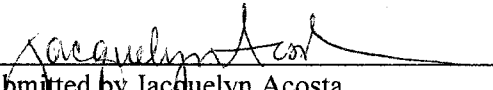


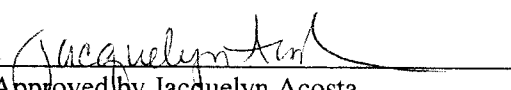


City of Carson Report to Mayor and City Council

December 17, 2013
New Business Consent

SUBJECT: REQUEST TO APPROVE A GRIEVANCE SETTLEMENT AGREEMENT BETWEEN THE CITY OF CARSON AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) UNION, COUNCIL 36, LOCAL 809, FOR THE UNCLASSIFIED PART-TIME EMPLOYEES BARGAINING UNIT OF THE CITY OF CARSON


Submitted by Jacquelyn Acosta
Acting City Manager


Approved by Jacquelyn Acosta
Acting City Manager

I. SUMMARY

In May 2013, a dispute arose between the City and the American Federation of State, County and Municipal Employees (AFSCME) Union, Council 36, Local 809 for the Unclassified Part-Time Employees Bargaining Unit regarding the union's entitlement to certain FY 2012/13 salary increases. As required by State law, the City's negotiating team met and conferred in good faith with representatives of AFSCME in an attempt to resolve this dispute. As a result of those meetings, the City and AFSCME have reached a settlement agreement which, if approved by the City Council, would serve to resolve this dispute to the satisfaction of both parties. Therefore, staff is presenting the settlement agreement to the City Council for their approval. (Exhibit No. 1)

II. RECOMMENDATION

APPROVE THE GRIEVANCE SETTLEMENT AGREEMENT BETWEEN THE CITY OF CARSON AND THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME) UNION, COUNCIL 36, LOCAL 809, FOR THE UNCLASSIFIED PART-TIME EMPLOYEES BARGAINING UNIT OF THE CITY OF CARSON.

III. ALTERNATIVES

None, this settlement agreement was successfully negotiated at the direction of the City Council.

IV. BACKGROUND

In May 2013, a dispute arose between the City and the American Federation of State, County and Municipal Employees, (AFSCME) Union, Council 36, Local 809 for the Unclassified Part-Time Employees Bargaining Unit regarding the union's entitlement to certain FY 2012/13 salary increases, which included a Cost of Living Adjustment (COLA) and an amendment of their salary ranges that would add an additional step increase from E to F.

The City and AFSCME mutually agreed to open a dialog over the disputed COLA and salary range amendment for FY 2012/13, which resulted from differing interpretations of certain conditional language contained in the July 1, 2010, through June 30, 2013, AFSCME PT MOU.

As required by State law, the City's negotiating team met and conferred in good faith with representatives of AFSCME in an attempt to resolve this dispute. With the expressed intent of avoiding a PERB violation charge from AFSCME, staff remained committed to resolving this dispute at the administrative level. As a result of those meetings, the City and AFSCME have reached a settlement agreement which, if formally approved by the City Council, would serve to resolve this dispute to the satisfaction of both parties. The mutual settlement agreement will amend the Unclassified Part-Time Represented Employees salary ranges by adding the additional step increase from E to F effective retroactively to January 1, 2013.

Staff would like to acknowledge and thank the AFSCME negotiating team for agreeing to reopen the dialog and finding a compromise that resolved the dispute over the interpretation of language contained in the MOU as well as the cooperative and courteous manner in which all meet and confer sessions were conducted. Staff would also like to thank all AFSCME unclassified part-time employees for ratifying the settlement agreement.

V. FISCAL IMPACT

Funds for this item were not included in the FY 2013/14 budget; therefore, if the settlement agreement is approved, the budget will need to be increased by \$79,000. Funds should be appropriated from the unallocated general fund. The current balance of the unallocated general fund is \$16,516,859.

VI. EXHIBITS

1. Grievance Settlement Agreement (pgs. 4-9)

Prepared by: Elvia Parra, Acting Human Resources Officer

Document I

TO: Rev10-14-2013

Reviewed by:

City Clerk	City Treasurer
Administrative Services	Public Works
Community Development	Community Services

Action taken by City Council

Date _____ Action _____

GRIEVANCE SETTLEMENT AGREEMENT

BETWEEN THE

CITY OF CARSON

AND

**THE AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES
(AFSCME) UNION, COUNCIL 36, LOCAL 809 FOR THE UNCLASSIFIED PART-TIME
EMPLOYEES BARGAINING UNIT OF THE CITY OF CARSON**

(DECEMBER, 2013)

**GRIEVANCE SETTLEMENT AGREEMENT BETWEEN THE CITY OF CARSON AND
AFSCME LOCAL 809 FOR THE UNCLASSIFIED PART-TIME EMPLOYEES
BARGAINING UNIT OF THE CITY OF CARSON**

The American Federation of State, County and Municipal Employees, Local 809 (hereinafter "AFSCME"), is the recognized employee organization for employees in the "Unclassified Part-Time" bargaining unit of representation (hereinafter "Unit") in the City of Carson (hereinafter "City"). The City's grievance procedure for part-time employees represented by AFSCME is governed by Article VI of the recently expired Memorandum of Understanding between the City of Carson and AFSCME for the Unclassified Part-Time Employees Bargaining Unit of the City of Carson (Effective July 1, 2010 Through June 30, 2013) ("AFSCME PT MOU"). Representatives of AFSCME contacted the City prior to expiration of the AFSCME PT MOU regarding their complaint that the City violated the AFSCME PT MOU when the City failed to provide employees in the AFSCME part-time bargaining unit with a Cost of Living Adjustment (hereinafter "COLA") for FY 2012/13 and failed to provide an additional Step F within represented employee salary ranges as per the express terms of Article II of the AFSCME PT MOU. The City asserted that the financial pre-conditions required for the COLA and Step F implementation were not satisfied.

While each party maintains that their respective position has merit, in the interest of promoting harmonious labor relations between the parties and to avoid the uncertainty, inconvenience, and expense of potential litigation, this Grievance Settlement Agreement (hereinafter "Agreement"), hereby means to fully and finally address any and all claims related to the Grievance, including any disputes between them related to compensation set forth in the now expired AFSCME PT MOU, and any damages resulting from any of these claims or disputes. This Agreement does not constitute an admission of wrongdoing of any kind, including any alleged violation of state or federal statute or of any local ordinance, resolution, rule, regulation or policy, or any liability whatsoever on the part of the parties hereto. This Agreement represents a full and complete resolution of the claims and disputes between the parties which are hereby resolved, waived and forever released.

In consideration of the promises made herein, the parties shall promptly take the following actions within two pay periods following City Council approval of this Agreement:

- A. City shall implement the additional Step F as outlined in the AFSCME PT MOU effective January 1, 2013 for all represented employees covered by the AFSCME PT MOU who remain employed by the City at the time this Agreement is formally adopted by resolution of the City Council;
- B. City shall also implement the following evaluation and review process for implementation of Step F for all represented employees covered by the AFSCME PT MOU who remain employed by the City at the time this Agreement is formally adopted by resolution of the City Council:



1. For represented part-time employees who have reached the required hours for a Step F increase on or after January 1, 2013, the City will review their personnel files for a performance evaluation done for the one year period preceding their eligibility for the Step F increase, but in no event earlier than January 1, 2012 and then use that performance evaluation for the required satisfactory performance, attendance and/or punctuality determination which is a pre-condition to receiving a step advance.
 2. For represented part-time employees who do not have current evaluations as defined immediately above, the employee's supervisor shall have forty-five (45) days to file a performance evaluation for the preceding one year period. Failure to meet this deadline shall waive the City's right to object to the Step F increase on the basis of satisfactory performance, attendance, or punctuality.
 3. For represented part-time employees who are rejected for a Step F increase based upon a newly created evaluation as defined immediately above, the employee may request review by a special review panel to be comprised of one employee panel member selected by the City, one employee panel member selected by the Union, and one employee panel member selected by the other two panel members. A majority vote of the panel shall be final and binding as to whether the employee shall be denied the Step F increase on the basis of eligibility, satisfactory performance, attendance, or punctuality.
 4. A represented part-time employee denied a Step F increase who meets the hours eligibility requirement but was denied on the basis of satisfactory performance, attendance, or punctuality, shall be entitled to request a new performance evaluation after ninety (90) days from the initial denial date and every ninety (90) days thereafter. The review panel process above shall not apply to consideration of Step F increase for anyone becoming eligible more than forty-five (45) days after City Council approval of this Agreement or to any ninety (90) day reconsideration of such Step F increases. In those instances, represented employees are limited to the Grievance process.
- C. AFSCME formally withdraws with prejudice its Grievance;
- D. AFSCME agrees to withdraw and/or waive any third party complaints, claims or charges filed against the City, including but not limited to the civil courts, the Public Employment Relations Board, the Department of Fair Employment and Housing or the Equal Employment Opportunity Commission, relating to the Grievance, including any disputes between the parties related to COLA and Step F compensation set forth in the now expired AFSCME PT MOU.



In exchange for the consideration provided for herein, AFSCME, on behalf of itself and its represented employees, and where applicable, on behalf of their spouses, heirs, representatives, successors, and assigns, hereby release, acquit, and forever discharge the City, and each of its predecessors, successors, assigns, officials, employees, representatives, agents, insurers, attorneys, and all persons and entities acting by, through, under, or in concert with any of them, and each of them (hereinafter collectively referred to as the "CITY PARTIES"), from any and all claims, charges, complaints, contracts, understandings, liabilities, obligations, promises, benefits, agreements, controversies, costs, losses, debts, expenses, damages, actions, causes of action, suits, rights, and demands of any nature whatsoever, known or unknown, suspected or unsuspected, which each now has or may acquire in the future, or which they ever had, relating to or arising out of any act, omission, occurrence, condition, event, transaction, or thing which was done, omitted to be done, occurred or was in effect **relating to the Grievance, including any disputes between them related to COLA and Step F compensation set forth in the now expired AFSCME PT MOU**, and any damages resulting from any of these matters, from the beginning of time up to and including the date of execution of this Agreement (hereinafter referred to collectively as "CLAIMS").

The releases set forth above are general releases of all claims, demands, causes of action, obligations, damages, and liabilities related to the Grievance **as described herein** and are intended to encompass all known and unknown, foreseen and unforeseen claims that AFSCME and its represented employees may have against the CITY PARTIES, or any of them related to the Grievance as described herein; provided, however, that nothing contained herein shall purport to waive or otherwise affect any parties rights or claims that may arise after they have signed this Agreement, or to waive or release any claims which may not be released pursuant to applicable law. The undersigned represent that they are authorized to execute this Agreement on behalf of their principals, themselves and/or their represented employees.

In relation to the release provisions above, AFSCME understands that California Civil Code section 1542 reads as follows:

"General Release--Claims Extinguished"

"A general release does not extend to claims which the creditor does not know or suspect to exist in his/her favor at the time of executing the release, which if known by him/her must have materially affected his/her settlement with the debtor."

AFSCME, being aware of section 1542, hereby expressly waives any and all rights that it may have thereunder, as well as under any other statute or common law principles of similar effect under the laws of any state or the United States. This Agreement shall act as a general release of all claims relating to the Grievance, including any disputes between the parties related to COLA and Step F compensation set forth in the now expired AFSCME PT MOU, whether such claims are currently known or unknown, foreseen or unforeseen including, without limitation, any claims for damages resulting from any acts or omissions which occurred on or before the date of this Agreement related to



the Grievance as described herein. Thus, notwithstanding the provisions of section 1542, and for the purpose of implementing a full and complete release and discharge of CITY PARTIES, AFSCME expressly acknowledges that this Agreement is intended to include in its effect, without limitation, all released CLAIMS which it does not know or suspect to exist in its favor at the time of execution hereof, and that this Agreement contemplates the extinguishment of all such released claims. AFSCME hereby waives any provisions of state or federal law that might require a more detailed specification of the claims being released pursuant to the provisions herein.

No party (nor any officer, agent, employee, representative, or attorney of or for any party) has made any statement or representation or failed to make any statement or representation to any other party regarding any fact relied upon in entering into this Agreement, and neither party relies upon any statement, representation, omission or promise of any other party in executing this Agreement, or in making the settlement provided for herein, except as expressly stated in this Agreement. Each party to this Agreement has made such investigation of the facts pertaining to this settlement and this Agreement and all the matters pertaining thereto, as it deems necessary.

In entering into this Agreement, each party assumes the risk of any misrepresentation, concealment or mistake. If any party should subsequently discover that any fact relied upon by it in entering into this Agreement was untrue, or any fact was concealed from it, or its understanding of the facts or of the law was incorrect, such party shall not be entitled to any relief in connection therewith, including without limitation on the generality of the foregoing any alleged right or claim to set aside or rescind this Agreement. This Agreement and the settlement contained herein are intended to be, and are, final and binding between the undersigned parties, regardless of any claims of misrepresentation, promise made without the intent to perform, concealment of fact, mistake of fact or law, or any other circumstance whatsoever.

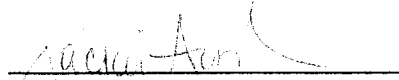
This Agreement sets forth the entire agreement between the parties and supersedes any prior agreements between the parties pertaining to the subject matter of this Agreement. Should any provision in this Agreement be determined to be invalid, the validity of the remaining provisions shall not be affected thereby, and the invalid provision shall be deemed not to be a part of this Agreement, and all remaining provisions shall remain valid and enforceable. No modification or waiver of the terms of this Agreement shall be effective unless it appears in writing signed by all parties to this Agreement. The language of all parts of this Agreement shall be construed as a whole, according to fair meaning, and not strictly enforced for or against any party.

BY SIGNING BELOW, the AFSCME representatives certify that they have read and understand all of this Agreement, have received any advice or counsel they deem necessary regarding this Agreement, and are entering into this Agreement freely and voluntarily, intending to be bound by its terms.



PLEASE READ CAREFULLY. THIS SETTLEMENT AGREEMENT INCLUDES A RELEASE BY AFSCME OF ALL KNOWN AND UNKNOWN CLAIMS RELATING TO THE UNDERLYING GRIEVANCE, INCLUDING ANY DISPUTES BETWEEN THE PARTIES RELATED TO COLA AND STEP F COMPENSATION SET FORTH IN THE NOW EXPIRED AFSCME PT MOU.

City of Carson

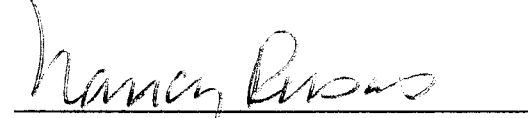


Jackie Acosta,
Acting City Manager


Colin J. Tanner, Esq.
Deputy City Attorney

AFSCME Local 809


De Nize Hunt,
President




Nancy Rusas
Recording Secretary



Bob Adams,
Business Representative



Celena Parish, Unit Member



Terry Banes, Unit Member

