



# Memorandum

**TO:** HONORABLE MAYOR  
AND CITY COUNCIL

**FROM:** Jennifer Schembri

**SUBJECT:** SEE BELOW

**DATE:** December 6, 2017

Approved

Date 12-7-17

**SUBJECT: APPROVE THE CITY'S PREEXISTING AGREEMENTS REGARDING UNCLASSIFIED TEMPORARY EMPLOYEES WITH THE INTERNATIONAL UNION OF OPERATING ENGINEERS, LOCAL NO. 3 (OE#3) AND THE INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS, LOCAL NO. 332 (IBEW)**

## RECOMMENDATION

It is recommended that the City Council adopt a resolution approving the terms of preexisting agreements as follows:

- (a) Approve the terms of a preexisting agreement dated February 26, 2007, regarding unclassified temporary operating engineers between the City of San Jose (City) and the International Union of Operating Engineers, Local No. 3 (OE#3); and
- (b) Approve the terms of a preexisting agreement dated April 27, 1998, regarding unclassified temporary electricians between the City of San Jose (City) and the International Brotherhood of Electrical Workers, Local No. 332 (IBEW).

## OUTCOME

Adoption of the resolution will formalize City Council approval of ongoing and longstanding agreements previously reached with OE#3 and IBEW on unclassified temporary employees, including any changes that were subsequently agreed upon between the City and OE#3, and the City and IBEW, regarding unclassified temporary employees since the initial agreements were reached in 2007 and 1998, respectively.

December 6, 2017

**Subject: Approve the City's Preexisting Agreements Regarding Unclassified Temporary Employees with the International Union of Operating Engineers, Local No. 3 (OE#3) and the International Brotherhood of Electrical Workers, Local No. 332 (IBEW)**

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## **BACKGROUND**

On or about February 26, 2007, the City and the International Union of Operating Engineers, Local No. 3 (OE#3) entered into an ongoing agreement on unclassified temporary operating engineers, and on or about April 27, 1998, the City and the International Brotherhood of Electrical Workers, Local No. 332 (IBEW) entered into an ongoing agreement on unclassified temporary electricians (hereinafter collectively referred to as "Agreements"). However, it does not appear that these Agreements were presented to City Council for approval when initially entered into. Complete copies of the Agreements are attached.

## **ANALYSIS**

In general, the Agreements on temporary employees provide the terms under which the City would hire temporary employees directly from the unions, including but not limited to specifying that such employees are unrepresented non-management and at-will employees subject to the terms of the Agreements and excluded from the terms of the City's labor contracts with OE#3 and IBEW. In addition, the benefits paid by OE#3 or IBEW to temporary employees have changed since the initial date of these Agreements with OE#3 or IBEW providing notice to the City of the appropriate amounts to be paid for temporary employees under the Agreements.

On or about December 2017, it was discovered that these Agreements did not appear to have been approved by City Council in Open Session when they were initially entered into. Accordingly, given that the amount paid to OE#3 and IBEW for the various benefits provided by OE#3 and IBEW to the temporary employees under these Agreements may have likely exceeded the City Manager's authority, it was recommended that the City agendaize the existing Agreements for City Council approval. It should be noted that City Council's approval of the Agreements are not meant to change the terms of the Agreements, but only to ratify the longstanding and ongoing Agreements relating to temporary employees with OE#3 and IBEW.

Complete copies of the Agreements are attached.

## **EVALUATION AND FOLLOW-UP**

No further follow-up with the City Council related to this action is anticipated at this time.

## **PUBLIC OUTREACH/INTEREST**

This memorandum will be posted on the City's Council Agenda website for the December 19, 2017, City Council meeting.

HONORABLE MAYOR AND CITY COUNCIL

December 6, 2017

**Subject:** Approve the City's Preexisting Agreements Regarding Unclassified Temporary Employees with the International Union of Operating Engineers, Local No. 3 (OE#3) and the International Brotherhood of Electrical Workers, Local No. 332 (IBEW)

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### **COORDINATION**

This memorandum was coordinated with the City Attorney's Office and the City's Budget Office.

### **COMMISSION RECOMMENDATION/INPUT**

No commission recommendation or input is associated with this action.

### **COST IMPLICATIONS**

There are no additional cost implications pertaining to the approval of ongoing and longstanding agreements with OE#3 and IBEW on temporary employees.

### **CEQA**

Not a Project, File No. PP10-069(b), Personnel Related Decisions.



JENNIFER SCHEMBRI

Director of Employee Relations

For questions please contact Jennifer Schembri, Director of Employee Relations, at (408) 535-8150.

Attachment A: City and OE#3 Agreement on Unclassified Temporary Operating Engineers dated February 26, 2007

Attachment B: City and IBEW Agreement on Unclassified Temporary Electricians dated April 27, 1998

# Attachment A

## AGREEMENT

Between  
City Of San Jose  
And  
Operating Engineers  
Local No. 3

### UNCLASSIFIED TEMPORARY OPERATING ENGINEERS

THIS AGREEMENT, made and entered into this 26<sup>th</sup> day of February, 2007, by and between the City of San Jose, California hereinafter referred to as the "Employer", and OPERATING ENGINEERS LOCAL UNION NO. 3 of the International Union of Operating Engineers, AFL-CIO, hereinafter referred to as the "Union."

#### **01.00.00      TEMPORARY OPERATING ENGINEERS**

**01.01.00**      Temporary Operating Engineers will be employed by the City of San Jose in the classification of Temporary Employee (Unclassified). Temporary operating engineers in this classification will be unrepresented non-management employees and shall be subject only to the terms and conditions contained in this Agreement.

#### **02.00.00      EXCLUSION OF TEMPORARY OPERATING ENGINEERS**

Temporary Operating Engineers shall be excluded from any and all terms of the Memorandum of Agreement between the City of San Jose and the International Union of Operating Engineers, Local No. 3, November 9, 2006 through April 17, 2009 and any successor agreements.

**02.02.00**      Temporary Operating Engineers shall be excluded from all terms of the Master Agreement for Northern California except as specifically referenced in this Agreement.

#### **03.00.00      AT-WILL EMPLOYEES, LAY-OFFS AND PROPERTY RIGHTS**

**03.01.00**      Temporary Operating Engineers are temporary employees and as such shall serve as at-will employees hired to temporary positions to supplement the regular work force, and are not intended to displace regular civil service employees.

**03.02.00**      In the event a regular City of San Jose Civil Service Operating Engineer is laid off from City service, the City will provide those individuals with priority in assignments as Unclassified Temporary Operating Engineers.

**03.03.00**      Employees in this classification will have no property rights to continued employment. In order to be hired as a regular City of San Jose civil service employee,

an Unclassified Temporary Operating Engineer must be hired in accordance with the civil service employment process applicable to classified positions.

**04.00.00      *HIRING PROCEDURES***

**04.01.00**      The hiring process for this classification shall be as follows:

**04.01.01**      City departments desiring operating engineer services will contact the Operating Engineers, Local Union No. 3 District Office (Job Placement Center) and define the type of skills required and the duration/number of hours expected for the project.

**04.01.02**      Operating Engineers, Local Union No. 3 will provide a qualified Operating Engineer who is available to work.

**04.01.03**      The City shall have the right to reject any individual sent by Operating Engineers, Local Union No. 3. If an individual is rejected by the City, Operating Engineers, Local Union No. 3 District Office (Job Placement Center) shall then promptly provide an alternate qualified individual.

If the individual provided by Operating Engineers, Local Union No. 3 is acceptable to the City, before performing work, the individual shall complete the appropriate forms in order to be appointed to the Temporary Operating Engineer position.

**04.01.05**      Upon the request of the City, Operating Engineers, Local Union No. 3 shall have a list of eligible members available for review at the Union Job Placement Center.

**04.01.06**      An unclassified temporary employee hired pursuant to this Agreement may work for the City in this classification for a period of time not to exceed six (6) cumulative months in any 12-month period. The City may employ an unclassified temporary employee for an additional six (6) month period upon mutual agreement by the City and Operating Engineers, Local Union No. 3.

**05.00.00      *WAGES***

**05.01.00**      The hourly wage of the Unclassified Temporary Operating Engineer classification shall be equivalent to the current hourly rate of an Operating Engineer specified in Operating Engineers Local Union No. 3's Master Agreement for Northern California.

**05.02.00**      Overtime compensation shall be provided in accordance with the Fair Labor Standards Act.

**05.03.00** Employees shall be paid by the City for hours worked in accordance with the City's established bi-weekly payroll procedures.

**06.00.00 UNION DUES**

**06.01.00** The City will not collect or pay union dues or any other fees or charges related to Unclassified Temporary Operating Engineers not specified in this Agreement.

**07.00.00 TRUST FUND CONTRIBUTIONS**

**07.01.00** The City shall make contributions to the following Operating Engineers Local Union No. 3 Trust Funds:

- Operating Engineers Local Union No. 3 Health and Welfare Trust Fund
- Operating Engineers Local Union No. 3 Pension Trust Fund
- Operating Engineers Local Union No. 3 Pensioned Health & Welfare Trust Fund
- Operating Engineers Local Union No. 3 Annuity Plan
- Operating Engineers and Participating Employers Pre-Apprentice, Apprentice and Journeyman Affirmative Action Training Fund
- Operating Engineers Local Union No. 3 Vacation and Holiday Pay Plan and Supplemental Dues

07.01.00.01 Vacation and Holiday Pay Plan and Supplemental Dues is considered taxable income and will be subject to applicable taxes and withholdings. Vacation and Holiday Pay Plan and Supplemental Dues taxable earnings will be added to the paycheck for each bi-weekly pay period, and Federal and State of California taxes will be withheld automatically.

**07.02.00** The City's contributions to these funds on behalf of Employees in this classification shall be based upon the number of hours worked.

**07.02.01** The hourly rate for such benefits shall be the current hourly rate for such benefits applicable to Operating Engineers Local Union No. 3's Master Agreement for Northern California. The City shall make combined contributions to the funds specified in Section 7 above. The combined hourly rate of these contributions effective as of June 16, 2006 of this Agreement is \$18.63 with supplemental dues. The City will forward contributions to ATPA, 1640 South Loop Road, Alameda, California, 94502.

**8.00.00 BENEFITS**

Temporary Operating Engineers shall not be eligible to receive any City benefits or participate in any City-sponsored benefit programs except that, in lieu of Social Security, employees in this classification shall participate in the City's PTC 457 Plan. The City will make all appropriate deductions and/or contributions required under State and/or Federal law regulation.

**09.00.00 AMENDMENTS, CHANGES, OR OTHER MODIFICATIONS**

**09.01.00** Operating Engineers Local Union No. 3 shall provide the City of San Jose's Office of Employee Relations with any amendments, changes of wage rates, updates, revisions or other modifications to their Master for Northern California on or before the effective date of that amendment, change of wage and/or benefit rate, update, revision or modification. The City shall implement any applicable modifications within 30 days of receipt and shall not be responsible for any retroactive adjustment.

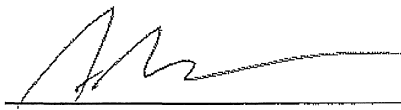
**10.00.00 DISCONTINUANCE**

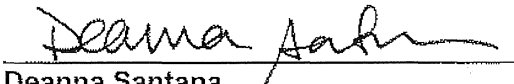
**10.01.00** This Agreement will be reviewed annually upon request of either party, and may be discontinued by either party upon forty-five (45) day advance written notice.

**IN WITNESS WHEREOF**, the parties hereto set their hands and seals by their respective officers duly authorized to so this 26<sup>th</sup> day of February, 2007.

EMPLOYER:

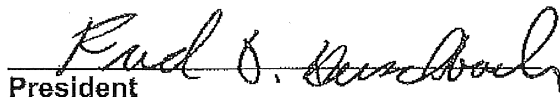
CITY OF SAN JOSE

  
\_\_\_\_\_  
Alex Gurza  
Director of Employee Relations

  
\_\_\_\_\_  
Deanna Santana  
Deputy City Manager

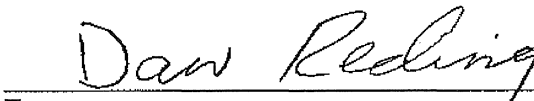
UNION:

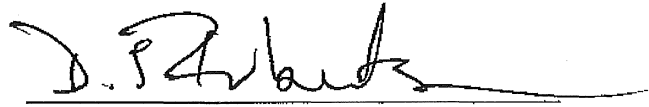
OPERATING ENGINEERS LOCAL UNION NO. 3  
of the International Union of Operating  
Engineers, AFL-CIO

  
\_\_\_\_\_  
Rudolph B. Benschbach  
President

  
\_\_\_\_\_  
Robert L. Wise  
Recording - Corresponding Secretary

  
\_\_\_\_\_  
Russell E. Bunn  
Business Manager

  
\_\_\_\_\_  
Dan Redding  
Treasurer

  
\_\_\_\_\_  
D. P. Roberts  
District Representative

  
\_\_\_\_\_  
Bill [unclear]  
Business Representative

# Attachment B

## AGREEMENT

Between  
City Of San Jose  
And  
International Brotherhood Of Electrical Workers  
Local No. 332

### UNCLASSIFIED TEMPORARY ELECTRICIANS

An unclassified temporary electrician classification shall be created. Employees in this classification will be unrepresented non-management employees and shall be subject only to the terms and conditions contained in this Agreement.

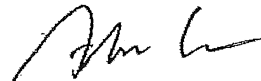
Unclassified temporary electricians shall be excluded from any and all terms of the Memorandum of Agreement between the City of San Jose and International Brotherhood of Electrical Workers, Local No. 332. Unclassified temporary electricians shall be excluded from all terms of the Agreement between the National Electrical Contractors Association - Santa Clara Valley Chapter and Local Union No. 332, IBEW, except as specifically referenced in this Agreement.

1. Unclassified temporary electricians are temporary employees and as such shall serve as at-will employees hired to temporary positions to supplement the regular work force, and are not intended to displace regular civil service employees.
2. In the event a regular City of San Jose Civil Service electrician is laid off from City service, the City will provide those individuals with priority in assignments as unclassified temporary electricians.
3. An unclassified temporary electrician hired pursuant to this Agreement may work for the City in this classification for a period of time not to exceed six (6) cumulative months in any 12-month period.
4. Employees in this classification will have no property rights to continued employment. In order to be hired as a regular City of San Jose civil service employee, an unclassified temporary electrician must be hired in accordance with the civil service employment process applicable to classified positions.
5. The hiring process for this classification shall be as follows:
  - 5.1. City departments providing electrical services will contact the IBEW Local No. 332 office and define the type of skills required and the duration/number of hours expected for the project.

- 5.2. IBEW Local No. 332 will provide a qualified Journeyman Wireman who is available to work.
- 5.3. The City shall have the right to reject any individual sent by IBEW Local No. 332. If an individual is rejected by the City, the Local No. 332 office shall then provide an alternate qualified individual.
- 5.4. If the individual provided by IBEW Local No. 332 is acceptable to the City, before performing work the individual shall complete the appropriate forms in order to be appointed to the unclassified temporary electrician classification.
- 5.5. Upon request of the City, IBEW Local No. 332 shall make a list of the names of eligible employees available for review at the Union office.
6. The hourly wage of the unclassified temporary electrician classification shall be equivalent to the current hourly rate of a Journeyman Wireman ("White" classification) specified in the Agreement between the National Electrical Contractors Association - Santa Clara Valley Chapter and Local Union No. 332, IBEW. (Hourly rate effective as of the date of this Agreement is \$31.05 per hour.)
  - 6.1. Overtime compensation shall be provided in accordance with the Fair Labor Standards Act.
  - 6.2. Employees shall be paid by the City for hours worked in accordance with the City's established bi-weekly payroll procedures.
7. The City shall make contributions to the following IBEW Local Union #332 funds:
  - IBEW Health and Welfare Trust
  - IBEW Local Union #332 Pension Trust
  - National Electricians Benefits Fund
  - National Electrician Contractor's Association
  - 7.1. The City's contributions to these funds on behalf of employees in this classification shall be based upon the number of hours worked.
  - 7.2. The hourly rate for such benefits shall be the current hourly rate for such benefits applicable to Journeyman Wireman ("White" classification) specified in the Agreement between the National Electrical Contractors Association - Santa Clara Valley Chapter and Local Union No. 332, IBEW.

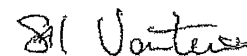
- 7.3. The City shall make combined contributions to the funds specified in section 7 above. (The combined hourly rate of these contributions effective as of the date of this Agreement is \$11.36 per hour.) The City will forward contributions to the IBEW Local Union #332 office which shall disburse such payments into each fund.
8. The City will not collect or pay union dues or any other fees or charges related to unclassified temporary electricians not specified in this Agreement.
9. The unclassified temporary electrician shall not be eligible to receive any City benefits, or participate in any City-sponsored benefit programs except that, in lieu of Social Security, employees in this classification shall participate in the City's PTC 457 Plan. The City will make all appropriate deductions and/or contributions required under State and/or Federal law and regulation.
10. IBEW Local Union No. 332 shall provide the City of San Jose Office of Employee Relations with any amendments, changes of wage and/or benefit rates, updates, revisions or other modifications to their Agreement with the National Electrical Contractors Association - Santa Clara Valley Chapter on or before the effective date of that amendment, change of wage and/or benefit rate, update, revision or modification. The City shall implement any applicable modifications within 30 days of receipt and shall not be responsible for any retroactive adjustment.
11. A grievance is an alleged violation, misinterpretation or misapplication of a specific provision of this Agreement. If an employee in this classification wishes to file a grievance, the employee shall follow the grievance procedure contained in the Personnel Administrative Manual section 15.02.5--Grievances.
12. This Agreement will be reviewed annually upon request of either party, and may be discontinued by either party upon forty-five (45) day advance written notice.

FOR THE CITY:

  
Alex Gurza  
Employee Relations Representative

4/27/98  
Date

FOR THE EMPLOYEE ORGANIZATION:

  
Sal Ventura  
IBEW, Local 332

4-27-98  
Date

  
Charles Gebhardt  
IBEW, Local 332

4/27/98  
Date