

MEMORANDUM OF UNDERSTANDING

between

THE CITY OF SAN DIEGO

and

DEPUTY CITY ATTORNEY

ASSOCIATION

for the period

July 1, 2007 to June 30, 2008

LAST BEST & FINAL OFFER

IMPOSED BY COUNCIL 4/17/07

PARTIES TO THE AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING is made and entered into on July 1, 2007, by and between Authorized Management Representatives [“Management”] of the City of San Diego [“City”] and the City Attorney’s Office, on the one hand, and the San Diego Deputy City Attorney Association [“DCAA”], on the other hand.

PURPOSE

It is the purpose of this Memorandum of Understanding [“Memorandum”], to promote and provide for harmonious relations, cooperation and understanding between Management and the employees covered by the Memorandum; to provide procedures herein for an orderly and equitable means of resolving any misunderstandings or differences which may arise under this Memorandum; and 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, which agreement the parties intend jointly to submit and recommend for approval and implementation.

MEET AND CONFER

The City and the DCAA agree to meet and confer during the term of this Memorandum only to the extent required by applicable law, and if agreement is reached in such meeting and conferring, to reduce such agreement to writing, sign and seek any required ratification, implementation, and/or approval.

ARTICLE 1

Recognition

Management formally recognizes the DCAA as the exclusive representative for all deputy city attorneys employed in the City Attorney’s Office, **except that** assistant city attorneys, **confidential attorneys**, and those deputy city attorneys involved in labor negotiations with DCAA on behalf of management of the City Attorney’s Office are excluded from the bargaining unit. **Confidential attorneys are those with access to confidential information regarding management positions with respect to the meet and confer process. No classification shall be removed from the bargaining unit exclusively represented by DCAA during the term of this MOU.**

ARTICLE 2

Good Faith Bargaining

~~The parties understand that creating a comprehensive Memorandum of Understanding will be a longer term project than the time currently available for collective bargaining negotiations in order to meet current budget deadlines. Therefore, the parties propose and agree to negotiate in good faith during FY07 to develop a comprehensive MOU on non-economic issues.~~

Ratification of Agreement

In negotiating a successor MOU, once the parties reach a Tentative Agreement, that Tentative Agreement will be reduced in writing and taken to the City Council of the City of San Diego, and to the membership of DCAA, for ratification of the Tentative Agreement, as soon as reasonably possible. It is the intent of the parties that the Tentative Agreement shall be binding on the parties once it is adopted by the City Council and ratified by the membership of DCAA. The MOU effective date will be as set forth in Article 3, Term. When a successor MOU is completed, the parties will work together to get the agreement finalized and signed by a target date of October 1.

ARTICLE 3

Term

~~The term of this modified Memorandum shall commence at 12:01 a.m. on July 1, 2006. This Memorandum shall expire and otherwise be fully terminated at 12:00 midnight on June 30, 2007.~~

The term of this Memorandum of Understanding shall commence at 12:01 a.m. on July 1, 2007. This MOU shall expire and otherwise be fully terminated at 12:00 midnight on June 30, 2008

ARTICLE 4

Renegotiation

~~The parties agree to reopen negotiations on the elements of Total Compensation if the City enters into an agreement with another represented employee group that provides more favorable economic terms or less detrimental economic concessions when measured against the Total Compensation provided to represented employees under this MOU.~~

Section 1. DCAA shall serve upon the City its full and entire written proposals for a successor agreement by February 4, 2008, with the exception of salary or other economic proposals, which shall be presented no later than February 14, 2008. Upon receipt of such written proposals, meet and confer shall begin no later than March 2, 2008.

Section 2. The City shall serve upon DCAA its full and entire written proposals for a successor agreement by February 25, 2008, with the exception of salaries or other economic proposals. Meet and confer shall begin no later than March 3, 2008, at which time the City will present its full economic proposal. Notwithstanding the above, if federal or state governments take action that has a direct effect upon the areas which fall within meet and confer, the City and DCAA may submit proposals concerning these areas at later dates.

Section 3. If neither party has proposed a change to a particular Article in this MOU by March 3, 2008, that Article shall remain in full force and effect from the date it would have been terminated.

Section 4. Unless otherwise agreed to, the parties agree that final offers by both parties will be made no later than April 7, 2008. If an impasse hearing with City Council is necessary, it will be scheduled for on or about April 15, 2008. DCAA agrees to provide to the Management Team a written statement of its positions regarding any issues at impasse on April 7, 2008.

Section 5. The dates set forth in the Article can be changed by mutual agreement of the parties, if confirmed in writing.

Section 6. Nothing in the Article is intended to waive the rights and obligations of either party under the Meyers-Milias-Brown Act to bargain in good faith.

ARTICLE 5

Salary

No general salary increase for FY07~~8~~.

Employees in the DROP program will have a pay reduction of 3.2% of base salary, to correspond to the 3.2% employee contribution to CERS by non-DROP employees.

ARTICLE 6

Flexible Benefits Plan

~~The annual value of flexible benefits for employees covered under this agreement shall be \$8,575 for FY07.~~

An IRS qualified cafeteria-style benefits program is offered to all eligible employees called Flexible Benefits Plan (FBP). This plan 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. Eligible employees must have no less than 40 hours of compensated time during each pay period in order to receive City paid benefits. If an eligible employee has less than 40 hours of compensated time during a pay period, the eligible employee will have the right to continue their benefits by paying the City the full cost to continue any or all of the employee's benefits during the period. In the case of FMLA approved absences, the City will continue to pay for the employee's health and dental, insurance for up to 12 weeks per year in accordance with FMLA requirements.

The City's contribution to the Flexible Benefits Plan, effective July 1, 2007 will be based on the level of health insurance coverage selected by the eligible employee. The City's contribution to the FBP will be pro-rated according to the percentage of time worked if the employee works less than full-time status. The FBP annual value for FY 2008 will be as follows:

Health Waiver (for those that have other comprehensive health coverage) - \$4,000

Employee only – 100% of the cost for the highest cost City health and dental HMO plans and \$3,000

Employee & 1 Dependent – 80% of cost for highest cost City health and dental HMO plans plus \$3,000

Employee & 2+ Dependents – 60% of cost for highest cost City health and dental HMO plans plus \$3,000

The benefits available through FBP and the respective annual costs are reflected in the Flexible Benefits Summary Highlights booklet provided to each employee each year of the agreement. Significant changes to the benefit options for FY 2008 are:

- 1. Eliminate life insurance options from FBP and provide all eligible employees \$50,000 group term life through duration of employment.**
- 2. Eliminate eligibility for MEA and Local 127 health plans.**
- 3. Sponsored Dependent (parents, siblings) no longer eligible for health coverage.**

It is the intent of the parties that all plans offered in the Flexible Benefits Plan comply with all applicable State and federal laws, including IRS regulations as interpreted by the City Attorney. All disputes over interpretation of the above shall be submitted to the appropriate agencies for interpretation.

The employee must select health insurance unless he/she has other comprehensive health insurance. With remaining FBP monies, eligible employees may select from other optional benefits including dental, vision, cancer/intensive care protection, 401(k). Dental/Medical/Vision (“DMV”) and Dependent Care reimbursement and/or cash payment.

In addition to designated flexible benefits monies to pay for Dental/Medical/Vision or Dependent Care reimbursements, 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 medical, dental, vision or dependent care expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and monies are forfeited if not used within the fiscal year.

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 or comparable plan if unavailable will be automatically continued at the same level for the next year as if the employee had elected to keep them. Employees agree that the City may make a payroll deduction for employee and/or dependent health coverage if there is not enough FBP allotment to pay for all benefit options. Any monies remaining from the FBP allotment will be paid out as taxable cash payment. All payroll deductions, including DMV and Dependent Care reimbursement, will continue and may not be eligible to be stopped until the following open enrollment period.

ARTICLE 7

Retirement Benefits

Effective July 1, 2006, employees represented by the DCAA shall increase their retirement pickup to San Diego City Employees Retirement System [“CERS”] from 3.0% to 3.2% of the employee’s base salary. Effective July 1, 2007, the City will continue to “pick up” or pay for 3.2% of the employees’ portion of the required retirement contribution to the San Diego City Employees Retirement System. This retirement contribution is in addition to the 2.25% of base salary contribution made to the retirement plan by each employee now that the Employee Contribution Reserve is depleted. The 3.2% contribution increase will be applied exclusively to reduce the legally accrued UAAL, through the purchase of POBs, real estate transactions, or other means, and will be held in an escrow or comparable account pending such use.

PENSION BENEFIT RESTRUCTURE

FUTURE EMPLOYEES:

For employees hired after July 1, 2005:

- Eliminate the purchase of service provisions.
- Eliminate DROP
- Eliminate the 13th Check benefit.
- Eliminate all formulae except 2.5% at 55

RETIREE MEDICAL BENEFITS

FUTURE EMPLOYEES:

For employees hired after July 1, 2005:

- Exclude from existing retiree medical program and create defined contribution Retiree Medical Trust with understanding that employees’ right applies only to actual employee contributions and investment earnings on those contributions, but not to the benefit itself. DCAA and the City will meet and confer on Trust establishment, SPSP conversion, administration, plan design and distribution options. Pending establishment of Trust, employee contributions and City match will be held in escrow within CERS, but combined with other CERS funds for investment purposes only.

CURRENT EMPLOYEES:

For employees hired before July 1, 2005:

- Establish service qualification for retiree medical benefit:
10 years of City service = 100% benefit.
5 years of City service = 50% benefit.

ARTICLE 8

Bereavement Leave

~~Up to three (3) days bereavement leave for loss of an immediate family~~

~~member, once per fiscal year, effective July 1, 2005. Immediate as defined under the Family Medical Leave Act.~~

The City will provide paid bereavement leave of up to three days upon the death of an employee's spouse, father, mother, brother, sister, son, daughter (including step-, foster, or adopted), or state-registered domestic partner, with a limit of one eligible death per fiscal year. Submission of written documentation of such loss within 30 days may be required as a condition of payment.

ARTICLE 9

Mileage Reimbursement

~~Mileage reimbursement will increase to \$.48 per mile effective July 1, 2006.~~

Mileage reimbursement will be paid in accordance with the current IRS Standard Mileage Rates for business reimbursement. Reimbursement for travel will be as provided in City policies governing reimbursement for travel.

ARTICLE 10

Management Rights

Unless specifically in conflict with this MOU, all management rights shall remain vested exclusively with the City Attorney. City Attorney management rights include, but are not limited to:

- a. All rights vested in the City Attorney pursuant to Section 40 of the City of San Diego City Charter;
- b. The right to determine the mission of the office of the City Attorney and all of its departments;
- c. The right of full and exclusive control of the management of the City Attorney's office; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
- d. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City Attorney's office;

- e. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;
- f. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City Attorney work, and to contract out for work;
- g. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
- h. The right to establish and enforce employee performance standards;
- i. The right to schedule and assign work;
- j. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
- k. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City or City Attorney investigation;
- l. The right to maintain order, effective and efficient operations; and
- m. The right to establish rules for the management and operation of the office of the City Attorney, including rules to maintain discipline and efficiency.
- n. Nothing in this Article shall be construed to limit or abrogate any constitutional or statutory rights of any employee.

ARTICLE 11

DCAA Communications

A. Bulletin Boards

The City Attorney will furnish adequate bulletin board space for the use of DCAA at reasonable locations. This will not preclude management from using other space on these bulletin boards. The **Association DCAA** shall limit its posting on such bulletin boards to **Association DCAA** affairs such as reports of official business and meeting schedules. The **Association DCAA** agrees not to post controversial or political material, and to remove dated material in a timely manner.

B. Mail Boxes

The **Association DCAA** can utilize attorney mailboxes for information related to DCAA business. The information placed in attorney mailboxes shall relate to **Association DCAA** affairs such as reports of official business and meeting schedules. The **Association DCAA** agrees not to place controversial or political material in attorney mailboxes.

C. Email

The **Association DCAA** can utilize the City e-mail system for DCAA business, such as reports of official business and meeting schedules. The **Association DCAA** agrees not to utilize the email system for controversial or political matters, and to comply with all City policies regarding the utilization of the City's email system.

ARTICLE 12

Professional Education

The City Attorney will pay State bar dues for each Deputy City Attorney ("DCA"). In addition, the City Attorney will pay the reasonable expenses for a DCA to attend professional, job-related conferences that are pre-approved by management. Pre-approval may be denied in the sole discretion of the City Attorney, and such approval will be denied if such expenses are not within the budgetary constraints of the City Attorney. In order to be reimbursed for such educational expenses, the DCA shall submit a request for approval to attend the event, along with a list of the likely expenses associated with the event, such as mileage, air fare, hotel, meals, rental car and taxi expenses. This information shall be submitted in advance of attendance, and pre-approval is required. The City Attorney may require the DCA to submit satisfactory evidence of attendance at the event, and receipts for all actual expenses incurred, in order to receive reimbursement.

In the event the City Attorney does not approve the payment of expenses for a DCA to attend a professional, job-related conference (such as in the event of budgetary constraints), the employee can still attend the conference at his or her own expense, provided such attendance is pre-approved by management, and the employee will receive his or her salary while in attendance at the conference.

ARTICLE 13

Review of Performance and Discretionary Merit Increases

The salary structure attached as Addendum 1 to this MOU will remain in effect for the term of this MOU, subject to the discretion of the City Attorney to hire new employees with special expertise or in a unique circumstance who may not be placed into this structure.

Deputy I and II

Management of the City Attorney's Office will review the performance of employees in the Deputy I and II assignments every six months, in approximately January and July. These

employees will be eligible to receive a merit increase at the time of these reviews based on their performance, provided that such increases shall be in the sole and absolute discretion of the City Attorney, shall be based on merit, and shall be within the budgetary constraints of the City Attorney.

Deputy III

Management of the City Attorney's Office will review the performance of employees in the Deputy III assignment once a year, in approximately July. These employees will be eligible to receive a merit increase at the time of these reviews based on their performance, provided that such increases shall be in the sole and absolute discretion of the City Attorney, shall be based on merit, and shall be within the budgetary constraints of the City Attorney.

Deputy IV, V and Senior Deputy

Management of the City Attorney's Office will review the performance of employees in the Deputy IV, V and Senior Deputy assignments once a year, in approximately the month of that employee's anniversary date of hire by the City Attorney's office, provided that it shall be the responsibility of the employee to contact management of the City Attorney's office during their anniversary month and to request a review of their performance. These employees will be eligible to receive a merit increase at the time of these reviews based on their performance, provided that such increases shall be in the sole and absolute discretion of the City Attorney, shall be based on merit, and shall be within the budgetary constraints of the City Attorney.

Progression Between Assignments

Placement in, and progression between assignments shall be in the sole and absolute discretion of the City Attorney.

DCAA Input on Performance Evaluation Process

The parties recognize that management of the City Attorney's office needs more time to develop the performance evaluation process for employees. As such, during the ~~term of this MOU~~ **FY 07 MOU**, the City Attorney's office will work on developing a performance evaluation process for employees. DCAA will be invited to provide input on the performance evaluation process, and the City Attorney's office will consider that input in the development of the performance evaluation process. **The City will conduct performance evaluations consistent with the procedures developed above.**

ARTICLE 14

Grievance Procedure

This Grievance Procedure is provided for the orderly and efficient disposition of grievances. A grievance is any dispute involving the interpretation or application of this Agreement, or relating to working conditions or disciplinary action imposed by the City Attorney or his or her designee,

except that this Grievance Procedure does not apply to employment terminations. This grievance procedure in no way limits the management rights of the City Attorney as expressed in Article 10 of this MOU, nor does it change the fact that all employees are employed on an at-will basis, and as such the City Attorney reserves the right, in his or her sole and absolute discretion, to discipline, demote, terminate to alter the employment relationship with any employee at will, either with or without cause or advance notice.

The parties recognize that the City has other complaint procedures. This Grievance Procedure is not intended to limit or prohibit an employee from filing a complaint under any other City policy that is applicable to that employee, nor does it prohibit an employee from filing a complaint in an administrative agency or a court of law, once the employee has exhausted this grievance procedure with respect to violations of the MOU.

The following are the steps in the Grievance Procedure:

First Step – Chief Deputy: In order to minimize the possibility of misunderstanding, an employee shall discuss the problem or grievance with the Chief Deputy of his/her unit within ~~seven (7) business days~~ **fourteen (14) calendar days** of the occurrence of the problem creating the grievance. The Chief Deputy or his/her designee will investigate the matter and attempt to provide a solution or explanation within ten ~~(10) business days~~ **fourteen (14) calendar days** after the employee reported the grievance, unless additional time is required under the circumstances.

Second Step – Assistant City Attorney: If an employee does not receive a satisfactory answer or resolution as a result of the First Step of this procedure, the employee or the DCAA will reduce the grievance to writing and present the grievance to the Assistant City Attorney or his or her designee within ~~five (5) business days~~ **fourteen (14) calendar days** after receiving the explanation from the Chief Deputy referred to in the First Step of this procedure. After receiving the written grievance, the Assistant City Attorney or his or her designee will promptly schedule a meeting to provide the employee and/or the Union with an opportunity to present the problem personally. Within ~~ten (10) business days~~ **fourteen (14) calendar days** after that meeting or such longer period as is required under the circumstances to properly investigate and/or consider the matter, the Assistant City Attorney or his or her designee will provide the employee with a verbal or written response to the grievance.

Third Step – City Attorney: If an employee is not satisfied with the decision at the Second Step of this procedure, he or she may request in writing, ~~within five (5) business days~~ **fourteen (14) calendar days** after receiving the response from the Assistant City Attorney at the Second Step of this procedure, an appointment to meet with the City Attorney or his or designee **who shall not be a person that was involved in the discipline or the issue involved in the grievance**, who will discuss the problem with the employee and investigate the basis for the grievance. The City Attorney or his or her designee will provide either a verbal or written decision to the employee within ~~10 business days~~ **(14) calendar days** after that meeting, unless he

or she determines that additional time is required under the circumstances. The decision at this step shall be the final decision of the City Attorney with regard to the grievance.

It is the City Attorney's intention to be fair and impartial in order to establish the smoothest working relationship possible. No employee will be discriminated or retaliated against, or in any way penalized, for using this procedure.

ARTICLE 15

Employment Termination Meeting

Any employee who has been terminated by the City Attorney's office may, within five (5) business days of his or her termination, request a meeting with the City Attorney or his or her designee, in order to discuss with the City Attorney or his or her designee, the termination decision. The City Attorney or his or her designee will meet with the employee within ten (10) business days of such a request to discuss the decision.

Nothing in this Article or this MOU in any way limits the management rights of the City Attorney as expressed in Article 10 of this MOU, nor does it change the fact that all employees are employed on an at-will basis, and as such the City Attorney reserves the right, in his or her sole and absolute discretion, to discipline, demote, terminate to alter the employment relationship with any employee at will, either with or without cause or advance notice.

ARTICLE 16

Inspection of Employee Personnel File

Each employee ~~may~~ **shall have the opportunity to** inspect the contents of his or her personnel file at reasonable times and at reasonable intervals, provided sufficient advance notice is given to management of the City Attorney's office of the desire to do so. Such inspection is limited to those records which an employee has the right to inspect under California Labor Code section 1198.5.

A copy of any document which reflects negatively on an employee's performance that is placed in the employee's personnel file shall also be provided to the employee. At the employee's request, the City Attorney's office will place into an employee's personnel file a ~~brief~~ **written response to any such document, , and shall be signed and dated by the author.**

ARTICLE 17

DCAA Matters

The DCAA may, with the prior approval of management, be granted the use of City Attorney meeting room facilities for meetings of its members. Such meetings shall not be held during work hours.

The City Attorney agrees to provide DCAA with an opportunity to make non-controversial presentations to new employees represented by DCAA regarding the role and purpose of DCAA. These presentations will not exceed one-half hour.

The City Attorney recognizes the right of DCAA to designate employee representatives from the employees in the bargaining unit. The DCAA shall reserve the right to designate the method of selection of employee representatives. The DCAA shall notify management of the City Attorney's office in writing of the names of its employee representatives, and shall also provide notice in writing of any changes regarding employee representatives and who they are replacing.

On an annual basis, the City will distribute a form to all employees represented by DCAA. This form will give these employees an opportunity to indicate that they do, or do not, wish to disclose their home addresses to DCAA. The City will provide home addresses to DCAA for those employees who authorize it, and DCAA agrees to hold those addresses in confidence. The City will provide mailing labels of the bargaining unit to DCAA no more than twice per fiscal year. The labels will be applied at the labor relations office and postage and assembly will be the responsibility of DCAA.

When formal meetings are scheduled for the purpose of meeting and conferring on subjects within the scope of representation, the DCAA may be represented by up to four members designated by DCAA. For purposes of conferring on a successor MOU, DCAA may designate up to four DCAA members to participate. However, additional representatives may attend upon mutual written agreement of the parties. These employees may attend said meetings during regular work hours without loss of compensation or other benefits. Nothing provided herein shall limit or restrict City Management from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

Designated DCAA representatives will be entitled to devote a reasonable amount of time to the representation of its members, such as grievance handling, attending disciplinary meetings, and addressing meet and confer issues, during the course of the work day. This time will not result in a reduction of workload from current levels. At the time of the designation, DCAA will provide to Management contact information for its representatives.

ARTICLE 18

Association Dues

Agency Shop

A. Employee's Responsibilities

All employees in the bargaining unit shall have the choice of either becoming a member of DCAA, or of being a non-member and paying an agency fee or conscientious objector fee. All new employees to the bargaining unit shall within thirty (30) days of their employment by the City Attorney have the choice of either becoming a member of DCAA, or of being a non-member and paying an agency fee or conscientious objector fee. The City Attorney's office will also notify DCAA within ~~thirty days~~ **seven (7) days** of the identity of these new employees.

B. Implementation of Agency Shop

1. Notice to Employees

The City has provided current employees in the unit, and will provide any employees hired into the bargaining unit, with an authorization notice provided by DCAA advising them that an election has resulted in an Agency Shop arrangement and that all employees must either join DCAA, pay an agency fee to DCAA, or execute a written declaration setting forth a bona fide religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing payroll deduction of Union dues, or an agency fee, or a charitable contribution equal to the agency fee, if that is appropriate. Affected employees shall have ~~thirty (30)~~ **fourteen (14)** calendar days from the date of receipt of this notice and authorization to fully execute and return it to the City. DCAA can request the City Attorney to terminate any employee who refuses to comply with this Article. In this event, the City Attorney will give the employee notice that they must comply with the Article within 30 days, or their employment will be terminated. If the employee fails to comply with this Article after receipt of such notice, the City Attorney will then terminate the Employee at DCAA's request. Dues deductions, once initiated, shall continue until the authorization is revoked in writing by the employee. An employee may only revoke a dues deduction authorization by delivering the written notice of revocation to the DCAA and the City.

2. Notice to City of Dues and Agency Fees

DCAA will give the City sixty (60) days advance written notice of any changes to the amount of dues and agency service fees to be deducted.

3. Sufficiency of Employee's Earnings

The employee's earnings must be sufficient, after all other legally required but not voluntary, deductions are made, to cover the amount of the dues or fees authorized. When an employee is in an unpaid status for an entire pay period, no withholding shall be made from future earnings to cover the missed pay period. In the case of an employee in an unpaid status during part of a pay period, whose salary is insufficient to cover the full withholding, no deduction shall be made. All other legally required deductions, including health care deductions, shall have priority over dues and agency service fees.

4. Deductions/Remittance of Dues and Fees

Payment of dues and/or agency service fees shall be by regular payroll deductions only **in an amount that is based on the employee's base salary**. Remittance of the aggregate amount of all dues and service fees shall be made to DCAA by the City on a bi-weekly basis. DCAA shall refund to the City any amounts paid to it in error upon presentation of supporting evidence.

5. Employee Lists

The City shall also provide with each payment a list of represented employees paying the membership fees and a list of employees paying service fees, and/or conscientious objector fee. All such lists shall contain the employee's name and amount deducted. DCAA will maintain this list in confidence. **The City will provide a biweekly report to DCAA which will notify DCAA when a new Deputy City Attorney has been hired by the City, and no dues, fees or charitable contributions are being deducted.**

6. Notice to Fee Payers

In accordance with the law DCAA shall be responsible to provide such fee payers an annual explanation of the fee and sufficient financial information to enable the fair share service fee payer to gauge the appropriateness of the fee. DCAA will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, not chosen by DCAA, and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

DCAA will provide to the City sufficient copies of the notices required under this section (with postage paid) at the appropriate time each year, and the City shall forward these notices to all fair share service fee payers within thirty (30) days of the City's receipt of the notices, and to all new employees at the time of hire.

C. Employee's Right to Conscientious Objection

An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining and financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee shall be required, in lieu of periodic dues, initiation fees, or Agency Shop fees, to pay sums equal to the dues, initiation fees, or Agency Shop fees, to a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)3 of the Internal Revenue Code, chosen by the employee from the list designated in paragraph D below.

D. Designation of Nonreligious, Non-Labor Charitable Funds

Employees who are eligible conscientious objectors as described in paragraph C above must designate one of the following nonreligious, non-labor charitable funds to which his/her contributions in lieu of dues/agency fees shall be paid:

United Way, Inc.
San Diego Volunteer Lawyer Program
Legal Aid Society of San Diego, Inc.

Declaration of or applications for religious exemption, with supporting documentation, shall be submitted to DCAA and shall be processed promptly. If the application for religious exemption is challenged by DCAA, the deduction to the designated charity shall commence but shall be held in escrow by DCAA pending DCAA's resolution of the challenge. Charitable contributions as a substitute for the payment of dues or an agency fee shall be made only by regular payroll deductions.

E. Indemnification

DCAA shall indemnify, defend, and hold the City of San Diego and the City Attorney and their officials, representatives, and agents harmless against any claims, suits, attorney's fees, or any other form of liability as a result of the City making dues deductions pursuant to this Article. Further, DCAA agrees to indemnify and hold the City of San Diego, and the City Attorney, and their officials, representatives, and agents harmless for any loss or damage arising from the DCAA's actions or inactions under this Article.

F. No Concerted Action

During the term of this MOU, DCAA agrees not to engage in any concerted action, and the City Attorney agrees not to engage in a lockout. Further, in the event of any concerted action authorized by DCAA at any time which encourages employees to withhold their services to the City, the City Attorney shall have the right to immediately cease the collection and remittance of dues to DCAA.

ARTICLE 19

Employee Rights

The parties mutually recognize and agree fully to protect the rights of all employees covered hereby to join and participate in the activities of DCAA (outside of work time). No employees shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.

The parties, in the conduct of their affairs, shall apply the provisions of this Memorandum equally to all employees covered hereby without favor or discrimination because of race, color, sexual orientation, sex, age, disability, national origin, pregnancy, political or religious opinions or affiliations.

ARTICLE 20

Savings Clause

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 an agency or court of competent jurisdiction, such part or provisions shall be suspended and superseded by such applicable law or regulations, and the remainder of the Memorandum shall not be affected thereby.

ARTICLE 21

Holidays

I. 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”; and
- J. December 25.

If the City Council changes City holidays, the parties will re-negotiate the holidays for employees.

If January 1st, March 31st, July 4th, November 11th, or December 25th fall on a Sunday, the Monday following is the City-observed holiday, and if they fall on a Saturday, the preceding Friday is the City-observed holiday.

II. 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 Regulation H-2) shall accrue credit for hours of holiday time equal to the hours worked in the employee’s normal work day of up to eight (8) hours. Each employee accruing such time shall comply with the following conditions:

- A. Employee must schedule prior to June 1;
- B. It must be a one time absence and it must be used before the last day of the last full pay period in June; and
- C. At a time convenient to the City Attorney or his or her designee.

ARTICLE 22

Direct Deposit

The City Attorney agrees to offer direct deposit of employee paychecks. All employees will be required to provide authorization to the City Auditor to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility).

ARTICLE 23

Transportation

- A. Employees who utilize the Concourse Parkade and pay on a monthly basis will be charged 50% of the prevailing general public monthly rate.
- B. The City will provide 75% reimbursement up to \$100 to those employees who wish to purchase monthly passes for transportation on the public bus and/or trolley and commuter rail service, or who ride bicycles to work and utilize bicycle lockers. Such passes will be for the exclusive use of the employee/purchaser. The City will provide an equal amount to employees who utilize the 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 a week to be eligible for reimbursements. Employees in violation of these provisions shall have their Transportation Incentives discontinued.
- C. The City will provide reimbursement to employees who utilize 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 24

Recognition of City Policies

During the term of this MOU, all existing City policies and administrative regulations currently applicable to Deputy City Attorneys will remain in effect.

ARTICLE 25

Jury Duty Scheduling

When feasible and appropriate, management agrees to make reasonable adjustments in an employee's work schedule when the employee is assigned to jury duty.

ARTICLE 26

Notice of Termination

For any employee covered by this Agreement who has been employed for at least two years, the City Attorney agrees to provide three (3) weeks advance notice before terminating such employee, or three (3) weeks pay in lieu of notice, **or a combination of notice and pay, in the City Attorney's discretion. Any pay in lieu of notice paid pursuant to this Article will be paid at the end of said period.** In ~~either~~ any case, the employee will take appropriate steps to transition his or her duties to other attorneys in the office ~~during this three-week period.~~

ARTICLE 27

Employee Representation

An employee is entitled, upon his or her request, to representation by DCAA during an interview or investigation by City representatives that the employee reasonably believes may result in disciplinary action, and during any meeting at which management intends to issue written disciplinary action, or to terminate an employee. The employee shall be permitted to consult with his/her representative, upon request, prior to the interview, investigation or meeting, provided the representative may not disrupt the interview, investigation or suggestions, additions or clarifications at the appropriate time of the interview, investigation or meeting.

ARTICLE 28

Fingerprinting

The City shall bear the full cost of fingerprinting whenever such is required of the employee

ARTICLE 29

Copies of the Agreement

The DCAA may obtain copies of this Agreement from the City by reimbursing the City for their cost. The City agrees to provide DCAA with 20 free copies of this MOU without charge, and the City will provide DCAA with an electronic version of this Agreement. The MOU will be posted on the City's website in a location easily accessible to all DCAA unit members by June 30, 2008.

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IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding effective July 1, 2007 – June 30, 2008, to the appropriate bodies.

Date: June __, 2007

**SAN DIEGO DEPUTY CITY
ATTORNEY ASSOCIATION**

Andrew Jones, President

Mark Stiffler, Deputy City Attorney

Cindy Davis, Deputy City Attorney

Margo Feinberg, Lead Negotiator

OFFICE OF THE CITY ATTORNEY

Michael Aguirre, City Attorney

Karen Huemann, Deputy City Attorney

Kathryn Burton, Deputy City Attorney

CITY OF SAN DIEGO

J. Rod Betts, Lead Negotiator

Scott Chadwick, Labor Relations Manager

Lisa Briggs, Policy Advisor to the Mayor

Doug Edwards, Personnel Department