

LETTER OF AGREEMENT
SEPARATION INCENTIVE PROGRAM
CITY OF LOS ANGELES HARBOR DEPARTMENT

This Letter of Agreement (LOA) is entered into by and between the City of Los Angeles Harbor Department (Harbor Department), acting by and through its Board of Harbor Commissioners, and the following unions representing their respective City of Los Angeles (City) Employee Bargaining Units, the signatories to this LOA being hereinafter referred to collectively as "Parties";

American Federation of State, County and Municipal Employees, Council 36 (AFSCME) (Bargaining Units 3, 6, 7, 10, 11, 16 and 37)

Engineers & Architects Association (EAA)
(Bargaining Units 1, 19, 20 and 21)

International Union of Operating Engineers (IUOE), Local 501
(Bargaining Unit 9)

Laborer's International Union of North America, Local 777 (LIUNA)
(Bargaining Unit 12)

Los Angeles/Orange Counties Building & Construction Trades Council (LAOCBCTC) (Bargaining Units 2 and 13)

Los Angeles Professional Managers Association (LAPMA)
(Bargaining Units 36, 63 and 64)

Municipal Construction Inspectors Association
(Bargaining Unit 5)

Service Employees International Union (SEIU), Local 721
(Bargaining Units 4, 8, 14, 15, 17 and 18)

WHEREAS, the Harbor Department has created a Separation Incentive Program (SIP) for the purpose of incentivizing eligible employees to retire from City service; and

WHEREAS, the Harbor Department seeks to implement a SIP for its employees;
and

WHEREAS, the purpose of this LOA between the Harbor Department and the City's Employee Bargaining Units is to set forth their agreement regarding the SIP and employee participation requirements;

NOW, THEREFORE, IT IS MUTUALLY AGREED AS FOLLOWS:

1. Separation Incentive Program Description

The Parties agree to implement the Separation Incentive Program (SIP), a program to assist the Harbor Department in meeting its expense reduction goals. The SIP is designed to provide a non-retirement related incentive for eligible civilian Harbor Department employees (hereinafter Employees) to retire. For each Employee who is eligible and successfully applies for the SIP, the City will make a payment equivalent to 2.0% of the Employee's final annualized pensionable compensation for each year of service with the City, supplemented by \$7,500. The total SIP payment to each Employee shall not exceed \$80,000.

The Harbor Department SIP shall have a single application period starting on March 1, 2021, and ending at 3:00 PM on March 31, 2021. The Parties agree that Employees who accept the SIP will retire from City service as soon as practicable based upon the time necessary for the City to process and approve each Employee's SIP application and retirement paperwork, but not before the rescission period as described in Paragraph 7 (Employee Rights). Each Employee's final retirement date will be determined by the Los Angeles City Employee's Retirement System (LACERS).

In addition, Harbor Department management may postpone the final retirement date for a select limited number of Employees who are working on critical department projects up to December 31, 2021. All Harbor Department management decisions to postpone an Employee's final retirement date are final and shall be considered a condition of an Employee's SIP application approval, not subject to appeal by the Employee.

2. Employees Eligible for the Separation Incentive Program

Eligible employees shall be Harbor Department civilian employees who meet both of the following criteria:

- 1) Employees whose classifications are listed in the bargaining units of the signatories of this LOA; and
- 2) Employees who are eligible for a normal retirement from the City effective on or before March 31, 2021. The Parties agree that LACERS shall confirm that each Employee applying for the SIP has a normal retirement eligibility date effective on or before March 31, 2021.

3. Application Period

Employees must apply for the SIP between March 1, 2021, and March 31, 2021. **The deadline for SIP filing is 3:00 p.m. on March 31, 2021.** All forms will be made available electronically on the Harbor Department intranet site, iPOLA. Completed, signed forms may be submitted in one of two ways:

- 1) Emailed to HarborSIP@portla.org
- 2) Returned in person Monday - Friday, excluding City holidays, between the hours of 9 a.m. and 3 p.m., at the following location:

Harbor Administration Building
Human Resources Division Reception Counter, Fourth Floor
425 South Palos Verdes Street
San Pedro, CA 90731

The Harbor Department Human Resources Division will respond to all electronically submitted applications with a reply email receipt to verify the date and time the email was received. All applications submitted in-person will be date/time stamped upon receipt, with a copy of such date/time stamped page provided to the Employee upon request at the time of filing. Receipt of an application does not mean the application was approved. Separate notification will be sent after the application has been reviewed.

4. Payment Guidelines

The Parties agree that all SIP applications shall be subject to review and approval by the City. A lump-sum SIP payment shall be paid by the City to the Employee approximately six to eight weeks after the Employee's final retirement date from City service.

The lump-sum SIP payment will be paid through the City's regular payroll process with all required tax withholdings calculated by the Controller's Office. The Harbor Department shall not have any role in calculating or determining tax requirements of the lump-sum SIP payment. Employees who participate in the SIP program shall be solely liable for all tax consequences and may consult a tax consultant for related questions.

5. Application and Employee Agreement

Employees who participate in the SIP shall fully complete and sign an Application and Employee Agreement. Employees shall return the Application and Employee Agreement following the filing instructions set forth in Paragraph 3 of

this LOA. In the event an employee submits an incorrect or incomplete document, the Harbor Department may allow employees to correct such deficiencies upon discovery by the Harbor Department or by request of the employee.

Under the terms of the SIP Employee Agreement, the Parties agree that where the Harbor Department determines that an Employee who participated in the SIP thereafter becomes employed in any capacity with the City or performs work under an individual (i.e. direct employment) personal services contract with any City agency (including proprietary departments), within three years from their final retirement date (City Employment), the Employee shall return to the City the SIP payment received in full or in part, as set forth below;

- a. The Employee shall pay the City the full amount received under the SIP if the Employee undertakes City Employment within 12 months of their final retirement date; or
- b. The Employee shall pay the City a pro-rated amount if the Employee undertakes City Employment after 12 months but within 36 months from their final retirement date.

The Harbor Department shall have the sole and final authority to make the determination about the appropriate amount to be repaid. A pro-rated amount shall be calculated by the Harbor Department, the calculation of which shall be final and cannot be appealed.

The City may, but shall not be obligated to, re-employ an Employee willing to repay their SIP payment in accordance with the repayment provision set forth in Paragraph 5 of this LOA. The City may waive the repayment requirement for Employees whose services are needed to respond to a local emergency (as defined in Section 4.22 of the Los Angeles Administrative Code) declared by the Mayor and approved by the City Council. Any repayment waivers as described herein shall be at the sole discretion of the Harbor Department as to the number, classification, and individuals needed.

This agreement does not prohibit the SIP recipients from applying for and accepting appointments on City Boards and Commissions, or as per-diem hearing officers and committee members so long as those applications and appointments are otherwise consistent with the City requirements and City Ethics guidelines.

This agreement does not prohibit the Harbor Department from determining that in its discretion, an individual SIP recipient is necessary for particular purposes and may be rehired by the Harbor Department for 120-day contracts with the approval of the Mayor and consistent with IRS requirements.

6. Making an Informed Decision

The Parties hereby acknowledge that employees should make an informed decision regarding their participation in the SIP. Every employee considering the SIP faces different considerations as to whether to participate. Employees are encouraged to consult with LACERS staff or other advisors as appropriate to discuss retirement benefits, health care costs, and financial planning that would assist in making decisions. Employees participating in the SIP shall hold harmless the City for any and all claims, damages, or other repercussions resulting from their decision to retire and participate in the SIP.

7. Employee Rights

Employees may rescind their decision to participate in the SIP and withdraw their application from 3:00 PM on March 31, 2021 to 3:00 PM on April 7, 2021. Employees making the decision to rescind and withdraw their SIP applications have the responsibility to do so with the Harbor Department Human Resources Division by submitting a Letter to Rescind Participation utilizing one of the two methods outlined in Paragraph 3 (Application Period) of this LOA.

8. Accumulated Overtime Usage

Employees accepted into the SIP will be allowed to use, immediately prior to their final retirement date, any balance of accumulated overtime, up to the maximum allowed by their Memorandum of Understanding (MOU).

9. Vacation/Sick Leave Pay Out

Employees accepted into the SIP will be paid for the balance of any unused vacation in accordance with their MOU upon separation from the City. Employees accepted into the SIP will also be paid for the balance of any unused sick leave in accordance with their MOU upon separation from the City.

10. Tuition Reimbursement

For eligible Employees participating in the SIP, the Harbor Department shall waive any tuition pay back requirements for tuition payments made by the Harbor Department during the last two years prior to the Employee's final retirement date.

11. Severability

Should any part, term, condition or provision of this LOA be declared or determined by any court of competent jurisdiction to be invalid, illegal or incapable of being enforced by any rule of law, public policy, or city charter, the validity of the remaining parts, terms, conditions or provisions of this LOA shall not be affected thereby, and such invalid, illegal or unenforceable part, term, condition or provision shall be treated as follows: (a) if such part, term, condition or provision is immaterial to this LOA, then such part, term, condition or provision shall be deemed not to be a part of this LOA; or (b) if such part, term, condition or provision is material to this LOA, then the Parties shall revise the part, term, condition or provision so as to comply with the applicable law or public policy and to effect the original intent of the Parties as closely as possible.

12. State Tidelands Grants

The Parties acknowledge that this LOA is entered into in furtherance of and as a benefit to the State Tidelands Grant and the trust created thereby. Therefore, this LOA is at all times subject to the limitations, conditions, restrictions and reservations contained in and prescribed by the Act of the Legislature of the State of California entitled "An Act Granting to the City of Los Angeles the Tidelands and Submerged Lands of the State Within the Boundaries of Said City," approved June 3, 1929 (Stats. 1929, Ch. 651), as amended, and provisions of Article VI of the Charter of the City of Los Angeles relating to such lands. The Parties agree that any interpretation of this Agreement and the terms contained herein must be consistent with such limitations, conditions, restrictions and reservations.

13. Construction of Agreement

This LOA shall not be construed against the party preparing the same, shall be construed without regard to the identity of the person who drafted such and shall be construed as if all parties had jointly prepared this LOA and it shall be deemed their joint work product; each and every provision of this LOA shall be construed as though all of the parties hereto participated equally in the drafting hereof; and any uncertainty or ambiguity shall not be interpreted against any one party. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

14. Order of Precedence

The parties agree that if any term in this LOA is in conflict with, or inconsistent with, any information otherwise provided to employees regarding the SIP, then the terms of this LOA shall govern.

15. Effective Date of Agreement

- a. Subject to the provisions of Charter Section 245, the effective date of this Agreement shall be the date of its execution by Executive Director upon authorization of the Board. The parties acknowledge that the City Council, pursuant to Charter Section 245 of the City of Los Angeles, has the right to review this Agreement. Accordingly, in no event shall this Agreement become effective until after the expiration of the fifth Council meeting day after Board action, or the date of City Council's approval of the Agreement.
- b. This Agreement shall be in full force and effect commencing from the date of execution and shall continue until three (3) years have lapsed from the effective date of the Agreement.

16. Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and all of which shall constitute together one and the same instrument.

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IN WITNESS WHEREOF, the Parties hereto have executed this LOA on the date to the left of their signatures.

THE CITY OF LOS ANGELES

Dated: _____, 2021

By: _____
Richard H. Llewellyn, Jr.
City Administrative Officer

THE CITY OF LOS ANGELES, by its
Board of Harbor Commissioners

Dated: _____, 2021

By: _____
EUGENE D. SEROKA
Executive Director

Attest: _____
AMBER M. KLESGES
Board Secretary

American Federation of State, County
and Municipal Employees, Council 36
(AFSCME) (Representing Bargaining
Units 3, 6, 7, 10, 11, 16 and 37)

Dated: _____, 2021

By: _____

(Print/type name and title)

Engineers & Architects Association
(EAA) (Representing Bargaining Units
1, 19, 20, and 21)

Dated: _____, 2021

By: _____

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International Union of Operating
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(Representing Bargaining Unit
9)

Dated: _____, 2021

By: _____

(Print/type name and title)

Laborer's International Union of North
America, Local 777 (LIUNA)
(Representing Bargaining Unit 12)

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By: _____

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Units 2 and 13)

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Service Employees International Union
(SEIU), Local 721 (Representing
Bargaining Units 4, 8, 14, 15, 17 and 18)

Dated: _____, 2021

By: _____

(Print/type name and title)

APPROVED AS TO FORM AND LEGALITY

_____, 2021

MICHAEL N. FEUER, City Attorney

JANNA B. SIDLEY, General Counsel

By: _____

Heather M. McCloskey, Deputy