

**LETTER OF AGREEMENT #1
BETWEEN THE CITY OF STOCKTON AND
THE TRADES AND MAINTENANCE UNIT
Amendment to the July 1, 2012 - June 30, 2013 MOU**

RECITALS

This Letter of Agreement (LOA) has been jointly prepared by the designated representatives of the City of Stockton (City), a public agency within the meaning of section 3501(c) of the Government Code of the State of California, and the designated representatives of the Trades and Maintenance Unit, represented by Operating Engineers' Local 3, AFL-CIO, to modify the Memorandum of Understanding between the City and Trades and Maintenance Unit for the period ending June 30, 2013 (MOU) as follows:

WHEREAS, under the parties' prior MOU effective July 1, 2010 through June 30, 2012 (prior MOU section 14.5), employees hired on or after July 1, 2010 were eligible to receive retiree medical benefits to be provided through a Voluntary Employee Benefits Association (VEBA) trust;

WHEREAS, prior MOU section 14.5 provided for an employer contribution equal to 2% of base salary and also provided for employee contributions equal to 3% of base salary; employer contributions were eliminated effective July 1, 2011 and employee contributions were deducted pre-tax from July 1, 2010 through approximately July 15, 2011;

WHEREAS, pursuant to the advice from the City's benefits counsel that until the City obtained a letter ruling from the Internal Revenue Service that the employee contributions were not taxable it should treat them as after-tax contributions, employee contributions were deducted after withholding applicable employment taxes from approximately July 16, 2011 through June 30, 2012;

WHEREAS, employer and employee contributions were held in an escrow account pending the establishment of a qualified VEBA vehicle for contributions, and as

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of June 30, 2012, employer and employee contributions had not been transferred to a VEBA; and

WHEREAS, the parties agreed to eliminate section 14.5 in the MOU effective July 1, 2012 through June 30, 2013.

AGREEMENT

NOW THEREFORE, based on the foregoing and on the City's current financial condition, the City and Trades and Maintenance Unit, after meeting and conferring in good faith under section 3505 of the Government Code of the State of California, have agreed that the contributions which would have been made to the VEBA should accrue to the benefit of the impacted bargaining unit employees. Therefore, the parties agree as follows:

1. Employer Contributions. In conjunction with the elimination of prior MOU section 14.5, the City shall, as soon as practicable, transfer all employer contributions made pursuant to prior MOU section 14.5 to Health Reimbursement Accounts (HRAs) established for the benefit of each affected bargaining unit member.

a. If any members eligible for employer contributions left City employment on or before June 30, 2012, the employer contribution associated with those individuals shall be paid to those individuals, less any appropriate tax withholdings.

2. Employee Contributions. Employee contributions deducted from individual employee paychecks during the period from July 1, 2010 through June 30, 2012 will be paid to the individual members, including any members who have left City employment.

a. For deductions which were made pre-tax, Trades and Maintenance acknowledges and agrees that this will result in a net increase in the employees' taxable wages for 2012 and may result in increased income tax liability. The City will report the amount of the lump sum distribution representing pre-tax contributions as the employee's wages and withhold all appropriate taxes before

making the lump sum distribution. The lump sum distribution and appropriate withholdings will be reflected on each member's 2012 Form W-2.

b. Deductions that were made on an after-tax basis will also be included in the lump sum but these will not be reported as the employee's wages nor will any taxes be withheld on these amounts.

3. The parties understand that the refund of contributions could create tax liability on behalf of both employees and the City and agree that each should bear their own tax liability. On behalf of itself and its members, Trades and Maintenance waives any cause of action based on City conduct regarding the tax treatment of the would-be contributions or benefits under prior MOU section 14.5 and releases the City from any liability or potential liability resulting therefrom.

4. In consideration for this agreement and for transferring the employer contributions to HRAs for individual bargaining unit members (or for providing the employer contribution to former bargaining unit members who have left City employment), Trades and Maintenance agrees that payments to current or former bargaining unit members shall be distributed in a lump sum only upon execution by the member of a waiver releasing the City from liability for (a) any conduct regarding the tax treatment of the would-be employee contributions or benefits under prior MOU section 14.5; and (b) any and all rights to receive any payment from a VEBA for retiree medical benefits upon retirement for the member and dependents. Sample employee waiver forms are included in Attachments A , B and C.

IN WITNESS WHEREOF, this Letter of Agreement was agreed to by Operating Engineers' Local 3, AFL, CIO representing Trades and Maintenance on July
12, 2012, and affirmed by an affirmative vote of the Stockton City Council on October 23, 2012, and is effective on this date first set forth above.

Operating Engineers Local No. 3

By: Joe Santella
JOE SANTELLA
Senior Business Representative

CITY OF STOCKTON, a Municipal Corporation

By: Bob Deis
BOB DEIS
City Manager

By: Teresa Haase
TERESIA HAASE
Director of Human Resources

ATTEST:

By: Bonnie Page
BONNIE PAGE
City Clerk



APPROVED AS TO FORM:

By: John Luebberke
JOHN LUEBBERKE
City Attorney

**For Operating Engineers Local Union No. 3
of the International Union of Operating Engineers, AFL-CIO**

Russ E Burns

Russ Burns
Business Manager

12/18/12

Date

Fred S. Herschbach

Fred Herschbach
President

12-18-12

Date

Carl Goff

Carl Goff
Vice-President

12-18-12

Date

James K. Sullivan

James K. Sullivan
Recording-Corresponding Secretary

12-18-12

Date

Carl D. Carey

Carl D. Carey
Director, Public Employees Division

12-17-12

Date