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## Parties to the Agreement

THIS MEMORANDUM OF UNDERSTANDING (**Memorandum**) is made and entered into on July 1, **2012**, by and between the City of San Diego (City), and the California Teamsters Local 911 (Union).

## Purpose

It is the purpose of this Memorandum to: promote and provide for harmonious relations, cooperation, and understanding between Management and the employees covered by **this** Memorandum; to provide procedures herein for an orderly and equitable means of resolving any misunderstandings or differences which may arise under this Memorandum; and **to** set forth the understanding of the **Parties** reached as a result of good faith negotiations regarding wages, hours of employment, and other terms and conditions of employment of the employees covered by this Memorandum. The **Parties will** jointly submit **the Memorandum to the San Diego City Council (City Council)** and recommend **its** approval and implementation.

## Meet and Confer

The City and Union agree to meet and confer during the term of this Memorandum only to the extent required by applicable law. **Any agreement reached through required meet and confer will be in writing and signed by the Parties. The Parties will obtain any required ratification, and approval before implementation of the new Memorandum becomes effective.**

## ARTICLE 1

### Recognition

- A. Management formally recognizes Union as the exclusive representative for all employees in the Lifeguard Unit and Supervisory Lifeguard Unit (**Division**). This Memorandum applies to all classifications listed in Appendix A<sup>1</sup> and to any new classifications added to Appendix A during its term.
- B. No classification **may** be removed from the Bargaining Units exclusively represented by Union during the term of this Memorandum, and Management shall not entertain any employee petition which seeks removal from this “represented” status.

## ARTICLE 2

### Implementation

- A. This Memorandum constitutes the mutual recommendation **by City and Union** to be jointly submitted to the City Council and Civil Service Commission (**Civil Service Commission or Commission**). It is agreed that this Memorandum is binding upon the **Parties** upon:
  - 1. **Timely** ratification by Union. Union **will** notify Management of the result of the ratification process no later than April 22, **2013**; and
  - 2. The City Council and Civil Service Commission formally acting by majority vote to approve and adopt these Articles within their respective jurisdictions.
- B. City **will**, in a timely manner, complete necessary changes in ordinances, resolutions, rules, policies, and procedures to conform to this **Memorandum**. **Any changes in ordinances, resolutions, rules, policies and procedures needed to implement the terms set forth in this Memorandum will be completed in a timely manner, using September 20, 2012, as a target date for completion.**
- C. The tentative agreement **will** be submitted to the City Council and Union for their action as soon as possible after agreement has been reached by Management and Union.

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<sup>1</sup>Appendices A through D are attached to this Memorandum

### ARTICLE 3

#### Term

The term of this Memorandum begins **at 12:01 a.m.** on July 1, **2012**; provided, however, that the effective date of all changes affecting payroll shall **commence the first full pay period that begins on or after July 1, 2012.** This Memorandum expires at the end of June 30, **2013 at 11:59 p.m.**

### ARTICLE 4

#### Renegotiation

- A. Union **will** serve upon City its full and entire written proposals for a successor **Memorandum** by **February 4, 2013**, with the exception of salary or other economic proposals, which **will** be presented no later than **February 18, 2013**. Upon receipt of **the** written proposals, meet and confer **will** begin no later than **March 4, 2013**.
- B. City will serve upon Union its full and entire written proposals for a successor **Memorandum** by **February 25, 2013**, with the exception of salary or other economic proposals. Meet and confer **will** begin no later than **March 4, 2013**, at which time City will present its full economic proposal. If federal or state governments take action that has direct effect upon the areas which fall within **the scope of representation**, City **and** Union may submit proposals concerning **those** areas at later dates.
- C. If neither party has proposed a change to a particular Article in this **Memorandum** by **March 4, 2013**, **that** Article **will** remain in full force and effect from the date it would have been terminated.
- D. Unless otherwise agreed to, the **Parties** agree that final offers by both **Parties** will be made no later than **April 1, 2013**. If an impasse hearing with the City Council is necessary, it will be scheduled for **April 9, 2013**. Union agrees to provide to Management a written statement of its positions regarding any issues at impasse on **April 5, 2013**.
- E. “Me-Too Clause”  
  
City agrees that, if, during the term of this **Memorandum**, any other employee **labor organization** is given a general salary increase or **any** other economic enhancement to their overall compensation, or has any compensation reduction they have incurred or concession they have made restored to them, then the **City** will **extend that same economic benefit to Union represented employees on the same terms and on the same effective date.** **The Parties agree that this “Me-Too Clause” will remain in effect during Fiscal Year 2013 and will sunset on June 30, 2013.**
- F. **During the course of this Memorandum, the City will negotiate changes to make DROP “cost free”.**



## ARTICLE 5

### Grievance Procedure

#### A. Definitions.

1. A grievance is a claim or charge of misunderstanding, or difference in interpretation, or violation of provisions of the Civil Service Rules, the Personnel Manual, this Memorandum of Understanding, or Management policy or regulations including but not limited to Administrative and Departmental Regulations, which affect wages, hours, or other terms and conditions of employment.
2. Actions which are covered in the City Rights Article of this Memorandum are not grievable, but this shall not preclude employees or their representatives from consulting with Management about the practical consequences such actions may have on wages, hours, and other terms and conditions of employment. In addition, actions covered by another appeals process as described in the Civil Service Rules, Personnel Manual, or this Memorandum are not grievable and shall not be processed through this Grievance Procedure.
3. If the grievance system is abused by an unreasonable number of submittals by one individual or group and which is obviously designed to thwart orderly processing or if the grievances are patently irrelevant, or incomprehensible, such grievances shall be rejected as non-grievable. Such rejection shall be grievable.
4. Wherever applicable, the term “working days” means the actual work days of the individual on whom the time limits are imposed, excluding Saturday, Sunday and holidays.

#### B. Policy.

1. Employees have the right to file grievances without jeopardizing their positions.
2. Employees may represent themselves or be represented by a steward designated pursuant to Article 6 of this **Memorandum** or be represented by Union at any or all steps in the grievance procedure.
  - a. The employee has the right to the assistance of a steward and/or a Union representative in the investigation, preparation and presentation of a grievance.
  - b. Employees may have no more than one City employee and one non-City employee as representatives for a grievance hearing. A person not acting as a representative may take notes or observe.
  - c. Notwithstanding any other provision of this **Memorandum**, an employee in a **classification** assigned to the Lifeguard Unit may not select as a representative an employee assigned to the Supervisory Lifeguard Unit. An employee in the Supervisory Lifeguard Unit may not select as a representative a supervisor in the employee’s chain of command or a

higher ranking supervisor in the same Division. This **restriction** does not apply to stewards.

3. Grievances may be initiated by the employee, a steward, or by a formally recognized employee organization on the employee's behalf. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this Memorandum, **the** representation must come from Union.
4. The employee's, steward's, or **Union's** first contact regarding job and working conditions is with **his or her** immediate supervisor and supervisors **will** attempt to settle grievances informally at this level.
5. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting **on his or her** own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, steward, or Union representative and Management will give due consideration to all the participants' responsibilities in the essential operations of the **division**. Management has the unequivocal right to schedule grievance hearings as convenient. Hearings may or may not be held during an employee's normal shift. No overtime pay will be given to the grievant. Representatives, witnesses, or other participants will receive overtime pay if ordered to be present by the Appointing Authority **at a time outside their normal work hours**.
6. Waivers and Time Limits.
  - a. Failure by Management to reply to the employee's grievance within the time limits specified **in this Article** automatically processes the grievance to the next level.
  - b. Any level of review, or any time limits established in this procedure, may be waived or extended by mutual agreement confirmed in writing.
  - c. If an employee fails to appeal from one level to the next level within the time limits established in this grievance procedure, the grievance **will** be considered settled on the basis of the last decision and the grievance **will** not be subject to further appeal or reconsideration.
  - d. By mutual agreement, the grievance may revert to a prior level for reconsideration.
  - e. If a grievant fails to appear for a scheduled grievance meeting, **the** failure **to appear** without an **approved** excuse by the Appointing Authority entitles Management to decide on the grievance without the presence of the grievant, or to schedule another meeting at that level (in which case the time requirements for hearing and decision are automatically waived). Failure to appear at two meetings on the same grievance without an approved excuse automatically terminates that grievance and it is deemed

denied. The grievance will not subject to further appeal or reconsideration.

- f. When a grievant is on approved leave, the time limits established in this procedure **will** be suspended for the period of the leave.
  - g. No grievance **will** be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given **twenty-four** hours **advance** notice of the hearing.
7. Management **will** provide Union with copies of all grievances regarding this **Memorandum** filed by employees within Union Bargaining Units who choose to represent themselves.
8. Union agrees to pursue all claims of violations of this **Memorandum** through the grievance procedure. Resort to other remedies cannot be pursued until all steps of the grievance procedure have been exhausted. If the employee or Union does resort to remedies outside the grievance process prior to its completion, the grievance process is automatically terminated. When Union feels that an employee may be subject to immediate and irreparable harm, Union **may** contact the **Human Resources Department** directly prior to initiating some other type of action. Union will allow the **Human Resources Department** a reasonable period of time to address the grievance prior to initiating action outside of City. Use of this procedure **will** be deemed to exhaust the grievance procedure.

C. Procedures.

1. General.

- a. Management of the Department has the responsibility to inform an employee of any limitation of a given level of Management's authority to fully resolve the grievance. In this regard, Management **will**:
  - 1. **Determine, at any time during the processing of a grievance, if the grievance requires modification or interpretation of Civil Service Rules or Personnel Manual provisions and forward the grievance immediately to the Personnel Director for resolution or referral to the Civil Service Commission.**
  - 2. Supply the employee with the necessary **and relevant** information to process the grievance **at the proper step in the process.**
  - 3. Advise an employee when any matter under submission is determined by Management **to be not** grievable according to the definitions in section A. The "grievance" paperwork submitted by the employee **will** be returned to the employee along with a memorandum explaining why the matter is not grievable and what alternative procedures, if any, the employee may follow to process his **or** her complaint. If a grievance is determined to be

not grievable, that decision may be appealed to the next step **in the grievance process** without reverting to a lower step. A decision favorable to the employee or Union **at this step in the process** serves to reinstate the original grievance in whole. The grievance need not revert to a lower step.

- b. When a group of identical grievances develop, only one grievance form **may** be submitted. The grievants may select not more than two spokespersons who will be their representative “grievants.” The acceptance of **a** decision by the spokespersons at any step (or final decision if the grievance moves to **Step 5**) will be binding on all **Parties**.
- c. A grievance **will** be recognized if it is brought to the attention of the immediate supervisor either informally or formally within ten working **days** of the incident’s occurrence, unless an extension **is** approved by the **Human Resources** Director.
- d. **If** the grievance is between the employee and **his or her** immediate supervisor, **Step 1** may be to the **employee’s** next higher level supervisor.
- e. To be recognized, a grievance must state which policy, rule, regulation, etc., is involved in the matter and the nature of the remedy sought by the employee or Union. In the event that the grievance is rejected for failure to state which policy, rule, regulation, etc., is involved, it may be amended by the grievant or Union.

2. Steps.

- a. Step 1: At the employee’s or Union’s sole option, grievances may be presented to the supervisor either orally or in writing. If the complaint is presented orally, the procedure is informal and may be settled by an oral answer given within five working days to the employee and Union representative. If the grievance is presented in writing, the procedure is formal, a meeting with the grievant and Union **will** be held, and the answer must be given in writing within five working days after the meeting at which the supervisor **was given** the written grievance.
- b. Step 2: If the **grievance** cannot be **resolved** at Step 1, the employee or **Union** may present the complaint in writing to the second-level supervisor (if not done at Step 1) within five working days **of receipt of the Step 1 response**. Within five working days of the receipt of the grievance **by the second-level supervisor**, a hearing **will** be held. Management representative **will** give a written decision to the employee and Union representative within **ten** working days after the hearing.
- c. Step 3: If the **grievance** is not resolved at Step 2, the employee or **Union** may submit the grievance to the Division Head within five working days **of receipt of Management’s written decision**. Within ten working days of receipt of the grievance, a hearing **will** be held and the **Division Head**

**will** give a written decision to the employee and Union **representative** within **ten** working days after the hearing.

- d. Step 4: If the **grievance** is not **resolved** in Step 3, the employee or **Union** may present the grievance to the Department Head within five working days **after receipt of Management's written decision**. Within ten working days of the receipt of the grievance, a hearing **will** be held and the Department Head or **his or her** designee **will** give a written decision to the employee and Union representative within **ten** working days after the hearing.
  
- e. Step 5: Final Resolution of Grievance. If the grievance is still in dispute after Step 4, the employee or **Union** may request a further hearing by submitting the grievance **to Management within five working days of receipt of Management's written decision**. Management will determine whether the hearing will take place before the Civil Service Commission, on matters over which the Commission has authority, or before the **Mayor or his or her** designee. If it is determined that the hearing should be held before the Civil Service Commission, a fact-finding hearing to define the issues in the grievance will be held by the Personnel Director with the employee and/or **Union** prior to the date set for the Commission hearing. The grievance may be settled during **the** fact-finding hearing if a mutually acceptable solution is developed. **If no mutually acceptable solution is reached, the Commission will hear the grievance and** the decision of the Commission **will** be issued at its next regularly scheduled meeting following the hearing. In grievances answered by the **Mayor or his or her designee** a hearing **will** be held and a written response given within ten working days from the date of receipt of the appeal from **Step 4**. The employee or **Union** may only request a hearing before the Civil Service Commission **on** matters solely involving Civil Service Rules or the Personnel Manual. **Decisions of the Commission are final.**
  
- f. Step 6: Grievances arising out of **a** disagreement on interpretation or application of this Memorandum **will** follow the City-wide grievance procedure. Union may formally request to continue the grievance not later than ten **working** days following receipt of the answer **from Step 5** of the grievance procedure by serving written notice upon the Management Team. The Management Team will refer the grievance to the City Council for hearing and decision.

## ARTICLE 6

### Stewards

#### A. General.

1. Union may designate stewards to represent employees in the processing of grievances subject to the following rules and procedures:
  - a. Stewards may only function within the boundaries of their City-approved area of Union assignment. Stewards who are not on a current Union-submitted and City-approved list of stewards **will** not be recognized as stewards by City and have none of the rights or privileges agreed to for stewards.
  - b. Union and Management will agree to a reasonable number of stewards within each facility.
  - c. Union **will provide** Management representatives with a written list of **all regular and alternate stewards identifying each by name and assigned work areas on July 1** of each year. The list must be kept current by Union.
  - d. Union will designate as stewards only employees who have passed their initial probation period and who are permanent employees and who have a meets standards rating on their most recent performance evaluation. Union will also designate, and City will recognize as stewards, only employees currently assigned to classifications in the Units represented by Union, as listed in this Memorandum.
  - e. **Management will provide Union prior notice before a steward is transferred or changed to a different work shift. The requirement of prior notice to Union should not be construed as limiting Management in its prerogatives to transfer or change the work shift of a steward.**
  - f. Failure of a steward to abide by any of the provisions of this section may be cause for City to revoke recognition of **the** steward. Prior to taking such action, Management will meet and consult with Union.
  - g. It is recognized by both **Parties** that stewards' functions are necessary in maintaining sound employer-employee relations on the job.

#### B. Handling Grievances.

1. When an employee has a grievance, **he or she may request that** a steward, with permission of **the employee's** supervisor, investigate **the** grievance in his or her assigned work area and assist in its preparation and presentation.
2. After notifying and receiving approval of the immediate supervisor, a steward **maybe** allowed reasonable time off during working hours, without loss of time or pay, to investigate, prepare, and present such grievances. The immediate

supervisor will authorize the steward to leave his or her work **assignment** unless compelling circumstances require refusal of such permission. **In such** case, the immediate supervisor **will** inform the steward of the reasons for the denial of **release time** and establish an alternate time when the steward can reasonably be expected to be released from his or her work assignment.

3. When a steward **needs** to contact an employee at his or her work location, the steward **will** first contact the immediate supervisor of that employee, advise the **supervisor of the** nature of the business, and obtain the permission of the supervisor to meet with the employee. The immediate supervisor will make the employee available promptly unless compelling circumstances prohibit the employee's availability, in which case the supervisor will notify the steward when he or she can reasonably expect to contact the employee within **the next twenty-four** hours.
4. A steward's interview or discussion with an employee on City time will be handled expeditiously.
5. Union may appoint a Chief Steward or alternate who may act in instances where a job site steward is not available.

**C. Discipline.**

1. Stewards will also be **allowed** reasonable time to represent employees in actual disciplinary meetings and hearings between Management and the employee being disciplined subject to the provisions of Article 8.
2. Stewards involved in disciplinary actions will be allowed a maximum of two **work** hours to meet with employees to discuss disciplinary actions. In accordance with the procedure described in Section **B.2**, the steward must arrange this time with his or her supervisor.

## **ARTICLE 7**

### **Union Access**

- A. Authorized Union paid non-City employee representatives **will** be granted access to work locations in which employees covered by **this Memorandum** are employed, for the purpose of conducting grievance investigations and observing working conditions. Authorized Union representatives **seeking** access to work locations **must** first request **access** from the appropriate Management representative, at which time the representative **will** inform **the** Management representative of the purpose of the visit. The Management representative may deny access to a work location if, in his or her judgment, it is **determined** that a visit will unduly interfere with the operations of the **Department** or facility. **In that** event, the Management representative will recommend an alternative time for the visit within **the next twenty-four** hours unless the Management and Union representatives mutually agree on an alternative time for the visit. Union representatives **will** not unduly interfere with operations of any Department

during a visit. Representatives have the right to meet with employees during authorized coffee, rest or lunch breaks at City facilities that may be available, in compliance with access procedures in this Article.

- B. Within thirty **calendar** days of the effective day of this Memorandum, **Union will** give to Management a written list of all authorized representatives. **The list will** be kept current by Union. Access to work locations hereunder will be granted only to representatives on the current list.
- C. Authorized Union representatives **will** be given access to non-security work locations during working hours to conduct grievance investigations and observe working conditions on the condition that Union representatives will comply with the regulations established in this Article, and that Union representatives **will** not interfere with work operations of any **City** department.

## ARTICLE 8

### Employee Representation

- A. An employee is entitled, upon his or her request, to representation, not to exceed one City employee and one non-City employee during each of the following proceedings. In addition, one observer may also attend if authorized by the **Human Resources Department**. Under no circumstances **will** an employee suffer any retaliation or harassment **if he or she** requests representation.
  - 1. During any investigatory or fact-finding meeting where there is a reasonable expectation by the supervisor or the employee that discipline might result. Representation is not available in cases requiring immediate removal or suspension as defined in Civil Service Rule XI.
  - 2. During the required discussion of any document, including a Supplemental Performance Report, written warnings, reprimands, or notes of counseling which are to be made part of the employee's permanent record and/or which may be used as a basis for subsequent discipline.
  - 3. During any Skelly hearing prior to the imposition of a suspension, reduction in compensation, demotion, or discharge as outlined in Civil Service Rule XI.
  - 4. During the appeal hearing **or appeal hearings** of any disciplinary action.
  - 5. During the presentation of any grievance at any and all steps of the procedure described in Article 5 of this **Memorandum**.
- B. In all other instances, Management has the right to counsel employees as it deems appropriate without employee representation being present.
- C. Management **will** give an employee who is notified of a proceeding described in **section A Advance notice of the meeting**. **The notice will provide the employee** a reasonable



amount of time to consult with his **or** her representatives and to prepare a response. At the time of notice, Management **will** also inform **the** employee of his or her right to representation. An employee **has** the right to contact a representative for this purpose **and have** reasonable use of City facilities on City time so long as **the consultation** not unduly interferes with the operation of the **department** or facility.

- D. The City employee representative **cannot** be an employee **who is a** subject **of** the same investigation or fact-finding.
- E. Once Management is notified that Union represents an employee in any of the proceedings described in **section A**. Union will receive copies of all correspondence and notices sent to the employee related to the matter.

## **ARTICLE 9**

### **Personnel Regulations**

- A. The following Personnel Manual sections, Administrative Regulations (**A.R.s**), and other official regulations **are** included in this Memorandum as if fully set out at this point. The provisions of **the following** documents which affect wages, hours and other terms and conditions of employment which would otherwise be subject to meet and confer **may** not be changed, **except as permitted by the MMBA**.

- 1. **Personnel Manual Index Codes.**
  - E-7, Transfers, Demotions, and Status Changes
  - G-1, Code of Ethics and Conduct
  - G-2, Permanent Appointment Probationary Periods
  - G-7A, Employee Performance Review Program
  - H-1, Bilingual Pay
  - H-2, Holidays
  - H-3, Out-of-Class Assignments
  - H-4, Overtime Compensation
  - H-5, Salary Status of Part-time Positions
  - H-6, Shift Differentials
  - H-7, Stand-by Pay
  - H-8, Step Increases
  - H-9, Starting Salary Upon Appointment
  - I-2, Annual Leave
  - I-9, Court Leave
- 2. **Administrative Regulations.**
  - 45.10, Employee Transportation Authorization
  - 63.00, Industrial Leave
  - 70.30, Tuition Refund Plan
  - 70.50, **Administration of Vocational Rehabilitation Program**
  - 75.12, City Manager Vehicle Accident Review and Prevention
  - 75.40, **Administration of Light Duty Program**

- 95.01, Overtime Compensation
- 95.60, **Conflict of Interest** and **Employee Conduct**
- 95.90, Unused Sick Leave and Accrued Annual Leave Reimbursement
- 95.91, Employee Recognition and Award Programs

**3. Other Regulations and Procedures.**

- Long Term Disability Plan (on file with **the Office of the City Clerk**)
- Smoking Policy (on file with **the Office of the City Clerk**)
- Council Policy 300-06, Employee-Employer Relations Policy**
- Civil Service Rule V, Layoff and Reemployment
- Civil Service Rule VII, Appointments

**B.** City and Union agree to meet and confer regarding **any** proposed modifications **by City** to these documents which affect wages, hours and **other terms and conditions of employment** during the term of this **Memorandum**. If agreement is not reached on City's proposed modifications, the existing provisions of these documents that affect wages, hours, and **other terms and conditions of employment will** remain in force through the term of this **Memorandum**.

**C. Special Leave Without Pay (SLWOP).**

During the term of **this Memorandum**, City and Union agree to review the provisions of **Personnel Manual Index Code I-7, Special Leave Without Pay**, as they affect seniority. Any modifications will be prospectively applied.

## **ARTICLE 10**

### **Personnel Practices**

**A. Employee Personnel Files.**

1. An employee, or a Union representative with the written consent of the employee, may inspect the employee's personnel files. The request to inspect files **will** be granted at a time that is convenient to both Management and the employee. The inspection **must** be made in the presence of an appropriate supervisor. If requested by the employee, copies of the record, or any portion of **the record**, may be provided to the employee, or anyone designated by the employee. Charges for these copies **will** be made in accordance with **A.R. 95.20, Pricing and Furnishing City Documents**.
2. An employee **is** entitled to read any statement on his or her work performance or conduct if **the** statement is to be filed **in the employee's personnel file**. The employee **will** acknowledge reading **the** material by affixing his or her signature on the actual **document** to be filed. **The employee's** signature merely signifies that the employee has read the material to be filed and does not necessarily indicate agreement with its content. If the employee refuses to sign, the supervisor will sign, noting the refusal of the employee to sign.

No disciplinary documents will be placed in an employee's permanent personnel file unless the procedure in paragraph 2 is followed. Any documents placed in the employee's file in violation of this provision will be removed at the employee's request.

B. Commendations.

1. All written commendations initiated by Management **will** be placed in the employee's permanent personnel file.
2. An employee may request that all commendations may be entered as a permanent part of **his or her** employee personnel file. Commendations may include such items as letters from the public, suggestion awards, educational or training honors, and **awards or commendations from** civic clubs.

C. Vacancies.

Neither party **will** intimidate or encourage qualified eligibles from a certification list to waive appointment. Waivers **are** an employee decision only and **should** normally be submitted in writing by the employee. Violations of this section **are** subject to the grievance procedure.

D. Dismissal During Probation.

Employees in classifications in these Units **will** normally receive at least five working days **advance** notice **if the Appointing Authority makes a determination that the employee should be terminated during his or her probationary period. Notice may be given** either through the **Performance Evaluation** or **separate** written notification.

E. Performance Evaluations.

1. Performance **Evaluations** will normally be given to **an** employee within **fourteen** calendar days after the close of the rating period. In no case **can** the Department give a **Performance Evaluation** to an employee later than **thirty** working days after the close of the rating period without the prior approval of the **Human Resources Department** or non-managerial Department Head. **Prior** approval is required **before the evaluation can be given to the employee** more than **thirty** working days after the due date, **but does not affect** the content of the **evaluation**. Failure to obtain prior approval gives rise to a grievance which Union may present directly to the **Human Resources Department** or to the non-managerial Department Head.
  - a. Employees will be informed when permission has been granted to give a **Performance Evaluation** later than **thirty** working days after the close of the rating period.
  - b. The approval for late Employee Performance **Evaluations will** be submitted to the employee in writing, and **will** include reasons for the delay and approval.
  - c. An Annual **Performance Evaluation** should not be prepared if the employee's performance has already been evaluated in a **Supplemental**

**Performance Report (Supplemental Performance Report or Supplemental)** for the entire period which the **Annual Performance Evaluation** would otherwise cover, as an additional **Annual Performance Evaluation** would be unnecessarily cumulative. Where there has been one or more Supplemental Performance **Report or Reports** during the year, an **Annual Performance Evaluation** should not restate the information otherwise covered by the **Supplemental or Supplementals**, but may make a simple reference to the fact **that Supplemental or Supplementals** have been issued during the year. The rating on the **Annual Performance Evaluation** must fairly and accurately describe the overall performance of the employee during the months actually being described and evaluated in the **Annual Performance Evaluation**. The fact **that a Supplemental or Supplementals** have **been issued** during the year **will** not dictate or predominate in deciding the employee's **overall** rating. It is the intention of the **Parties** to give an employee the opportunity to overcome the deficiencies noted **in the Supplemental Reports in order to meet performance standards** at the time of an **Annual Performance Evaluation**.

2. Rating Performance Evaluations.

- a. Raters should remember that **the** Employee Performance Plans are developed for positions, not personalities; that they should rate job performance, compared to the expected performance standards.
- b. Raters should assemble and review data gathered on an employee's performance throughout the rating period, such as production records, observations, draft documents, work product, commendations, citizen's complaints, and similar tangible evidence.
- c. The basis of evaluations should concentrate on facts and concrete instances of performance. Raters should focus on performance throughout the rating period, not merely on recent experience.
- d. An employee **may** only be rated by **his or her** immediate supervisor. If the first-line supervisor is unavailable, the next higher level supervisor will be the rater. The rater should consult with the **out-of-class assignment (OCA) supervisor or supervisors** during the rating period for input.
- e. City agrees to a joint committee with Union to discuss guidelines and training related to the incorporation of performance-based measurements into Employee Performance **Evaluations**. Union **will** have three representatives on this committee.

3. Supervisor-Employee Conference.

The supervisor should point out the employee's progress in performing job functions and meeting performance standards, achievements, areas in which improvement is necessary, why **improvements** are needed, how **this** can be

accomplished with the supervisor's assistance, as well as any other performance information considered to be important.

4. Issuance of Supplemental Performance Reports.

- a. Supervisors should provide regular feedback to their employees during the rating period. In instances where improvement is needed, the supervisor should provide guidance and assistance **to the employee** on how to improve **his or her performance** so as to allow the employee an opportunity to raise his or her performance level **to** meets standards.
- b. If it is determined that an employee will be issued a Supplemental Performance Report, the employee **will** be provided reasonable advance notice **of this meeting** for the purpose of obtaining representation. However, this **notice requirement cannot** be construed to require Management to delay issuance of a Supplemental Performance Report past an employee's probation period or transfer trial period end date.
- c. A Supplemental Performance Report **must** include written comments as to what remedial action was discussed, what corrective action (such as warnings or other discipline) may have been taken, and a follow-up review date within **ninety calendar** days where appropriate.
- d. In reviewing a Supplemental Performance Report, the **Appointing Authority** should determine if reasonable efforts have been made to assist the employee **in meeting performance standards**.

5. Employees who are on light duty **must** still be evaluated. The light duty assignment will not interrupt or suspend the normal rating period for Employee Performance **Evaluation**. The usual performance standards **should be used** for the time period that the employee was performing the full range of duties. For the period of time during which the employee is on light duty, the evaluation will cover the performance of the employee while on light duty. This may be done in a simple narrative form as an addendum to the usual form.

6. The rating period for an Employee Performance **Evaluation cannot** exceed twelve months. The department will not retroactively evaluate employees beyond a **twelve-month** period.

F. Citizen Complaints and Route Slips.

Employees will be notified of any citizen complaint or route slip in which they are identified by name or in which they can be identified by Management from the information received. If the complaint is resolved in the employee's favor, the complaint, together with all related documents, **will** be removed immediately from the employee's personnel file **or files**, unless the employee requests in writing that the document be retained.

G. Transfer and Promotion.

Any employee receiving and accepting an offer of promotion or transfer will be released from the employee's current position in a timely fashion as mutually agreed to by the Appointing Authority and the employee.

H. Access to Information Regarding Employment.

Union may bring to the attention of the **Mayor** or his or her designee, the identity of any work location where employees do not have reasonable access to documents which affect or describe their terms and conditions of employment, including but not limited to this **Memorandum**; the Personnel Manual, Civil Service Rules, Departmental Instructions, Policies and Regulations, and relevant sections of the **San Diego Charter (Charter)** and **San Diego Municipal Code (Municipal Code)**. The **Mayor will** make a reasonable effort to remedy the situation in order that all employees have reasonable access to these documents.

I. Fact-Finding.

1. Management **will** give an employee **who is the subject of the fact-finding** sufficient notice of its **need** to conduct a fact-finding session so as to allow the employee to obtain representation if he or she chooses.
2. A copy of the fact finding questions will be provided to the employee and the employee's representative at the beginning of the fact-finding session.
3. Employees will normally receive written notification of the results of any fact finding interview within **thirty** calendar days of the interview. Employees not receiving such notification may request **the results of the fact-finding** through the **Human Resources Department**. **The results will** be made available to the employee unless the **Human Resources Department** determines that extraordinary and extenuating circumstances require additional time, in which case the employee will be given the reasons additional time is required and a projected date for conclusion of the fact finding process.
4. No fact-finding session will be tape-recorded without the express consent of all **Parties** present in the session. If a tape is made pursuant to such consent, the Party who makes the tape will provide a copy, within one working day, to any participant in the session who requests it.

J. Skelly Rights.

Management agrees to follow appropriate procedures during any Skelly hearings prior to the imposition of a suspension, reduction in compensation, demotion, or discharge as outlined in Civil Service Rule XI.

K. Merit Increase.

Management will maintain records of merit increase recommendations and will notify employees in writing of decisions to recommend denial of merit increases.

- L. Duplication of Discipline.
1. City agrees that if an employee is disciplined for a specific act, that discipline **is** final for the particular act once the appeal process is complete.
  2. This does not preclude City from considering this discipline as part of the progressive disciplinary **process** and employee performance evaluation process should any future discipline be **necessary**.
- M. Documentation.  
In connection with any proposed adverse action, City **will** provide the employee and/or his or her representative with all documentation related to the proposed action and the reasons for it, including but not limited to notes made in connection with any fact-finding.
- N. Notice of Appointment with Terms.  
After a person is appointed to a position from an official Personnel Certification, City **will** provide the person with a notice which indicates the person's official appointment date, his or her job status, the starting salary and salary step upon appointment, and length of probation.
- O. Equity in Access to Opportunities.
1. Opportunities.
    - a. Department will ensure that training, **OCA**, special assignments, and committee assignments will be offered fairly to Division employees.
    - b. Departments will also ensure that clerical employees will have equal opportunity to participate in appropriate Citywide or Departmental meetings and committees, special events, awards ceremonies, and other functions.
  2. Communication.  
To the extent practical, Department will communicate with employees about general criteria used for promotions and how they can better prepare themselves within their current classifications for promotions or career advancements. Such communications may be made through Department or City publications, during staff meetings, or through special conferences with all employees.

## ARTICLE 11

### Use of City Facilities

- A. Union may, with the prior approval of the **Human Resources Department**, be granted the use of City meeting room facilities during non-work hours for meetings of City employees provided space is available, and provided further, **that the** meetings are not intended for organizational activities or membership drives of City employees.

- B. Solicitation of membership and activities concerned with the internal Management of Union, such as collecting dues, holding membership meetings, campaigning for office, conducting elections, and distributing literature to individual employees, **cannot** be conducted during working hours.

## ARTICLE 12

### Bulletin Boards

- A. City will furnish, for the exclusive use of Union, adequate bulletin board space at reasonable locations. Additional bulletin board space or locations may be made available by mutual agreement as additional changes occur in work site locations during the year. Union representatives have access at any time to the bulletin boards. Only these designated boards **may** be used **to provide Union information. Use is limited to** the following subjects:
1. Information on Union elections and the results **of those elections**, stewards' reports and notices.
  2. Reports of official business of Union, including reports of committees or the Board of Directors.
  3. Scheduled Union meetings and news bulletins.
  4. Any other written material which first has been approved by the Department Head.
- B. City will **investigate incidents when** the space provided to Union is being misused or vandalized.

## ARTICLE 13

### Mail Station

Management **will** continue to provide Union with mail stations. Union agrees to continue to use these boxes and City's interoffice mail system only for official communications with City Management and to respond to employee inquiries.

## ARTICLE 14

### Payroll Deductions, Union Dues and Agency Shop Language

- A. Union dues **will** be deducted by Management from the salaries of employees when **the deductions are authorized by Council Policy 300.06, Employee-Employer Relations Policy, section VI (B). Employees must file a written authorization**



**requesting that the deductions be made. Deductions will be in the amount of \$17.00 for twenty-four of the twenty-six pay periods. Remittance of the aggregate amount of all deductions will be made to Union by Management biweekly at the conclusion of each pay period in which Union deductions were made.**

**California Teamsters Local 911  
9900 Flower Street  
Bellflower, CA 90706**

- B.** Dues **are** for a specified amount and **will** be made only upon the voluntary written authorization of the employee. The authorization or cancellation of **dues will** be made on clearly marked cards provided by Union.
- C.** When an employee is in a non-pay status for an entire pay period, no dues **deduction** will be made to cover that pay period from future earnings nor will the employee deposit (with City) the amount that would have been withheld if the employee had been in a pay status during that period. In **the** case of an employee who is in a non-pay status during only a part of the pay period and the salary is not sufficient to cover the full **dues amount**, no deduction **will** be made.
- D.** In the event of any concerted action authorized by Union which encourages employees to withhold their services to City, the City Council has the right, by resolution, to immediately cease the collection and remittance of dues and other deductions to Union. Before invoking its rights under this paragraph, City will notify Union of its intention and meet to discuss the matter if requested by Union.
- E.** Upon request, Personnel **will** provide a list of new employees (department and classification).
- F.** Pursuant to **California** Government Code **section** 3502.5 (Organizational Security), employees of the Lifeguard and Lifeguard Supervisors Bargaining Units represented by **Union** shall have the right to join or refrain from joining Union.
  - 1. Membership.
    - a.** As a condition of employment, all employees in the Units covered by this **Memorandum will**, on the **fifteenth** day following the beginning of regular or probationary employment be required to either join **Union** and pay **Union** dues or be required to pay the established monthly service fee. Any employee who is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations **will** not be required to join or financially support **Union** as a condition of employment. **The** employee may be required, in lieu of periodic dues, to pay sums equal to such dues to a non-religious, non-labor, charitable fund exempt from taxation under **Internal Revenue Code (IRC) section** 501(c)(3), chosen by such employee from a list of at least three such funds designated by City and Union. City will deduct **service fees** equivalent to union dues each month from **the** employee's paycheck and remit **the fees** to Union. The

Union will send this sum of money to the religious objector's selected qualified charitable organization. Proof of such payments **will** be made on a monthly basis to the Parties as a condition of continued exemption from the requirement of financial support to Union.

**b. The service fee will be deducted from the employee's payroll check on twenty-four of the twenty-six pay periods per year. Such sum shall not exceed the membership dues paid by those who voluntarily choose to join Union. Other than the payment of this service fee, those employees who do not choose to join Union are under no further financial obligation or requirements to Union.**

2. New Employee Notice.

City **will** give each employee at the time of employment the current Union form authorizing voluntary payroll deduction of monthly dues. City will provide Union with a "reduction/deduction register" for each of the **twenty-four** pay periods per year of all employees who are subject to the provisions of this **Memorandum**, giving the names, effective date of dues deduction, and the amount of dues deduction.

3. Maintenance of Membership.

Upon notice of Union and after counseling by Union, an employee who fails to **remit the** required **dues** or pay the service fee will be given fourteen calendar days notice of termination or **will** be allowed to resign with proper notice to City.

4. Payroll deduction.

Upon receipt of a written authorization by an employee using a Union form, City shall deduct and remit to Union each of the **twenty-four** pay periods per year. Upon written notification of City by the Union, employees in the **Bargaining Unit** who do not elect to pay dues as outlined above will, as a continued condition of employment, pay an agency fee. The amount of the agency fee shall not exceed the monthly dues that are payable by **Members** of the Union. The amount of the fee shall automatically be deducted by City from the wages of the employee and remitted to Union each of the **twenty-four** pay periods per year. Each **remittance to** Union shall be made by City and shall be **sent to**:

California Teamsters Local 911  
9900 Flower Street  
Bellflower, CA 90706

5. Indemnification.

Union **will** indemnify and hold City harmless against any cost or liability resulting from any and all claims, demands, suits or any other action arising from the operation of any provision of this Article. The indemnification includes the cost of defending against any such actions or claims. Union **will** have no monetary claim against City by reason of its failure to perform under this Article.

6. Seasonal Lifeguards.

Each Seasonal Lifeguard hired for the peak season as a condition of work will be required to either pay agency **service** fees or have the opportunity to join Union and become a Union member. Union recognizes that Seasonal Lifeguards do not have property rights to employment, are not eligible for fringe benefits, and work at the pleasure of City. Seasonal Lifeguards who accept **OAs** of **thirty working** days or more outside of the traditional peak season will be required to pay either **service** fees or union dues. City will not oppose Union's efforts to pursue the establishment of additional lawful benefits for its **Members**, including, but not limited to, affiliated institutions with all privileges and powers authorized by state and federal law.

- G.** The payroll deduction provision in Council Policy 300-06, section VI(B) will be enforced.

## ARTICLE 15

### Use of City Email System

Union may use City's email system to direct employees to information contained on Union's website. Union's email message for this purpose may include a link to Union's website and it will not be a violation of City policies for an employee to click on the link in this email message and access the information to which he or she has been directed. No further use of or access to City's email system is authorized unless **the** use pertains directly to the employer-employee relationship. Examples of this relationship include, but are not limited to: communicating with **Management** or Labor Relations, responding to disciplinary actions or appeals, submitting grievances, scheduling meetings, making requests for information, and communicating a tentative agreement for ratification purposes. Union agrees to comply with all City policies on the use of City resources. For purposes of the communications permitted by this Article, City agrees to provide Union with a complete list of workplace email addresses for all employees in the **Bargaining Units** it represents, as well as a list of all applicable **mail** stations for represented employees, and to update these lists annually. The limitations of this Article become effective on the date City provides Union with this information.

## ARTICLE 16

### Rest Periods

- A.** City and Union jointly endorse the practice of progressive management which recognizes that regular, authorized rest periods are beneficial both to employees personally and to the productivity of the organization.

- B. Subject to work assignments and **Departmental** requirements, **Department Heads** are authorized and encouraged to allow rest periods for employees within the limits of the policy outlined below:
1. Two **fifteen**-minute rest periods (including “travel time” if the employee leaves the work area) **are** allowed during each **eight**-hour workday (“travel time” means pedestrian travel or travel in the employee’s private vehicle). Employees working less than an eight-hour work day **will** be given rest periods near the end of each consecutive two hours worked, including overtime, except in situations where public safety, public health, or emergencies exist.
  2. Subject to work assignments and **Department** requirements, a rest period or a meal break should be allowed near the end of each two-hour period of work, including overtime.
  3. Since the purpose of granting the privilege of rest periods is to give relief from mental or physical fatigue, and consequently, to improve productivity, the following practices **are** not allowed:
    - a. Combining two or more rest periods into one rest period;
    - b. “Saving” rest period time to justify extended lunch hours or shortened workdays;
    - c. Accumulating rest period time from day to day; **or**
    - d. Applying rest period time to compensatory or other time off, or in the considerations or computations concerned with overtime compensation.

## **ARTICLE 17**

### **Work Schedules**

- A. If Management desires to make a change in work schedules, or geographic locations, Management will notify the employee five **working** days in advance of the proposed change. The notice will be in writing and state the reasons for the proposed change. In emergency situations, Management will not be required to give a five-**working** day notice prior to changing a work schedule or location. The downtown area around the City Administration Building is considered one geographic location.
- B. Any changes in the method of assigning employees to shifts or significant changes in work schedules **is** subject to meet and confer. Union may consult with Management on other matters that affect hours of work.
- C. Shift Preference: Any employee who wishes to change to a different work schedule or shift within his **or** her **Department** may submit such request in writing to the **Department’s** personnel section or the authority who has the power to render a decision in these matters. Such requests will be considered by Management prior to filling a

vacancy in the employee's position on the desired shift. In the event two or more employees are equally qualified to transfer to a vacant position and desire to do so, the employee with the most seniority in the Department will normally prevail. Management may select **someone** other than the most senior **employee** if there are valid bona fide reasons **for doing so**. Seniority in this instance is defined as the longest continuous service in the class in the Department. In the event two or more employees having the same length of service in the class in the **Department** desire the vacant position, the tie **will** be broken by overall **length of** City service.

- D. Nothing **in this Memorandum should** be construed to limit the authority of Management to make temporary assignments to different or additional locations, shifts or work duties for the purpose of meeting emergency situations over which the Department has no control. **Such** emergency assignments shall not extend beyond the period of such emergency.
- E. Any violation of this policy shall be grievable.
- F. Subject to **section B**, departments with the concurrence of the **Human Resources Department**, have within their authority the right to modify their work schedules. Union may meet with Appointing Authorities to discuss alternate work schedules and job sharing.
- G. **The** current Lifeguard Division two year district rotation for Lifeguard II's and III's will be modified to a one year district rotation.
- H. **The** 4/10 work schedule will be the official work schedule for the Lifeguards for the term of **this Memorandum**.
- I. The Lifeguard Chief and a Marine Safety Lieutenant **or Lieutenants** will meet individually with each **Lifeguard Sergeant**, in order, based on seniority. The Lifeguard Sergeant will provide **his or her** top three schedule picks based on the available schedules. The Lifeguard Chief or **his or her** designee will find the best accommodation that suits both the employee's choice and the operational needs of the Lifeguard Division. Seniority will be a strong factor in the final placement of the **Lifeguard Sergeant**. The Lifeguard Chief will clearly articulate specific reason for his **or her** final decision in order to promote a culture of transparency and mentorship. In addition to seniority, the Lifeguard Chief will consider such factors as individual skills, abilities, knowledge, specialty team membership, boating **skill** levels, overall experience, and the value of creating the most effective leadership teams for each district. The Lifeguard Chief's decision will be final and **is** not subject to the grievance procedure set forth in **this Memorandum**.
  - 1. **Lifeguard Sergeant twenty-four** hour shifts (not 10-10-20 shifts) will generally be limited to six months within a one-year period.
- J. During the peak summer season, Seasonal Lifeguards will be scheduled for forty hour work weeks. Based on operational needs, as determined by the Lifeguard Chief or his or

her designee, the actual number of hours worked by the Seasonal Lifeguards during the peak season may be less than **forty** hours **per** week.

- K. Definitions:
1. “Workday” is the number of hours an employee is scheduled to work in a **twenty-four**-hour period.
  2. “Workweek” is a period of **one hundred and sixty-eight** consecutive hours (seven consecutive **twenty-four**-hour periods) as determined by the **Appointing Authority**.
  3. “Scheduled work week” is the employee’s predetermined number of hours per workday and workdays per workweek as established by the **Appointing Authority**.
- L. Schedule alternatives to the traditional eight-hour day, five-day week, such as the 4/10 or 44/36 schedules, may be approved for implementation based on justifications identifying operational efficiencies, productivity improvements or enhanced customer service. They may also be approved in cases in which there is no harm to **Departmental** efficiency, productivity or costs, but will result in benefits for employees. Employees who telecommute may be eligible for alternative work schedules at the discretion of the **Appointing Authority**. Employees who work alternate work schedules may be eligible to telecommute at the discretion of the **Appointing Authority**.
- M. When the need to work outside normal or scheduled work hours is identified and authorized, and when Management directs the employee to adjust his or her work schedule to avoid overtime expense, Management will notify the employee, in writing, at least five **working** days in advance of any directed schedule change.
- N. When proper advance notice has been given, Management will work with the employee to determine how the work schedule will be adjusted within the pay period to meet the needs of both City and the employee.
- O. In the event that five **working** days’ advance notice has not been given, whatever the reason, Management **will** authorize overtime in accordance with Article 18, Annual Leave **and** Compensatory Time Off; Article **54**, Overtime; and Personnel **Manual Index Code**, H-4, Overtime Compensation.

## **ARTICLE 18**

### **Annual Leave and Compensatory Time Off**

- A.** **Appointing Authorities** are responsible for arranging scheduled annual leave for vacations so that adequate personnel are available to carry on necessary City work.
- B.** As is practicable, employees should be permitted to schedule annual leave for vacations and compensatory time off at times most acceptable to the employee. Annual leave for vacations **will** be selected by employees within each **Division, Section, or Unit**, as is

applicable, based upon their seniority by class within the Department. Employees who are transferred at their request or promoted may be required to modify their scheduled annual leave or **compensatory** time off for vacations.

- C. Employees should be encouraged to take regular annual leave vacations but they **will** not be required to take annual leave vacations against their will. Employees may accumulate annual leave time in accordance with this **Memorandum**.
- D. **Compensatory time may be accumulated up to a maximum of one hundred and twenty hours during the fiscal year. However, accrued compensatory time will** be reduced to **forty-five** hours as of June 30 each year unless an exception is granted by the **Human Resources Department**. This time frame may be modified in exceptional circumstances. However, based on workload and operational considerations, Department Heads or their designees may set a lower midyear accumulation limit after meeting and discussing the proposed limit with Union.
- E. Any existing annual leave vacation scheduling method that is satisfactory with the employees **will** remain in effect for the duration of **this Memorandum**. This is in lieu of the above mentioned scheduling method.
- F. **Annual Leave.**
  - 1. Effective July 1, 1991, the maximum accumulation of annual leave for employees with fifteen or more years of service is seven hundred hours. For employees hired after July 1, 1993, the maximum accumulation of annual leave is three hundred and fifty hours.
  - 2. Employees are eligible to receive “pay-in-lieu” of annual leave regardless of the total number of annual leave hours the employee has accrued at the time of the request, up to a maximum payment of one hundred and twenty five hours per fiscal year.
- G. **Cease to Accrue Provision.**

Employees who reach their maximum permitted accumulation of annual leave on their anniversary date **will** cease to accrue additional annual leave. Employees who expect to be in this situation may submit a written plan to reduce excess leave which will include time off and pay-in-lieu up to **one hundred and twenty five** hours per fiscal year as necessary. If the Appointing Authority denies the specific time off requested and provides no alternative time off which is acceptable to the employee, this cease-to-accrue provision shall not apply until such time as the employee is granted and takes the time off. It is City’s intent to accommodate employees’ requests to use annual leave and avoid any loss of this benefit.
- H. Leave provisions included under **sections I and J** will be accounted for separately.
- I. Pre-approved annual leave, sick leave, or compensatory time off properly used for personal, family, or dependent illnesses **will** not be subject to disciplinary action.
- J. Approved, unscheduled annual or sick leave properly used for family, dependent, or **domestic partner** illnesses **will** be considered as a separate category when reviewing

employee performance with regard to attendance and/or absenteeism issues, and **will** not be subject to disciplinary action. Should City, for good and sufficient reasons, determine that an employee is abusing this leave provision, the **Appointing Authority** may request a bona fide doctor's statement from the employee to substantiate the leave request **or requests**. Failure to provide documentation, by a mutually agreed upon date, to the **Appointing Authority** may subject **the employee** to disciplinary action in accordance with the City's Personnel Regulations.

- K.** Criteria to be considered in determining leave abuse **is** limited to stated **Department or Division** numerical standards, and must include, but not be limited to, length of service, prior attendance record throughout City career, reason for absence, past performance reports, harm to the work unit, leave balances, past discipline, as well as job classification and working conditions.
- L.** If disciplinary action for employee leave abuse under this article is proposed which deviates from these criteria, the Appointing Authority or designee must obtain prior approval from the Human Resources Director.
- M.** **Compensatory Time and Grant Reimbursement.**  
**City and Union agreed that overtime earned from a grant fund will only be compensated in pay and not with compensatory time off. All other overtime earned may be taken as pay or as compensatory time up to the compensatory time caps as set forth in Article 18, section D.**

## ARTICLE 19

### **Bilingual Pay**

- A.** Any employee filling a position which is designated as requiring knowledge and use of Spanish, Korean, American Sign Language, Arabic, Farsi, Chinese, Indochinese or Tagalog language in the performance of **his or her** duties, and who has **been certified as bilingual by Personnel will** be paid seventy cents (\$.70) per hour in addition to **his or her** regular salary.
- B.** **Incidental Bilingual Pay.**
  - 1. City agrees to pay bilingual compensation in the amounts specified in paragraph A for the entire pay period to any eligible employee (certified by Personnel or identified by Citizens Assistance) who is requested or directed by a supervisor or manager to provide translator services in a non-English language other than a language eligible for ongoing bilingual compensation (Spanish, Korean, American Sign Language, Arabic, Farsi, Chinese, Tagalog, **or** Indochinese languages).
  - 2. A statement attached to the Personnel Change **Notice** from a supervisor will serve as certification for bilingual pay for the pay period.



## ARTICLE 20

### Workplace Safety

- A. City agrees to make each workplace safe. City also agrees to process, in an expeditious manner, work requests submitted to any City department or division intended to correct unsafe work places. City agrees to process those work requests involving significant safety problems within **thirty working** days.
- B. **Weapon Free Workplace.**  
**Union represented employees are prohibited from possessing personal deadly weapons or firearms, even if lawfully owned, while performing duties or have stored in the workplace, including City controlled access parking facilities. City shall have the right to adopt an A.R. regarding transporting or carrying of weapons by City employees on City property or job sites. At the request of the Union, the City will meet and confer over the identified impacts on the adoption of the A.R.**
- C. City agrees to establish a joint safety committee in which Union will be authorized to appoint three representatives to advise the **Mayor** in the area of safety and security at workplaces.
- D. City agrees to continue to develop and implement safety training programs for all employees whose job duties include the responsibility to enforce rules and regulations. In the development of such programs, City agrees to meet with Union to discuss ideas.
- E. In compliance with applicable federal and state laws, Management will continue to provide all employees in those classifications whose job responsibilities include the handling, storage, or disposal of hazardous materials, with guidelines, training and annual certification, as required.
- F. City agrees to continue the efforts being made to reduce **or** eliminate repetitive motion injuries and to provide a safer, healthier work environment regarding repetitive motion injuries. City also agrees to continue its practice of addressing issues and concerns which Union brings to Management in furtherance of this objective.
- G. **City has initiated a 100 percent response policy which means the City will investigate every report of an alleged threat, as defined in Administrative Regulation 97.10 Threat Management Policy. City will make its best efforts to protect, support and counsel employees who have been threatened during the course of employment.**
- H. In the event of power outages, water shut off, building-wide restroom closures and other such events that seriously impact the health and safety of employees, City shall:
1. Notify employees of the problem, **the** actions **that** are being taken to rectify it and the projected time when it will be fixed;

2. Provide reasonable alternate accommodations to meet employees' restroom needs and to eliminate other health or safety hazards created by the event; **or**
3. Allow non-emergency employees to leave work if reasonable alternate accommodations cannot be provided and the event has not been rectified **within** three hours.

Departments with emergency employees will execute their emergency plans to cover these situations.

## ARTICLE 21

### Salaries

#### A. General Salary.

1. Effective July 1, **2009** and continuing through June 30, **2013**, there is a general salary freeze and there will be no general salary increase. Employees will remain eligible for all other current forms of compensation, including step advances on the salary schedule, career advancement opportunities, certification and registration pay.
2. No special salary adjustment requests will be submitted to the Civil Service Commission by City, Union, or employees covered by this **Memorandum**, proposing any special salary adjustments for any job classifications covered by this **Memorandum** to be effective prior to **Fiscal Year 2014**. In anticipation of the meet and confer process for a new agreement for **Fiscal Year 2014** however, Union may bring special salary adjustment requests to the Civil Service Commission during the appropriate period in Fiscal Year **2013**.

#### B. Mandatory Furlough.

1. Effective with the pay period beginning on July 11, 2009 **and continuing through June 30, 2013**, each full-time employee (see **exception below for all Hourly employees**) will take fifty-two hours of unpaid furlough for each fiscal year, which will be deducted on a pro-rata basis from each of **twenty-five** paychecks over the course of the fiscal year on the same terms and conditions as apply to the City's Voluntary Furlough Program, except that no discretionary days will be made available.
2. A pro-rata adjustment in the number of furlough hours **shall** be made for those employees who work half and three-quarter time **and for any employee who is hired after the beginning of a fiscal year.**
3. **Exception (3 percent Pay Deduction for Hourly Employees):**

**Since hourly employees are not eligible for furlough, and since federal law mandates their participation in the SPSP-H Plan (see Article 49), these hourly employees will receive a 3 percent pay deduction.**

4. The **Parties** agree to allow pre-selected vacation in accordance with Vacation Schedule Policy Number 1.8 under Fire-Rescue Department Lifeguard Services Division Manual of Policies and Procedures (Vacation Policy) to be substituted with mandatory furlough hours.
5. Any other furlough outside of pre-selected vacation will not be permitted if it requires backfilling.
6. Any remaining mandatory furlough not used by **June 21, 2013 (last pay period in Fiscal Year 2013)** will be forfeited.
7. Telestaff indicated vacations **for the fiscal year** will be used as the basis for this agreement.
8. For Fiscal Year **2013**, the procedure **described in paragraph B.4 above** will be the mechanism for scheduling mandatory furlough.
9. If any change is made by City to the vacations selected, both **Parties** agree to meet and confer over the Mandatory Furlough Program.
10. In the event of any dispute over the Lifeguard Division's handling of employees' requests to schedule their mandatory furlough days, City's Human Resources Director will have the authority to hear **the dispute** and direct the Lifeguard Division to resolve the dispute in keeping with the letter and spirit of the **Parties'** agreement.

**C. Special Assignment Pay.**

1. River Rescue Team Pay.  
Lifeguards assigned to the River Rescue Team **will** receive an additional 10 **percent** of their base salary November 15 through April 15 and outside of those dates while deployed in flood alert, during call-out, during actual river rescue training, and during call-out for dive operations. Lifeguards receiving River Rescue Team pay are not eligible to simultaneously receive Dive Team pay.
2. Dive Team Pay.  
**Any** Lifeguard assigned to the Dive Team **will** receive an additional 10 **percent** of base salary when he **or** she performs a scuba dive or participates in training for scuba dive. Members of the Dive Team will receive the above premium pay for the entire pay period when assigned to the above activities. Lifeguards receiving Dive Team pay are not eligible to simultaneously receive River Rescue Team pay.
3. Cliff Rescue Instructor Pay.  
Lifeguards assigned as Cliff Rescue Instructors **will** receive an additional 5 **percent** of base salary.
4. Special Team Eligibility.  
Lifeguard II's and III's who are promoted to limited Sergeants for the duration of the summer season only and are demoted back to Lifeguard II's or III's at the

end of the summer season **will** retain their place or eligibility to participate on Lifeguard Special Teams.

5. Class A or B License.

An employee who is directed to obtain a Class A or B license or who possesses a Class A or B license and is directed to drive a commercial vehicle requiring the Class A or B license when the possession of a Class A or B license is not a minimum requirement for the employee's classification **will receive** fifty cents (\$.50) per hour special assignment pay. The special assignment pay **will** be paid for each day the employee was directed to, and did, drive a commercial vehicle. City shall pay the medical and licensing fees required to obtain the Class A or B license.

6. **The Parties agree there will be no increases to Special Assignment Pay during Fiscal Year 2013.**

D. Salary Calculations.

1. City agrees to establish the salaries for new classes and calculate special salary adjustments so as to achieve **the** internal salary relationships specified by the Civil Service Commission. Salaries **will** be set to the nearest percent per hour using normal rounding procedures and must be compatible with all applicable payroll and personnel data processing systems.

2. City will make every effort to ensure that the new payroll system has sufficient flexibility to allow further refinements in differentials and salary calculations.

3. In the **Adopted Salary ordinance** "B" step **is** eliminated for new hires beginning **after July 1, 1994**. Employees hired after **July 1, 1994**, will move from "A" step to "C" step after one year. This represents an increase of approximately **10 percent**. Current employees (hired prior to **July 1, 1994**) will continue with the present five-step salary schedule in present and future positions.

E. EMT Pay.

Lifeguard I's, II's, III's, Lifeguard Sergeants, and Marine Safety Lieutenants who are EMT-certified **will** receive an additional **8.5 percent** of base pay.

F. All Lifeguards assigned to the Fire-Rescue Emergency Air Operations/Regional Fire-Rescue Helicopter Program **will** receive **7.5 percent** additional pay when deployed to a team rescue.

G. Shift Differential.

Lifeguards working the Night Shift are entitled to an increase in the amount of **5 percent**. Due to City's structural deficit in the General Fund, it is unable to implement this benefit during the term of this **Memorandum**. City and Union agree that it is Union's intention to address the implementation of this benefit in meet and confer for a successor **Memorandum**.

## ARTICLE 22

### Retirement

- A. 2005 Retirement Benefit Plan Changes.  
The Parties recognize that the effective date applicable to the following benefit changes is currently in litigation and will eventually be established by order of the court.
- B. Purchase of Service Credit.  
Employees hired on or after July 1, 2005, are not eligible for the purchase of service credit (airtime) in **San Diego City Employees' Retirement System (SDCERS or Retirement System)**, except for credit for up to five years of military service. Article 4, Division 13 of the Municipal Code will be revised to reflect this change.
- C. "13th Check" Supplemental Benefit.  
Employees hired on or after July 1, 2005, are not eligible to receive the "13th Check" supplemental benefit set forth in **Municipal Code** section 24.1502(a)(6). Section 24.1503 will be revised to reflect this change.
- D. DROP.  
Employees hired on or after July 1, 2005, are not eligible for DROP. Article 4, Division 14 of the Municipal Code will be revised to reflect this change.
- E. Calculation of Service Retirement Allowance.  
The only service retirement allowance calculation formula for employees hired on or after July 1, 2005, 3.0 **percent** at age **fifty** for Safety Members, with the existing tiers for those formulae. Article 4, Division 4 of the Municipal Code will be revised to reflect this change. For employees hired before July 1, 2005, the retirement allowance calculation formulae will remain as currently provided under Article 4, Division 4 of the Municipal Code.
- F. 2002 Retirement Contribution and Benefit Changes.  
Following meet and confer in 2002, the Parties agreed to certain changes to City's employee retirement contribution offset and to SDCERS benefits for **Health-Eligible Retirees**. Those changes are specified in this Section 3. Notwithstanding any provision below, employees hired on or after July 1, 2005, are excluded from the **Retiree Medical Benefit** and are not eligible for (1) the 13th Check'; (2) participation in the DROP program; (3) purchase of service credits; and, (4) calculation of a service retirement allowance using a formula other than 3.0 **percent** at age 50 for Safety Members, with the existing tiers for those formulae.
- G. Retirement Contribution Offsets.  
**Effective July 1, 2011, for employees hired before July 1, 2009, the City will pay a portion of the employees' required retirement contributions in an amount equal to 2.3% of their base compensation, thereby reducing the amount deducted from their paychecks. Upon termination, these employees will have no vested right in the contributions by the City.**

H. Retirement Benefit Changes.

1. Effective July 1, 2002, a “Health Eligible Retiree”, as defined in the Municipal Code, will have the applicable Medicare eligible or non-Medicare eligible insurance premiums paid for the Health Eligible Retiree-only insurance, or the Health Eligible Retiree will be reimbursed the actual cost incurred from the Medicare eligible or non-Medicare eligible retiree-only premium up to the maximum amount allowed in Municipal Code Division 12. Municipal Code Division 12 will be amended to set the maximum amounts to be paid on behalf of or reimbursed to a Health Eligible Retiree for retiree-only Medicare eligible or non-Medicare-eligible health insurance premiums based on the premium for City-sponsored PPO plan for Fiscal Year 2003 and annually adjusted thereafter based on the Centers for Medicare & Medicaid Services, Office of the Actuary, projected increase for National Health Expenditures for the full year period ending in the January preceding the start of the new plan year; such adjustment shall not exceed **10 percent** for any given year. The maximum amount of monies reimbursed to Health Eligible Retirees will be **100 percent** of such Medicare-eligible or non-Medicare eligible retiree-only premium. Pursuant to this provision, the based monthly maximums are established for **Fiscal Year 2003** as follows:
  - a. For Non-Medicare eligible retirees: \$489.16
  - b. For Medicare eligible retirees: \$460.67
2. Health Eligible Retirees may choose to participate in a City sponsored health insurance plan or any other health insurance plan of their choice
3. Additionally, the Retirement System will reimburse the Part B Supplemental Medical Expense Premium for those Health Eligible Retirees enrolled in Medicare.
4. The Disability Income Offset provision is eliminated. There will be no reduction of retirement benefits if the retiree has other income.
5. A five-year purchase of service credit provision is established effective January 1, 1997. Under this provision, an eligible Member may purchase up to five years of service credit by paying both employee and employer contributions in an amount and manner determined by the **SDCERS Board (Board)** to make the **Retirement** System whole for such time. In addition, Members retiring on or after January 1, 1997, may purchase probationary periods, **Military and Veterans Code** leaves, waiting periods for the 1981 Pension Plan, actual time worked hourly or part time, special leaves without pay occurring prior to January 1, 1997, the difference in time between part time and full time prior to January 1, 1997, **Long Term Disability (LTD)**, **Vocational Rehabilitation Maintenance**, **Temporary Total Disability**, **Family Medical Leave** periods, special leaves of absence with job to be saved periods and any period preceding reinstatement by the Civil Service Commission following a termination appeal.

6. DROP is established effective April 1, 1997. DROP provides an alternative form of benefit accrual while allowing a Member to continue working for City. During the DROP period, a DROP **participant** retains all rights, privileges, and benefits of being an active City employee, except as specifically modified in the DROP Plan Document, and is subject to the same terms and conditions of employment including disciplinary actions up to and including termination. The Member continues to be eligible for the active employee **Flexible Benefits Plan** for the classification and is not eligible for “Retiree” Health Benefits until such time as the Member completes or terminates the DROP period. Under DROP, a monthly service retirement allowance, along with any **Cost of Living Adjustment** increases, Supplemental Benefit checks, and any adjustments to such payments applicable to retirements effective on the date the Member entered DROP, are deposited into a trust account. These SDCERS benefits are calculated as if the Member were retiring on the date the Member enters DROP. The Member’s contributions to the Retirement System cease. The Member and City each contribute 3.05 **percent** of the Member’s salary each pay period that the Member participates in DROP. The Member’s contribution is made on a pre-tax basis pursuant to **IRC** section 414(h)(2). These monies are placed in a trust account and are distributed to the DROP participant upon termination of employment or completion of the DROP period whichever occurs first. No withdrawals may be made from the DROP account until the Member completes or terminates his or her DROP period. Interest will be credited to the Member’s DROP account at a rate determined by the **SDCERS** Board. The Member is 100 **percent** vested in DROP from its inception.
7. A DROP participant who becomes disabled may apply for conversion of **his or her** deferred retirement allowance to a disability allowance calculated at the date of entry into DROP. A Member who participates in DROP irrevocably designates a specific consecutive period of months for participation, not to exceed sixty months. The Member must terminate City service at the end of the designated period.
8. For retirements effective on or after January 1, 1997, the 50 **percent** continuance is available to the spouse to whom the Member was married on the date of retirement. The requirement that the Member be married to his or her spouse at least one year prior to retirement for the spouse to receive the 50 **percent** continuance is eliminated.
9. The surviving spouse of a Member who is killed while in the performance of duty is entitled to continued health coverage as provided in California Labor Code section 4856.
10. The modified special death benefit provided to the surviving spouse of a Member killed in the line of duty is amended to eliminate the requirement that the benefit be discontinued if the spouse remarries. Any benefit terminated to such spouse as a result of remarriage shall be reinstated effective January 1, 1997.

**11. Lifeguard Members.**

City and Union, having met and conferred, and having participated in the settlement of a class action lawsuit challenging the calculation of “compensation earnable,” have agreed to benefit changes to SDCERS. The benefit changes resulting from this class action settlement were approved by the SDCERS active and retired membership in June 2000.

**I. Formula Change for Calculation of SDCERS Monthly Retirement Benefit.**

- 1.** The Retirement Calculation Factor to be applied to the Lifeguard Member’s high one year salary at specified ages may be increased from the current levels to those shown below for all retirements effective on or after July 1, 2000, if the Lifeguard Member selects this option.

	<u>Retirement Calculation Retirement Age Factor effective 1/01/97-6/30/00</u>	<u>Retirement Calculation Factor effective 7/01/00</u>
	<u>(Current)</u>	<u>(New)</u>
50	2.50%	3.00%
51	2.60%	3.00%
52	2.70%	3.00%
53	2.80%	3.00%
54	2.90%	3.00%
55+	2.99%	3.00%

- 2. Member Option:** Pursuant to the class action settlement, a Lifeguard Member may choose, upon application for retirement, one of the following two options:
- a.** The Retirement Calculation Factor in effect on July 1, 2000, with no change in the Lifeguard Member’s Final Compensation; OR
- b.** A ten percent increase in the Lifeguard Member’s Final Compensation, with the Lifeguard Member’s Unmodified Service Retirement Allowance calculated using the Retirement Calculation Factor in effect on June 30, 2000.
- 3.** This election must be made with SDCERS at the time of application for retirement.

**J. Formula Change for Calculation of SDCERS Monthly Retirement Benefit for Lifeguards hired after June 30, 2011.**

Subject to the provisions contained in Article 4, section 8, the Retirement Calculation Factor for Lifeguard Members hired after June 30, 2011, shall be based on a Lifeguard Member’s three highest years’ salary and the following formula:



Retirement Calculation

	<u>(New)</u>
50	2.50%
51	2.60%
52	2.70%
53	2.80%
54	2.90%
55+	3.00%

K. Eligibility for Industrial Disability Retirement Change.

A Lifeguard Member may be eligible for an industrial disability retirement if it has been medically determined that the Lifeguard Member has become psychologically or mentally incapable of performing his or her normal and customary duties as a result of a violent attack on the Member with deadly force, such as a shooting or stabbing that causes great bodily injury, and that resulted in a nervous or mental disorder. The violent attack must occur on or after July 1, 2000, and such application for industrial disability retirement must be submitted before July 1, 2005. This provision shall sunset on June 30, 2005, and no such applications may be made after that date.

L. IRC section 415 Amnesty Provisions.

In order to preserve the City Employees' Retirement System's (CERS)' tax qualified status, Union and City mutually agree to adopt the "amnesty" or "grandfather" provisions of IRC section 415(b)(10), and agree to meet and confer regarding "make-up" provisions.

M. Buy-Backs.

Current employees with 1981 Pension Plan credited years of service will be granted, at no cost to the employee, credit for past CERS service.

**ARTICLE 23**

**Lifeguard Services**

A. **Lifeguard Training.**

1. Union may meet with City to discuss training programs and enforcement responsibilities for Lifeguards, including the development of a more adequate training program for Seasonal Lifeguard I's.
2. City **will** continue to pay the costs associated with a Lifeguard's EMT recertification, including necessary training.

B. **Class B Driving License Requirements.**

All Members of the River Rescue Team, along with all Cliff Rescue Instructors, will be required to have a Class B driving license, (with air brake endorsement) and become a Rescue 44 operator within one year of selection to these respective assignments if they wish to continue serving **in** these assignments. City **will** provide the training for a Class

B license in-service and will cover the costs of the required medical examination and the initial **Department of Motor Vehicles** license fee. Renewals of the Class B license will be at the employee's cost except City shall pay for the required medical examination required for renewal.

**C. Preservation of Work.**

Fire-Rescue, Lifeguard Division recognize the expertise and organizational benefit of Lifeguard Division continuing to be the primary responders for cliff rescues during the day and river rescue responders throughout the year. Due to the specialized aquatic expertise of the Marine Safety section these duties and responsibilities shall not be removed from Lifeguard Division.

**D. Cliff Rescues.**

1. The Lifeguard Division will continue to be primarily responsible for responding to coastal cliff emergencies **when Lifeguard staffing provides for a Lifeguard Rescue Response as outlined in Coastal Cliff Rescue Procedures 2.19.** If the call for emergency services involves an injury of a person whose injury status is unknown, the appropriate Fire Operations and Advance Life Support (ALS) personnel will be dispatched as per the Coastal Cliff Rescue Procedures 2.19. Fire Operations and ALS personnel will not be dispatched until requested by the Lifeguard Division. If the Lifeguard Division, when responding to a cliff incident, determines that **additional** equipment is required or that additional personnel are required to perform the rescue safely, they should request assistance from Fire-Rescue and ALS personnel. **Incident command authority will be followed as described in Coastal Cliff Rescue Procedures 2.19.**
2. **When Lifeguard night crew staffing is not available,** Fire Operations will continue to be primarily responsible for responding to coastal cliff rescue emergencies. However, when such a call is received the appropriate Lifeguards should be called to assist the Fire Operations as described in Coastal Cliff Procedures 2.19.

**E. Communications.**

Requests for cliff rescue services **should be immediately routed to the appropriate Public Safety Answering Point (PSAP), either Lifeguard Communications Center (LCC) or Fire Communications Center (FCC).** When the Lifeguards have primary responsibility for coastal cliff rescues, the LCC is responsible for dispatching these emergencies. When Fire Operations have primary responsibility for coastal cliff rescues, the FCC is responsible for dispatching these emergencies.

**F. River Rescues.**

1. For the purpose of this policy, a "river rescue" is defined as any rescue of persons or property threatened, surrounded, or entrapped by stationary or moving water. River rescues, particularly those rescues that necessitate going in the water to effect the rescue, are extremely hazardous operations. To safely perform these rescues requires specialized training and equipment. For this reason, it is important that, where possible, all river rescues be performed by the Lifeguard

Division River Rescue Team. The Lifeguards who comprise this team are expert swimmers and have received extensive training in making river rescues. In addition, there is a reserve of Lifeguards who are qualified to assist them. As a general policy, therefore, the Lifeguard Division River Rescue Team will be called to make these rescues. Other safety personnel will not make in-water rescues unless a citizen's life is in immediate peril.

2. Whenever an inland water emergency occurs, the request for emergency service should be referred by the Police to the Lifeguard Communications Center. Lifeguard Division will dispatch the appropriate unit **or units**. In those cases where it is not apparent from the request that a river rescue is involved but any responding Fire-**Rescue** units realize upon arrival at a scene that a river rescue is necessary, the Lifeguard Division River Rescue Team will be summoned. **Other** safety personnel will not attempt river rescues unless a citizen's life is in imminent peril. This policy applies at any time of the day and during periods when there is no flood alert or during a Stage 1 or Stage 2 flood alert as defined in the Disaster Preparedness Plan. The Lifeguard Division River Rescue Team is available on a call back basis at all times through the Lifeguard Communications Center.
3. It is also necessary to address the issue of emergency scene management at river rescue incidents. The senior officer of Fire-Rescue at the scene will **be responsible for overall scene management**. When the Lifeguard Division River Rescue Team is called to the scene, the senior ranking member of **the River Rescue** Team will **be responsible** for overseeing the in-water rescue and how that should be accomplished. The senior officers of all safety services at the scene should ensure that there is a high degree of coordination and cooperation among all personnel present at the scene.

**G. Career Path Options.**

Fire-Rescue shall establish a committee with Lifeguards to develop additional career path options for Lifeguards and increase appropriate, short-term light duty assignments.

**H. Swim Test.**

The swim test shall continue to be conducted as described in the current Lifeguard Division Policies and Procedures Manual.

## **ARTICLE 24**

### **Limited Appointments**

Management agrees not to fill permanent, full-time, one-half time, or three-quarter time budgeted positions with employees serving on limited appointments except in extraordinary circumstances. Management intends to use limited appointments to fill hourly positions, positions funded by the state and federal government, and full-time budgeted positions in which the incumbent employee is on a **leave of absence**.

## ARTICLE 25

### Performance Incentives

#### A. Performance Pay.

1. City may grant an **Exceptional Merit Cash Payment** to any employee at “E” Step **who** meets standards on **his or her** most recent **Performance Evaluation** within the Units represented by Union. It is understood and expressly agreed to by the **Parties** to this **Memorandum** that any employee receiving a payment under this provision **does** not acquire any future rights to receive any future payment of salary beyond **the** employee’s base salary.
2. The **Appointing Authority** may grant an employee who meets standards on **his or her** most recent **Performance Report** up to three days special leave with pay in recognition of a specific instance of **exceptional** performance.

#### B. Exceptional Merit Increases.

1. Employees with commendation level performance may be granted an Exceptional Merit Increase for a maximum of a one step increase to the next consecutive step within the salary range, unless in conjunction with a normal merit increase where a maximum two step increase would be permitted. Exceptional Merit Increases not done in conjunction with a normal merit increase will be effective at the beginning of a pay period, and can be no earlier than the pay period in which the supervisor delegated the responsibility by the Appointing Authority.
2. Union may discuss problems in the Exceptional Merit Cash Payment Program with the **Human Resources Department**. Management shall provide Union an opportunity to review awards quarterly.

## ARTICLE 26

### Rehabilitation and Employee Assistance Programs

- A. Union agrees to cooperate with efforts by Management to conduct voluntary rehabilitation programs for employees having physical or mental disabilities; however, such agreement does not preclude Union from representing its members.
- B. Union and Management support the Employee Assistance Program (**EAP**) and both **Parties** agree to encourage, if appropriate, employees with personal problems to participate in **EAP**.
- C. The purpose of **EAP** is to **help** employees who have personal problems to obtain professional assistance and treatment where necessary. Participation in **EAP** will be entirely voluntary. City will not take disciplinary action against an employee for refusing to participate in **EAP except pursuant to Article 75**. Management and Union agree that actual discussions between the employee and **EAP** staff, and treatment

provided the employee through **EAP**, will be kept confidential unless the employee consents to disclosure.

- D. In accordance with Article 20, Workplace Safety, City will make its best efforts to protect, support, and counsel employees who have been threatened during the course of employment.

## ARTICLE 27

### Flexible Benefits Plan

- A. An IRS qualified cafeteria-style benefits program **called the Flexible Benefits Plan (FBP)** is offered to all eligible employees. **The FBP** provides a variety of tax-free benefit options. “Eligible employee” means any employee in one-half, three quarter, or full-time status. “Eligible employee” excludes all employees in an hourly status.
- B. There will be no increase in the **FBP** annual value during the term of this **Memorandum**, and the annual value will remain at the **Fiscal Year 2008** level of \$6,075.
- C. On or about April 1 of each year during the term of this **Memorandum** or earlier if mutually agreed, the **Parties will** exchange premium rates for the **Parties’** respective plan offerings.
- D. The benefits available through the **FBP** and the respective annual costs **of the benefits** are reflected in the Flexible Benefits Summary Highlights booklet provided to each employee each year.
- E. Notes:
  - 1. It is the intent of the **Parties** that all plans **offered in FBP** comply with all applicable State and federal laws, including IRS regulations as interpreted by the City Attorney. All disputes over interpretation of **this Article will** be submitted to the appropriate agencies for interpretation.
  - 2. The employee must select **a** life insurance and health insurance **plan** (unless covered under another comprehensive health plan). An employee may opt out of City health insurance if he **or** she has other comprehensive health insurance by selecting the “waiver” option.
  - 3. With the remaining FBP monies, eligible employees may select from other optional benefits including dental, vision, cancer/intensive care protection, 401(k), Dental/Medical/Vision and Dependent Care reimbursement and cash payment.
  - 4. After selecting required health and life insurance coverage, employees who are unable to enroll in their desired dental plan may purchase **dental coverage outside the FBP** by making an “out-of-pocket” payment for the cost difference.

Only dental coverage may be obtained in this manner. “Out-of-pocket” contributions must be made at the time of **open enrollment** and is nonrefundable.

5. Employees may designate a specific amount of pre-tax money (IRS restrictions apply) to be withheld from their paychecks to reimburse eligible out-of-pocket **Dental/Medical/Vision**, or **Dependent Care** expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, **and** are subject to IRS regulations. **Monies** are forfeited if not used within the fiscal year.
6. Eligible employees are required to enroll for their benefits each year during the designated open enrollment period. If an employee fails to complete enrollment within the open enrollment period, the employee’s current options for health (or comparable plan, if unavailable), including dependent health offset and life, will be automatically continued at the same level for the next year as if the employee had elected to keep them. All other benefit options will be cancelled. Any monies remaining from the FBP allotment will be paid out as **a** taxable cash payment. All payroll deductions, including **Dental/Medical/Vision** and **Dependent Care** reimbursement, will continue and may not be eligible to be stopped until the following open enrollment period.
7. City agrees that it will not arbitrarily or unreasonably deny Union the opportunity to offer a health insurance plan to active or retired employees. Such coverage must include mental health coverage at an equal or better level of coverage than that offered through City’s health plans. Union agrees to inform EAP of any changes to the mental health coverage or provider in order for EAP to give input on the proposed changes to ensure that City employees are receiving adequate mental health coverage through their selected health plan.
8. Union agrees to indemnify City against any and all claims arising out of the administration of its benefits plans.
9. Audit and Inspection of Records.  
The City Auditor is authorized to audit all necessary documents pertaining to the health insurance plans offered by Union.
10. The **Parties** agree that Union is authorized to audit City’s health plans to the extent that documents are requested and provided pursuant to state and federal public information laws.
11. Union will be available to answer questions **regarding its health plans** at the end of open enrollment and New Employee Orientation sessions.

## ARTICLE 28

### Formal Representation

- A. When formal meetings are scheduled for the purpose of meeting and conferring on subjects within the scope of representation, Union may be represented by a reasonable number of employee members of the **Unit** or **Units** involved, and the President or his **or her** designee, as agreed **to** with Management prior to the meetings. These employees may attend **these** meetings during regular work hours without loss of compensation or other benefits. Employees working shift hours other than regular day work hours may attend meetings and will have **their** schedules adjusted to the day shift for each meeting. For purposes of meeting and conferring on a successor Memorandum, three representatives of each **Unit** plus the President and Vice President **are** considered a reasonable number **of representatives**. However, additional representatives may attend upon mutual agreement of the **Parties**. Union may select a representative to attend City Council, Council Committee, Civil Service Commission, Retirement Board, Special Employer-Employee Committee meetings, and meetings of other special commissions or boards established by the City Council, during regular work hours, without loss of compensation, **when** subjects within the scope of representation are being discussed. Union shall, whenever practicable, submit the names of all **designated** representatives to Management at least two working days in advance of **the** meetings provided further:
1. That no representative **will** leave **his or her** duty or work station or assignment without specific approval of Management.
  2. That **approval to attend** any meeting is subject to scheduling by Management in a manner consistent with **the** operating needs and work schedules.
- B. Nothing provided in **this Article** limits or restricts Management from scheduling meetings before or after regular duty or work hours under appropriate circumstances.
- C. Union will have a permanent representative on the Suggestion Awards Committee.
- D. Union Board **Members** and **Stewards** **will** be granted the opportunity to attend meetings during regular work hours without loss of compensation or other benefits provided that Union, **not individual employees**, provides Management and the employee's Appointing Authority with notice of meetings at least five working days in advance of **the** meetings and pursuant to the provisions of Section A.1. In the event Union must convene an emergency board or steward meeting, Union shall give Management as much notice of this meeting as circumstances permit. For the purposes of the notice and approval provisions of this paragraph, "Management" shall mean the Human Resources Director or his **or her** designee.
- E. **Retiree Medical Trust.**  
**Effective July 1, 2012, four hours of release time, per quarter, is authorized for the Union trustee representative for the purpose of attending San Diego Employees Retiree Medical Trust board meetings. No overtime is authorized. Additional**

release time may be granted subject to the approval of the Human Resources Director.

## ARTICLE 29

### Employee Rights

- A. The Parties mutually recognize and agree **to** fully protect the rights of all employees covered by **this Memorandum** to join and participate in the activities of Union and all other rights guaranteed by law.
- B. No employees **will** be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.
- C. The Parties, in the conduct of their affairs, **will** apply the provisions of this Memorandum equally to all **covered** employees without favor or discrimination **based on any of the protected classes or categories listed in the City's Equal Employment Opportunity (EEO) Policy – Annual Statement, or because of** political or religious opinions or affiliations.

## ARTICLE 30

### Management Rights

- A. The rights of City include, but are not limited to:
  - 1. The exclusive right to determine the mission of its constituent departments, commissions, and boards;
  - 2. Set standards of service;
  - 3. Determine the procedures and standards of selection for employment and promotion;
  - 4. Direct its employees, **and** take disciplinary action for just cause;
  - 5. Relieve its employees from duty because of lack of work or for other legitimate reasons;
  - 6. Maintain the efficiency of governmental operations;
  - 7. Determine the methods, means, and personnel by which government operations are to be conducted;
  - 8. Determine the content of job classifications;
  - 9. Take all necessary actions to carry out its mission in emergencies; and,



10. Exercise complete control and discretion over its organization and the technology of performing its work.
- B. The exercise of **these** rights **does** not preclude Union from consulting with Management representatives about the practical consequences that decisions on these matters may have on wages, hours, and other terms and conditions of employment. Management decisions **will** not supersede the provisions of this **Memorandum**.

## ARTICLE 31

### Modification and Waiver

- A. Laws, regulations, or rules proposed during the life of this Memorandum **will** be reviewed by City and Union to determine their effect on this Memorandum.
- B. Reasonable written notice **will** be given to Union of any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted or changed by the City Council, Civil Service Commission, Retirement Board, or by a department, and Union **will** be given the opportunity to meet and confer or consult as required by law with **the appropriate** body or person prior to adoption of **any changes**. Reasonable notice **will** normally **be set at** of three working days.
- C. Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained in **this Memorandum will** not be binding upon the **Parties** unless agreed to in writing by all **Parties**, and, if required, approved and implemented by the appropriate body.
- D. In cases of emergency pursuant to the Charter, when City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with the Union, the City Council or the board or commission of City **responsible for the changes will** provide notice and opportunity to meet **with Union** at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.
- E. The provisions of this **Memorandum**, together with those provisions of wages, hours, **other terms and conditions of employment**, and employer-**employee** relations subject to meet and confer currently in existence and not changed by this **Memorandum**, **may** not be revised to adversely affect the employees in this unit during the term of this **Memorandum**; provided however, that Union agrees to meet and confer during the term of this **Memorandum** if City proposes to introduce ballot measures which relate to or would impact wages, hours, **other terms and conditions of employment**, or employer-**employee** relations.

## ARTICLE 32

### Obligation to Support

The Parties agree that during the period of time **this** Memorandum is pending before the Civil Service Commission or the City Council for action, neither Union, nor Management, nor their authorized representative, or any member of Union's Board of Directors will appear before the Civil Service Commission or the City Council or meet with members of either body individually to advocate any amendment, addition, or deletion to the terms and conditions of this Memorandum. It is further understood that this Article **does** not preclude the Parties from appearing before the Civil Service Commission or the City Council nor meeting with individual members of either body to advocate or urge the adoption and approval of this Memorandum in its entirety.

## ARTICLE 33

### Provisions of Law

- A. This Memorandum is subject to all current and future applicable federal, state and local laws, regulations, and the Charter. Provided, however, no local law which is enacted in contravention of the provisions of the MMBA **will** affect the provisions of this **Memorandum**.
- B. If any part or provision of this Memorandum is in conflict or inconsistent with applicable provisions of federal, state, or local laws or regulations, or is otherwise held to be invalid or unenforceable by any tribunal or court of competent jurisdiction, **those** parts or provisions **will** be suspended and superseded by applicable laws or regulations, and the remainder of this Memorandum **will** not be affected.
- C. It is the intent of Parties that this Memorandum be administered in its entirety in good faith during its full term.

## ARTICLE 34

### Information Exchange

Union, as bargaining agent for employees, is entitled to timely written information from Management which would enable it to properly perform its duties. In particular, the following information **will** be **provided** by Management **to Union** upon request:

- A. Bi-weekly, a magnetic tape (converted to diskette format) from City **will** be provided to Union containing the information currently furnished on each Union Member, at cost or at another price if agreed upon.
- B. Quarterly, City **will** provide Union with a diskette containing the information listed in **section A** for all employees in a Bargaining Unit.

- C. The City will make available to the Union information pertaining to employment relations as set forth in this rule and **the California Public Records Act**.
- D. Such information **will** be made available during regular office hours. Materials presently supplied to Union at no cost **will** continue to be supplied at no cost.
- E. Information which **will** be made available includes regularly published data covering subjects under discussion. Data collected on a promise to keep its source confidential may be made available in statistical summaries but **will** not be made available in a form **that** discloses the **identity of the employee**.
- F. Nothing in this rule **may** be construed as requiring City to do research for an inquirer or to do programming or to assemble data in a manner other than **its** customary **format**.
- G. Information **will** be made available on a biweekly basis from the Risk Management **Department (Risk Management)**, in regards to Union Members enrolled for Union-sponsored **health and dental plans**. This information will consist of current listings of Union-sponsored prepaid plans and documentation copies of the Union-sponsored prepaid benefits. Union shall provide Risk Management with a separate listing of premium payment accrual amounts for Union members being reimbursed for all or part of their plan premiums through Dental/Medical/Vision Reimbursement. Additions and deletions shall be reported to Risk Management by memorandum. Any list provided by Union shall include employee's name, social security number, and year-to-date cumulative totals by Union-sponsored option.

## ARTICLE 35

### Union Orientation

- A. City agrees to provide Union with an opportunity to make presentations to new employees during City's New Employee Orientation Program. These presentations will not exceed **one-half** hour, and will be restricted to employees in job classifications represented by Union. Union will be provided a separate room for their presentations.
- B. Union, upon request to Management, will be provided with an opportunity to have presentations not to exceed one-half hour at New Employee Orientations in departments which have **departmental** programs and **that** do not send employees to the Citywide program.

## ARTICLE 36

### Appeals

- A. **An** employee may appeal the placement of any document, including a Supplemental Performance Evaluation, which may be used as a basis for subsequent discipline, in his **or** her permanent record by submitting an appeal letter to the Department Head within

ten working days of the employee receiving **the** document that is to be placed in his or her file. It is mutually agreed that employee performance evaluations where employees “meets standards” are not eligible to be appealed. Within ten working days after receiving the appeal letter, which becomes an attachment to the document in question, the Department Head or his **or** her designee will schedule a hearing on the matter. The employee is entitled to representation at **the** hearing. **Within ten working days** after the hearing, the Department Head or his **or** her designee will provide **a** written **decision** as to whether the **original** document will be retained in or removed from the employee’s record.

It is mutually agreed that when an employee has concerns about evaluations that “meets standards,” the Department Head should designate someone other than the rater and the reviewer to meet with the employee and Union in an attempt to resolve any differences or dissatisfaction.

Reviews of “meets standards” evaluations are discussion items which may result in changes being made to the evaluation, but are not to be considered an appeal of the evaluation.

- B. Formal reprimands without further penalty more than two years old, and those with additional penalty more than three years old, will be destroyed, and will not be considered for purposes of promotions, transfers, special assignments and disciplinary actions, except as to disciplinary actions when **the** reprimands show patterns of specific similar misconduct. Reprimands may be retained in the employee’s personnel jacket. Upon request of the employee, reprimands will be destroyed on **the schedule set forth in this Article**. In the event an employee fails to make such a request, on discovery by Management, any reprimand will be destroyed in accordance with this provision.
- C. A **Written** counseling and **Written** warning more than one year old will be destroyed and will not be considered for purposes of promotions, transfers, special assignments, and disciplinary actions, except as to disciplinary actions involving specific similar misconduct as that addressed in the **written** counseling or **written** warning. **A written** counseling and **written** warning may be retained in the employee’s personnel jacket. Upon request of the employee, such **written** counseling and **written** warning will be destroyed on **the schedule set forth in this Article**. In the event an employee fails to make such a request, on discovery by Management any **written** counseling or **written** warning will be destroyed in accordance with this provision.

## ARTICLE 37

### Transportation Programs

- A. “C” Mileage.  
“C” Mileage reimbursement will be paid in accordance with the current IRS Standard Mileage Rates for business reimbursement.

**B.** City-Provided Vehicles.

City retains the right to determine unilaterally to provide employees with City vehicles for the performance of City business in lieu of requiring employees to use their personal vehicles and reimbursing them at the above-stated mileage reimbursement rates. However, in making such determinations where multiple employees within the same work group are using personal vehicles, City will focus on the entire work group rather than on individual drivers within a work group. City **will** discuss any such intention with Union **prior to** making its **decision**. In the event City **decides to provide City vehicles to employees**, City **will** give employees affected by the **decision** notice to permit them to make decisions regarding the purchase or lease of personal vehicles with this change in mind.

**C.** Payment of Mileage Reimbursement.

It is City's intent to provide employees their mileage reimbursement checks within two weeks **after the employees submit** their timely and accurate reimbursement requests to their designated supervisors.

**D.** Parking.

1. **An employee will be reimbursed the monthly Concourse **Parkade** parking fee at least seven **working** days each calendar month he **or** she uses the **Concourse** Parkade and drives his **or** her car on City business. The actual monthly cost of parking, not to exceed the monthly rate established for City employees at the Concourse **Parkade**, shall be added to the monthly mileage report and included in the total amount due.**

**E. The City will implement the Assigned Vehicle Policy and will meet and confer over the impacts. The City shall have the right to adopt an A.R. regarding Take Home Vehicles and will meet and confer over the identified impacts on the adoption of the A.R. The following shall apply to the side letter agreement: Personnel Regulations H-7, Standby Pay; Teamster Memorandum Article 63, Call Back Pay; and the side letter agreement will be subject to the Teamsters Memorandum Article 5, Grievance Procedure.**

**ARTICLE 38**

**Death or Injury Notification**

Union will be notified as soon as possible when a member of Union dies or retires.

**ARTICLE 39**

**Clean Air**

**A.** City, through the Safety Office, will provide Union with the results of asbestos air sampling on **at least** an annual basis. In addition, the City Buildings Division, through the Safety Office, agrees to inform Union when building or remodeling activities take place that involve the removal or containment of asbestos.

- B. In cases of emergency removal or containment of asbestos, City will comply with all applicable state and federal laws, including the notification of employees in the affected areas.

## ARTICLE 40

### Court Leave/Jury Duty Scheduling

- A. Where feasible and appropriate, Management agrees to make reasonable adjustments in an employee's work schedule when the employee is assigned to jury duty. Such adjustments will be in compliance with Personnel **Manual Index Code I-9**, Court Leave. In no case will Management be required to pay employees overtime when **an** employee's jury duty extends beyond the end of the employee's normal work schedule.
- B. Employees are no longer required to deposit with the **Office of the** City Comptroller fees **paid to** him or her from the Court.
- C. Upon request, Department shall make **its** best effort to adjust the schedules of employees who work second or third shifts, rotating **twenty-four** hour shifts or any schedule which is not a standard five-day "8 to 5" schedule, to "days," Monday through Friday, for a portion of, or duration of, the assigned jury duty.
- D. **Pursuant to** Personnel Manual **Index Code I-9, II C(4)** the **Mayor's** designee will review and resolve disputes regarding reporting to work and the application of leave or rescheduling for court duty purposes.

## ARTICLE 41

### Uniform Reimbursement

- A. The intent of this policy is to reimburse employees in certain designated classes who have attained permanent status, for the cost of one initial set of regulation uniform items.
- B. Reimbursement shall be limited to items of a specialized nature, including items with permanent City insignia, to be worn exclusively in line of duty. Street clothes are excluded from this provision. Lifeguard Division employees in designated job classifications will maintain a current price list of items for which reimbursement will be provided. Required items for each job classification are listed in Appendix B.
- C. Employees in the following job classifications will be provided with uniform reimbursement:

Lifeguard II and III  
Lifeguard Sergeant  
Marine Safety Lieutenant

- D. All personnel receiving uniform reimbursement or issued a uniform will be required to wear the designated uniform. Failure to wear any of these items may result in discipline of the employee.
- E. Lifeguard Is will be issued their required uniforms by the City upon appointment as listed in Appendix B. Upon promotion to Lifeguard II, probationary Lifeguard II's will be issued items listed in Appendix B for Lifeguards. Probationary Lifeguard II's shall not receive a uniform allowance for the one year probationary period.

## ARTICLE 42

### Uniform Allowance

- A. The following classifications are entitled to uniform allowances:
  - 1. Hourly Lifeguard I: \$277 annually.
  - 2. Lifeguard II, Lifeguard III, Lifeguard Sergeant, and Marine Safety Lieutenant: \$1204 annually.
  - 3. Lifeguard II, Lifeguard III, Lifeguard Sergeant, and all Marine Safety Lieutenant, assigned to the Boating Safety Unit shall receive an additional allowance of \$258 annually.
  - 4. Lifeguard II, Lifeguard III, and Lifeguard Sergeant assigned to the Regional Fire-Rescue Helicopter Program shall receive an additional allowance of \$456 biannually for the cost of one flight suit and one pair of safety shoes.
  - 5. Women in all Lifeguard classifications shall receive an additional \$120 annually for the cost of two swimsuits with dark colored underlining.
  - 6. On or about August 1 of each year, City **will** target to pay the appropriate uniform allowance to permanent personnel and hourly and part-time Lifeguard II's in these classes who were available for assignment in the class on July 1 of each year. Hourly Lifeguard I's will be paid on or about June 15 of each year. This allowance will not be paid for items for which uniform reimbursement has been received in the same year. This allowance is to be used for the replacement and maintenance of the uniforms in Appendix B. Employees on a leave of absence are eligible for the payment upon their return to work.
- B. All employees in these classes are required to have all uniforms described in Appendix B. Failure to have these items may result in discipline **to** the employee.
- C. City will provide employees with all patches required as part of the uniform.
- D. Lifeguard II's and III's who are assigned as boat operators in the Boating **Safety** Unit will be provided with safety gear. Lifeguard II's and above who were regularly scheduled for assignments in the Boating Safety Unit for six months or more during the

twelve-month period prior to July 1 of each year will receive a higher allowance in recognition of their different uniform requirements and the unusual wear on their uniforms. Replacement costs for two pairs of safety shoes with non-slip soles are included in these funds.

## ARTICLE 43

### Reduction in Compensation

A. Reduction in Compensation.

The compensation of any employee or officer of City may be reduced within the salary range of that employee's current classification. Such reduction in compensation may be put into effect upon finding that the employee's performance **does not meet standards** for the employee's classification and/or position.

B. Procedure for Reduction in Compensation.

An employee's compensation **can** be reduced only upon the completion of the following steps:

1. The inadequate performance of the employee shall be documented and the employee shall receive a copy of that documentation.
2. Upon being notified of the proposed action to reduce the employee's compensation, **the employee has** the right to respond orally or in writing to the Appointing Authority. **The response must be provided within five working days of the notification of the proposed action.**
3. After giving due consideration to the information provided by **the** employee, the Appointing Authority may elect to reduce the compensation of **the** employee.
4. At the time the employee is notified of the **Appointing Authority's decision**, **the** employee will be informed of **his or her** representation and appeal rights.

C. Appeal of Reduction of Compensation.

1. Within five **working** days of receipt of notice of reduction in compensation, an employee may file an appeal by filing a written demand to the Civil Service Commission for the right to be heard before the Commission. The Commission, at its discretion, may appoint one or more of its members to hear the appeal and submit a proposed decision to the Commission for ratification.
2. The conduct of the hearing **is** the same as **that** prescribed in the Civil Service Rules relating to discharge.

D. Return to Prior Compensation.

1. Employees having their compensation reduced in accordance with the provisions of this Article **will** be placed on a **Supplemental Performance Report**. At the time of the reduction in **compensation**, **the** employee will be informed of the date of the next performance evaluation. An employee's compensation will be



reinstated at the step the employee was receiving prior to the reduction in compensation upon receipt of a “meets standards” performance review.

2. The reduction in compensation **will** not exceed six months of active duty. At the end of that time, the employee **will** be reinstated to **his or her** previous salary step in the job classification or some type of disciplinary action shall be taken.

## ARTICLE 44

### Salary Status of Part-time Positions

A. Authority.

1. Annual Salary Ordinance.
2. Civil Service Rule X: Leaves of Absence.

B. Policy.

1. Intent.

The intent of this policy is to ensure that employees who work on a regular basis for **forty** or more hours each pay period and for a substantial period of time be provided with an appropriate level of fringe benefits. This policy is not intended to apply to employees hired on a seasonal basis.

Positions filled on an on-call or seasonal basis due to fluctuations in work or staffing needs **will be paid on an hourly basis.**

2. Positions which are at least one-half time but less than full-time, **will** be appropriately compensated as half or three-quarter time positions paid on a biweekly basis rather than an hourly basis if they average at least **forty** hours **per** pay period (**sixty** for three-quarter time) and require at least **forty** hours of work (**sixty** for three-quarter time) in each of **twenty-four** of the **twenty-six** annual biweekly pay periods.

3. Overtime Pay.

Part-time employees are eligible for overtime pay in accordance with the following:

a. Half and three-quarter time employees.

1. Are eligible for regular rate compensation in the form of pay or compensatory time credits for all time worked in excess of their scheduled workweek up to **forty** hours per week.
2. Are eligible for premium rate overtime for all time worked in excess of **forty** hours in their workweek and must receive pay for such overtime.

b. **Hourly Employees.**

1. Are eligible for premium rate overtime pay for all time worked in excess of **forty** hours in their workweek and may not receive compensatory time credits in lieu of pay.

c. Such employees may not count compensatory time or compensated leave as hours worked in the overtime calculation.

4. **Fringe Benefits.**

Part-time employees paid on a biweekly basis are eligible for holidays, annual leave, and other leaves **of absence** as provided in Civil Service Rule X. All part-time employees **are** eligible for Military Leave as provided in Civil Service Rule X.

5. **Present Employees.**

Employees who would be hired on an hourly basis according to this policy, but who are now paid on a biweekly basis, may remain in that status until the termination of their current employment.

C. **Procedure.**

1. Personnel will review the payroll records of all hourly employees every six months. Appointing Authorities will be informed of those employees who qualify for benefits and take appropriate action.

2. If an employee is hired as an hourly employee, and the Appointing Authority intends to work the employee **forty** hours or more per pay period, on a regular basis for a substantial period of time, the Appointing Authority should ensure compliance with this policy.

3. The **Mayor's** designee will periodically review the payroll records of all hourly employees. Union may meet periodically with the **Mayor's** designee to discuss and attempt to resolve problems in the application of this Regulation especially those involving the conversion of hourly employees to part-time status.

## ARTICLE 45

### **Holidays**

A. **Fixed Holidays.**

1. Fixed Holidays will be:

a. January 1;

b. Third Monday in January, known as "Dr. Martin Luther King, Jr.'s Birthday;"

c. Third Monday in February, known as "Presidents' Day;"

d. March 31, known as "Cesar Chavez Day;"

- e. Last Monday in May, known as “Memorial Day;”
  - f. July 4;
  - g. First Monday in September, known as “Labor Day;”
  - h. November 11, known as “Veterans’ Day;”
  - i. Fourth Thursday in November, known as “Thanksgiving Day;”
  - j. December 25; and
  - k. Every day appointed by the City Council for a public fast, thanksgiving, or holiday.
2. If January 1, March 31, July 4, November 11, or December 25 falls on a Sunday, the Monday following is the City-observed holiday. **If any of the dates listed in this section** fall on a Saturday, the preceding Friday is the City-observed holiday.
  3. Half-time, three-quarter time, and full-time employees who are scheduled to work a shift of five, seven, and nine or more hours on a fixed City holiday will be credited with one or more additional hours of holiday time, respectively, for use on that holiday.

B. Floating Holiday.

In each fiscal year covered by the term of this Memorandum, each eligible employee available for a duty assignment on July 1 (as defined in Personnel **Manual Index Code H-2**) **will** accrue credit for hours of holiday time equal to the hours worked in the employee’s shift up to ten hours. Each employee accruing such time **must schedule his or her floating holiday to** comply with the following conditions:

1. Employee must schedule **the floating holiday** prior to June 1;
2. **The floating holiday** must be a one-time absence and it must be used before the last day of the last full pay period in June; and
3. **The floating holiday must be taken at** a time convenient to the employee’s Appointing Authority.

## ARTICLE 46

### In House Committees

Department Heads may, at their discretion, create advisory committees to provide information which is necessary to administer their Department. However, prior to implementation, it is Management’s responsibility to notify Union to allow for meet and confer as necessary.

## ARTICLE 47

### Exchange of Days Off Between Employees

Employees in classifications which call for work to be performed seven **calendar** days per week may exchange days off with employees of the same classification under the following conditions:

- A. Both **Parties** to the exchange must be willing to make the exchange and must have the approval of the immediate supervisors concerned.
- B. Generally speaking, exchanges of days off will be kept within the Division, section, shift or watch, crew or work site location unless, on an individual basis, the supervisors of the **Parties** to the exchange otherwise agree.
- C. When practical, requests for **an** exchange of days off **should** be made in writing at least five **working** days prior to the first day of exchange.
- D. An employee must report for the exchanged days off and, with the exception of illness, **an** employee who fails to report **for any other reason will** be carried absent without leave.
- E. To avoid administrative problems, **an** exchange of days off must be made within the same workweek by both **Parties**.
- F. Such trades must be made in accordance with the provisions of the Fair Labor Standards Act.
- G. Such trades will not be approved if they result in an increased cost to City.

## ARTICLE 48

### Direct Deposit

- A. City agrees to **offer** direct deposit of employee paychecks to an expanded network of financial institutions.
- B. All employees will be required to provide authorization to the **Office of the** City Comptroller to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility). Employees **will not be required** to change financial institutions if their financial institution is not compatible with the wire transfer.
- C. An employee who does not have a financial institution at which to provide electronic transfer accessibility may pick up his **or** her paycheck at a designated location within the downtown City Hall complex, after 4:00 p.m. on paydays, or have the paycheck mailed to the address of the employee's choice.

- D. The Parties will both communicate and promote the availability and advantages of automatic deposits of paychecks through their respective communication means.

## ARTICLE 49

### Supplemental Pension Savings Plans/401(k)

A. Supplemental Pension Savings Plan (SPSP).

1. Full-time lifeguards, who are defined as Safety Members of the SDCERS and who are hired by the City on or after January 1, 2011, are not eligible for SPSP. The SPSP Program will continue for full-time lifeguards hired before January 1, 2011, in compliance with the SPSP document.
2. The terms of the SPSP document and the terms of the SPSP-H document for hourly employees control the SPSP benefit. The following language (through the end of section A) is taken from prior Memoranda[a] and is set forth for historic purposes: The Parties agree that a new SPSP will be implemented for all new employees hired on or after July 1, 1986 [through December 31, 2010]. For these employees the voluntary contribution will be reduced from 4.5% to 3.05% to offset the Medicare tax. Future increases in the Medicare or Social Security tax will result in corresponding decreases in the SPSP contribution for the City and the employees.
3. This change will not affect or change the current SPSP Plan for employees hired prior to July 1, 1986.
4. The Parties agree that an early retirement provision will be added to the **SPSP document** so that distributions prior to age 59-1/2, but within the City's normal retirement age provisions, will not be subject to the 10% excise tax on early distributions.
5. Legislation mandates that all employees be covered by a retirement plan effective July 1, 1991. This impacts all hourly employees in the units represented by Union since they do not participate in any retirement system. Mandatory participation for these employees in a version of the **SPSP document** is agreed to by the Parties in order to comply with this mandate.
6. City and Union agree to **maintain SPSP-H document** coverage for hourly employees to avoid compulsory inclusion in the Social Security System as mandated by the Omnibus Budget Reconciliation Act of 1990. These new Federal regulations mandate Social Security for employees not covered by a "retirement system." Current hourly employees, who are not participating in the City Retirement System do not meet the requirements of the regulations and must be covered by Social Security or a "retirement" plan effective July 1, 1991.

In order to comply with this federal law, City and Union agree to the implementation of a new SPSP-H **document** for **SPSP-H eligible hourly employees** or with the following key elements:

- a. 3.75 **percent** employee contribution matched by a 3.75 **percent** City contribution to meet **the 7.5 percent** minimum requirement.
- b. 100 **percent** immediate vesting.
- c. Monies must remain in **the SPSP-H document** until termination.

City and Union agree to study the feasibility of establishing a program which allows employees to borrow against their vested SPSP contribution.

B. 401(k).

City agrees to change the structure of the 401(k) Plan in order that each employee participant may determine the type and mix of his or her investment in the **401(k)** Plan (e.g., Socially Responsive, Aggressive Growth, Long Term Growth, etc.) in the same or similar manner to the choices available to participants in the Deferred Compensation Plan. As part of this restructuring, a reasonable administrative fee will be established on each 401(k) account by the plan administrator which will not exceed approximately \$23.00 annually.

All part-time benefitted employees shall be eligible to participate in the 401(k) plan that is offered to full-time benefitted employees.

## **ARTICLE 50**

### **Employee Counseling**

A. **Job Counseling.**

Employees who are interested in promotional opportunities or a transfer to a different department or to another classification should call Personnel. (telephone: 619-236-6400). See also Personnel Manual Index Code E-7, Transfers and Demotions.

B. **Financial Counseling.**

If an employee's supervisor receives notification from a firm, collection agency, or other source that a debt is owed by the employee, the information should be immediately turned over to the employee. The supervisor should not attempt to ascertain the validity of the debt, collect the money, or determine the method of payment. This is a personal matter between the employee and the creditor. The supervisor may suggest that the employee seek financial counseling, if necessary, and refer the employee to the Employee Assistant Program (**EAP**) **for a referral to an** appropriate community resource for financial counseling.

C. **Retirement Counseling.**

An employee who is planning retirement, or who is leaving City employment, should consult the Retirement Office (619-525-3650) to discuss available retirement benefits, and the SPSP Administrator in Risk Management (619-236-6600) regarding SPSP payout of **monies held in the employee's SPSP Plan account.**

**ARTICLE 51**

**Transportation Alternatives**

- A. Employees who **use** the Concourse Parkade and pay on a monthly basis will be charged **50 percent** of the prevailing general public monthly rate.
- B. Employees participating in the Transportation **Alternative** Program (**TAP**) **will** pay **50 percent** of the public daily rate, for up to **fifty-two** instances per year. Participation in **TAP** is limited, and **is** available **to employees on a** first-come first serve basis.
- C. City will provide a **75 percent** reimbursement up to **\$100.00 per month** to those employees who wish to purchase monthly passes for transportation on the public bus, trolley, and commuter rail services, or who ride bicycles to work and **use** bicycle lockers. **Transportation** passes will be for the exclusive use of the employee/purchaser. City will provide an equal amount to employees who **use** the **San Diego Bay** ferry and to employees participating in a City-approved vanpool program. Employees must utilize these subsidized transportation services to commute to and from work at least three days **per** week to be eligible for reimbursements. Employees in violation of these provisions **will** have their Transportation Incentives discontinued. **Payments for passes are made payable to the City Treasurer no later than the 12<sup>th</sup> day of the current month for the next month's pass. Payment is loaded on to issued Compass Cards.**
- D. City will provide reimbursement to employees who use the Concourse Parkade and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.

**ARTICLE 52**

**Labor-Management Committee and Training Committee**

- A. Management and Union will establish a joint **Labor Management** Committee for the purpose of discussing common problems including, but not limited to, safety issues and policies, contract interpretation and administration, application and administration of the grievance procedure, the exceptional merit cash payment program, **SPSP**, air quality in City buildings, alternate work schedules, and use of limited appointments.
- B. The **Labor-Management** Committee **will** meet quarterly, or more frequently if needed, at a time and for a duration that is mutually agreeable to both Management and Union. Union and Management will **each** be able to appoint three members to this Committee.

C. **The Parties also agree to establish a Training Committee which meets quarterly during the term of this Memorandum to discuss any training issues related to Lifeguard duties.**

1. **Lifeguard Training Committee.**

Union may select no more than three Lifeguards which City may meet with to discuss training programs and enforcement responsibilities. Union will bring all matters regarding training and enforcement to the committee prior to seeking resolution elsewhere. Such matters must be dealt with in a reasonable time. This committee will not be used as a vehicle to bypass the management chain of command in the Fire-Rescue, Lifeguard Division.

2. The **Fire-Rescue** Training Division shall form a committee with the Union Lifeguard Training Committee to develop a basic lifeguard training plan and any cross training. The Parties agree that it is of mutual importance that training be provided in the Lifeguard Division to the extent fiscally feasible in order to maintain the most effective level of safety for the benefit of the public and the employees. Discussion areas will include, but are not limited to, how to provide expanded designated training to ensure the training policy requirements are met, how to increase recertification trainings to ensure maintenance of skills for Lifeguards who assist specialty teams and assist with cliff rescues, and enhanced marine fire fighting training.

**ARTICLE 53**

**Polygraph Examinations**

No employee **can** be compelled to submit to a polygraph examination against his **or** her will. No disciplinary action or other **retaliation will** be taken against an employee **who refuse** to submit to a polygraph examination, **and no comment will** be entered anywhere in the investigator's notes or anywhere else that **indicate** the employee refused to take a polygraph examination. **No** testimony or evidence **that the employee refused to take a polygraph examination will** be admissible at **any** hearing, trial, or proceeding, **whether** judicial or administrative.

**ARTICLE 54**

**Overtime**

A. For the purposes of overtime compensation, the compensatory time limits set forth in **A.R. 95.01 will** be amended to permit employees to accrue **one hundred and twenty** hours of compensatory time off. By the end of the fiscal year, compensatory time balances **may** not be in excess of **forty-five** hours.



- B. City agrees to evaluate the current process of making overtime opportunities available to Lifeguard II's and to make reasonable efforts to increase the equity of this process, recognizing that skill levels and availability must continue to be considerations in the process. The goal will be to provide opportunities as equally as reasonably possible considering the skill level of the vacancy and of the available Lifeguard personnel who wish to work overtime.

## ARTICLE 55

### Layoff

- A. In the event of a layoff involving classes represented by Union, City agrees to provide Union with a copy of the official layoff notice which is provided to affected departments.
- B. City will make its best efforts to counsel and place employees in alternate jobs when **employee** subject to layoff.
- C. The City's layoff procedures currently provide for an order of layoff for permanent employees in a class determined by City-wide seniority. Seniority **will** be based upon the employee's most recent hire date with City without a break in service.

## ARTICLE 56

### Repair or Replacement of Employees Property

Risk Management will process employee claims submitted under **A.R. 35.70**, Repair or Replacement of Employees' Personal Property, within **thirty** calendar days of receipt. Disallowed claims may be appealed to the **Mayor** or his **or her** designee, who **will investigate the claim and** conduct a hearing as appropriate.

## ARTICLE 57

### Long Term Disability/Industrial Leave

- A. Industrial Leave.  
For claims filed based on a work-related illness or injury occurring on or after July 1, 1994, City will implement the following changes to the Industrial Leave Policy. The actual policy (A.R. 63.00) should be consulted for detailed language.
  - 1. Industrial Leave payments will not be granted for any injury which occurs as a result of a motor vehicle accident where available safety restraints **were** not in use, unless Departmental policy permits.

2. Industrial Leave benefits will be terminated when an employee misses a medical appointment designed to determine the employee's work status, **if it is determined** that the failure to attend the appointment was not excusable.

B. Long Term Disability (LTD).

1. The Parties agree to reopen this **Memorandum** in order to meet and confer over a new **LTD Plan (LTD Plan)**.

C. Flexible Benefits.

1. City will pay the participant's **Flexible Benefits** for a maximum of one year while **he or she is on LTD. At the end of one year participants will be referred** to COBRA for extension of appropriate coverage.
2. City **will** pay the participant's **Flexible Benefits** while the Participant is receiving **LTD** benefits even if the LTD benefit is 100 **percent** offset by other income benefits.
3. Participants who are in a **LTD** status during City's annual open enrollment for its **FBP will** be enrolled in Flexible Benefits as required during the open enrollment. Participants **will** keep their current health and life insurance coverage while receiving **LTD**. Participants will be allowed to change health care plans provided the health care plans so stipulate.
4. When an employee suffers a work-related injury or illness but is not eligible for **Industrial Leave** benefits, City **will** continue to pay the **Flexible Benefit** allocation on his **or** her behalf for the period of his **or** her temporary total disability or participation in internal vocational rehabilitation, not to exceed a total of twelve months.

D. Wellness Program.

Human Resources will request that Risk Management review the cost of the Wellness Program for the **Bargaining Unit** and determine if the cost of the program would be offset by savings such as reduced **Workers' Compensation** claims, reduced overtime, and any other costs incurred by City as a result of an employee's absence, injury and illness.

## ARTICLE 58

### Out-of-Class Assignments

- A. Employees represented by Union **will** be compensated for out-of-class (**OCA**) assignments on the **thirty-first** continuous day of assignment or on the **thirty-first** day of cumulative **OCA** in the same classification. **OCA** accrues on a fiscal year basis only. Accumulated days will not be carried into the next fiscal year. An employee in an **OCA will** receive an increase at least equal to that which would be given if the employee were promoted to the same class from an eligible list established by a promotional examination.

- B. City agrees that all **OCA**, regardless of **the number of** hours worked in a pay period, **will** be recorded in the employee's personnel file.
- C. For employees in classifications in the Lifeguard Unit and Supervisory Lifeguard Unit, Appointing Authorities **will** give first consideration for appointment to an **OCA** to employees on the eligible list for the class in which a vacancy occurs except in those cases in which the specialized needs of the assignment or a requirement for an employee with specialized skills necessitates appointment of an employee not on the eligible list. In **an OCA** in excess of **thirty** days where specialized needs are required, the Appointing Authority will advertise **the vacancy** Division wide.
- D. Management has discretion to determine when **OCA** will be made. Management agrees to provide equal opportunity on a rotational basis for **OCA** to persons on the eligible list and will consider the seniority, availability, training, and job performance of employees when making such divisional assignments. In the event that there is no eligible list, the Appointing Authority will provide equal opportunity on a rotational basis to eligible employees and will consider seniority, availability, training, and job performance in making **an OCA**. If the **OCA** lasts over five **working** days, an employee's current shift or station assignment **will** not preclude **his or her** eligibility for **OCA**.
- E. **OCA may** not exceed thirty consecutive days nor **can** a series of **OCA** to any one vacant position exceed thirty calendar days without approval by the Personnel Director. **OCA will** not be made **to** avoid filling a position **with** a limited or permanent appointment.
- F. An employee who is not on an existing or expired eligibility list for the particular class will not be assigned to an **OCA** which would result in the employee's supervising his or her current supervisor.

## ARTICLE 59

### Implementation of New Programs

- A. Prior to implementation of any new programs, City will give Union advance notice in writing so that the **Parties** may address the impact of any **new** programs on wages, hours, and **other terms and conditions of employment**.
- B. City will make its best efforts to give Union at least **thirty** working days advance notice.

## ARTICLE 60

### Confidentiality of Medical Information

- A. City, its officers, and employees **will** respect the confidentiality of employee medical records and **will** abide by the guidelines set forth in Personnel Manual **Index Code** J-4.

- B. City acknowledges that an employee's Constitutional right of privacy entitles an employee to decline to disclose or to permit his or her physician to disclose the nature of an illness, diagnosis or prognosis unless otherwise required by workers' compensation law, by the employee application for Industrial Leave or LTD benefits, state or federal law, application for employment, or required as part of a City-mandated physical examination. To the extent that an employee's absence or absences due to illness have resulted or may result in discipline or placement on a "doctor's list," the employee, at his or her own option, may disclose these details to the appropriate person in his or her chain of command or directly to the Department Head if the employee wishes. Based on an employee's right of privacy, City forms for an employee's request for a leave of absence does not require disclosure of the nature of an illness or require authorization for release of a medical provider's records.

## ARTICLE 61

### Department Work Rules

Management agrees to make available to Union current written Departmental and Divisional policies, instructions, and work standards. When reasonable additional Departmental policies and instructions are developed and published, City will make copies available to Union and employees. All policies must be uniformly applied. However, the obligation to make copies of current and future Departmental and Divisional policies, instructions, and work standards available does not extend to policies which describe confidential or security procedures.

- A. All Departmental and Divisional policies, instructions, and work standards must conform to the Civil Service Rules, Personnel Regulations, and applicable Memorandum of Understanding.

## ARTICLE 62

### Time Off for Blood Donation

An employee will receive paid release time, not to exceed two hours, when he or she donates blood at the annual Lifeguard blood drive or in response to an emergency request from the San Diego Blood Bank. City will release the employee for the actual time the employee spends in travel to and from the blood donation site. Paid release time cannot exceed two hours. The employee will submit his or her "blood receipt" to the payroll clerk as verification of the donation.

## ARTICLE 63

### Call-Back/Court Pay

A. Call-Back Pay.

An employee who has been released from work and has left the workplace and is called back to duty **will** be paid for the reasonable estimate of the time required for **the** employee to travel from and to his or her residence and the workplace area and for the time the employee actually works. The total time of call-back pay, including travel time, **will** not be less than four hours, and **will** be computed at the employee's premium overtime rate. This callback pay provision also **applies when an** employee is issued a call-back order before he **or** she leaves the workplace at the end of his **or** her shift.

B. Call Back Pay Exceptions.

The above-described provisions for call-back pay **do** not apply in the following situations:

1. When an employee is required by subpoena to appear in court **regarding City business** prior to his **or** her scheduled shift, and the appearance is contiguous with the shift; or when an employee attends court then reports to work an hour later;
2. When an employee is already present at the workplace and is required by a supervisor to start work early or to **continue** work following the end of shift;
3. When an employee is required to attend a meeting scheduled before or after the employee's shift, and which is contiguous with the shift; **or**
4. When an employee is required to appear in court **regarding City business** during a session which begins during the employee's regularly scheduled shift, but which continues past the end of shift.

In these instances, and any other not specifically identified as entitling an employee to the four-hour minimum, the employee should receive compensation only for the time **he or she** actually worked or spent in court or meetings before or after his **or** her shift.

## ARTICLE 64

### Objective Hearing Officers

- A. Objective Hearing Officers will be assigned to hear disciplinary appeals at the Department level. "Objective" means a managerial employee who has not conducted the fact-finding or investigation which led to the proposed discipline and is not the person recommending the discipline. The primary responsibility for conducting a disciplinary investigation and the resulting Advanced Notice of disciplinary action, when warranted, will be delegated by the Appointing Authority to someone other than the individual prospectively responsible for hearing an appeal of such action. The individual delegated the primary responsibility will also sign the Advance Notice. This language is in no way

intended to preclude any managerial employee from the normal managerial review of actions recommended within a work unit.

- B. The Appointing Authority may delegate the appeal Hearing Officer responsibility to any supervisory or managerial employee at least one level above the employee requesting appeal. Exceptions may be granted by the Human Resources Director. Union-represented employees will not act as hearing officers for terminations of any employee in a job class represented by Union.

## ARTICLE 65

### Workloads

- A. After a section undergoes a reduction-in-force, Management will prepare a plan demonstrating how the work will be restructured, reassigned, or delayed. Additionally, new or revised work expectations, standards, and adjusted timelines for work product will be developed.
- B. Before and after implementation of the plan, Management **will** meet with impacted employees for input. Opportunities for follow-up, feedback, and proposed adjustments in the reorganization plan will be provided to employees.

## ARTICLE 66

### Overpayments to City Employees

- A. If it has been discovered that an overpayment or **an** unauthorized payment has been made to a City employee, it is the responsibility of the **D**ePARTMENT to notify the employee in writing and supply the employee with the documentation used to determine the overpayment.
- B. If the employee contends that any portion or the entire amount is not owed, he or she may request a meeting with the Appointing Authority to attempt to resolve the disagreement. If the dispute about the payment originates in another department, the employee has a right to request a meeting with the Appointing Authority in that department. The employee may have a representative attend **the** meeting **or meetings** with him or her.
- C. If the dispute regarding overpayment arises from the interpretation of a **P**ersonnel Regulation or **A**dministrative Regulation, the employee may grieve this matter directly to the Department Head.
- D. Repayment of Funds.
  - 1. An employee will pay no penalties, fees, or interest as a result of the overpayment.

2. The employee **has** the right to select one of the two following options for the repayment of the funds:
  - a. A lump sum payment with a date mutually established by the employee and the Department (lump sum payments must be made if the total amount due is **5 percent** or less than the employee's biweekly salary); **or**,
  - b. Biweekly installment payments through payroll deduction Installment payments must be a minimum of \$10 and repayment must be completed within **twenty-six** pay periods.
- E. The final agreement on the repayment **plan** will be **in** writing, with the lump sum payment date, or the biweekly amount, and the beginning and ending date of the installment plan identified.
- F. Disputes over repayment of funds which were overpaid to an employee through no fault of the employee **will** not be a factor in **Employee Performance Evaluations** or discipline.
- G. Referral to Collections.
  1. Department may refer an employee to the **City** Treasurer, Collections section, only when the employee, after being duly notified of the overpayment and having had the opportunity to review the relevant documentation, refuses to agree to a repayment of the amount owed.
  2. The employee will be notified of the referral and informed that the Collections section will proceed with collection as it would for any other debtor.

## ARTICLE 67

### Rights of Industrially Injured Employees to Schedule Medical Appointments

- A. An employee who has suffered an industrial injury, whether on light duty or full duty status, **has** the right to schedule medical appointments, including physical therapy, which are related to treatment of the industrial injury, during his or her regularly scheduled work hours without loss of pay.
- B. Employees **will** make their best effort to schedule appointments close to the beginning or end of their work shift.

## ARTICLE 68

### Catastrophic Leave Plan

- A. Purpose.  
Establish a City administered Catastrophic Leave Bank (**Leave Bank**) permitting City employees to assist other City employees who face extended leaves without pay due to a

catastrophic occurrence in their lives. For the purpose of this plan, a “catastrophic occurrence” is defined as any event that would qualify the employee under the Family Medical Leave Act as determined by the **Human Resources Director**. Catastrophic Leave determinations are non-grievable.

**B.** Procedures.

1. The employee must have exhausted or expect to exhaust his/her accrued leave (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a leave bank.
  - a. If an employee is diagnosed as terminally ill, a Leave Bank may be established without meeting this requirement. In such cases, the donated leave will be paid out **when the employee leaves work due to the illness**. A recipient’s total annual leave balance, including donated leave, cannot exceed two thousand eighty 2080 hours.
  - b. The employee has received approval for an unpaid leave of absence from his **or** her Department Head.
2. Requests to establish a Leave Bank for receipt of donations will be processed by the Human Resources Department.
  - a. An eligible employee will submit a completed “Request to Establish Catastrophic Leave Bank” form to the Human Resources Director, accompanied by:
    1. A medical statement from the attending physician, including a brief statement of the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request **in accordance with state and federal law**.
    2. Evidence of the Department Head’s approval of leave of absence.

**C.** Donations of annual leave may be made to an employee eligible for catastrophic leave. The **donor** department will be billed for the dollar amount of the **donor’s** annual leave donation.

1. Donations of leave will be strictly voluntary; the identity of Leave **Bank** donors will be held in absolute confidence.
2. Employees may only donate accrued annual leave.
3. Donations **must** be made in whole hour increments. There is no tax benefit to the donor.
4. Donors must have an overall annual leave balance of 160 hours remaining after donated time has been deducted.



5. Once donated to an individual, donated leave cannot be reclaimed by the donor.
  6. Employees wishing to donate time **must** complete a “Confidential Authorization for Catastrophic Leave Donation” form and submit **it** to their department payroll specialist, who will:
    - a. **Verify that the donating employee has the minimum required leave balance one hundred sixty hours;**
    - b. **Convert the donated time to dollars at the hourly rate of the donor and subtract the donation time from the donor’s designated leave category; and**
    - c. **Forward the donation authorization form to the Human Resources Director for tracking and submission to the Office of the City Comptroller for processing.**
    - d. **Donation authorization forms which do not contain all requested information will not be processed.**
- D.** Upon receipt of donation authorizations, the **Office of the City Comptroller will** take the following action:
1. Convert donated dollars as computed above two hours at the hourly rate of the recipient, and add **the donated hours to the recipient’s annual leave balance. The recipient will be taxed for the leave when it is taken.**
  2. Retain a confidential file of donation authorizations.
- E.** Donated time is treated as annual leave accrued by the recipient of the donation. Payments up to **eighty** hours per pay period will be made to the recipient until the donated leave has been exhausted.
1. Donated time does not alter the employment rights of City or the recipient, nor extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Article.
  2. Employees who are using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual **Index Code I-2, Annual Leave.**

## **ARTICLE 69**

### **Union Newsletter Distribution**

Union may use **City’s** mail system to distribute its newsletter or equivalent communication, to all employees in its **Bargaining Unit**. City agrees to provide Union with a complete list of

workplace email addresses for all employees in the **Bargaining Units** it represents, as well as a list of all applicable **mail stations** for represented employees, and to update these lists annually.

## ARTICLE 70

### New Employee Orientation

- A. City agrees to provide general information to City employees during New Employee Orientations regarding the applicability of the **MMBA** to City employment, and regarding the legitimate status of employee organizations as exclusive bargaining representatives.
- B. Union may provide the pertinent information on its dental and vision plans for presentation by City during New Employee Orientations, and a Union representative may attend the presentations as an observer. Union may report any inaccurate or improper presentations related to its plans to the Human Resources Director for his or her immediate attention.
- C. City will provide new employees with the forms associated with the various benefits plans during the pre-lunch “benefits” portion of the program.

## ARTICLE 71

### Identity of Appeal Hearers

City agrees that any **time Union** feels that the Department Head or **his or her** designee who intends to hear an appeal pursuant to Article 10, section J, or Article **64** is unduly biased under the circumstances, **Union may immediately bring the issue to the attention of the Human Resources Director**. The Human Resources Director agrees to take reasonable steps to assure an employee minimum due process in this regard.

## ARTICLE 72

### Side Letters

Effective July 1, 1994, all side letters previously in effect between the **Parties** are rescinded. **The current Memorandum as printed will represent all agreements between Union and City. All agreements, including department level agreements, from July 2, 1994, to June 30, 2012, will remain in effect. Effective July 1, 2012, any additional agreements must be made in writing between the Union and City, with the approval of the Mayor or his or her designee and the Union President and his or her designee.**

## ARTICLE 73

### Tuition Refund Plan

- A. Public Safety Exceptions to Tuition Reimbursements.  
Management agrees to meet without impasse annually with Union to review specific unique Public Safety exceptions to the Tuition Reimbursement process. Management's decision will be final and non-grievable.
- B. Use of Tuition Reimbursement for Job-related Training.  
One half of the Tuition Reimbursement benefit may be used by an employee each fiscal year for reimbursement of seminars or other training **and** educational events which will maintain or enhance an employee's job-related skills, or knowledge or contribute to the employee's broadening and diversification of his **or** her skills. An employee **must** submit a request for approval of the proposed reimbursable event in advance of attendance and pre-approval by the Department is required for reimbursement. The employee must subsequently submit satisfactory evidence of attendance at the **training** event in order to receive reimbursement. The **Parties** intend the general procedural requirements of the Tuition Reimbursement plan to be applicable except the requirement of a grade. It is the intent of the **Parties** that this provision will supplement rather than replace training funds **previously** made available by departments for the benefit of employees. It is also the intent of the **Parties** that this opportunity to avail oneself of one-half of the **Tuition Reimbursement** plan benefit **will** be at the initiation of the employee based on his or her proposal for training or education.
- C. Tuition Reimbursement Amount.
1. Tuition Reimbursement benefit amount will be \$1,000 per fiscal year.
  2. **A.R.** 70.30 will be amended as follows:
    2. Policy.
      - 2.4 b. An education plan must be approved by the Appointing Authority prior to requesting tuition reimbursement for a specific course. This plan must include:
      - 2.4 f. Requests for reimbursement must be submitted for approval to the Appointing Authority within sixty days of completion of the specific course for which reimbursement is being sought.
  3. Requests and Reimbursement - Procedure.
    - 3.1 **An** employee meeting the eligibility rules fills out Form CM-1578, "Request for Approval of Tuition Reimbursement," with 4 copies attached. The form is available from departmental payroll clerks. A central supply is maintained in City Operations Building - Store No. 4.

## ARTICLE 74

### Appointing Authority Interview Feedback

Upon request, an Appointing Authority involved in a selection interview process **will** provide feedback to those candidates not selected. **The feedback will** include how the candidate's experience and training compared to the announced criteria, and an assessment of candidate's interview skills.

## ARTICLE 75

### Drug and Alcohol Screening

**A. Department of Motor Vehicles (DMV) Drug and Alcohol Screening.**

A **random Drug and Alcohol Screening Program (urinalysis) has been implemented and applies to** all employees who undergo the biennial medical examination required by state law for **DMV Class A and B drivers' licenses**. All employees required to have a Class A or B license for the performance of their regular duties must have the medical examination and drug **and** alcohol test conducted by the medical examiner and testing laboratory designated by City. The scheduling of **these** medical examinations and drug tests will be determined by Management.

**B. Lifeguards Random Drug and Alcohol Screening.**

A random **Drug and Alcohol Screening Program will** include all Lifeguard personnel covered by this **Memorandum**, including Lifeguards currently covered by the Department of Transportation Drug Testing Program (**DOT**). The term "Lifeguard" refers to the following classifications:

Lifeguard I  
Lifeguard II  
Lifeguard III  
Lifeguard Sergeant  
Marine Safety Lieutenant

**C. Procedures.**

1. Fire-Rescue, **the** Human Resources Director, and Personnel's Random Drug Testing Coordinator will administer the Drug and Alcohol Screening Program.
2. The Lifeguards will be tested twice every **eighteen** months **by urinalysis** which will be screened for the presence of specific drugs. For Lifeguards who are tested under the DOT's Random Drug Testing Program, the DOT test **will** count toward the testing requirement under this Article.
3. The drug screening **will** be conducted to detect only the following drug groups:
  - a. Amphetamines/Methamphetamines (e.g., Speed, Crystal);

- b. Benzodiazepines (e.g., Valium, Librium, Oxazepam, Serax, Dalmane, Ativan);
  - c. Barbiturates (e.g., Amobarbital, Butobarbital, Pentobarbital, Phenobarbital, Secobarbital);
  - d. Cocaine;
  - e. Methadone;
  - f. Ethanol;
  - g. Opiates (e.g., Codeine, Heroin, Morphine);
  - h. Phencyclidine (PCP); **and**
  - i. THC (Marijuana).
4. Lifeguards will be selected through a computer generated random selection process.
  5. Lifeguards may provide appropriate documentation of legally prescribed drugs. Such documentation shall be included in the review of test results.

**D. Sample Collection.**

1. Medical Contractor's (MC) personnel will be responsible for obtaining the urine sample from the Lifeguard being tested.
2. MC's personnel will be available for test processing between 8:00 **a.m.** and 2:00 **p.m.**, **five days per week**, to allow Lifeguards to be tested during normal work hours. (Hours vary at some MC locations.)
3. MC's personnel will not observe **the Lifeguard** as the sample is being given.
4. Lifeguards selected for testing will be notified at the start of their shift. They will present themselves for testing at the earliest possible time during the shift and no later than four hours after the Lifeguard's shift begins. Refusals or failures to complete the test as required will be referred to Fire-Rescue and Human Resources Director for investigation.
5. At the MC's site, the lifeguard being tested will:
  - a. Identify himself **or** herself by presenting his **or** her City identification or California driver's license.
  - b. Complete requested paperwork.
  - c. Remove jackets, bags, or other bulky items of clothing prior to entering the testing area.

- d. Provide a urine sample.
    - 1. Lifeguards will be required to stay within the **MC's** facility until the required sample is given.
    - 2. Sample must be at least 45 ml, the minimum amount required for testing purposes.
6. At the **MC's** site, the Medical Assistant (MA) will:
- a. Direct the Lifeguard being tested to a private lavatory.
  - b. Assure that the lavatory is secured in accordance with established City procedures (as detailed in the contract with the **MC**).
  - c. Wait outside the lavatory for the sample.
  - d. Upon receipt of the urine sample, and in the presence of the Lifeguard, the MA will:
    - 1. Split the sample into two unused separate containers which will be referred to as the test sample and control sample.
    - 2. Seal the containers.
    - 3. Complete the appropriate chain-of-custody forms for the samples, and ask the Lifeguard to sign and initial the chain of custody forms and documents.
  - e. The MA will refrigerate both the test sample and **the** control sample until **the samples are** picked up by the laboratory courier.

**E.** Screening Procedure.

- 1. The initial screening of all collected samples will generally be conducted within **forty-eight** hours of receipt by a City-designated laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA).
- 2. Initial screening of urine samples will be conducted using a testing methodology based primarily upon an "Enzyme Immunoassay" or other testing methodology of equivalent quality and acceptability.
- 3. If a confirmation test is conducted, it will be conducted by Gas Chromatography/Mass Spectrometry (GC/MS) testing or other testing methodology of equivalent quality and acceptability.
- 4. Upon receipt of a sample for testing, the designated laboratory will:
  - a. Check the container to ensure it is not damaged, and that the seal is intact.
  - b. Complete the appropriate chain-of-custody forms for the sample.

- c. Conduct the initial testing of the sample using an “Enzyme Immunoassay” technique or other testing methodology of equivalent quality and acceptability. Results of the initial test should be known within **twenty-four** hours.
  - d. If the sample tests “negative,” all urine samples will be discarded.
  - e. If the sample tests “positive,” a confirmation test will be performed for the specific drug **or drugs** found in the sample during the initial test.
  - f. If the confirmation test confirms the presence of drugs, any remainder of the test sample and the entire control sample will be retained in a locked freezer for a minimum of one year.
  - g. If the confirmation test is “negative,” the whole test will be considered negative **and all urine samples will be destroyed.**
5. Alcohol Test.
- a. The standard for alcohol testing will be the converted urinalysis equivalent of a blood alcohol level of 0.04 percent.
  - b. An alcohol testing level of 0.04 percent or greater will be treated as a “positive” result and may be cause for disciplinary action.

**F.** Reporting Test Results.

- 1. Test results will be provided to Personnel’s Random Drug Testing Coordinator by the **MC**.
- 2. The Lifeguard will be notified of his **or** her test results in writing without delay.
- 3. If test results are positive for legally-prescribed **medications**, Personnel’s Random Drug Testing Coordinator will request **that** the Lifeguard provide acceptable documentation, such as a medical prescription or doctor’s statement, to explain the presence of this **medication**.
- 4. If test results are positive for alcohol (**0.04 percent** or above), illegal drugs or inadequately explained legal **medications**, Fire-Rescue and Human Resources Director will be notified and will be responsible for initiating an investigation, resulting in the issuance of disciplinary action to be held in abeyance and a Last Chance Agreement to the lifeguard.
- 5. Alcohol test results below the 0.04 **percent is** cause for mandatory referral of the Lifeguard to City’s **EAP**. However, no disciplinary investigation **will** be initiated solely on the basis of the result, including those instances where the Lifeguard is on a Last Chance Agreement. Personnel **is** responsible for making the referral of the Lifeguard to the City’s **EAP**. Test results are confidential and Personnel will not notify anyone including Fire-Rescue of the **alcohol** test result **that is below 0.04 percent** or the referral of the Lifeguard to the City’s **EAP**. If an employee fails or refuses to follow through with the initial mandatory EAP referral,

Personnel will notify Fire-Rescue for appropriate action. Fire-Rescue will not inquire of Personnel or the employee as to the basis for the EAP referral, including, but not limited to, whether there was an alcohol test and the results of **the test**.

**G.** Independent Testing.

1. If the test results are positive, the affected Lifeguard **has** the right to request independent testing of the control sample. **The** request must be made in writing and addressed to Personnel's Random Drug Testing Coordinator. The affected Lifeguard will be placed on light duty while the control sample is being tested.
  - a. The right of the Lifeguard to independent testing of the control sample shall include the right to designate the laboratory, which must be a SAMHSA certified laboratory.
  - b. The control sample will be transported by a courier designated by the original testing laboratory to the testing laboratory designated for the independent test.
  - c. All costs associated with independent testing shall be borne by City.

**H.** Program Records.

1. All drug testing information relating to individual Lifeguards is strictly confidential.
2. All records related to the **Drug and Alcohol Screening** Program **will** be maintained as directed by Fire-Rescue's Human Resources Manager **and the Personnel Department**.

**I.** Use of Test Results.

The Random Drug Screening Program shall be considered an administrative matter, and the results of this test shall not be used in any criminal action. However, if additional information is available through other means to support criminal action against an employee, the Department shall not be precluded from taking further action.

**J.** Last Chance Agreement.

1. Violation of the Last Chance Agreement may result in termination of employment.
2. The Last Chance Agreement will be held in a sealed envelope for one year after the conclusion of testing **so that** Last Chance Agreement **may** be considered for additional action up to termination. The disciplinary action issued as a result of testing positive will be removed upon successful completion of the Last Chance Agreement.
3. Last Chance Agreements will begin after the employee's first visit to the EAP. The employee will provide written verification from EAP to the **Fire-Rescue Department** that the first visit has occurred.



4. Employees who are on a Last Chance Agreement will not be eligible for special assignments within Fire-Rescue.
5. The Last Chance Agreement Form currently **used** in Fire-Rescue is the form to be used for Lifeguards covered under this Article. **Limited hourly Lifeguards are excluded from Last Chance Agreements.**

## ARTICLE 76

### Parking Subsidy

Management agrees to make its best effort to negotiate with Parking Facility Providers reduced rates comparable to those at the Concourse **Parkade** for employees assigned to City facilities.

## ARTICLE 77

### Military Leave

Military Leave for members of Union will be administered in accordance with Personnel Manual **Index Code I-10, Military Leave**. Union agrees that the City Council may determine to extend these benefits beyond what is provided in **Index Code I-10** in cases of national emergencies without an obligation to first meet and confer.

## ARTICLE 78

### Reimbursement of Emergency Meals

Employees who ordinarily qualify for a meal during the performance of after-hours emergency work **may**, with the proper receipts, be reimbursed up to **\$15.00**.

## ARTICLE 79

### Bereavement Leave

**Paid Bereavement Leave** of up to three days is available upon the death of an employee's spouse, father, mother, brother, sister, son, daughter (son or daughter **to include: step-, foster, or adopted**), or state-registered domestic partner, with a limit of one eligible death per fiscal year. Proof of death (death certificate, obituary, funeral program, etc.) must be provided **before an employee can** receive bereavement leave, which is in addition to annual leave, **and must be submitted within thirty calendar days of when the employee returns to work.**

## ARTICLE 80

### Alcohol Consumption Prohibited

The consumption of alcohol is prohibited during work hours, including breaks and unpaid meal periods.

## ARTICLE 81

### Discretionary Leave for Fiscal Year 2013

- A. All full time bargaining unit members will receive a one-time sixteen hours of discretionary leave for use during Fiscal Year 2013 and the discretionary leave identified in this Section has no eligibility requirements except as set forth in this Section. Three-quarter time employees will receive twelve hours of discretionary leave for use during Fiscal Year 2013. Half time employees will receive eight hours of discretionary leave for use during Fiscal Year 2013.
- B. Each employee will schedule his or her discretionary leave hours in the same manner as annual leave is presently scheduled pursuant to Article 18 of this Memorandum.
- C. All leave granted under this Article must be used by June 30, 2013 or it will be forfeited. The one-time sixteen hours of discretionary leave under this Article will sunset on June 30, 2013.
- D. The sunset provision of section C above does not amend, modify, or alter any discretionary leave that may be granted under A.R. 95.91 (Employee Recognition and Rewards Program).

## ARTICLE 82

### Volunteers

- A. The City's Volunteer Program is governed by City Council Policy 300-01.
- B. For purposes of this proposal, a volunteer is defined as an individual or groups of individuals who offer themselves for some service or undertaking without being compensated by pay by the City.
- C. In accordance with City Council Policy No. 300-01, the City will continue to optimize the use of volunteers where it is economically feasible, by developing volunteer opportunities throughout the City. Unless the Parties meet and confer during the term of the Memorandum, volunteers are to be utilized only to supplement and complement the work performed by City personnel and without decreasing bargaining unit work or displacing existing City personnel.

- D. Parties understand that departments participating in the City’s Volunteer Program shall utilize volunteers to perform a number of tasks necessary to support volunteer programs. Tasks performed by volunteers include, but are not limited to, the following:**
- 1. Crisis Intervention Program (San Diego Police Department) – The Lifeguard Division utilizes Crisis Interventionist volunteers who respond and assist with victims and family members of traumatic incidents and help console and provide guidance. Additionally, they assist at Lifeguard stations during the summer with lost and found children and general questions.**
  - 2. Court Ordered Community Service – The Lifeguard Division sergeants approve and monitor volunteers who must fulfill Court Ordered Community Service to perform functions such as picking up trash or sweeping/cleaning around the beach area/towers.**
  - 3. Beach Cleanup – Occasionally volunteers request permission to come out and conduct “Beach Cleanup” for the day. These volunteers request approval from and are monitored by Lifeguard sergeants.**

**APPENDIX A**

**Bargaining Units**

**SUPERVISORY LIFEGUARD UNIT**

Lifeguard Sergeant  
Marine Safety Lieutenant

**LIFEGUARD UNIT**

Lifeguard I  
Lifeguard II  
Lifeguard III

## **APPENDIX B**

### **Uniforms**

A. LIFEGUARD II, LIFEGUARD III, LIFEGUARD SERGEANT, AND MARINE SAFETY LIEUTENANT.

Items Required:

Wetsuit\*  
Wetsuit Hood  
Hat  
Dress Shirt (3)\*  
Trousers (3)\*  
Dress Shoes  
Tennis Shoes  
Orange Float Coat (1)\* (Boating Safety Unit (BSU) Members only)  
Swim Shorts (2)  
Swim Suits – Female (2)  
Fins  
Name Tag (2)\*  
Belt \*  
T-shirts (3)  
Sweats (2)  
Sunglasses  
Shoes with Non-Slip Soles (2) (BSU Members Only)\*  
Shorts, Navy Blue (2) (BSU Members Only)  
Golf Shirts (5)\*  
Nylon Windbreaker with fleece flannel lining\*  
“Third Reef” Foul Weather Jacket  
“Third Reef” Foul Weather Trousers  
“Third Reef” Foul Weather Boots  
Equipment Bag

\*Uniform Reimbursement Items

B. LIFEGUARD II (Hourly)

Items Required:

Hat  
Wetsuit\*  
Swim Suit  
Fins  
T-Shirts (3)  
Sweats (2)  
Sunglasses

C. **LIFEGUARD I (Hourly).**

Items Required:

Hat  
Swim Suit  
Fins  
T-Shirts (3)  
Sweat **pants** (2)  
Wear Guard Lightweight Jacket Model #401

These items are issued upon appointment to Lifeguard I's and to Lifeguard II's and above for those who have not served as a Lifeguard I. City agrees to continue to meet on Lifeguard uniform and equipment requirements through the term of **this Memorandum** to resolution of those issues.

## **APPENDIX C**

### **Smoking Policy**

No smoking in the workplace.

## APPENDIX D

### Appearance Guidelines

- A. All bargaining unit employees shall maintain a professional appearance through attire reflecting the specific requirements of his or her job duties.
- B. All employees shall dress in clean clothing, free of tears.
- C. Each employee shall maintain an inoffensive level of personal hygiene.
- D. Each employee shall wear any required safety equipment.
- E. No employee may wear any article of clothing, which bears a sexually suggestive or profane symbol or word.
- F. All **Bargaining Unit** employees shall adhere to the Lifeguard Division Uniform Policy.
- G. These guidelines establish minimum standards normally applicable **to Lifeguards**. They will be reasonably applied in order to accommodate the various situations not susceptible to enumeration.



IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding effective July 1, 2012– June 30, 2013, to the appropriate bodies.

CALIFORNIA TEAMSTERS LOCAL 911 CITY OF SAN DIEGO

(Signature on file, available upon request)  
Chester Mordasini  
President

(Signature on file, available upon request)  
Timothy Davis  
Lead Negotiator

(Signature on file, available upon request)  
Bill Bowers  
L911 Consultant

(Signature on file, available upon request)  
Scott Chadwick  
Human Resources Director

(Signature on file, available upon request)  
Ed Harris  
Lifeguard Sergeant

(Signature on file, available upon request)  
Jennifer Carbuccia  
Human Resources Deputy Director

(Signature on file, available upon request)  
John Everhart  
Marine Safety Lieutenant

(Signature on file, available upon request)  
Lourdes N. Silva  
Human Resources Labor Relations Officer

(Signature on file, available upon request)  
Larry Sanders  
Lifeguard III

(Signature on file, available upon request)  
Rick Wurts  
Lifeguard Chief

(Signature on file, available upon request)  
James Gartland  
Lifeguard Sergeant

(Signature on file, available upon request)  
Ronald Hicks  
SD Fire Assistant Chief

(Signature on file, available upon request)  
Richard Romero  
Lifeguard II

(Signature on file, available upon request)  
Greg Bych  
Risk Management Director

(Signature on file, available upon request)  
Jeffrey Hatfield  
Lifeguard II

(Signature on file, available upon request)  
Valarie VanDeweghe  
Risk Management Deputy Director

(Signature on file, available upon request)  
Ryan Dammann  
Lifeguard II

(Signature on file, available upon request)  
Marcelle Rossman  
Financial Operations Manager

For the City of San Diego, I HEREBY APPROVE the form and legality of the foregoing Agreement this \_\_\_\_\_ day of \_\_\_\_\_, 2012.

**TIMOTHY L. DAVIS:**

By: *(Signature on file, available upon request)*

**TIMOTHY L. DAVIS, ESQ.,  
BURKE, WILLIAMS & SORENSEN, LLP**

**DATE**

**SIGNED \_\_\_\_\_**