

**SIDE LETTER AGREEMENT BETWEEN THE CITY OF SAN DIEGO AND
DEPUTY CITY ATTORNEYS ASSOCIATION OF SAN DIEGO (DCAA) RELATED TO THE AUTOMATION OF
THE CATASTROPHIC
AND MEDICAL LEAVE SHARING PROGRAMS**

Pursuant to the provisions of the Meyers-Milias-Brown Act (MMBA) and San Diego City Council (Council) Policy 300-06, this Side Letter Agreement (Agreement) is entered into between the City of San Diego (City) and the Deputy City Attorneys Association of San Diego (DCAA) related to the automation of the City-administered Catastrophic Leave Sharing Program and Medical Leave Sharing Program. The City and DCAA are collectively referred to as the "Parties."

Background

The Catastrophic Leave Sharing Plan provides City employees the ability 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 for a leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Americans with Disabilities Act (ADA), other local, state, or federally protected leave, and other extraordinary circumstances as determined by the Human Resources Director or designee.

The Medical Leave Sharing Plan provides City employees the ability to assist other City employees who face extended leaves without pay due to a major health crisis, whether their own, or that of a family member.

Currently, these programs are manually processed and submitted to various departments, which takes an average of three weeks to complete if all the necessary paperwork and transmission are in order. The automation aims to reduce processing time, so that requests to establish or authorize donation to catastrophic or medical leave banks are completed immediately. The automation will ensure the proper and timely transmission of requests, and will make the program more accessible and convenient for employees to use.

Terms of Agreement

The Parties agree as follows:

1. The Parties have satisfied all obligations under the MMBA, Council Policy 300-06, and other applicable law and regulations to meet and confer in good faith on the subject of this Agreement.
2. This Agreement is not binding on the City and DCAA until it is approved by a two-thirds vote of the entire City Council, in accordance with San Diego Charter section 11.2. The Parties submit this Agreement to Council for final determination.
3. The automation of the Catastrophic and Medical Leave Sharing Programs will result to better and efficient services, and will greatly benefit City employees.
4. City employees who wish to establish Catastrophic or Medical Leave Bank will continue to submit the "Request to Establish Catastrophic/Medical Leave Bank" and appropriate requirements (e.g. medical certificate) to the Human Resources (HR) Department. Upon

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meeting the requirements, the HR Department will initiate the electronic processing of the request in the SAP system.

5. Employees who opted to publish their Catastrophic or Medical Leave Bank will be posted in the SAP system, under the Leave Administration section.
6. Donors will be able to donate their hours through the SAP system, under the Leave Administration section. Employees without access to the City's Active Directory may continue completing the "Confidential Authorization for Catastrophic Leave Donation" form for submission to the Human Resources Department.
7. Only the routing for review and approval of request to establish Catastrophic or Medical Leave Bank, and the authorization to donate Catastrophic or Medical Leave, will change through automation. Current eligibility requirements such as the recipient's total annual leave balance including donated leave (2,080 hours) and donor's minimum required leave balance (160 hours) will remain the same.
8. DCAA MOU, Article 37, Leave-Sharing Plans, will be amended and stated as follows:

A. Catastrophic Leave Plan Program Description

1. Purpose and Scope

Establish a City of San Diego-administered Catastrophic 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 for a leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Americans with Disabilities Act (ADA), other local, state, or federally protected leave, and other extraordinary circumstances as determined by the Human Resources Director or designee. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Catastrophic Leave Bank from their date of hire. Catastrophic Leave determinations are non-grievable.

Catastrophic leave coverage shall be extended to events affecting registered domestic partners provided that a City of San Diego Affidavit of Domestic Partnership has been submitted.

2. Procedures

- a. The Employee initiates a request for a Catastrophic Leave Bank to be established in accordance with this policy.

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- i. The employee must have exhausted or expect to exhaust **their** accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department Payroll Specialist), as a result of a qualifying event in order to establish a **Catastrophic** Leave Bank.
 1. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.
 - ii. The employee must receive approval for an unpaid leave of absence from **their** Department Head.
- b. Requests to establish a **Catastrophic** Leave Bank to receive donations will be processed by the Human Resources Department.
- i. An eligible employee must submit a completed "Request to Establish Catastrophic Leave Bank" form to the Human Resources Department, accompanied by:
 1. A signed statement by the employee which includes a brief description of the nature and need for the leave and an estimated time the employee will be out of the workplace, or other appropriate documentation supporting the request. Clarifying documentation may be requested by the Human Resources Department. Any employee who misrepresents information on the signed statement provided to the Human Resources Department may be subject to discipline, up to and including termination.
 2. Evidence of the Department Head's approval of the leave of absence.
 3. Employees must also identify, on the Request to Establish Catastrophic Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the **Catastrophic** Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the **Catastrophic** Leave Bank is approved by the Human Resources Department.
- c. Donations of annual leave may be made to an employee eligible for Catastrophic Leave as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.

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- i. Donations of leave are strictly voluntary; the City will maintain the identity of **Catastrophic** Leave Bank donors in absolute confidence.
 - ii. Employees may only donate accrued annual leave.
 - iii. Donations must be made in whole-hour increments.
 - iv. **Donation authorization requests that do not contain all requested information will not be processed.**
 - v. Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
 - vi. Once donated to the **Catastrophic** Leave Bank, donated leave cannot be returned to the donor.
 - vii. Employees who wish to donate leave must **submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit it to the Human Resources Department.**
- d. Upon receipt of donation authorizations forms, the **City's SAP System** will:
- i. **Verify that the donating employee has the minimum required leave balance of 160 hours.**
 - ii. Convert the donated dollars as computed above to hours at the recipient's hourly rate. The donor will be taxed for the leave when it is donated to the recipient.
 - iii. Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified **their** Payroll Specialist in writing to cancel deductions.
 - iv. Subtract the donated time from the donor's designated leave category; and
 - v. Add the donated hours to the recipient's Catastrophic Leave – Annual Leave (CatLv-AL) bucket.
- f. Donated **Catastrophic** Leave is treated as annual leave accrued by the recipient of the donation, but the recipient will not be taxed

on the donated annual leave. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.

- i. Donated Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.
 - ii. Employees using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Index Code I-2, Annual Leave.
 - iii. Donated Leave can only be used on a going forward basis.
 - iv. An employee who receives Donated **Catastrophic** Leave under this Catastrophic Leave Plan may either take the Donated **Catastrophic** Leave as compensated time off, or may receive pay-in-lieu of the Donated **Catastrophic** Leave, consistent with Personnel Manual Index Code I-2, subparagraph E, but may not re-donate that time to a Catastrophic Leave Bank or Medical Leave Bank for use by another employee.
3. Notification of the creation of a Catastrophic Leave Bank to potential donors is the responsibility of the employee, not the department. No City equipment, including the e-mail system, may be used to disseminate information about a **Catastrophic** Leave Bank. Employees may work with their recognized employee organizations to disseminate the request for leave through means other than the City e-mail system. However, if requested by the employee in the Request for Establishing Catastrophic Leave Bank form, the City will publicize on the **Leave Administration section of the City's SAP System**, the employee requestor's name, and the dates the Leave Bank opens and closes.

B. Medical Leave-Sharing Plan Program Description

1. Purpose and Scope

The City of San Diego offers a Medical Leave-Sharing Plan and Leave Bank (Medical Leave Bank) to give City employees the ability to assist other City employees who face extended leaves without pay due to a major health crisis, whether their own, or that of a family member. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

Employees who are entitled to annual leave are eligible to request a Medical Leave Bank from their date of hire. Medical Leave Sharing determinations are non-grievable.

For purposes of this plan, a "major health crisis" is defined as: (1) the employee's own medically certified "serious health condition," as defined by the federal Family and Medical Leave Act, (2) the medically-certified "serious health condition" of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), (3) the medically-certified "serious health condition" of the employee's registered domestic partner, or (4) the death of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), or employee's registered domestic partner (provided that a City of San Diego Affidavit of Domestic Partnership has been submitted). The determination of whether a major health crisis exists is made by the Human Resources Department Director or designee.

2. Procedures

- a. Employee initiates a request for a Medical Leave Bank to be established in accordance with this policy.
 - i. The employee must have exhausted or expect to exhaust **their** accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a Leave Bank.
 1. If an employee is diagnosed as terminally ill, a Medical 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 illness.
 2. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.
 - ii. The employee must receive approval for an unpaid leave of absence from **their** Department Head.
- b. Requests to establish a Medical Leave Bank to receive donations will be processed by the Human Resources Department.
 - i. An eligible employee must submit a completed "Request to Establish Medical Leave Bank" form to the Human Resources Department, accompanied by:
 1. A medical statement from the attending physician, including a brief statement describing 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.

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2. Evidence of the Department Head's approval of the leave of absence.
 3. Employees must also identify, on the Request to Establish Medical Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Medical Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Medical Leave Bank is approved by the Human Resources Department.
- c. Donations of annual leave may be made to an employee eligible for medical leave because of a major health crisis, as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.
- i. Donations of leave are strictly voluntary; the City will maintain the identity of Medical Leave Bank donors in absolute confidence.
 - ii. Employees may only donate accrued annual leave.
 - iii. Donations must be made in whole-hour increments.
 - iv. **Donation authorization requests that do not contain all requested information will not be processed.**
 - v. The donor will not be taxed on the value of the leave they donate, but also cannot claim an expense, loss deduction, or charitable contribution for the donated leave.
 - vi. Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.
 - vii. Once donated to the Medical Leave Bank, donated leave cannot be returned to the donor.
 - viii. Employees who wish to donate leave must **submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Medical Leave Donation" form and submit it to the Human Resources Department.**
- d. Upon receipt of donation authorization forms, the City's SAP System will:

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- i. **Verify that the donating employee has the minimum required leave balance of 160 hours.**
 - ii. Convert the donated dollars as computed above to hours at the recipient's hourly rate. The recipient will be taxed for the leave when it is taken.
 - iii. Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified **their Payroll Specialist** in writing to cancel deductions.
 - iv. Subtract the donated time from the donor's designated leave category; and
 - v. Add the donated hours to the recipient's annual leave balance.
 - e. Donated Medical Leave is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.
 - i. Donated Medical Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.
 - ii. 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.
 - iii. Donated Medical Leave can only be used on a going forward basis.
3. Notification of the creation of a Medical Leave Bank to potential donors is the responsibility of the employee, not the department. No City equipment, including the e-mail system, may be used to disseminate information about a Medical Leave Bank. Employees may work with their recognized employee organizations to disseminate the request for leave through means other than the City e-mail system. However, if requested by the employee in the Request for Establishing Medical Leave Bank form, the City will publicize on the **Leave Administration section of the City's SAP System**, the employee requestor's name, and the dates the Medical Leave Bank opens and closes.
9. The automated Catastrophic and Medical Leave Programs will be implemented on **January 1, 2020.**

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10. Unless expressly covered in this Agreement, all wages, hours, and terms and conditions of employment presently enjoyed by DCAA-represented employees, whether stated in an MOU, Personnel Regulation, Administrative Regulation or in any other enforceable document, remain in full force and effect.
11. Upon approval by the City Council, this Agreement is intended to be read in conjunction with the MOU and where in conflict on the specific issue covered by this Agreement, this Agreement will control.
12. This Agreement will remain in effect unless it is modified through further negotiations in accordance with the MMBA and Council Policy 300-06.
13. The Parties will incorporate the language set forth in this Agreement into any successor MOU negotiated by the City and DCAA which is approved by the City Council, as well as into any applicable Administrative Regulations and Personnel Regulations.

This Agreement is executed by the following authorized representatives of each party:

Deputy City Attorney Association of San Diego


City of San Diego

By: 
Jim Cunningham
Lead Negotiator

By: 
Timothy Davis
Lead Negotiator

Date: 11/25/2019

Date: November 25, 2019

By: 
Shelley Webb
President


By: 
Franklin Coopersmith
Supr. Human Resources Analyst

Date: 11/25/2019

Date: 11/25/19

Approved as to form this 25th day of November, 2019.

MARA W. ELLIOTT, City Attorney

By: 
Jim McNeill
Assistant City Attorney