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City of South Gate

Item No. 5

CITY COUNCIL

JUL 18 2018

CITY OF SOUTH GATE
OFFICE OF THE CITY MANAGER

4:55pm

AGENDA BILL

For the Regular Meeting of: July 24, 2018

Originating Department: Administrative Services

Department Director:

Jackie Acosta
Jackie Acosta

City Manager:

Michael Flad
Michael Flad

SUBJECT: AMENDMENT NO. 2 TO CONTRACT NO. 3395 WITH THE SOUTH GATE PROFESSIONAL AND MID-MANAGEMENT ASSOCIATION

PURPOSE: To approve an Amendment to the South Gate Professional and Mid-Management Association (“SGPMMA”) Agreement regarding Fair Labor Standards Act (FLSA) implementation issues.

RECOMMENDED ACTIONS:

- a. Approve Amendment No. 2 to Contract No. 3395 with the South Gate Professional and Mid-Management Association regarding Fair Labor Standards Act implementation issues; and
- b. Authorize the Mayor to execute the Amendment No. 2 in a form acceptable to the City Attorney.

FISCAL IMPACT: None.

ANALYSIS: As a result of the study regarding whether classifications within the SGPMMA bargaining unit should be classified as exempt or non-exempt for purposes of the FLSA, several classifications were changed from exempt status to non-exempt status. This has prompted the need to address certain leave benefits presently contained in the SGPMMA MOU.

BACKGROUND: In 2017, a study was conducted by an outside consultant to review the job specifications and work assignments of the SGPMMA classifications to determine if they should be classified as exempt or non-exempt under the FLSA. Previously, all SGPMMA positions had been classified as exempt from the FLSA. As a result of the study, several classifications were changed from exempt status to non-exempt status. This has prompted the need to address certain leave benefits presently contained in the SGPMMA MOU. Currently, SGPMMA members receive 60 hours of administrative leave each fiscal year, as well as the ability to accrue special administrative leave under certain conditions of a significant amount of extra hours being worked. These leaves were previously negotiated to compensate exempt employees for attendance at evening and off-time meetings and events as positions classified as exempt were not eligible to receive overtime pay under the FLSA. However, now that certain positions have been reclassified to be non-exempt, employees in those positions are entitled to overtime pay for hours worked in excess of 40 hours in a workweek and should not be receiving both overtime pay and administrative leave and/or special administrative leave.

Members of the City’s negotiating team and the SGPMMA board met to discuss this issue and have come to the following compromise. Effective July 1, 2018, SGPMMA members whose positions are

classified as non-exempt, will receive only 20 hours of administrative leave for each of the next two fiscal years (2018/19 and 2019/20) and after that will no longer be eligible to receive any administrative and/or special administrative leave.

Staff appreciates the SGPMMA's negotiating team's efforts to satisfactorily resolve this issue.

ATTACHMENT: Proposed Amendment No. 2



Amendment No. 2 to Contract No. 3395
Pursuant to California Government Code Section 3505.1
Between
The City of South Gate and
The South Gate Professional and Mid-Management Association
Represented by Service Employees International Union Local 721

This Amendment No. 2 to Contract No. 3395 (“Amendment No. 2”) between the City of South Gate (“City”) and the South Gate Professional and Mid-Management Association (“SGPMMA”) represented by Service Employees International Union Local 721 (“Union”) (collectively referred to as the “Parties”) is entered into with respect to the following and on the terms stated herein.

RECITALS

WHEREAS, the Parties entered into a previous Memorandum of Understanding, Contract No. 3085, dated February 23, 2015, for the term July 1, 2014 through June 30, 2015 (“SGPMMA MOU”), representing the most recent Memorandum of Understanding between the Parties;

WHEREAS, the Parties entered into a Side Letter of Agreement dated February 23, 2015, stating that the Parties “agree to continue to meet and discuss FLSA-related subjects as they pertain to PMMA;”

WHEREAS, the Parties entered into an Amendment No. 1 to the SGPMMA MOU dated February 9, 2016, extending the term of the SGPMMA MOU through June 30, 2017, among other negotiated items;

WHEREAS, on June 26, 2017, the Parties commenced labor negotiations, including exchanging proposals and meeting and conferring towards reaching agreement on a successor SGPMMA MOU;

WHEREAS, the SGPMMA MOU expired at midnight on June 30, 2017 by its own terms;

WHEREAS, the Parties reached a Tentative Agreement (Contract No. 3395) on the deal points for a successor SGPMMA MOU covering the term July 1, 2017 through June 30, 2020, and providing that all terms and conditions of the SGPMMA MOU (Contract No. 3085) and its

Amendment No. 1 thereto not otherwise addressed in the Tentative Agreement shall be maintained unless expressly modified by the Parties until a successor SGPMMA MOU is approved by City Council, with the Union ratifying the Tentative Agreement on November 27, 2017, and the City Council approving the Tentative Agreement on November 28, 2017;

WHEREAS, after the parties ratified and signed the Tentative Agreement (Contract No. 3395), the City Council offered an additional term, which was accepted by the SGPMMA, and thus resulted in the City Council approving an Amended and Restated Tentative Agreement (Amendment No. 1 to Contract No. 3395) on December 12, 2017;

WHEREAS, the Amended and Restated Tentative Agreement provides that the Parties “agree to a reopener to discuss the implementation of the change from exempt status to non-exempt status for affected SGPMMA members, including but not limited to, related issues of overtime calculations and right to administrative leave for the affected employees;”

WHEREAS, pending drafting and adoption of the successor SGPMMA MOU, the Parties continued to meet and confer and have reached a tentative agreement regarding the implementation of the change from exempt status to non-exempt status for affected SGPMMA members, including but not limited to, related issues of overtime calculations and right to administrative leave for the affected employees;”

WHEREAS, the Parties seek to have this Amendment No. 2 memorialize their tentative agreement regarding the implementation of the change from exempt status to non-exempt status for affected SGPMMA-represented employees pending drafting and adoption of the successor SGPMMA MOU, which shall supersede and replace this Amendment No. 2;

WHEREAS, this Amendment No. 2 shall not become effective until accepted, approved, and adopted by the South Gate City Council per California Government Code Section 3505.1.

NOW, THEREFORE, and in consideration for the promises, waivers and releases contained herein, the Parties agree as follows:

TERMS

1. All of the recitals listed above are material provisions of this Amendment No. 2 and are deemed true by the Parties and incorporated herein by this reference.

2. The City has changed the overtime exemption status under the federal Fair Labor Standards Act of 1938, as amended (“FLSA”), of certain bargaining unit positions from “exempt” to “non-exempt” in accordance with a recent outside FLSA audit done by the City.

3. In order to facilitate and ease the change in affected employee working conditions, the Parties have agreed to the following guidelines for any SGPMMA-represented employees whom the City changes their FLSA designation from overtime exempt to overtime

non-exempt, which are intended to be incorporated into the successor SGPMMA MOU, which shall supersede and replace this Amendment No. 2:

- A. **Overtime Definition:** Overtime means any time worked which exceeds 40 hours in a workweek. Paid time off shall be included in calculating the 40 hours.
- B. **Authorization of overtime:** Non-exempt employees should not work on an overtime basis without prior authorization. In the event that circumstances prevent obtaining the prior authorization, non-exempt employees shall notify their Director as soon as practical.
- C. **Qualifying work:** Non-exempt employees performing work on an overtime basis may provide such services using various means. Non-exempt employees may report to a City facility, but may also perform services off-site, depending on the circumstances, if approved by their Director. A non-exempt employee who provides off-duty service as pre-approved by their Director in response to a phone, e-mail or text request, shall record the actual time spent handling the call, e-mail or text and shall report that time, in increments of 15 minutes, as time worked in their workweek.
- D. **Compensatory time:** Overtime work is compensated at one and one-half times (1.5x) the non-exempt employee's regular rate as defined by the FLSA. Non-exempt employees may elect to receive payment for overtime work in the form of compensatory time off in lieu of the overtime cash payment. Employees may accrue up to 160 hours of compensatory time during the fiscal year but the balance will be automatically cashed out in the last pay period in June each year.
- E. **Administrative Leave:** SGPMMA bargaining unit employees who are designated non-exempt by the City under the FLSA will not be eligible to receive the administrative leave or special administrative leave as currently specified in the SGPMMA MOU starting effective July 1, 2018. Such non-exempt employees will instead be eligible to receive both overtime pay as described above and administrative leave of 20 hours per fiscal year for two fiscal years (FYs 2018/19 and 2019/20), after which time the right to accrue further administrative leave and/or special administrative leave shall permanently expire.

By their signatures below, the Parties' lawful representatives acknowledge the contents herein and that this Amendment No. 2 is entered into the 24th day of July, 2018.

CITY OF SOUTH GATE:

**SOUTH GATE PROFESSIONAL AND
MID-MANAGEMENT ASSOCIATION**

María Belén Bernal, Mayor

Osie Harrell, President

ATTEST:

Carmen Avalos, City Clerk
(SEAL)

Johanna Monterroza, Vice-President

APPROVED AS TO FORM:
DRAFT

Raul F. Salinas, City Attorney

Robert Hunt,
SGPMMA's Outside Labor Counsel

CITY'S LABOR NEGOTIATORS:



Jackie Acosta, Director of Administrative Services

Nellie Cobos, Deputy Director of Admin. Svcs./HR & RM

Collin Tanner, City's Outside Labor Counsel

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