

ORDINANCE No.

187587

*Ratify a Letter of Agreement between the City on behalf of Portland Parks & Recreation and Laborers' Local 483, Laborers' International Union of North America that places the City in full compliance with Arbitrator David Stiteler's May 1, 2015 Opinion and Award concerning the April 2013 Grievance filed under the Recreation collective bargaining agreement (Ordinance)

The City of Portland ordains:

Section 1. The Council finds:

1. The City on behalf of Portland Parks & Recreation (PP&R) and Laborers' Local 483, Laborers' International Union of North America (the Union) are parties to a collective bargaining agreement effective July 1, 2013 to June 30, 2017 (the CBA). The CBA was ratified by City Council on January 14, 2014.
2. The Union is the sole and exclusive bargaining agent for the purpose of establishing wages, hours and conditions of employment for employees employed at PP&R in the classifications listed in Schedule "A" of the CBA.
3. In April 2013, the Union filed a grievance alleging that Recreation Support Persons (Casual) employees were performing bargaining unit work. Recreation Support Persons are excluded from the CBA pursuant to Article 1.1.5. The City denied the grievance and the matter was appealed to arbitration before Arbitrator David Stiteler (Arbitrator Stitler).
4. On January 21-23, 2015, the parties went to arbitration on the grievance before Arbitrator Stiteler. Arbitrator Stiteler issued an Opinion and Award on May 1, 2015 (the Arbitration Award). In the Arbitration Award, Arbitrator Stiteler held that the City violated, and is continuing to violate, the CBA by assigning bargaining unit work to non-unit employees. He ordered the City to "cease and desist from assigning bargaining unit work, as set out in the job descriptions, to non-unit employees."
5. On July 17, 2015, the City on behalf of PP&R and the Union reached a Partial Compliance Agreement, in which the parties agreed on how to partially implement the Arbitration Award (the Phase 1 Agreement). City Council authorized the Phase 1 Agreement on July 29, 2015.
6. As a result of the Phase 1 Agreement, PP&R made temporary appointments of employees to the Recreation bargaining unit for 12 regular full-time, 30 regular three-quarter time, 19 regular part-time, and 25 full-time limited term positions, or the full-time equivalent thereof (Phase 1 bargaining unit positions). Each of the Phase 1 bargaining unit positions received one-time funding through June 30, 2016.

7. On December 1, 2015, the City on behalf of PP&R and the Union entered into an Agreement re: Outstanding Phase 1 Matters (the Phase 1 Agreement Amendment). City Council authorized the Phase 1 Agreement Amendment on December 16, 2015.
8. On January 19, 2016, the City on behalf of PP&R and the Union reached a Letter of Agreement (Agreement), Exhibit 1 attached hereto and incorporated herein by this reference. The City's labor interests are met through this Agreement by placing the City in full compliance with the Arbitration Award and by clearly delineating bargaining unit work from non-bargaining unit work. The Agreement also serves to avoid litigation and discord between the City and the Union. The parties have agreed that the Phase 1 Agreement and all subsequent amendments thereto are incorporated within this Agreement.
9. The City and the Union have agreed that the Recreation Work Task Matrix (the Task Matrix) dated and signed by both parties on January 15, 2016 will serve as the base document for determining what work Recreation Support employees can perform on a regular basis starting October 1, 2016. Prior to that date, the City is authorized to continue to have Recreation Support employees perform tasks as assigned by PP&R; such work is not limited by the Task Matrix except pursuant to the terms of the Phase 1 Agreement.
10. Under the Agreement, the City and the Union will update the Task Matrix as determined necessary or desirable by the Labor Management Committee (LMC) referenced in Article 21.5 of the CBA. The LMC shall convene for an initial meeting to review the Task Matrix in March 2016. Any substantive changes desired by the LMC will require prior sign-off by the Business Manager of the Union and the City's Bureau of Human Resources (BHR) Director, or their designees. In the event the Union does not sign off on any substantive change to the Task Matrix, the parties agree that notice for purposes of making a demand to bargain will be the date the LMC provides the proposed change to the Union's Business Manager for sign-off.
11. Effective July 1, 2017, the City will cease allowing Recreation Support employees to fill any position that is made up of a combination of duties in the current Recreation Leader classification specification, as stated in the Agreement.
12. Pursuant to the Agreement and to comply with the Arbitration Award while maintaining current service levels, PP&R will request permanent positions that total 50 full-time equivalency (FTE) as part of the 2016-2017 budget process. In addition, PP&R will submit P-4s requesting that the Classification and Compensation Division of BHR classify 47 FTE in the Recreation bargaining unit (Phase 2 bargaining unit positions) as described in Exhibit A to the Agreement. The remaining three FTE will be requested as non-represented FTE. PP&R will also request \$10,000 for upgrade opportunities across the Recreation side of PP&R in order to enforce the Task Matrix or provide career development opportunities.

13. Under the Agreement, if new bargaining unit positions are created prior to October 1, 2016 but after July 1, 2016, PP&R has discretion to temporarily appoint employees working in Casual job titles to a Phase 2 bargaining unit position. For purposes of healthcare eligibility, the date of hire for any Phase 2 bargaining unit position shall be considered to be the date of the temporary appointment to the Phase 2 bargaining unit position.
14. By no later than October 1, 2016, all employees appointed to a Phase 2 bargaining unit position and those who still work in casual Recreation Support positions will be given the opportunity to apply through the recruitment process for a Phase 2 bargaining unit position. The Union shall have the right to spend up to 30 minutes with each employee who is appointed to a Phase 2 bargaining unit position. The City shall pay for 10 minutes of the total 30-minute meeting time.
15. Under the Agreement, City Council retains its discretion to determine whether to fund all of the {Phase 1} and Phase 2 positions, some of the positions or none of the positions. In addition, Council retains its discretion, if it decides to fund positions under this Agreement, to determine whether that funding is one-time, ongoing or a combination thereof. In the event that economic conditions prevent the City from funding any of the requested Phase 2 bargaining unit positions, the Union and City Council, or Council's designees, shall meet to put forth a good faith effort to arrive at alternatives to a reduction in the work force. The Union has agreed to discuss potential alternatives to a reduction in the workforce with PP&R management prior to a meeting with City Council or Council's designees.
16. The Agreement resolves related grievances or potential grievances, including but not limited to:
 - a. The City's agreement to provide targeted outreach and recruitment assistance to Mary Mobley through the Senior Human Resources Analyst in the Diversity, Outreach and Employment Resources division of BHR;
 - b. Resolution of Grievance No. 2015-049 concerning Kim Cunningham; and
 - c. Resolution of Grievance No. 2015-053 concerning Recreation Leaders performing work as Summer Aquatics/Pool Managers for the period of time in which those individuals serve in that capacity.

All resolved grievances or potential grievances shall become effective upon City Council ratification of the Agreement.

17. The Agreement also provides that for the life of the current CBA, employees in the classification of Recreation Leader shall be paid a premium of 65 cents per hour for any hours worked as an Employee in Charge, rounded up to the next whole hour for any partial hour worked.

18. The City has determined that the approximate total cost of the resolution of the related grievances or potential grievances outlined in paragraph 16 above, and the premium pay outlined in paragraph 17 above, will cost \$41,260 for the life of the current CBA.
19. The City has also agreed that Recreation Support job titles as listed in Exhibit C to the Agreement share a community of interest with the existing Recreation bargaining unit. The City's agreement is non-precedent setting outside of the Recreation CBA. Specifically, the City has not agreed to take a position one way or the other about a community of interest with any other group of City employees.
20. On or after March 15, 2016, the Union may request, and the City shall provide, an Excelsior list in electronic format with information regarding Recreation Support employees whose job titles are listed in Exhibit C to the Agreement.
21. Between March 15, 2016 and May 1, 2017, upon a proper showing of interest by a union, the City shall voluntarily recognize the body of work represented in Exhibit C to the Agreement, but only to the extent permitted by law. The City will not review a showing of interest under the Agreement if the Union has previously submitted three showings of interest.
22. The parties have agreed that for the life of the current and successor CBA, and in the interest of labor peace, neither party shall file a unit clarification petition to exclude from the Union any Recreation represented employees or classifications currently in existence or as provided for in the Agreement or any Phase 1 agreements.
23. Upon ratification by Council, the Agreement shall remain in full force and effect unless and until the parties agree in writing to the contrary.

NOW, THEREFORE, the Council directs:

- a. The Agreement between the City on behalf of PP&R and the Union attached hereto as Exhibit 1 is authorized by this Council.
- b. The City is authorized to implement the Agreement in accordance with the terms and conditions of the Agreement.
- c. The City is authorized to pay up to \$41,260 for cost increases associated with the resolution of the grievances and for the premium pay for Recreation Leaders when working as an Employee in Charge for budget years 2015-2016 and 2016-2017 from the General Fund.
- d. This ordinance is binding City policy.

Section 2. The Council declares that an emergency exists in order to avoid an unnecessary delay in the orderly implementation of the provisions of the Agreement; therefore, this ordinance shall be in full force and effect from and after its passage by the Council.

Passed by the Council: **FEB 17 2016**

Mary Hull Caballero
Auditor of the City of Portland
By


Deputy

Mayor Charlie Hales
Prepared by: Anna Kanwit:JKU:ss
Date Prepared: January 26, 2016

Agenda No. **187587**
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Title

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<p style="text-align: center;">INTRODUCED BY Commissioner/Auditor: Mayor Charlie Hales</p>	<p>CLERK USE: DATE FILED <u>FEB 09 2016</u></p>
<p style="text-align: center;">COMMISSIONER APPROVAL</p> <p>Mayor—<i>[Signature]</i> Finance and Administration - Hales</p> <p>Position 1/Utilities - Fritz</p> <p>Position 2/Works - Fish</p> <p>Position 3/Affairs - Saltzman</p> <p>Position 4/Safety - Novick</p>	<p style="text-align: right;">Mary Hull Cabellero Auditor of the City of Portland</p> <p>By: <i>[Signature]</i> Deputy</p>
<p style="text-align: center;">BUREAU APPROVAL</p> <p>Bureau: Bureau of Human Resources OMF CAO: Fred Miller <i>[Signature]</i> Bureau Head: Anna Karwit <i>[Signature]</i></p> <p>Prepared by: AK:JKU:ss Date Prepared: January 26, 2016</p> <p>Financial Impact & Public Involvement Statement Completed <input checked="" type="checkbox"/> Amends Budget <input type="checkbox"/></p> <p>Portland Policy Document If "Yes" requires City Policy paragraph stated in document. Yes <input checked="" type="checkbox"/> No <input type="checkbox"/></p> <p>City Auditor Office Approval: required for Code Ordinances</p> <p>City Attorney Approval: Heidi K. Brown, Deputy City Attorney required for contract, code, easement, franchise, comp plan, charter <i>[Signature]</i></p> <p>Council Meeting Date: February 10, 2016</p>	<p>ACTION TAKEN:</p>

AGENDA
<p>TIME CERTAIN <input checked="" type="checkbox"/></p> <p>Start time: <u>10:25 a.m.</u> 30</p> <p>Total amount of time needed: <u>15 minutes</u> (for presentation, testimony and discussion)</p>
<p>CONSENT <input type="checkbox"/></p>
<p>REGULAR <input type="checkbox"/></p> <p>Total amount of time needed: _____ (for presentation, testimony and discussion)</p>

FOUR-FIFTHS AGENDA	COMMISSIONERS VOTED AS FOLLOWS:		
		YEAS	NAYS
1. Fritz	1. Fritz	✓	
2. Fish	2. Fish	✓	
3. Saltzman	3. Saltzman	✓	
4. Novick	4. Novick	✓	
Hales	Hales	✓	