



Office of the City Manager

CONSENT CALENDAR

December 6, 2005

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 – Hazardous Materials Specialist II

RECOMMENDATION

Adopt a Resolution authorizing the City Manager to execute and implement a Side Letter of Agreement with SEIU Local 535 to modify existing terms and conditions of employment and to provide a 2 percent salary differential to employees in the classification of Hazardous Materials Specialist II who obtain and maintain an International Codes Council (ICC) Underground Storage Tank Inspector certificate effective September 1, 2005.

FISCAL IMPACTS OF RECOMMENDATION

The annual cost in fiscal year 2006 should be approximately \$7,500 for ten months for the five employees who have passed the ICC Underground Storage Tank Inspector written examination. The Planning Department will fund the salary differential from salary savings in the Certified Unified Program Agency (CUPA) Fund, Budget Code 845--8305-420-1101.

CURRENT SITUATION AND ITS EFFECTS

Employees in the Toxics Management Division have been responsible for underground storage tank inspection but there has been a change in the regulatory environment that affects the terms and conditions of employment of the Hazardous Materials Specialist II staff. On May 8, 2004, new regulations were added to Title 23, Section 2715(j)(1) of the California Code of Regulations went into effect that require that all persons inspecting underground storage tanks must obtain and maintain an ICC Underground Storage Tank Inspector certification. The certification must have been obtained no later than September 1, 2005. All five of the Hazardous Materials Specialist II employees have passed the written examination and have obtained their ICC Underground Storage Tank Inspector certification.

BACKGROUND

The Toxics Management Division of the Planning Department is a CUPA responsible for programs related to the management of facilities that handle hazardous materials or generate hazardous wastes within the City. Employees in the classification of Hazardous Materials Specialist II perform a variety of professional inspection and enforcement work of environmental hazardous wastes including, but not limited to, the inspection of Underground Storage Tanks within the City limits. There are 40 facilities within the City with underground storage tanks of

which 25 are gas stations. There are 130 total underground storage tanks within the City. Each underground storage tank must be inspected annually and a complete inspection typically takes three days per facility.

As a result of the change in the California Code of Regulations to require ICC certification of underground storage tanks, SEIU Local 535 noticed the City on January 5, 2005 that they wished to meet and confer on the impact of this change in working conditions. Representatives of the City and SEIU Local 535 have met and conferred in good faith and have reached tentative agreement on a Side Letter to the Memorandum Agreement to compensate employees who are required, as a condition of employment, to obtain and maintain the ICC Underground Storage Tank Inspector certification with a 2 percent salary differential to be paid from the CUPA fund. To accommodate the change in Title 23 of the California Code of Regulations, we have amended the minimum qualifications for the Hazardous Materials Specialist II to require that current and future employees obtain and maintain ICC certification as an Underground Storage Tank Inspector. On November 7, 2005, the Personnel Board met and by a unanimous vote of those present, (Chun, Robinson, Roter, Silver, Smith, – yes; Bess, Gardiner, Wenk - absent), recommended that the changes to the Hazardous Materials Specialist II classification be modified to reflect the modification to the minimum qualifications as described above.

Under the current Memorandum Agreement with SEIU Local 535, the City has agreed to pay salary differentials to employees in the classifications of Senior Building Plans Examiner, Building Plans Examiner, Senior Building Inspector, Building Inspector II and Building Inspector I who are required to possess one or more ICC certification(s) as a condition of eligibility and continued employment. The type of ICC certification varies by classification and occupational area. The City also pays additional salary differentials to the aforementioned classifications for obtaining and maintaining additional ICC inspection certifications. The differentials range from 1 percent to 3 percent depending on the type of the certification up to a maximum cumulative differential of 4 percent. The tentative agreement with SEIU Local 535 follows this same policy of recognizing the effort and professionalism of staff for obtaining and maintaining these certifications.

The terms and conditions of the tentative agreement are included in a Side Letter of Agreement that is attached.

RATIONALE FOR RECOMMENDATION

This action fulfills the City's meet and confer requirements with SEIU Local 535 and recognizes the additional regulatory requirements set forth in Title 23, Section 2715(j)(1) of the California Code of Regulations that requires that all persons inspecting Underground Storage Tanks must obtain and maintain an ICC Underground Storage Tank Inspector certification.

ALTERNATIVE ACTIONS CONSIDERED

No alternative actions were considered.

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 SEIU Local 535

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

EXECUTING AND IMPLEMENTING A SIDE LETTER OF AGREEMENT WITH SEIU LOCAL 535 FOR THE HAZARDOUS MATERIALS SPECIALIST II CLASSIFICATION

WHEREAS, on May 8, 2004, the California Code of Regulations, Title 23, Section 2715, went into effect; and

WHEREAS, Subsection 2715(j)(1) of the California Code of Regulations requires that all persons inspecting underground storage tanks must obtain and maintain an ICC Underground Storage Tank inspection certification no later than September 1, 2005; and

WHEREAS, employees in the classification of Hazardous Materials Specialist II have been and continue to be responsible for the inspection of underground storage tanks in the City of Berkeley; and

WHEREAS, the change in California Code of Regulations, Title 23, Section 2715(j)(1) is a substantive change in the terms and conditions of employment for employees in the classification of Hazardous Materials Specialist II and thus triggered a duty to bargain with SEIU Local 535 over the impact of this change; and

WHEREAS, representatives of the City and representatives of SEIU Local 535 have met and conferred in good faith and have reached a tentative agreement on a Side Letter of Agreement to the Memorandum Agreement attached hereto as Exhibit A and made a part hereof; and

WHEREAS, under the terms and conditions of the Side Letter of Agreement, employees in the classification of Hazardous Materials Specialist II who obtain and maintain a valid International Code Council Underground Storage Tank Inspector certification by September 1, 2005 will receive a 2 percent salary differential to be effective that date and to be paid from Budget Code 8458305-420-1101.

NOW THEREFORE, BE IT RESOLVED that the Council of the City of Berkeley authorizes the City Manager to execute and implement the terms and conditions of a Side Letter of Agreement attached as Exhibit A and made a part hereof to the Memorandum Agreement with SEIU Local 535 pertaining to the Hazardous Materials Specialist II classification.

BE IT FURTHER RESOLVED, that a copy of the executed Side Letter of Agreement will be on file in the Office of the City Clerk.

**Side Letter of Agreement
Between the City of Berkeley and SEIU Local 535**

The City of Berkeley and Service Employees International Union (SEIU) Local 535 have met and conferred and reached agreement on this Side Letter of Agreement to the Memorandum Agreement regarding modification by adding section 10.14.9. This Side Letter of Agreement is intended to memorialize the agreement reached between the parties and is not intended to supersede any of the other terms and conditions of employment contained in the Memorandum Agreement.

The parties agree to add the following language:

Section 10.14.9 (Hazardous Materials Specialist Salary Differential)

1. Employees who are hired or promoted into the classification of Hazardous Materials Specialist II on or after September 1, 2005 must first obtain and maintain all necessary certifications and any other International Code Council (ICC) certifications, or equivalent certifications, as required to perform their job responsibilities and as a condition of continued employment.
2. Incumbent Hazardous Materials Specialist II employees who do not possess valid ICC certifications for programs specified in Chapter 6.11 of Division 20 of the California Health and Safety Code are not required to comply with the terms and conditions in the preceding paragraph. Effective September 1, 2005, Hazardous Materials Specialist II's, who successfully obtain valid certification as a California Underground Storage Tank (UST) Inspector or future certifications, must maintain the certifications as a condition of continued employment.
3. A salary differential for Hazardous Materials Specialist II of 2 percent of the base rate will be paid to all employees who possess valid certificates necessary for conducting their job.
4. New state-mandated certifications may be added as necessary. Hazardous Materials Specialist II's who do not receive the new certification will no longer receive the above 2percent differential.
5. The classification specification for Hazardous Materials Specialist II is modified to reflect the requirement that possession and maintenance of all certifications necessary for conducting inspections specified in Chapter 6.11 of Division 20 of the California Health and Safety Code and storm water inspections are a condition of continued employment.
6. The City will move to terminate an employee who fails to maintain the ICC certifications. Hazardous Materials Specialist II's who fail to maintain the certifications will be given reasonable time to recertify.

7. The terms and conditions of this Side Letter of Agreement will become effective upon implementation and execution of this Side Letter. Employees who possess the UST certificate and who are assigned to underground storage tank inspections in the Toxics Management Division of the Planning and Development Department for the period of September 1, 2005 through the date of implementation and execution of this Side Letter of Agreement will be compensated by receiving a differential of 2 percent above their base salary.

This Side Letter of Agreement is executed this ____ day of _____, 2005, by the employer-employee relations representatives whose signatures appear below for their respective organizations.

FOR SEIU/LOCAL 535

FOR CITY OF BERKELEY

Anes Lewis Partridge, Sr. Field Representative
SEIU Local 535

Phil Kamlarz, City Manager

Meridith Lear, Shop Steward
SEIU Local 535

Wendy Cosin,
Deputy Director of Planning

David W. Hodgkins,
Director of Human Resources