February 10 and 25, 2011; March 11 and 25, 2011; April 8 and 22, 2011; May 13 and 27, 2011; June 10 and 24, 2011, for a total of 29 VTO Days.

The parties agree that the terms of each individual bargaining unit employee's agreement to take a set number of VTO Days as 8 hours of leave without pay are incorporated herein and shall be fully enforceable as though set forth in this Agreement. The Union further agrees that, in the event a bargaining unit employee identified in Attachment B after signing said agreement, refuses to take the set number of VTO Days off without pay, the City shall have the right to require said employee to take the VTO Days off, as agreed to in the bargaining unit employee's individual agreement.

The Employees in Attachment B will continue to accrue City provided benefits, such as, sick and vacation leave, health, dental and SRIP benefits, at the same rate provided to full time employees.

3. Waiver of Rights

In consideration of the terms of this Agreement, the Union agrees that it shall not file any grievance or compel arbitration under the Memorandum of Understanding, file an administrative charge, with PERB or any other agency, claim, lawsuit or any other legal process, on behalf of the Union or any of the bargaining unit employees identified in Attachments A or B because the City has required said employees to comply with any aspect of this Agreement and/or required said employees to comply with any aspect of the individual agreements entered into by these bargaining unit employees.

4. No Layoff of Bargaining Unit Employees

The City agrees that for the period from July 1, 2010 through April 30, 2011, in consideration for the terms of this Agreement, no bargaining unit employee represented by Public Employees Union, Local One in any of its respective

bargaining units shall be released from employment due to a lack of work or lack of funds, or as a consequence of the budgetary difficulties affecting the City and its programs. This Agreement in no way alters the City's rights to reject a bargaining unit employee from probation, or to demote, suspend or terminate a bargaining unit employee per Sections 50 of the MOU.

5. **Non-Precedential**

This Agreement is non-precedent setting and is limited to the fiscal year 2010-2011. To that end, it is specifically agreed by and between the City and Public Employees Union, Local One, that this proposal shall not be extended, nor shall it have any force or effect beyond the fiscal year 2010-2011, except by express mutual written agreement.

WHEREFORE, the parties by and through their authorized agents and representatives agree to the terms of this Side Letter Agreement subject to the adoption or ratification of this Agreement by the City Council of the City of Berkeley.

Dated: _____, 2010 CITY OF BERKELEY:

BY: _____

Dated: _____, 2010 PUBLIC EMPLOYEES UNION, LOCAL ONE

BY: _____

BY: _____