

1995 - 1997

127 7/1/1995 to 6/30/1997

# **MEMORANDUM OF UNDERSTANDING**

**THIS MEMORANDUM OF UNDERSTANDING MADE  
AND ENTERED INTO THIS 1ST DAY OF JULY, 1995.**

**BY AND BETWEEN                      CITY OF SAN DIEGO**

**AND                      LOCAL 127, AMERICAN  
FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES,  
AFL-CIO**

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## Preamble

This Memorandum of Understanding entered into by the City of San Diego, herein referred to as the City, and Local 127, American Federation of State, County, and Municipal Employees, AFL-CIO, herein referred to as the Union, has as its purpose the promotion of harmonious labor relations between the City and the Union.

## ARTICLE 1

### Parties to the Agreement

This Memorandum of Understanding is entered into this 1st day of July 1995, by and between the City of San Diego, hereinafter referred to as the "City," and Local 127, American Federations of State, County, and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union".

## ARTICLE 2

### Term of Agreement

The term of this Memorandum of Understanding shall commence at 12:01 a.m. on July 1, 1995. This Memorandum of Understanding shall expire and otherwise be fully terminated at 12:00 a.m. (midnight) on June 30, 1997.

## ARTICLE 3

### Recognition

#### A. RECOGNITION

The City recognizes the Union as the exclusive representative of employees in the Maintenance, Labor, Skilled Trades and Equipment Operator Unit pursuant to the provisions of the Employer-Employee Relations Policy of the City, and applicable State Law.

#### B. COVERAGE OF EMPLOYEES

This memorandum applies to all classifications listed in Exhibit A, and to any new classifications added to Exhibit A during its term.

#### C. No classification shall be removed from the bargaining units exclusively represented by Local 127 during the term of this agreement, and Management shall not entertain any employee petition which seeks removal from this "represented" status.

## ARTICLE 4

### Provisions of Law

#### Section 1.

This Memorandum is subject to all current and future applicable federal, state and local laws and regulations. Provided, however, no local law which is enacted in contravention of the provisions of the Meyers-Milias-Brown Act shall affect the provisions of this agreement. Departments will not enact regulations which contravene the articles of this Memorandum of Understanding.

#### Section 2.

If any part or provision of this Memorandum is in conflict or inconsistent with such applicable provisions of federal, state or local laws or regulations, or is otherwise held to be invalid or unenforceable by any tribunal 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 5

### Implementation

This Memorandum of Understanding constitutes a mutual recommendation by the Management Team and Local 127, AFSCME to be jointly submitted to the City Council and/or the Civil Service Commission. It is agreed that this Memorandum of Understanding shall be binding upon the parties upon:

- A. The City Council's and Civil Service Commission's formal approval by majority vote of the Articles of said Memorandum as appropriate. However, it is recognized that those articles requiring a change or alteration by the City Council or Civil Service Commission to ordinances, resolutions, rules, policies and procedures shall be given effect only upon completion of the required adoption procedure.
- B. Ratification by Local 127, AFSCME, as soon as practicable, following completion of negotiations. The City shall permit employees a reasonable amount of paid time off in order to vote on ratification of negotiations only during the scheduled work day. Local 127, AFSCME, shall notify Management of the result of the ratification process no later than May 25, 1995.

## ARTICLE 6

### Reasonable Notice

#### Section 1.

A reasonable effort will be made to provide 30 calendar days written notice to Local 127 if affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City Council or by the Civil Service Commission or by appointing authorities and Local 127 shall be given the opportunity to meet with such body or person prior to adoption.

#### Section 2.

In cases of emergency pursuant to the City Charter, when the City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with Local 127, the City Council or the board or commission of the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such ordinance, rule, resolution, or regulation.

## ARTICLE 7

### Renegotiation

#### Section 1.

In the event Local 127 desires to meet and confer in good faith on the provisions of a successor agreement, it shall serve upon the City not later than March 10, 1997, its written request to commence meeting and conferring in good faith, as well as its written proposals for such successor agreements. Upon receipt of such written notice and proposals, meet and confer shall begin no later than April 3, 1997.

#### Section 2.

The City agrees to notify Local 127 by March 21, 1997, of its non-economic proposals and will submit its economic proposals not later than April 1, 1997. Notwithstanding the above, if federal or state governments take action that has direct effect upon the areas which fall within meet and confer, the City may submit proposals concerning these areas at later dates.

### Section 3.

Management will request the City Council to schedule an Impasse Hearing if necessary after 5 p.m. on a regular work day in order to permit Local 127 bargaining unit members the opportunity to attend and testify.

### Section 4.

Unless otherwise agreed to, the parties agree that final offers by both parties will be made no later than April 28, 1997. If an impasse hearing with the City Council is necessary, it will be scheduled for May 9, 1997. Local 127 agrees to provide the Management Team a written statement of its positions regarding any issues at impasse on May 2, 1997.

## **ARTICLE 8**

### **Management Rights**

The rights of the City include among others, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees, take disciplinary action for just cause; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and complete control and discretion over its organization and the technology of performing its work.

The exercise of such rights shall not preclude Local 127 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 shall not supersede the provisions of this agreement.

## **ARTICLE 9**

### **Equal Opportunity Policy**

#### Section 1.

The parties mutually recognize and agree fully to protect the rights of all employees falling in the unit listed in Article 3 herein to join and participate in the activities of Local 127, or not to join and participate in such activities, and all other rights guaranteed by law.

### Section 2.

No employees shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.

### Section 3.

The provisions of this Memorandum shall be applied equally to all employees covered hereby without favor or discrimination because of race, color, sex, age, disability (as defined by the Americans with Disabilities Act), medical condition, national origin, political or religious opinions or affiliations, sexual orientation, or for any other unlawful reasons. In interpreting these terms, the City will be bound by State and Federal law.

### Section 4.

The Union agrees to support affirmative action and equal opportunity plans and policies promulgated in accordance with procedures established by the City Council as consistent with State and Federal law.

### Section 5.

If an employee files a complaint with the State or Federal authorities, the City shall cooperate fully with that agency's investigation if conducted.

## **ARTICLE 10**

### **Grievance Procedure**

#### **I. Policy**

- A. Employees have the right to file grievances without jeopardizing their positions.
- B. Employees may represent themselves or select a Local 127 representative to represent them at any or all steps in the grievance procedure.
  - (1) The employee has the right to the assistance of a Local 127 representative in the investigation, preparation and presentation of a grievance.
  - (2) Employees may have no more than one City employee and one non-City employee as representatives for grievance hearings. In the last three steps of the grievance procedure, an additional non-City employee may, at the discretion of the employee, represent the employee.

- (3) Notwithstanding any other provision of this agreement, an employee may not select as a representative, a supervisor in the employee's chain of command or a higher ranking supervisor. This does not preclude stewards or officers of Local 127 from representing any employee in a grievance.
- C. Grievances may be initiated by the employee, or by the exclusive formally recognized employee organization on the employee's behalf. If an employee chooses to have representation on a grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this Memorandum of Understanding or wages, hours, and working conditions, such representation must come from Local 127.
- D. The employee's or employee organization's first contact regarding job and working conditions is with the immediate supervisor and supervisors shall attempt to settle grievances informally at this level.
- E. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting in his/her own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, a steward or Local 127 Representative and Management will give due consideration to all the participants' responsibilities in the essential operations of the department. 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.
- F. Waivers and Time Limits
- (1) Failure by Management to reply to the employee's grievance within the time limits specified automatically processes the grievance to the next level.
- (2) Any level of review, or any time limits established in this procedure, may be waived or extended by mutual agreement confirmed in writing.
- (3) If an employee fails to appeal from one level to the next level within the time limits established in this grievance procedure, the grievance shall be considered settled on the basis of the last decision and the grievance shall not be subject to further appeal or reconsideration.

- (4) By mutual agreement, the grievance may revert to a prior level for reconsideration.
- (5) If a grievant fails to appear for a scheduled grievance meeting, such failure without an excuse approved by the appointing authority shall entitle 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 shall then not be subject to further appeal or reconsideration.
- (6) When a grievant is on approved leave the time limits established in this procedure shall be suspended for the period of the leave.
- (7) No grievance shall be finally dismissed for an unexcused failure to appear at a scheduled hearing unless the grievant had been given 24 hours notice of the hearing.
- G. The Management Team shall provide Local 127 with copies of all grievances regarding this MOU filed by employees, within the Local 127 Bargaining Units, who choose to represent themselves, within five working days.
- H. The Union agrees to pursue all claims of violation of this MOU through the grievance procedure. Resort to other remedies shall not be pursued until all steps of the grievance procedure have been exhausted. If Local 127 reasonably feels that it or an employee has suffered immediate and irreparable harm, the City and Local 127 agree that the Local shall directly contact the City Manager's Office to seek a resolution prior to pursuing remedies outside the City. If the City Manager's Office fails to address cases of immediate and irreparable harm within a reasonable period of time, Local 127 may initiate action outside the City. Utilization of this procedure shall be deemed to exhaust the grievance procedure.

## II. Definitions

- A. 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.

B. Actions which are covered in the Management 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.

C. 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.

D. Wherever applicable, the term "working days" means the actual work days of the individual on whom the time limits are imposed.

### III. Procedures

#### A. General

(1) 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 shall:

(a) Supply the employee with the necessary information to process the grievance to the proper agency or authority.

(b) Advise an employee when any matter under submission is determined by Management as not grievable according to the definitions in Section II above. The "grievance" paperwork submitted by the employee shall 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/her complaint. A copy of this "grievance" shall be forwarded to Local 127. If a grievance is determined to be nongrievable, that decision may be grieved. A decision favorable to the employee or the Union in this latter grievance shall serve to reinstate the original grievance in whole.

(c) At the request of Local 127, a fourth step hearing will be conducted to discuss the reasons for finding that a grievance is nongrievable. The decision at the fourth step may be appealed to the fifth step for final resolution.

(2) When a group of identical grievances develop, only one grievance form shall be submitted. The grievants may select not more than two (2) spokespersons who thereafter will be their representative "grievants". The acceptance of the decision by the spokespersons at any step (or final decision if the grievance moves to the fifth step) will be binding on all parties.

(3) A grievance shall be recognized if it is brought to the attention of the immediate supervisor either informally or formally within ten (10) working days of the incident's occurrence.

(4) If the grievance is between the employee and any supervisor, the initial step may be to the next higher level supervisor.

(5) 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 Local 127. 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 the Union.

#### B. Steps:

Step 1: At the employee's or employee organization'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 (5) working days to the employee and Local 127 representative. If the grievance is presented in writing, the procedure is formal and the answer must be given in writing within five (5) working days after submission.

Step 2: If the problem cannot be solved at Step 1, the employee or employee organization may present the complaint in writing to the second level supervisor (if not done at Step 1) within five working days. Within five (5) working days of the receipt of the grievance, a hearing shall be held and the Management representative shall give written decision to the employee and the Local 127 representative.

Step 3: If the problem is not resolved at Step 2, the employee or employee organization may submit the grievance to the division head within five (5) working days. Within five(5) working days of the receipt of the grievance, a hearing shall be held and the division head shall give a written decision to the employee and Local 127. In smaller departments, this step is deleted.

Step 4: If the dispute is not solved in Step 3, the employee or employee organization may present the grievance to the Department Head within five (5) working days. Within ten (10) working days of the receipt of the grievance, a hearing shall be held and the Department Head (or designee) shall give a written decision to the employee or Local 127 representative. The designee cannot be an individual who previously heard the grievance at a lower level. In non-managerial departments, this shall constitute the final resolution of a grievance involving management policy or regulations.

Step 5: Final Resolution of Grievance: If the grievance is still in dispute after Step 4, the employee or employee organization may request a further hearing, which at the discretion of the Management Team will take place before the Civil Service Commission, on matters over which the Commission has authority, or before the City Manager or his designee, by submitting the grievance within five (5) working days. (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 employee organization, prior to the date set for the Commission hearing. The grievance may be settled during such fact-finding hearing, if a mutually acceptable solution is developed.) The decision of the Commission shall be issued at its next regularly scheduled meeting following the hearing by the Personnel Director. In grievances answered by the Manager, a hearing shall be held and a written response given within ten (10) working days from the date of receipt of the appeal from the fourth step. The employee or employee organization may only request a hearing before the Civil Service Commission, in matters solely involving Civil Service Rules or the Personnel Manual.

Step 6: Grievances arising out of the disagreement on interpretation or application of this Memorandum shall follow the City-wide grievance procedure. Local 127 may formally request to continue the grievance, not later than ten (10) days following receipt of the answer at the final step of the grievance procedure (provided it was heard by the City Manager), by serving written notice upon the Management Team. The Management Team will refer the grievance to the City Council for hearing and decision.

- C. All grievances not responded to within the time limits in Steps 1 through 4 will be forwarded directly to Step 5.
- D. Management will ensure that grievances are properly handled in a timely manner and that any abuses of this grievance procedure are expeditiously corrected.

## ARTICLE 11

### Stewards

#### Section 1. GENERAL

The Union may designate stewards to represent employees in the processing of grievances subject to the following rules and procedures:

- A. The Union may select stewards for the Unit represented herein according to the attached Exhibit B. Additional stewards may be named after agreement between the parties. The parties agree to discuss the addition of stewards in the event of decentralization in a City department.
- B. The Union shall furnish Management representatives on July 1 of each year a written list identifying by name and assigned work areas all regular and alternate stewards, and the list shall be kept current during the term of this Memorandum.
- C. The Union will designate as stewards only employees who have been designated as permanent. The Union will also designate as stewards only employees currently assigned to classifications in the Unit represented by Local 127, as listed in Exhibit A of this Memorandum.
- D. The City agrees to allow no more than ten [10] Stewards to operate outside of their assigned work areas. Local 127 and Management agree to develop a system to identify those Stewards eligible to operate outside of their assigned work areas, subject to ongoing review and the approval of the Labor Relations Manager.

All other 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 shall not be recognized as stewards by the City and shall have none of the rights or privileges agreed to as a steward.

- E. In an emergency, or if no job site steward is available, then the Chief Steward or a designated Officer shall have the right to investigate a grievance, or represent an employee.
- F. Management will make every effort not to temporarily or permanently transfer a steward from a geographic location, as in Exhibit B, without 5 days prior notice to the Union. A prior notice to the Union shall not be construed as limiting Management in its prerogatives to transfer or change the work shift of a steward.
- G. Stewards are responsible for an accurate accounting of their City compensated time spent on steward duties as indicated by the time card entries submitted for payroll purposes.

#### Section 2. HANDLING GRIEVANCES

- A. When requested by an employee who has a grievance, a steward, with permission of his or her supervisor, may investigate any grievance in his or her assigned work area and assist in its preparation and presentation.
- B. After notifying and receiving approval of the immediate supervisor a steward shall be 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 unless compelling circumstances require refusal of such permission in which case the immediate supervisor shall inform the steward of the reasons for the denial and establish an alternate time within 24 hours, except in case of emergency, when the steward can reasonably be expected to be released from his or her work assignment.
- C. When a steward desires to contact an employee at his or her work location, the steward shall first contact the immediate supervisor of that employee, advise 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 within 24 hours, except in case of emergency, he or she can reasonably expect to contact the employee.

- D. A steward's interview or discussions with an employee on City time will be handled expeditiously.
- E. A request by a steward to investigate and process a grievance shall not be unreasonably withheld.

#### Section 3. DISCIPLINE

- A. Stewards will also be provided with a reasonable time to represent employees in actual disciplinary meetings and hearings between Management and the employee being disciplined subject to the provisions of Article 13.

### ARTICLE 12

#### Access to Work Locations

- A. Authorized Union business representatives, or the President of the Union or his authorized designee in the case of his absence after notification to the City Manager's Office, and one other member of the Executive Board of Local 127, who will not be on City time, shall be granted access to work locations in which employees covered hereby are employed, for the purpose of conducting grievance investigations and observing working conditions. Authorized Union representatives desiring such access to such work locations shall first inform the appropriate Management representative at that work site of the purpose of the visit. The Union representative shall not unduly interfere with the operations of the department during a visit. Representatives have the right to meet with employees on an individual basis during coffee, rest or lunch breaks at City facilities. Such access shall normally be granted by Management unless the visit will unduly interfere with the operation of the department. Such permission shall not be unreasonably withheld.
- B. When the President of the Union desires to leave his work assignment to pursue grievances or observe working conditions, he shall first inform his immediate supervisor as to the nature and location of said business and obtain permission to leave, and he shall provide the supervisor with an estimated time of return. Such permission shall not be unreasonably withheld.

## ARTICLE 13

### Employee Representation

- A. An employee may request representation from Local 127, not to exceed one City employee, who is not designated as a supervisory employee, and one non-City employee; or two City employees, who are not designated as supervisory employees; or two non-City employees. In addition, the President of Local 127 or a designated alternate may also attend if authorized by the Manager's Office. Such representation may be present:
1. During any investigatory or fact-finding meeting where there is reasonable expectation that discipline might result. Such 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 an "Unsatisfactory" or "Below Standard" Performance Evaluation, written warnings, reprimands or notes of counseling which are to be made a 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 discipline by a supervisor, reduction in compensation, demotion, or discharge.
  4. During the appeal of any disciplinary action.
  5. During Accident Review Committee meetings, Civil Service appeals, Long Term Disability and Industrial injury appeals and any other meeting in which representation is normally afforded employees.
  6. The employee will be provided an opportunity to notify Local 127's office in the event that the employee is required to submit to "for cause" drug or alcohol testing. This opportunity to notify Local 127 is at the employee's option and shall not be interpreted as a basis upon which any employee may refuse to submit to the required drug or alcohol testing. Local 127 shall utilize this notification to prepare for eventual investigations or fact findings as necessary. In no way shall this representation be interpreted as the right to an immediate appeal of the test.
- B. The City employee representative shall not be an employee subject to the same investigation or fact-finding.

- C. In all other instances, Management has the right to verbally counsel or interview employees as it deems appropriate without employee representation being present.
- D. The employee who is notified of a pending disciplinary action shall be given a reasonable time to consult with his/her representatives so that he/she may prepare a response to said action. All meetings between employees and their representatives on City work time shall take place in the immediate vicinity of the employee's worksite.
- E. An employee is also entitled to representation as outlined above in appeals of disciplinary actions and less than satisfactory performance evaluations.
- F. If an employee subject to disciplinary action elects to have a City employee as a representative, such employee may attend disciplinary hearings or meetings with management on City time. If these meetings or hearings extend beyond the representative's normal work hours, no overtime will be paid.
- G. If during any unscheduled meeting in which the employee is informed that discipline may result an unrepresented employee may request representation. The meeting should be stopped and rescheduled affording the employee an opportunity to obtain representation.
- H. Management shall give an employee prior notice of his or her right to representation.
- I. Management will study the feasibility of encouraging Appointing Authorities to schedule some representation matters at the Local 127 Union Hall.

## ARTICLE 14

### Disciplinary Actions and Appeals

1. The employee may appeal the placement of any disciplinary document in his/her permanent record by submitting an appeal letter within 10 working days of the employee being notified that any such document is to be placed in his or her file. This appeal letter should contain pertinent details of the basis for the appeal and should be submitted to the Department Head. Disciplinary documents which may be appealed include written warnings, reprimands, and less than satisfactory performance reports. It is mutually agreed that satisfactory and above employee performance evaluations are not eligible to be appealed. As soon as possible after receiving the appeal letter, the Department Head or his/her designee will schedule a hearing on the matter. The employee is entitled to representation at such hearing as

specified under Article 12, Section A. After the hearing the Department Head or his/her designee will make a decision within 10 working days as to whether the written document will be retained in or removed from the employee's record. This decision shall be final and shall terminate the appeal procedure.

2. Disciplinary actions shall remain a permanent part of the employee's file, with the exception of the following:
  - a. When the employee has appealed the placement of a document in his or her file and the appeal has been upheld by the Department Head or his/her designee.
  - b. When a disciplinary action has been appealed to the Civil Service Commission in accordance with the appeal rights provided in Civil Service Rule XI and the Commission has directed that such record be removed from the employee's file.
3. The City and Local 127 ascribe to the principles of just and progressive discipline where warranted and appropriate. These principles include:

#### Performance Related Matters

- a. Performance Plan
- b. Oral Counseling
- c. Written Counseling
- d. Performance Evaluation
- e. Reduction in Compensation
- f. Demotion
- g. Termination

#### Misconduct Issues

- a. Oral Warning
- b. Written Warning
- c. Reprimand
- d. Suspension
- e. Demotion or reduction in compensation
- f. Termination

While these progressive steps are available, severity of the problems, circumstances and supervisory judgment dictate which disciplinary measure is appropriate.

4. The City Personnel Department and the Appointing Authority shall keep and maintain an official personnel file for employees, which shall contain all information relative to the employee. Formal reprimands, warnings and written counselings without further penalty more than two (2) years old, and those with similar additional penalty more than three (3) years old, will be destroyed and will not be considered for purposes of promotion, transfer, special assignments and disciplinary actions except as to disciplinary actions, when such reprimands show patterns of specific similar misconduct.

An employee will have an opportunity to rebut any detrimental material which is placed in his or her permanent personnel record by having a letter of rebuttal attached to the detrimental material.

Upon request, an employee is entitled to a copy of specific materials placed in their current personnel record. An employee will receive a copy of any material placed in their personnel record at the time the material is placed in the employee's personnel record.

All materials placed in the Appointing Authority's personnel record for an employee will be located in one central file.

An employee's supervisor may maintain an informal file of job related information on an employee. Any detrimental information will be discussed with the employee during counselling sessions or performance evaluations. Formal disciplinary documents will be maintained in the Personnel Department or Appointing Authority files. Both the City and Local 127 agree that an employee's failure to challenge any material in such file does not justify the conclusion that the employee is in agreement with any such material.

5. Less than satisfactory performance reports which are not resolved by the Department Head or his/her designee may be appealed by the employee to the Personnel Director. The Personnel Director will accept and take action on such appeals only when the employee has a valid complaint that:
  - a. the employee was not rated by the first-line (immediate) supervisor, or
  - b. the Employee Performance Report was not discussed with the employee, or
  - c. ratings were changed without the employee's knowledge, or

- d. the Performance Plan was not discussed with the employee when the employee first began a job or when the plan was revised due to changes in the job. (This applies only to employees in departments/divisions which have implemented the new Employee Performance Review Program.)

If an appeal is accepted, the Personnel Director will investigate the facts and consult with all concerned before a change, if any, is made in the rating.

6. Less than satisfactory performance reports which are not resolved by the Department Head or his/her designee may be appealed to the City Manager or his designee if the rating was based on incidents that occurred outside of the rating time period.

7. Skelly Rights

The City agrees to observe the "Skelly" rights of employees in disciplinary actions. Where the City disciplines a permanent employee in the form of a suspension, demotion, discharge, or a reduction in compensation, the City agrees to provide written notice and an opportunity to respond to the Appointing Authority proposing the discipline. The employee will be given a reasonable opportunity to obtain representation and will be provided with the factual basis and pertinent documents for the discipline. The employee will be permitted to have one City employee and one non-City employee as representatives at the Skelly hearing.

8. Reduction in Compensation

The compensation of any employee of the City may be reduced a maximum of 2 steps 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 is unsatisfactory for the employee's classification and/or position.

It is the intent of both parties that a reduction in compensation is an intermediary step, normally preceded by progressive discipline and may normally precede more severe disciplinary action.

a. Procedure for Reduction in Compensation

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

- (1) The employee receives an unsatisfactory performance report.

- (2) Upon being notified of the proposed action to reduce the employee's compensation, such employee shall, within five working days, have the right to respond orally or in writing to the appointing authority.
- (3) After giving due consideration to the information provided by the employee, the appointing authority may elect to reduce the compensation of such employee.
- (4) At the time the employee is notified of such action, the employee will be informed of their representation and appeal rights.
- (5) The reduction in compensation may be in effect for only six months of active duty. At the end of that time the employee shall be reinstated to the previous salary step in the job classification or some other type of disciplinary action shall be taken.
- (6) At the end of 90 days the employee's job performance must be reevaluated by the appointing authority. If the employee's performance is unsatisfactory the reduction in compensation may continue. If the employee's performance is better than unsatisfactory, the employee will be reinstated to the previous salary step in the job classification.

b. Appeal of Reduction of Compensation

Within ten working days of receipt of notice of reduction in compensation, an employee may file a written appeal with the City Manager's Office. The decision of the City Manager or his designee will be final.

9. Except for the appeal process for reduction in compensation as stated above, members of the unit shall have all appeal rights currently provided in Civil Service Rule XI.
10. Unless there are extraordinary and extenuating circumstances, management shall begin the discipline process within thirty days of the conclusion of the investigatory process. Local 127 may grieve violations of this provision directly to the City Manager's Office.
11. The use of Last Chance agreements is recognized by Management as a possible alternative to termination of employment in select cases. Consideration by Management of this alternative will be conducted in a fair and equitable manner.

12. The primary responsibility for conducting a disciplinary investigation and the resulting advance 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 Advanced Notice. Exceptions may be granted by the Labor Relations Manager.

## ARTICLE 15

### Out-of-Class Assignments

Employees represented by Local 127 shall be compensated for out-of-class assignments on the 31st continuous day of assignment or on the 31st day of cumulative out-of-class assignments in the same classification. Out-of-class assignments shall accrue on a fiscal year basis only. Accumulated days will not be carried into the next fiscal year.

Appointing Authorities should take into consideration all OCA time worked in a class when considering at what step to place an employee who is permanently promoted to a higher classification.

The City agrees that all out-of-class assignments, regardless of number of hours worked in a pay period, will be recorded in the employee's personnel file.

For employees in classifications in the Maintenance, Labor, Skilled Trades and Equipment Operator representation unit, appointing authorities will give first consideration for appointment to an out-of-class assignment 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.

Management has discretion to determine when out-of-class assignments will be made. Management agrees to provide equal opportunity on a rotational basis for such out-of-class assignments to persons on the eligible list and will consider the seniority, availability, training and job performance of employees when making such 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 such assignments. If the out-of-class assignment lasts over five (5) days, an employee's current shift or station assignment shall not preclude their eligibility for out-of-class assignment.

Out-of-class assignments shall not exceed thirty consecutive days nor shall a series of out-of-class assignments to any one vacant position exceed thirty calendar days without approval by the Personnel Director. Out-of-class assignments shall not be made for the purpose of avoiding filling a position by a limited or permanent appointment.

Eligible City employees who are performing and compensated for out-of-class assignments both the last scheduled workday before and the first scheduled workday after a fixed holiday shall be compensated at the out-of-class rate.

## ARTICLE 16

### Use of City Facilities

- A. The Union may, with the prior approval of the Management Team, be granted the use of City facilities during non-work hours for meetings of City employees provided space is available, and provided further that such meetings are not intended for such internal employee organizational meetings as soliciting membership, campaigning for office, and organizational meetings and elections. Such meetings in City facilities may not interfere with the efficiency, safety or security of City operations.
- B. Solicitation of membership and activities concerned with the internal management of the Union such as collecting dues, explaining benefits, holding membership meetings, campaigning for office, conducting elections, and distributing literature to individual employees, shall not be conducted during working hours without prior approval of the Manager's Office.
- C. Management agrees to study the feasibility of providing a small office in the City Hall complex to Local 127 for use in providing services to its members and facilitating access to its representatives at City Council, Committee, Labor Relations and Board meetings.
- D. Parkade parking stamps will be made available to a reasonable number of Local 127 representatives on official business for representation purposes at the Downtown City facilities.

## ARTICLE 17

### Bulletin Boards

The City agrees to furnish suitable bulletin boards in mutually convenient places for each work area to be used by the Union. The Union shall limit its posting to such bulletin boards and to matters relating to Union affairs. Present locations and allocations of space are considered adequate. Union representatives shall not be unreasonably denied access to the bulletin boards.

Management shall ensure that the space on bulletin boards allocated to Local 127 is clearly designated as such. This will not preclude Management from using other space on these bulletin boards for City information.

Management agrees to provide additional security for bulletin boards in those areas where both parties agree.

## ARTICLE 18

### Payroll Deductions

- A. It is agreed that AFSCME Local 127 dues shall be deducted bi-weekly by Management from the salary of employees when authorized by Section VI (B) of the Employer-Employee Relations Policy, who file with the City a written authorization requesting that such deductions be made. Remittance of the aggregate amount of all dues shall be made to the Union by Management bi-weekly at the conclusion of each pay period in which said dues and deductions were deducted.
- B. Dues deduction shall be for a specified amount and shall be made only upon the voluntary written authorization of the member. Dues deduction authorization or cancellation shall be made upon clearly marked cards provided by the Management Team or the Union. If an employee submits a payroll deduction authorization change to the City which has not been processed by Local 127, the City will forward a copy of the notice to the Union promptly.
- C. When a member is in a nonpay status for an entire pay period, no dues withholding will be made to cover that pay period from future earnings nor will the members deposit (with the City) the amount that would have been withheld if the member had been in a pay status during that period. In case of an employee who is in a nonpay status during only a part of the pay period and the salary is not sufficient to cover the full withholding, no deduction shall be made.

- D. The Union shall indemnify, defend, and hold the City of San Diego harmless against any claims or suits instituted against the City of San Diego contesting the check-off of Union dues. In addition, the Union shall refund to the City of San Diego any amounts paid to it in error upon presentation of supporting evidence.
- E. Payroll authorization forms may, at the election of Local 127, include a provision that the authorization is for a specific term. The responsibility to enforce this provision lies solely with Local 127. The City will assume all costs for design and printing of the form with Union concurrence and make available sufficient quantities at Union request.
- F. The City will provide for direct deposit of employee paychecks to an expanded group of financial institutions by October 1, 1993, or as soon as operationally practicable.

The issue of electronic deposit of employee pay checks will be referred to the Labor Management Committee for study. The Committee shall seek methods to encourage cooperation but not mandate compliance.

## ARTICLE 19

### Presidential Leave

City Management will support a request to the Civil Service Commission for Leave of Absence without pay by the president of Local 127 during his/her term, unless there is a compelling reason to not support a "Job to be Saved" type leave. In the latter case, the City will meet and confer with the Union in advance of any such objection.

## ARTICLE 20

### Rest Periods

- A. The City of San Diego endorses 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. The following guides are established to assure that rest periods will be properly controlled and that maximum benefits will be derived from them. These guides also extend to personnel working on an overtime schedule.
  - 1. Two 15-minute rest periods (including "travel time" if the employee leaves the work area) may be allowed during each 8-hour work day ("travel time" means pedestrian travel or travel in the employee's

private vehicle). Subject to work assignments and departmental requirements, a rest period or a meal break should be allowed near the end of each 2-hour period of work.

Employees who work more than ten hours a day shall be entitled to a third rest period of 15 minutes duration. Employees who work 12 or more hours a day shall be entitled to a third rest period of 30 minutes duration.

Certain constant staffing positions may be exempt from the third rest period. In no case shall an employee working more than ten hours be provided more than a third break.

2. Since the purpose of granting rest periods is to give relief from mental and/or physical fatigue, and consequently, to improve productivity, the following practices shall not be allowed:
  - a. combining two daily rest periods into one 30-minute period;
  - b. "saving" rest period time to justify extended lunch hours or shortened work days;
  - c. accumulating rest period time from day to day;
  - d. applying rest period time to compensatory or other time off, or in the considerations or computations concerned with overtime compensation.
- C. Subject to work assignments and departmental requirements, department heads are authorized to provide rest periods for employees within the limits of the policy outlined above.

## ARTICLE 21

### Local 127 Orientation

The City agrees to provide Local 127 with an opportunity to make presentations to new employees during the 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 Local 127. Local 127 will be given five working days written notice of New Employee Orientation meetings. Only Local 127 and no other employee organization will be provided with the opportunity to make presentations to employees in job classifications represented by Local 127.

Local 127 will be provided with a list of those employees required to attend and those who attended orientation. Local 127 will also be provided with the number of employees required to attend the orientation prior to the date of the orientation.

## ARTICLE 22

### Work Clothing

#### A. Work Clothing Issuance and Maintenance

The City agrees to continue to provide and maintain work clothing and protective equipment for those employee classifications represented by the Union currently receiving such benefit by the Management of each Department. This includes the provision of raingear, as currently supplied by each Department, on an as-needed basis for those employees who are required by Management to work during rainy weather. The City agrees to provide all safety equipment as required by applicable State law.

The City shall put forth every effort to make available to employees represented by Local 127 a location where employees may purchase specialized footwear at an appropriate discount.

The City agrees to provide Equipment Division employees (including the Custodian) who are currently eligible for the uniform benefit with an option of having coveralls or shirts and pants. The City will make its best effort to provide these employees with an option to have both coveralls and pants and shirts.

The City agrees to provide and maintain a total of ten (10) sets of coveralls (or pants and shirts) for employees in the classification of Equipment Mechanic, Equipment Service Writer, Senior Motive Service Technician, Motive Service Technician, Motive Service Technician Trainee, Welder, Machinist, Equipment Painter, Body and Fender Mechanic and the Equipment Division Custodian. The City agrees to provide Sanitation Drivers I and II with five (5) sets of coveralls or pants and shirts. The City agrees to provide five (5) sets of shirts to Custodians working at the City Administration Building/City Operations Building complex.

The City agrees to provide to members of the Equipment Technician II, Equipment Operator II, Light Equipment Operator, Grounds Maintenance Worker III (Lead Cemetery Groundskeeper), Grounds Maintenance Worker II, and Grounds Maintenance Worker I classifications at Mt. Hope Cemetery five (5) sets of pants-shirts with no laundering service provided.

The City agrees to provide employees of the Systems Division with ten (10) sets of coveralls (or pants and shirts). The City agrees to provide employees of the Streets Division eight (8) sets of coveralls (or pants and shirts). The City agrees to provide employees of the Plant Operator classification (including Fresh Water and Power Plant Operators) one (1) jacket. The City also agrees to provide one (1) jacket each to a total of 13 additional positions, comprised of Equipment Operator I, Equipment Operator II, and Equipment Operator III classifications, assigned at Alvarado, Otay, Miramar, and Aquaculture.

Plumbers will be provided with coveralls as necessary. Roofers will be provided with work shoes as necessary.

The City agrees to provide and maintain a total of ten (10) uniforms for members of the Grounds Maintenance Supervisor, Grounds Maintenance Worker II, Grounds Maintenance Worker I, Utility Supervisor, Equipment Operator II, Equipment Operator I, Heavy Truck Driver I, Light Equipment Operator, Carpenter, Utility Worker I and Laborer classifications in Coastline Park and Golf Division.

The City agrees to provide Systems Division employees on the Wastewater Collection Crews who are currently eligible for the uniform benefit with an option of having polo style or T-shirts or a mixture of the two up to the current maximum shirt issuance. Employees may switch from the current T-shirts to the polo style shirts as the T-shirts need replacing.

Carpenters and Carpenter Supervisors will be provided with two (2) sets of bib overalls.

The City agrees to provide and maintain members of the Landfill Equipment Operator classification optional overalls.

The City and Local 127 agree that the materials issued will be worn or used during work hours. Employees who are issued work clothing will normally wear the issued clothing. If the clothing is not used, the employees will turn the items in and forfeit this article. Employees will have the same responsibilities to maintain work clothing as applies to other City issued property. Employees will be required to replace missing work clothing at their own expense if the work clothing is lost or stolen due to the employee's own negligence.

Painters, Plasterers and the Firearms Technicians will receive up to five (5) sets of pants and shirts each year at the employee's request.

Appropriate foot protection shall be required and provided as needed for employees who are exposed to foot injuries from hot, corrosive, poisonous substances, falling objects, crushing or penetrating actions, which may cause injuries or who are required to work in abnormally wet locations.

Footwear which is defective or inappropriate to the extent that its ordinary use creates the possibility of foot injuries shall not be worn.

Safety-toe footwear for employees shall meet the requirements and specifications in American National Standard for Men's Safety Toe Footwear, Z41.1-1981.

Management agrees to study, at the Department level, the feasibility of allowing the use of short pants for certain landfill and park employees, with emphasis on the health and safety issues relating to this.

#### B. Uniform Reimbursement

1. The intent of this policy is to reimburse employees in certain designated classes who have completed probation and have attained permanent status, for the cost of a complete set of regulation uniform items.
2. Reimbursement shall be limited to items of a specialized nature, including items with permanent City insignia, to be worn exclusively in line of duty. Other items such as regular shirts, ties, belts and shoes are excluded from this provision. Each department with employees in these designated job classifications will maintain a price list of items for which reimbursement will be provided.
3. All personnel receiving uniform reimbursement will be required to wear the designated uniform. Failure to wear any of these items may result in discipline of the employee.

#### Note:

The City agrees that consideration will be given to a uniform company's ability to provide appropriately fitted uniforms for women and employees with special fitting needs.

## ARTICLE 23

### Transportation Incentives

- A. Employees who utilize the Concourse Parkade and pay on a monthly basis will be charged 50% of the prevailing general public monthly rate.

Participation in this program is limited, and available on a first-come first-serve basis.

- B. Employees participating in the Employee Transportation Incentive Program (ETIP) shall pay 50% of the public daily rate, for up to 52 instances per year.
- C. The City will provide 75% reimbursement up to \$60.00 to those employees who wish to purchase monthly passes for transportation on the public bus and/or trolley, and commuter rail service. 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 reimbursement. Violation of these procedures may disqualify the employee from further participation in the TIP program.
- D. 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.
- E. As new work stations are established, the City agrees to meet and consult or meet and confer as required by the Meyers-Milias-Brown Act regarding parking arrangements; in either case, the City will make every effort to provide suitable parking arrangements for the employees affected.
- F. The City shall no longer require employees to deposit with the City Auditor fees due him or her from the Court.
- G. Management agrees to Meet and Confer with Local 127 without Impasse in the event the County Air Quality Control Board requires that parking spaces in non-pay status City work locations be converted to pay status.

## ARTICLE 24

### Tools/Tool Allowance

#### A. BASIC POLICY-INITIAL OUTFITTING

1. The City will provide outfitting of tools and tool boxes to employees except as detailed below.
  - a. Employees in the following job classifications shall provide and maintain the outfitting of tools and tool boxes at their own expense:  
  
Equipment Service Writer  
Equipment Mechanic  
Body and Fender Mechanic  
Carpenter  
Apprentice - Equipment Mechanic  
Apprentice - Body and Fender Mechanic  
Apprentice - Carpenter
2. Current employees may elect to continue with City provided tools or to provide their own tools and new employees must provide their own tools. Outfitting is defined as those tools required by the employee upon being employed in the particular job class for the first time, and subsequently, additional tools required because of technological advances with other requirements.
3. Outfitting, in the case of mechanics, shall be all hand tools 1/2" drive and under.
4. The City provides power tools for all job classifications.

#### B. TOOL REPLACEMENT POLICY-OUTFITTING BY THE CITY

1. For those job classifications for which the City provides outfitting of tools, the City will replace in kind tools worn out, damaged, or broken through no fault of the employee.
2. Employees losing tools or causing damage to tools through negligence or willful conduct will be required to replace them at the employee's expense and/or be disciplined under Civil Service Rule XI, Section 3.
3. City furnished tools shall not be used for private purposes or private gain. (Administrative Regulation 45.50.)

### C. TOOL ALLOWANCE POLICY-OUTFITTING BY THE EMPLOYEE

1. This paragraph applies to Equipment Service Writers, Equipment Mechanics, Body and Fender Mechanics, Carpenters, and Apprentice for the listed trades.
2. Employees meeting conditions set forth by the City will be provided a cash tool allowance as follows, provided the employee has shown by tool box inspection that he has a full inventory of tools as provided on the tool list.

	<u>July 1, 1995</u>	<u>July 1, 1996</u>
Carpenters and Apprentices	\$133.88	\$140.57
Equipment Service Writers	\$433.07	\$454.72
Equipment Mechanics and Apprentices	\$433.07	\$454.72
Body and Fender Mechanics and Apprentices	\$433.07	\$454.72

Other conditions may include requirements that (1) the initial outfit be complete and in serviceable condition initially, (2) tools purchased as replacements and additions be of the kind and size required for the job, (3) during each shift, each employee must have the complement of tools necessary to perform the work assigned or will be considered as not having reported to work, (4) and any other condition to fulfill the requirement that the purpose of the tool allowance is to benefit the City is subject to meet and confer.

3. Employees receiving a cash tool allowance shall not receive replacements in kind from the City. Except that, however, the employee's personal tools which have been recorded by the City on an inventory list will be replaced, at no cost to the employee, if they are lost due to fire, burglary or robbery of the City facility or some other catastrophe or accident not due to the employee's negligence or fault.
4. To qualify for the cash allowance the employee shall have permanent status and 12 months service in the job classification authorized an allowance. Time served as a probationary employee will count toward meeting the 12 month requirement.
5. The allowance will be paid to eligible employees in active status in an eligible position on July 1, of each fiscal year and will be paid only once during each fiscal year.

The cash amount for tool allowance cannot be accumulated from one year to another.

6. Failure to maintain a proper set of tools in satisfactory condition may be grounds for disciplinary action of the employee.
7. Employees having tool outfitting provided by the City shall not qualify for the cash allowance.

### D. TOOL ALLOWANCE CALCULATION METHOD

The tool allowance in this contract was established based on 10% of the average price list for items on the essential tool list.

1. The essential tool price list for Carpenters was based on the average of prices for these tools at Sears and Dixieline.
  2. The essential tool price list for Equipment Service Writers, Equipment Mechanics, and Body and Fender Mechanics was based on the average of the retail discount for Proto tools and the retail list price for Snap-on tools. Where Proto tools were not available, the MAC price list was used.
- E. The City shall continue its current practice of making tool discounts available for employees.
- F. The tool allowances identified in Section C.2 shall be increased by 5% each fiscal year during the term of this agreement.

## ARTICLE 25

### Mileage Reimbursement

Mileage reimbursement for use of private vehicles on City business shall be in accordance with the provisions of Administrative Regulation 45.10. This reimbursement rate shall be \$.30 per mile for all miles driven unless the City determines after a review and evaluation that such rate shall be changed.

## ARTICLE 26

### Personnel Regulations

The following Personnel Manual Sections, Administrative Regulations, and other official regulations shall be included in this Memorandum as if fully set out at this point.

M-1, Apprenticeship Training

L-5, Layoff

G-7, 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 Employees

I-2, Annual Leave

I-9, Court Leave

63.00, Industrial Leave

70.30, Tuition Refund Plan

95.01, Overtime Compensation

95.60, Conflict of Interest

95.90, Unused Sick Leave and Accrued Annual Leave Reimbursement

Civil Service Rule V, Layoff and Re-employment

Long Term Disability Plan (on file with City Clerk)

Smoking Policy (on file with City Clerk)

Council Policy 300-6

Appearance Guidelines

The City agrees to develop a procedure for liberty interest hearings during FY 96.

## ARTICLE 27

### Weapons

Employees shall not have on their person, or immediately available to them, deadly weapons while at work. Such deadly weapons shall include any instrument or weapon of the kind commonly known as a blackjack, slingshot, billy-sandclub, metal knuckles, any dirk, dagger, pistol, revolver, or any other firearm, any knife having a blade longer than five inches, any razor with an unguarded blade and any metal pipe or bar used or intended to be used as a club unless specifically authorized by the Appointing Authority in each instance. Violations of this provision may be grounds for termination. For purposes of the Article, tools required or used on the job are not considered weapons.

The foregoing provisions of this Article shall not apply to items stored in the employee's personal vehicle.

## ARTICLE 28

### Shift Reassignment and Work Schedules

Except in an emergency, all employees in the units represented by Local 127 shall receive at least five working days notice prior to a permanent or extended shift change, or a permanent or extended work schedule change. Management will normally use seniority as the first and principal factor in such assignments. However, other factors may also be considered such as performance problems, disciplinary reasons, physical ability, punctuality, attendance and specialized skills and experience. If a change is ordered out of seniority, Management will discuss and explain its reasons with the Union if requested. Grievances related to seniority issues may be made directly to the Department Head or his/her designee.

Management agrees that shift and work schedules shall not be changed back and forth on an irregular basis for the sole purpose of avoiding overtime. This does not preclude Management from exercising its right to evaluate its responsibility to allocate resources, staff and material in an efficient manner which may result in irregular schedules such as split shifts, etc.

The parties agree to refer to the Labor Management Committee issues related to irregular changes in work schedules and/or shifts.

## ARTICLE 29

### Copies of the Agreement

The City agrees to provide 600 free copies of the Memorandum of Understanding to Local 127. The Union may obtain additional copies from the City by reimbursing the City for their cost.

## ARTICLE 30

### Employee Assistance Program

The City agrees to continue the current Employee Assistance Program. The Employee Assistance Program will be assigned to the Risk Management Department, Home Savings Bank Building, 225 Broadway, Suite 340 [Telephone 533-4540].

The purpose of this program is to assist the employees who have personal problems to obtain professional assistance and treatment where necessary. Participation in this program will be entirely voluntary. This program in no way affects the ability of Management to discipline employees with performance problems. Management and Local 127 agree that actual discussions between the employee and the Employee Assistance Counselor and treatment provided the employee through the Employee Assistance Program, will be kept confidential unless the employee consents to disclosure.

Local 127 and Management fully support this Program and both parties agree to use their best efforts to ensure that employees with personal problems are encouraged to participate in this program.

The City agrees to provide Local 127 with input regarding the administration of this Program through the Labor Management Committee.

## ARTICLE 31

### Formal Representation

- A. When formal meetings are scheduled, for the purpose of meeting and conferring, Local 127 may be represented by a reasonable number of employee members of the unit or units involved, and the President or his designee. These employees may attend said meetings during regular work

hours without loss of compensation or other benefits. For purposes of meeting and conferring on a successor Memorandum of Understanding, six (6) representatives plus the President and one other officer are considered a reasonable number. However, additional representatives may attend upon mutual agreement of the parties. In addition, Local 127 may also select a representative to attend City Council, Council Committee, Retirement Board and Civil Service Commission meetings, during regular work hours without loss of compensation where subjects within the scope of representation are being discussed. Local 127 shall, whenever practicable, submit the names of all such representatives to the Management Team at least two (2) working days in advance of such meetings provided further that no representative shall leave the duty or work station or assignment without specific approval of the City Management Team. Such request will not be unreasonably or capriciously denied.

- B. Nothing herein shall limit or restrict said meetings to regular working hours.
- C. Local 127 will have a permanent Union designated representative on the Suggestion Awards Committee.
- D. Local 127 shall have two (2) permanent union designated representatives on the SPSP Advisory Committee.
- E. Local 127 shall have four (4) permanent representatives on the Joint Apprenticeship Advisory Committee.

## ARTICLE 32

### Holidays

#### I. General

- A. San Diego Municipal Code Section 21.04. Except where otherwise specifically defined and provided in this Code, the holidays in the City of San Diego are:

##### 1. Fixed Holidays:

- (a) January 1st;
- (b) Third Monday in January known as "Dr. Martin Luther King, Jr.'s Birthday";
- (c) Third Monday in February, known as "Washington's Birthday";
- (d) Last Monday in May, known as "Memorial Day";
- (e) July 4th

- (f) First Monday in September known as "Labor Day";
- (g) November 11th, known as "Veterans' Day";
- (h) Fourth Thursday in November known as "Thanksgiving Day";
- (i) December 25th; and
- (j) Every day appointed by the City Council for a public fast, thanksgiving or holiday.

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

## 2. Floating Holiday

Each eligible employee available for a duty assignment on the first day of the fiscal year (as defined in Personnel Regulation H-2) shall accrue credit for eight (8) hours of holiday time. Each employee accruing such time shall comply with the following conditions:

- a. Schedule prior to June 1 of the fiscal year earned.
- b. Take off in a one time absence before the last day of the last full pay period in June;
- c. Take at a time convenient to the employee's appointing authority.

## II. Work on Fixed Holidays

In the departments required to maintain minimum staffing on a fixed holiday, Management will attempt to fill necessary staffing needs by seniority on a voluntary basis. Where there are insufficient volunteers, Management will use inverse seniority in making mandatory assignments.

## III. Work on Fixed Holidays at City Landfills

- A. The parties recognize the City's right to operate the landfill on the following fixed holidays:
  - 1. Dr. Martin Luther King, Jr.'s Birthday
  - 2. Washington's Birthday
  - 3. Memorial Day
  - 4. July 4th
  - 5. Labor Day
  - 6. Veterans' Day

- B. All employees that work on the above referenced holidays will be guaranteed their regular work shift at premium overtime rates so that they will receive holiday pay plus premium overtime pay for hours worked.
- C. Work on holidays shall be voluntary except where the number of volunteers is insufficient to meet the needs of the City. No employee shall be threatened, coerced or otherwise compelled to work on a holiday except as specified below. An employee who volunteers to work on a holiday may not change this schedule within 10 working days of the holiday unless the employee finds a replacement.
- D. Where the number of volunteers to work on a holiday is insufficient to meet the needs of the City, the City can compel employees in the landfill to work on said holidays on the basis of inverse seniority.
  - 1. The City shall maintain and have readily available to Local 127 and its members a seniority list of employees in the landfill. Said seniority list shall list employees in the landfill in order of overall City seniority.
  - 2. After the supply of volunteers to work on a holiday is exhausted, the City may require the least senior available employee(s) in the landfill (on the basis of overall City seniority) to work that holiday in order to fill its needs.
  - 3. With each succeeding holiday, those employees that have been required to work a holiday within the term of this agreement, shall not be required to work an additional holiday, unless and until all employees in the landfill have been required to work a holiday.
- E. If Management determines that the landfill must be open on additional holidays, it will meet and consult or meet and confer as required by law. Management also has a right to determine the appropriate staffing levels at the landfill.

## ARTICLE 33

### Annual Leave and Compensatory Time

- 1. Both parties agree to the current regulations provided in Personnel Regulations I-2 and I-3.
- 2. Employees on authorized leave shall have the option of using accumulated compensatory time prior to charging any time off with pay to any other account.

3. Employees shall be granted vacation and/or compensatory time off in increments of one (1) day or less with prior notice and Management approval.
4. Once a vacation has been requested and approved it shall not be changed except by mutual agreement or in case of emergency. In the case of rescheduling due to an emergency, the vacation will be rescheduled immediately.
5. In the event the employee terminates for any reason, the employee shall be paid in full for all unused annual leave credits.
6. Employees on approved annual leave, compensatory time off, or industrial leave, shall have time counted as time worked for purposes of benefit computations.
7. If a department should approve a scheduled leave request and subsequently deny it, resulting in an employee losing leave credits because of going beyond the accrual limit, credits lost would be reinstated for a period of three months during which the department would mandate a leave for the employee.
8. Insofar as practicable, employees should be permitted to schedule annual leave at times most acceptable to the employee. In larger departments or divisions, the choice of vacation times should be arranged according to seniority.
9. Overtime will be paid or compensatory time given at the discretion of the Department Head subject to the availability of funds and workload considerations, and in accordance with the provisions of Personnel Regulation H-4, Overtime.
10. Should the City for good and sufficient reason, judge that an employee is abusing the sick leave and/or family leave provision, the City may request a bona fide doctor's statement from the employee to substantiate an illness. The parties agree that the City will apply this sick leave policy in a fair and equitable manner City-wide.
11. Compensatory time shall be reduced to 45 hours as of June 30 each year unless an exception is granted by the City Manager's Office. This time frame may be modified in exceptional circumstances. Compensatory time may be accumulated up to a maximum of 120 hours during the fiscal year as long as the above provisions are complied with. However, based on workload and operational consideration Department Heads or their designees may set a lower midyear accumulation limit after meeting and discussing the proposed limit with Local 127. In any event overtime will be paid or compensatory time given as outlined in number 9 above. This time

frame may be modified in exceptional circumstances. Compensatory time may be accumulated beyond 45 hours during the fiscal year as long as the above provisions are complied with.

12. The maximum accumulation of annual leave for employees with 15 or more years of service is 700 hours. For employees hired on or after July 1, 1993, the maximum accumulation of annual leave is 250 hours.

Employees with over 250 hours of annual leave accrued during the term of this agreement, may receive a maximum pay-in-lieu of annual leave of 125 hours per fiscal year.

The parties agree to mutually study approaches to phasing down employee accruals of annual leave which have exceeded designated caps.

13. Leave provisions included under items 14 and 15 below will be accounted for separately.
14. Pre-approved annual, sick, or compensatory leave properly used for personal, family or dependent illnesses should not be subject to disciplinary action.
15. Approved unscheduled annual or sick leave properly used for family, dependent or significant other/co-tenant illnesses shall be considered as a separate category when reviewing employee performance with regard to attendance and/or absenteeism issues. Should the City, for good and sufficient reason, determine that an employee is abusing this leave provision, the City may request a bona fide doctor's statement from the employee to substantiate illness.
16. Employees are covered under the Family Medical Leave Act (FMLA) effective February 5, 1994. Eligible employees are entitled to take up to 12 weeks of leave each year for medically related reasons such as the birth or adoption of a child, to care for an immediate family member with a serious illness, or for the employee's own serious illness. Eligible employees are those with 12 months of cumulative service with the City who have worked at least half time for the past year. All FMLA eligible absences from work will count against the 12 week period. The City will be required to provide group health coverage to the employee at the same level and conditions as for similarly situated active employees. Hourly employees do not receive paid health benefits.

17. The City agrees to conduct a comprehensive review of the current sick leave use policies in consultation with the Labor Management Committee, with a goal of improving consistency and equity.

#### ARTICLE 34

##### Hazardous Duty

1. The City shall abide by all OSHA, CAL-OSHA and all other applicable Federal and State codes relating to employee safety while on the job.
2. No employee will be disciplined for reasonably refusing to perform an unsafe act or job.
3. Upon the request of Local 127, the City's Safety Officer shall make available to the Union a copy of all applicable safety rules and regulations.
4. The City agrees to provide copies to Local 127 of any changes in written policies related to employee safety within ten working days of the effective date of the change.
5. Within the guidelines of Federal, State and City safety regulations and operational requirements, the City agrees to make reasonable accommodations for currently bearded employees in assignments designated as respirator needed.

#### ARTICLE 35

##### Appendices

Local 127 may append any Civil Service Commission Rules or Personnel Manual sections it wishes to the Memorandum of Understanding it may distribute to its members.

#### ARTICLE 36

##### Availability of Data

- A. The City will make available to the Union information pertaining to employment relations as set forth in this rule and Government Code Sections 6250-6260.

- B. Such information shall be made available during regular office hours. Materials presently supplied to the Union at no cost shall continue to be supplied at no cost.
- C. Information which shall 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 shall not be made available in such form as to disclose the source.
- D. City Personnel Department will provide Local 127 monthly with a list of all newly hired employees, their job classification, and date of hire, within the Union's recognized bargaining unit.
- E. The City agrees to inform, in writing, the Union in all instances when an employee represented by the Union retires from the City, giving the name, job classification and date of retirement. This information will be provided to the Union as early as is legally possible. The parties agree to meet to discuss and implement the most feasible method of providing this information.
- F. Nothing in this rule shall be construed as requiring the City to do research for an inquirer or to do programming or to assemble data in a manner other than customary.
- G. An authorized representative of the Union shall be allowed to review an employee's records upon the employee's written authorization.
- H. The City will provide the Union with a computer printout on a monthly basis, which will include the following information for each employee in the Maintenance, Labor, Skilled Trades and Equipment Operator Unit: name, social security number, department, hire date, job classification, and birth date.

#### ARTICLE 37

##### Modification and Waiver

- A. Laws, regulations, or rules proposed during the life of this Memorandum of Understanding shall be reviewed by the City and the Union to determine their effect on this Memorandum of Understanding.
- B. It is agreed and understood that each party shall not be required to meet and confer with respect to any matter covered herein or with respect to any other matters within the scope of meeting and conferring during the term of this Memorandum of Understanding, except as noted in Article 7 and other

portions of the Memorandum of Understanding, unless required by a Federal or State law which mandates action by the City affecting the provisions herein.

- C. Any agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall not be binding upon the parties unless agreed to in writing by all parties, and if required, approved and implemented by the appropriate body.

## ARTICLE 38

### Hours of Work

- A. Employees covered by this Agreement shall normally work a 5-day, 40-hour work week. The City agrees to Meet and Confer on the request of any changes to the current 40-hour work week schedule.
- B. A normal work day shall normally consist of eight (8) consecutive hours not including time for lunch.
- C. This does not preclude the City from using a 4-day, 10-hour per day weekly work schedule or a similar modified work schedule. Employees on the 4-10 Plan who have a holiday in their work schedule and do not work on the holiday, will be provided with the option of two hours of additional work during the same work week in which the holiday occurs, as part of an adjusted work schedule for which overtime will not be paid.
- D. Except for emergency situations, as defined in Personnel Manual Index Code H-4, II(B) 1-4, employees may not work more than 16 hours per day.
- E. At City landfills, when a worksite is closed for a holiday not formally recognized by the City (i.e. Easter) which falls on an employee's regularly scheduled work day, management may either provide work on that day, or make alternative hours available within that work week.

The parties agree to refer to the Labor Management Committee issues related to overtime and limitations on consecutive hours of work.

## ARTICLE 39

### Implementation of New Programs

Prior to implementation of any new programs, the City will give the Union 30 working days advance notice in writing so that the parties may meet and consult and/or meet and confer as required by law with the Union on the impact of any such programs on wages, hours, and working conditions.

## ARTICLE 40

### Probation

Probationary employees in classifications represented by Local 127 shall normally receive at least five (5) working days notice of dismissal during probation, either through the performance report or other written notification.

Probationary employees and permanent employees serving a probationary period, may use the grievance procedure in accordance with Article 10.

## ARTICLE 41

### Vacancies

Management will normally use seniority as the first and principal factor in reassigning employees within a classification within a division. However, other factors may also be considered such as performance, disciplinary reasons, physical ability, punctuality, attendance and specialized skills and experience. If a vacancy is filled out of seniority, Management will discuss and explain its reasons with the Union if requested.

Issues regarding the hiring of hourly Sanitation Drivers to fill vacancies for permanent positions shall be referred to the Labor-Management Committee for further study and discussion.

## ARTICLE 42

### Employee Rights

It is agreed that neither the City nor the Union shall discriminate against any employee because of race, national origin, age, sex, disability (as defined by the Americans with Disabilities Act) or Union membership or activity, or for any other unlawful reasons. It is further agreed that no employee will be discriminated against because of exercising his/her rights specified in the Employer-Employee Relations Policy and this Memorandum of Understanding. The Union and Management agree that they support the current policies of the City of San Diego as to affirmative action and equal employment opportunity.

No employee shall be compelled to submit to a polygraph examination against his/her will. No disciplinary action or other recrimination shall be taken against any employee refusing to submit to a polygraph examination, nor shall any comment be entered anywhere in the investigator's notes or anywhere else that the employee refused to take a polygraph examination, nor shall any testimony

or evidence be admissible at a subsequent hearing, trial, or proceeding, judicial or administrative, to the effect that the employee refused to take a polygraph examination.

Requests for covert video surveillance for the purpose of documenting misconduct shall be submitted to the Labor Relations Manager for review.

Employees have the right to expect professional supervision free of undue and/or unfair harassment.

## ARTICLE 43

### Retirement

The City agrees to conduct a study of general member retirement benefits, including disability retirement benefits.

#### Elimination of 1981 Pension Plan Benefits

All General Members who are presently in or eligible only for the 1981 Pension Plan will be provided the same level of benefits currently provided to members of the old CERS plan, except as to disability and medical benefits, with the understanding that contribution rates shall be adjusted according to the member's age at entry into the 1981 Plan and that the benefit change will be prospective only, with an effective date of July 1, 1989.

#### High One-Year Basis for Final Compensation

Retirement benefits for General Members shall be based upon the "highest one-year" annual compensation earnable in lieu of the existing "highest three-year" average compensation earnable. This change in benefit calculation shall apply to all General Members who are participating and contributing members on or after December 30, 1988, and who retire on or after July 1, 1989. Local 127 agrees that there will be an increase in employee contribution rates in the amount of .4% on December 30, 1988, to cover the cost of this "high one-year" basis for final compensation.

The City agrees that it will apply an amount that is approximately equal to 5.0% of the base salary of employees covered by this agreement into the City Retirement System, thereby reducing the amount deducted from employees' paychecks as the employees' retirement contribution by that amount. The employee, upon termination, will have no vested right in the amount so contributed by the City. Substitution of this portion of the employees' contribution by a City payment will not decrease the total amount applied towards the

required retirement contribution, and will not affect retirement benefits. Provided, however, such payment shall not exceed any employees' total contribution to the system.

#### IRC Section 415 Amnesty Provisions

In order to preserve CERS' Tax qualified status, Local 127 and the City mutually agree to adopt the "amnesty" or "grandfather" provisions of IRC Section 415 (b) (10).

#### Retiree Health Insurance

Contingent upon the City Council approving the conversion of the City Employees Retirement System actuarial funding methodology from the Entry Age Normal (EAN) method to the Projected Unit Credit (PUC) method, employees represented by Local 127 will receive the following new retirement benefits.

1. Effective July 1, 1992, employees hired after September 3, 1982, will accrue a graduated vesting benefit for retiree health insurance premiums based on the following methodology:
  - a) For each year of service an employee will accrue 5% to be applied to payment of retiree health insurance premiums.
  - b) The accrued percentage will be valued based on the lowest retiree health insurance premium available at the time of retirement.
  - c) In any event, the maximum amount an employee in this group will accrue for retiree health insurance premiums will be \$2,000/year.
2. Effective July 1, 1991, current employees with 1981 Pension Plan credited years of service will be granted at no cost to the employee credit for past CERS service. (Should the City Council not convert from EAN to PUC effective July 1, 1991, employees in this group represented by Local 127 will be allowed to "buy back" past CERS service and will be responsible for all associated costs.)
3. Effective July 1, 1992, the cost of living adjustment (COLA) for retirees who retired before October 6, 1980, will increase from 1.5% to 2% per year.
4. IRS Section 414(H)2

Implement pre-tax retirement contributions under IRS Section 414(H)2, effective the first pay period in January, 1993, with the effect of reducing the employee's income tax base.

5. For employees represented by Local 127 hired on or before September 3, 1982, who are eligible for retiree health insurance and who are not covered by the \$2000 cap described herein, the City will pay the actual cost of City sponsored, Local 127 sponsored or privately secured health insurance for the employee up to a maximum of \$4500 per year.

The City agrees to conduct a comprehensive study of retiree health insurance issues including alternative rate structures, blending rates, and evaluating other large insurance pools such as PERS.

#### ARTICLE 44

##### Salaries

###### A. General Increase

All classes in the unit represented by Local 127 shall receive the following increases:

<u>Effective Date</u>	<u>Approximate Increase</u>
December 30, 1995	3%
December 28, 1996	3%

###### B. Special Salary Increases

Local 127 agrees that it will not bring forward any requests for special salary adjustments during the term of this agreement except by mutual agreement.

###### C. Special Assignment Pay

1. Sanitation Drivers, who are working alone and assigned to a one-person sanitation truck, shall receive, in addition to regular salary, an additional \$1.00 per hour for such assignment. Drivers on Recycling Trucks are not eligible for this assignment pay.

Note: Special Assignment Pay shall only accrue while the employee is actually performing this special duty, and not while on light duty.

###### D. New Employee Salary Schedule

Effective 7/1/94, "B" step will be eliminated for new hires beginning 7/1/94. Employees hired after 7/1/94 will move from "A" step to "C" step after one [1] year at which time an approximate 10% increase will be granted. This salary schedule will remain in place for the duration of the employee's tenure with the City. Current employees will continue with the present five step salary schedule.

###### E. Voluntary Certification Pay

The City agrees to implement voluntary certification pay for employees in the Plant Technician Series and Tank Service Technician Series. Employees in the Plant Technician Series who successfully complete Mechanical Technology Certification from the California Water Pollution Control Association (CWPCA), or employees in the Tank Service Technician Series who successfully complete either Water Treatment Plant Operator Certification from the California State Office of Drinking Water Safety (CSODWS) or Water Distribution Systems Operator Certification from American Water Works Association, shall receive the following certification pay:

Grade II Certification = \$.25/hour  
Grade III Certification = \$.50/hour  
Grade IV Certification = \$.75/hour

The City agrees to discuss with Local 127 expansion of this program during the term of this agreement.

## ARTICLE 45

### Flexible Benefits Plan

Eligible employees have \$3,440 to spend on Plan selections effective July 1, 1995. The issue of the City's Flex allotment will be re-opened for FY 97.

#### I. Employees must select one Health Insurance Policy:

##### Annual Value

- |   |        |
|---|--------|
| 1. *Kaiser                                  | \$1636 |
| 2. Blue Cross                               |        |
| a. California Care                          | \$1584 |
| b. Blue Cross Plus (Point of Service)       | \$2427 |
| c. Prudent Buyer (\$1,000 deductible)       | \$1478 |
| d. Working Spouse                           | \$ 267 |
| e. Waiver (proof of coverage required)      | \$ 18  |
| 3. CIGNA Health Plan                        | \$1828 |
| (available to 127 represented classes only) |        |

#### II. \*Employees must select one Life Insurance Policy:

- |             |       |
|-------------|-------|
| 1. \$10,000 | \$ 20 |
| 2. \$25,000 | \$ 48 |
| 3. \$50,000 | \$ 96 |

#### III. With remaining money, the employee may select among the following additional benefits:

- |  |                  |
|--|------------------|
| 1. CIGNA Prepaid Dental Plan and CIGNA Indemnity Dental Plan<br>(available to Local 127 members in Local 127 represented classifications only) | Values Vary      |
| 2. Safeguard Dental Plan (available to current enrollees only)   | Value Varies     |
| 3. Mutual of Omaha Dental Plan<br>(for current City indemnity dental enrollees only)   | Value Varies     |
| 4. Dependent Care Reimbursement  | Designated Value |
| 5. Dental/Vision/Medical Reimbursement   | Designated Value |

- |  |                  |
|--|------------------|
| 6. Cash Payment (taxable)                    | Designated Value |
| 7. 401(k)                                    | Designated Value |
| 8. Cancer and Catastrophic Illness Insurance | Value Varies     |
| 9. Safeguard Vision Plan                     | Value Varies     |

#### Notes:

1. Eligible employee means any employee in a one-half, three-quarter time, or full-time status. Eligible employee excludes all employees in an hourly status.
2. It is the intent of the City that this Plan comply with the IRS Regulations.
3. After selecting required health and life insurance coverages, employees who are unable to enroll in their desired dental plan for which they are eligible may purchase such benefit by making an "out-of-pocket" payment for the cost difference. Only dental coverage may be obtained in this manner. Such "out-of-pocket" contribution must be made at the time of Open Enrollment and is non-refundable.
4. In addition to designating flexible benefits monies for DMV or Dependent Care reimbursements, employees may designate a specific amount of pre-tax money (some restrictions may apply) to be withheld from their paycheck to reimburse eligible out-of-pocket medical, dental, or vision expenses 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.
5. Failure to enroll during the open enrollment period will result in the employee receiving only the current health including dependent health offset and life insurance. The remainder of Flexible Benefits allotment will be paid out as taxable cash.
6. A 10% discount will be provided to City employees for child care at the following participating child care providers: Kindercare, Children's World, and La Petite Academy.
7. The level of benefits coverage will not be diminished during the term of this contract.

\* Significant Plan Changes

- A. Kaiser - "Sponsored Dependents" who are residing with and financially dependent upon the employee as determined by affidavit and tax records will be eligible dependents. Dependent child attending an accredited educational institution will be eligible for coverage up to age 25.
- B. Life Insurance - Change of carriers to Northwest National Life. Coverage enhanced to offer an accelerated benefit and expanded Accidental Death and Dismemberment events. Supplemental and Additional Term Life Insurance, available through payroll deductions only, will be replaced with portable term and individual universal life policies respectively. Coverage for spouse and children will be offered under the universal life policy.
- C. Mental health/chemical dependency managed care carrier changed to U.S. Behavioral Health.

**ARTICLE 46**

**Tuition Reimbursement**

The City agrees to provide tuition reimbursement in the amount of \$700 annually. The revised Administrative Regulation 70.30 will govern the administration of this program.

Effective fiscal year 1995, Form CM-1578, Request for Approval of Tuition Reimbursement, will be revised for the purpose of clarifying that courses must be attended on the employee's own time.

**ARTICLE 47**

**Asbestos Containment Team**

Employees assigned to the Asbestos Containment Team shall receive, in addition to regular salary, an additional 60 cents per hour while actually performing asbestos containment work. Effective July 1, 1989, employees assigned to the Asbestos Containment Team shall receive an additional 77 cents (\$.77) per hour while performing asbestos containment work. This will include training and team meetings. Assignments to the Team will be made on a voluntary basis. Members of the Asbestos Team will receive the above premium pay for the entire pay period when assigned to the above activities. An officer of the Local 127 Board will be provided with input in the development of an Asbestos Containment Program and an opportunity to monitor the work of the Team on an occasional basis.

Employees performing technical work only in an established **containment** area shall wear respiratory protection and any other safety equipment as directed by the Asbestos Management Program staff. In addition, assignments made under the aforementioned conditions shall be mandatory and said employees shall be eligible for the additional \$.77 cents per hour for time worked in containment areas. Prior to wearing a respirator, all employees shall receive respirator training and a medical clearance.

In addition, employees performing technical work only in **non-containment** areas where asbestos is present shall wear respiratory protection and any other safety equipment as directed by the Asbestos Management Program staff. These employees will not be compensated the additional \$.77, and assignments will be mandatory.

**ARTICLE 48**

**Apprentices**

Upon successful completion of the Apprenticeship Program and the following probationary period, seniority in the journey level class shall be retroactive to the date of hire as an apprentice for the purposes of shift assignments, station transfers, and other intra-departmental purposes.

Apprentices required to attend school or enroll in correspondence courses as part of their required training shall not be required to use this program to pay tuition or enrollment fees. All such fees, the cost of required books and supplies and any other fees required by the State, State approved agency, or the City for participation in the apprenticeship program shall be reimbursed in full by the City to the employee at the time of enrollment. If the apprentice fails or does not satisfactorily complete the course, the cost of the books and supplies shall be repaid to the City.

Apprentices will receive City mileage reimbursement when required to attend coursework required as part of their apprenticeship program. Mileage will be calculated based on roundtrip distance between the worksite and school or actual distance traveled, whichever is less.

## ARTICLE 49

### Home Addresses

The City agrees to take the following actions with respect to home addresses:

1. In August 1990, the City will distribute a form to all employees represented by Local 127. This form will give these employees an opportunity to indicate that they wish or do not wish to disclose their home addresses to Local 127. Local 127 will be given an opportunity for input into the design of this form. The form shall be approved by Local 127 prior to distribution. Employees will be required to return this form.
2. All employees who do not return this form will be re-contacted by the City. The City agrees to make its best efforts to ensure that these forms are returned.
3. Only those employees who sign and return the form indicating that they wish to disclose their home addresses to Local 127 will have that information disclosed to Local 127.
4. The City agrees to provide new employees with this same opportunity at the new employee orientation.

All employees represented by Local 127 must provide the City with a current mailing address including telephone number where they can be contacted. Employee shall have ten (10) days within which to notify the City of changes in this information. Nothing in this article shall be construed as a requirement that employees possess a phone.

## ARTICLE 50

### Contracting Out

The contracting out services by the City of San Diego is an exclusive City however agrees to provide notice to Local 127 of contracting out, and allowing Local 127 input. The City will refer Local 127's concerns regarding the contracting out to the Labor Management Committee.

The City will confer, as required by law, with Local 127 prior to contracting out for services in the event of a layoff or reduction in force. The City will refer Local 127's concerns regarding the contracting out to the Labor Management Committee. In the event of a layoff or reduction in force, the City will provide 30 days notice of such action as required by law, with Local 127.

4. Depend

5. Dental/Vision/Medic

If employees represented by Local 127 are to be laid off, the City will make its best efforts to find alternative City employment for those employees affected. Management will attempt to find alternative City employment as close as possible to the employee's current salary level provided the employee meets the minimum qualifications for this alternative employment.

The City agrees to create a Committee to study the Consultant Hiring process in an effort to eliminate waste and abuse.

## ARTICLE 51

### Labor Management Committee

The Management Team and Local 127 will establish a joint committee for the purpose of discussing common problems including safety problems, contract interpretation and administration, application and administration of the grievance procedure, and application and administration of the City's disciplinary procedures. The Committee shall meet at regular intervals when either side has an agenda to present. Generally, these meetings will be held on a monthly basis at a mutually satisfactory time for a duration of approximately two hours. Each side will appoint three permanent members. Meetings will be held during normal business hours.

## ARTICLE 52

### Department Work Rules

Management agrees to make available to Local 127 current written departmental policies and instructions. As reasonable additional departmental policies and instructions are developed and published, the City will make available copies to Local 127 and employees. Such policies shall be uniformly applied. However, the obligation to make available copies of current and future departmental policies and instructions shall not extend to ones which describe confidential or security procedures.

## ARTICLE 53

### Industrial Leave

#### 1. PURPOSE

To establish regulations and guidelines regarding the City of San Diego's Industrial Leave Program.

## 2. SCOPE

This regulation applies to all City of San Diego employees including those represented by bargaining agents. If a conflict occurs between this regulation and an existing Memorandum of Understanding for represented employees, the Memorandum of Understanding shall prevail.

## 3. DEFINITIONS:

- 3.1 Disability - the inability to perform the usual duties of one's classification.
- 3.2 Emergency - a sudden unexpected happening; an unforeseen occurrence or condition; specifically, perplexing contingency or complication of circumstances; a sudden or unexpected occasion for action; a pressing necessity.
- 3.3 Gross Negligence - the intentional failure to perform a manifest duty in reckless disregard of the consequence as affecting the life or property of oneself or another; such a gross want of care and regard for one's own well-being or the rights of others as to justify the presumption of willfulness and wantonness.
- 3.4 Hospitalization - the status of being admitted to a hospital institution on an inpatient basis.
- 3.5 Light Duty - work status with limitations as provided in the City's Light Duty Program.
- 3.6 Physician - as defined under 3209.3 of the California Labor Code.

## 4. POLICY:

### 4.1 General:

City-wide safety program exists to prevent accidents and resulting injuries involving employees. Continuing efforts are made to eliminate, guard against, or protect employees from physical hazards in the work environment. Several types of benefits are available to employees who sustain disabilities arising out of their employment. The specific benefits available depend on the circumstances in each case.

This Article sets forth only the eligibility requirements and benefits for industrial leave. Procedures are set forth for industrial leave and in part for other programs available for injured employees. Employees may be eligible for benefits under the Workers' Compensation Act or the City's Annual Leave or Sick Leave Programs. Eligibility and benefits

under the Workers' Compensation Act are established in State law (Division 4 of the California Labor Code). Eligibility and benefits under the City's Annual Leave and Sick Leave Programs are set forth in the Personnel Regulations, Index Code I-2 and I-3.

Nothing herein contained shall be deemed to affect the employee's entitlement to medical, surgical and hospital treatment as provided in Division 4 of the California Labor Code nor be deemed to affect the employee's entitlement to receive such temporary disability payments as also provided in Division 4. These rules define the granting of industrial leave only. Industrial leave is not within the jurisdiction of the California Labor Code nor the adjudication of the Workers' Compensation Appeals Board.

### 4.2 Eligibility for Industrial Leave:

Employees shall be eligible for industrial leave benefits subject to the following provision

- a. The employee is unable to perform his or her assigned duties and is entitled to Worker's Compensation Temporary Disability under the provisions of Division 4 of the California Labor Code.
- b. The employee reported the injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. Extenuating circumstances under which an employee may report an injury beyond the 24 hour limit shall include but not be limited to a report at the time the employee realizes the injury is disabling and the medical evidence is consistent with the claim.
- c. Medical treatment is provided and maintained by a licensed physician acceptable to the City's Worker's Compensation Administration.
- d. The employee is medically incapacitated from the performance of light duty, or light duty is not available.
- e. Except in circumstances of obvious emergency, the disability did not result from the failure to:
  - 1. Wear prescribed safety or personal protective clothing or equipment.
  - 2. Use provided safeguards or safety equipment.
  - 3. Follow safety rules and regulations, or other departmental work rules.

- f. The disability did not result from an aggravation or recurrence of:
  1. A pre-employment, non-service connected medical condition or disability (either physical and/or mental), even if such condition is aggravated by on-the-job experience. It is the intent that industrial leave will not be approved when competent medical authority determines the disability to be a result of aggravation of, or caused by, a pre-employment or non-industrial medical condition.
  2. A medical condition for which the employee has received a Compromise and Release settlement pursuant to Division 4 of the Labor Code.
  3. An injury or illness previously denied industrial leave.

Therapy prescribed pursuant to Industrial Leave provisions shall be eligible for Industrial Leave. Therapy sessions shall normally be scheduled at the beginning or end of the day.

- g. The employee's gross negligence or willful misconduct was not the proximate cause of the disability.
- h. The request for industrial leave is submitted in form and detail as prescribed by Risk Management, is recommended for approval by the appointing authority, and is approved by the City's Workers' Compensation Administration.
- i. The employee fulfills his or her responsibility as outlined in this Administrative Regulation.

#### 4.3 Industrial Leave Benefits

- a. The Industrial Leave Benefit shall be the employee's normal compensation, less current deductions for state and federal tax withholdings, and other payroll deductions authorized by the employee. The injured employee shall be prohibited from amending his or her claim of deductions from the date of injury until after they have returned to work and industrial leave benefits have discontinued.
  1. The term "normal compensation" includes extra compensation for night or unusual schedule work shifts, motorcycle pay, emergency ordinance disposal pay, and educational incentive pay, which the employee was receiving at the time of the injury, but does not include overtime, standby, or out-of-class pay.

2. Employees may receive normal merit increases while on industrial leave if they are otherwise eligible as provided in Personnel Manual Index Code H-8.
- b. Industrial leave is granted in lieu of Workers' Compensation Temporary Disability.
- c. An employee cannot supplement industrial leave payments with accrued sick leave, annual leave, or compensatory time off.
- d. Employees shall earn annual leave credits while on industrial leave as if they were working. Employees shall be eligible to accrue and utilize annual and sick leave in accordance with the rules governing the accrual and usage of annual and sick leave respectively. (See Personnel Manual I-2 and I-3.)
- e. The City shall continue to make the contribution towards the employee's health and life insurance coverage as if the employee was working.
- f. Duration of Industrial Leave:
  1. An employee's maximum industrial leave benefit shall be the number of hours equivalent to the employee's scheduled workyear.
  2. Industrial leave shall commence on the first workday following the injury or illness for which the employee is medically disabled from working.
  3. An injury shall be deemed to continue through any recurrence or aggravation to the original injury. Claimed recurrences, aggravations, or sequel of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury.
  4. Industrial leave will terminate when one of the following occurs:
    - a. The employee fails to follow the advice of the treating physician and pursue a course of treatment which will lead to recovery in as short a period of time as possible.
    - b. The employee's condition becomes medically permanent and stationary.

- c. It is medically determined that the employee will never be capable of performing the duties of his or her classification.
  - d. The employee no longer qualifies for industrial leave.
  - e. The employee is engaged in outside employment which would medically impede recovery and prolong his/her return to work.
  - f. The employee uses the maximum benefits available.
5. If industrial leave is terminated upon the basis of medical evidence and at a later date, the City relies on further medical evidence which is inconsistent with the earlier medical evidence, the employee shall receive industrial leave benefits which are consistent with the subsequent report relied on by the City.
6. Industrial leave provides only the benefits enumerated herein.
7. Return to Duty:
- a. The employee shall return to duty when ordered by the department head, based upon medical reports and other reliable information.
  - b. Determination of the proper time for the employee's return to duty will be based on reliable medical advice.
  - c. In cases of suspected malingering, when it appears that the employee and/or the employee's personal physician are not cooperating toward return to limited or full duty within a reasonable period of recovery, the department head or the Workers' Compensation Administration will order an investigation and take proper action.
  - d. If further remedial action is indicated, the employee must follow a course of treatment which will enable return to full employment at the earliest possible time. This does not mean that the employee should be carried on industrial leave until completely able to perform every duty of the position. All reasonable efforts shall be made to return the employee to work, even in a light-duty status, as soon as, based upon authoritative medical advice, it is safe to do so.

- e. Prior to soliciting information from an employee's treating physician concerning that employee's ability to return from industrial leave to a selective placement position, the treating physician shall be furnished with a written statement describing the duties of such selective placement position. The City will allow the treating physician five (5) days to respond in writing. If the treating physician fails to respond in writing within five (5) days, the City may receive information from the treating physician orally. The City may extend the time for response for good and sufficient reason.

## 5. PROCEDURE

### Responsibilities

### Action

### Employee

- 5.1 Each employee is responsible for reporting the job related injury or illness to his or her supervisor within 24 hours of the incident, except under extenuating circumstances. The initial report should be made to the employee's immediate supervisor, or if unavailable, to the next supervisor in the chain of command. The initial report may be made verbally, but must be followed by completion as soon as possible of the necessary forms outlined below.
- 5.2 For injuries which result in absence from work at any time following the day of the injury, the employee must complete Form CS-14-25B, Request for Leave of Absence for on-the-job disability, within 24 hours of the disability and have the attending physician complete the appropriate portion of the form. If, because of injuries, the employee is physically unable to comply with this requirement, it shall be the supervisor's responsibility to complete and submit the form for the employee.
- 5.3 The employee must complete Form ES-1531A, Employee-Employer Report of Occupational Injury or Illness.
- 5.4 The employee and others concerned, shall provide the department head, City Manager or his representative with any additional evidence necessary to elaborate on or substantiate injury and medical reports.

- 5.5 When necessary, the employee must report as soon as possible to a licensed physician.
- a. In doubtful and/or controversial cases, the employee shall be required to report to a physician who is acceptable to the Workers' Compensation Administration.
  - b. The employee, if dissatisfied with the treatment received from the first approved physician, has the right to ask for a change of physicians; however, the physician selected must always be acceptable to the Workers' Compensation Administration.
- 5.6 The employee must obtain a medical diagnosis and prognosis for light duty with all applicable work restrictions, since industrial leave cannot be granted if light duty is available and can be performed.
- 5.7 The employee must follow a course of treatment which will lead to recovery in as short a period of time as possible.
- 5.8 If requested during prolonged disability, a fully completed set of Form CS-14-25B, including the physician's certification, shall be provided by the employee for each pay period in order to obtain up-to-date medical information.
- 5.9 Each employee is responsible to cooperate with Risk Management in their function of determining eligibility and returning the employee to work.

#### Operating Department Supervisor

- 5.10 Each supervisor concerned must thoroughly investigate each accident within 24 hours after it is reported and complete the applicable "Employee Injury Investigation Report". The supervisor must also fill out the supervisor's portion of the Employee-Employer Report of Occupational Injury or Illness, and make sure the employee completes the employee portion of both that form and the Request for Leave of Absence form. All required forms must be promptly forwarded to the appointing authority for processing.

#### Operating Department-Appointing Authority

- 5.11 To make sure that the injury is promptly and thoroughly investigated, shall recommend whether or not industrial leave should be granted, shall determine the availability of light duty, and shall forward all required forms to the Workers Compensation Administration within one workday of receipt from the supervisor.

- 5.12 To promptly notify the Workers' Compensation Administration of any potentially controversial case, and all instances of suspected malingering, or where the cause of injury is doubtful.

- 5.13 To cooperate in determining eligibility and returning the employee to duty.

#### Operating Department-Payroll

- 5.14 The day of injury is to be reported on time sheets as a day of work. Necessary leave due to disability shall start with the first part or full scheduled workday of required absence after the day of injury.
- 5.15 Necessary leave for medical treatment or granted because of recurrence, aggravation, or sequel of an injury previously approved for industrial leave shall be charged to the balance, if any, of the one-year maximum allowance of such leave for said original injury.
- 5.16 Any holiday falling during a period of industrial leave shall be charged as industrial leave and not be paid as a holiday. Industrial leave will be charged rather than holiday if industrial leave is paid the scheduled workday before or after the holiday. If an employee is scheduled to work on a holiday and is injured, the holiday credit will be granted.
- 5.17 In those cases where the appointing authority recommends industrial leave, the employee's absence will be charged to industrial leave pending a determination of eligibility by the Workers' Compensation Administration. If the employee is later determined to be ineligible by the Workers' Compensation Administration, the employee will be required to reimburse the City for the number of industrial leave hours used. Reimbursement will be made by charging the employee's accumulated sick leave, annual leave and/or compensatory time credits. If sufficient leave credits are unavailable, the employee will be required to make a direct monetary reimbursement to the City.
- 5.18 In those cases where the appointing authority does not recommend industrial leave, the employee's absence shall be deemed sick leave to the extent the employee has sick leave credits pending a determination of eligibility by the Workers' Compensation Administration. However, the employee may decline to use sick leave and, with the approval of the appointing authority, may instead take other leave or compensatory time off to which the employee may be entitled. In the event paid leave is not utilized, the employee may receive Workers' Compensation temporary disability to the extent he or she may be entitled under Division 4 of the California Labor Code.

If it is subsequently determined that the employee is eligible for industrial leave, the industrial leave shall be deemed to commence pursuant to Section 4.3(f)(2) of this Regulation, and any sick leave, compensatory time off or other leave credits expended shall be restored to the employee's balance. In the event temporary disability has been paid, the employee shall be paid the difference between temporary disability and the industrial leave amount.

- 5.19 The use of sick leave or annual leave credits may be requested if the requirements for industrial leave are not met, or in cases where the employee has exhausted the maximum industrial leave credits. The employee's sick leave or annual leave credits will not be charged for the amount of temporary disability payments made under Workers' Compensation Act provisions.

An employee shall not receive payment in excess of full salary through a combination of Workers' Compensation temporary disability payments and paid sick leave or annual leave or compensatory time off.

- 5.20 When sick leave is used for an on-the-job injury, the employee's sick leave account will be reimbursed in hours, by the equivalent amount due from temporary disability payments.
- 5.21 If a disabled employee is receiving Workers' Compensation temporary disability benefits, but is not receiving payment for industrial leave, or annual leave, the appropriate payroll symbol is "green C". It is unnecessary for an employee in this status to request a leave of absence from the Civil Service Commission since the City has a legal obligation under Workers' Compensation laws to return the employee to gainful employment.
- 5.22 Leave without pay (payroll symbol "red A") may be used if the employee is not receiving Workers' Compensation benefits, annual leave, sick leave, industrial leave, or compensatory time credits. Employees in this status must request a leave of absence from the Civil Service Commission if their absence extends for more than 30 calendar days.
- 5.23 When sick leave, annual leave or leave without pay is used under these circumstances, a set of Form CS-14-25B shall be completed, routed and processed in the same manner as for industrial leave.

#### Workers' Compensation Administration

- 5.24 All requests for industrial leave will be reviewed by the Workers' Compensation Administration for a decision on whether the circumstances qualify the employee for industrial leave, under the requirements of this Administrative Regulation.
- 5.25 Workers' Compensation Administration shall inform the employee and the department as to the employee's eligibility for industrial leave.
- 5.26 Denial of industrial leave shall be in writing, shall contain information as to the specific reason for the denial, and shall clearly indicate the appeal procedure.
- 5.27 Workers' Compensation Administration shall inform each applicant for industrial leave of his/her responsibilities under the Industrial Leave Program and of the right to appeal the denial of industrial leave.
- 5.28 When it appears from competent medical advice that a disability is permanent, and precludes the employee from returning to his or her regular job classification, the Workers' Compensation Administration will refer the employee to its Rehabilitation Unit for consideration of vocational rehabilitation. All officials concerned will cooperate actively to assist the employee in rehabilitation consistent with proper position classification and compensation. The Rehabilitation Unit, in addition to providing vocational evaluation, training, and other assistance to the eligible employee, will initiate with the Personnel Department and appointing authority, consideration of class transfer, voluntary demotion and other appropriate personnel actions as alternatives to employee termination or disability retirement.

#### 6. APPEAL PROCEDURE

##### Responsibilities

##### Action

##### Employee

- 6.1 An employee may appeal the denial of industrial leave by the Workers' Compensation Administration. The appeal shall be in writing, submitted to the City Manager within ten (10) working days of receipt of the notice of denial and shall state the specific reasons for the employee's appeal and the issues upon which the appeal is based.

#### City Manager

- 6.2 The City Manager or his designee shall review the entire case and announce an intended decision indicating his rationale. In the event of an intended denial, the City Manager or his designee shall arrange a meeting in which the affected employee may present his or her appeal. The employee shall have the opportunity to confront the information relied on by the City Manager or his designee and submit additional information as desired for consideration by the City Manager or his designee. Such meeting shall be as informal as is compatible with justice.
- 6.3 The City Manager or his designee shall render a decision which shall be final and shall include the reasons for the decision.
- 6.4 The City Manager may grant the employee an extension of time beyond the appropriate appeal period if it is determined that the employee is so disabled as to be physically unable to perfect the appeal within the allocated time.

#### Addendum:

Employees shall not be granted Industrial Leave if the employee fails to wear lap and shoulder restraints when involved in a vehicular accident.

Industrial Leave Benefits may be terminated if an employee misses a medical appointment.

### **ARTICLE 54**

#### **Stadium Stand Moves**

1. Available positions on the Stadium Stand Moves will be made on the following basis; full-time status will have priority over hourly; past experience on stand moves; attendance and job performance; and seniority at the Stadium.
2. All full-time employees who work a full stand move [one way move of the stands] shall receive 15 hours of regular time plus 7.5 hours of premium time for a total of 22.5 hours. Hourly employees will receive 15 hours and the standard procedure for calculating premium overtime shall be utilized, i.e. if employee works more than 40 hours in the work week then they will receive premium time. Employees who do not work a complete stand move shall be paid for the actual hours worked plus the appropriate premium overtime, except employees who are late shall be compensated per the guidelines stated in item #8.

3. Employees shall be provided a meal and a one hour meal break. Employees are not permitted to leave the Stadium premises during this meal break or at any other times.
4. Employees shall be provided with safety shoes, hard hat, and gloves and shall be required to wear them at all stand moves. Employees must also wear long pants. Failure to be properly dressed or follow proper safety procedures will result in appropriate disciplinary action being taken. Employees shall immediately report any unsafe conditions to the Stand Move Manager[s].
5. Employees scheduled to work a stand move, wherever possible, may have their regular work schedule adjusted so that they do not work at least eight hours prior to or eight hours after a stand move. This may result in an employee being scheduled to work four ten-hour days.
6. All employees who are on the Stand Move crew shall be required to work all of the stand moves, except in the case of illness which is covered in item #9. Employees who fail to report for a stand move shall be given appropriate disciplinary action which may include removal from all future stand moves. Employees may request to be excused from a stand move provided that five days notice is given, however the final determination shall be at the sole discretion of the Stand Move Manager[s].
7. The work performance of an employee during a stand move shall be reflected on an employee's regular performance evaluation. Employees shall follow and take direction from the Stand Move Manager[s] and the appointed crew leader. Any employee that displays behavior that is disruptive to the stand move shall be appropriately disciplined.
8. Stand move employees shall report to work at the East Tunnel field floor entrance at the assigned time and shall sign in with the Stand Move Manager[s]. Employees who are late more than one hour and eventually report to work may be sent home without pay, or may be given a written reprimand that shall be placed in their personnel file, or may have the number of hours paid for the stand move reduced. The number of hours to be reduced shall be a ratio of the time late to the actual hours worked on the stand move multiplied by the standard 15 hours pay.
9. Employees who are ill and cannot report to work must contact the Stadium Security Office at 525-8267 and speak with either the Stand Move Manager[s] or the Stadium General Manager as soon as possible. Employees who are ill, and do not give at least eight hours notice prior to the start of the stand move and this is the second illness, must provide a doctor's note to the Stand Move Manager[s] when they return to work which

indicates that they were unable to work on that day. Failure to bring in a doctor's note will result in an employee being given appropriate disciplinary action which may include removal from all future stand moves.

10. Employees shall not leave the field area until the Stand Move Manager[s] have determined that all work has been completed. Employees will then be required to sign out.

## ARTICLE 55

### Supplemental Employee Pension Savings Plan [SPSP]

In the event Congress mandates the provision of Medicare and/or Social Security for any or all City employees, Local 127 and City Management agree to automatically reopen this Memorandum of Understanding for the purpose of meeting and conferring in good faith with regard to the impact of said mandate on the Supplemental Pension Savings Plan and employee wages and benefit levels.

City and Local 127 agree to the adoption of a new mandatory SPSP (H) plan 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 new Federal law, the City and Local 127 agree to the implementation of a new SPSP-H (hourly) Plan for hourlies with the following key elements:

- 3.75% employee contribution matched by a 3.75% City contribution to meet 7.5% minimum requirement.
- 100% immediate vesting.
- Monies must remain in plan until termination.

The City agrees to study the feasibility of establishing a program which would allow employees to borrow against their vested SPSP contribution for a nominal fee.

## ARTICLE 56

### Time Off for Blood Donation

An employee shall receive paid release time, not to exceed two hours, when he or she donates blood at the annual City blood drive and/or in response to an emergency request from the Blood Bank. The City shall release the employee for the actual time the employee spends in any travel to and from the Blood donation site, as well as for the time spent at the site, in any event not to exceed a maximum of two hours of release time. The employee shall submit his or her "blood receipt" to the payroll clerk as verification of the donation.

## ARTICLE 57

### 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.

Local 127 and Management will continue to evaluate the use of limited appointments in the City.

## ARTICLE 58

### Performance Pay

#### A. Performance Pay

1. The City may grant an exceptional merit cash payment to any employee at "E" step that receives a satisfactory or above rating on their most recent performance report within the units represented by Local 127. It is understood and expressly agreed to by the parties to this agreement that any employee receiving a payment under this provision shall not acquire any future rights to receive any future payment beyond that employee's base salary.
2. The appointing authority may grant an employee with a satisfactory or above rating on their most recent performance report up to three (3) days special leave with pay in recognition of a specific instance of outstanding performance.

B. Exceptional Merit Increase

Employees with a performance report rating above satisfactory may be granted an Exceptional Merit Increase to any step within the salary range.

Local 127 may discuss problems in the Exceptional Merit Cash Payment Program with the City Manager's Office.

C. Discretionary Leave

The City will grant two [2] days of discretionary leave to those employees who would have received merit increases prior to November 6, 1993, but for the restrictions which were lifted on that date. This proposal is contingent upon Local 127 identifying the employees impacted who filed documents with Local 127.

**ARTICLE 59**

Vacation Schedule

1. Appointing authorities are responsible for arranging vacations so that adequate personnel are available to carry on necessary City work.
2. Insofar as is practicable, employees should be permitted to schedule vacations at times most acceptable to the employee. Vacations shall 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 vacations.
3. Employees should be encouraged to take regular annual vacations but they shall not be required to take vacations against their will. Employees may accumulate vacation time in accordance with this agreement.
4. Any existing vacation scheduling method that is satisfactory with the employees shall remain in effect for the duration of the contract. This is in lieu of the above-mentioned scheduling method.

**ARTICLE 60**

Personnel Practices

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, shall be removed immediately from the employee's personnel file(s), unless the employee requests in writing that the document be retained.

Performance Reports

Performance Reports will normally be given to the employee within 14 calendar days after the close of the rating period. However, in no case shall the Department give a performance report to an employee later than 30 working days after the close of the rating period without the prior approval of the City Manager's Office or non-managerial Department Head. Approval is required for the presentation of the performance report more than 30 working days after the due date, not for the content of the report. Failure to obtain such prior approval gives rise to a grievance which Local 127 may present directly to the City Manager's Office or to the non-managerial Department Head.

Management agrees to Meet and Confer with Local 127 without impasse on enhancements to Performance Report practices and procedures.

**ARTICLE 61**

Additional Pay

This Article lists all additional pay provisions for which employees in Local 127 bargaining units may be eligible. The contents of this Article are presented as a matter of information only and may not be construed to constitute a contract between the City and Local 127. For purposes of implementation and negotiations, the appropriate article, regulation, ordinance or policy referenced herein must be referred to where applicable.

1. Bilingual Pay - sixty cents (\$ .60) per hour in addition to regular salary; refer to the Annual Salary Ordinance and Personnel Manual Index Code H-1.
2. Tool Allowance - refer to Article 24 of this Memorandum.

3. Shift Differential - 5% [general] and 10% [special]; refer to Personnel Manual Index Code H-6.
4. Standby Pay - 5%; refer to Personnel Manual Index Code H-7.
5. Special Assignment Pay:
  - a. One Person Sanitation Truck Pay - refer to Article 44 of this Memorandum.
  - b. Asbestos Containment Team Pay - refer to Article 47 of this Memorandum.

## ARTICLE 62

### Side Letters

Effective July 1, 1994, all side letters, verbal agreements, and/or any other outstanding agreements not represented by the current Memorandum of Understanding expire. The current M.O.U. will represent all agreements between the Local 127 and the City including agreements in effect at the departmental level.

## ARTICLE 63

### Long Term Disability

#### Article II, 2.07

Elimination Period is the thirty [30] day period from the date following the date of disability until the date benefit payments commence.

#### Article II, 2.17

#### Treatment and Care

Treatment and care shall mean the treating physician must furnish treatment which is necessary to cure or relieve the effects of the disabling condition.

#### Article III, 3.01

#### Participation

Participation shall continue for as long as the Participant remains an Eligible Employee. Participation shall continue while a Participant is on a medical leave of absence of up to thirty [30] days. Participation shall not be deemed continuous if an Eligible Employee is on a non-medical leave of absence or has retired.

Participation shall cease upon the effective date of retirement. Participation shall cease upon termination of employment, or absence of more than 30 days on a leave of absence unless such termination or leave of absence is due to Total Disability as defined in Section 4.03. If participation ceases as a result of a leave of absence, eligibility will begin again upon return to work. There is no requirement for repeating the twelve [12] month eligibility.

For the purpose of this section, plan participation will cease on the day the participant fails to return to active employment as scheduled.

#### Article V, 5.09 [F] [G] [H]

#### Benefit Exclusions

The benefit provisions do not provide for:

- (F) Any industrial disability occurring on or after July 1, 1994 caused by employment with the City of San Diego unless:
  1. A period of twelve (12) months of Industrial Leave coverage has been exhausted for such disability. LTD coverage may then be approved for a maximum period of twelve (12) months while the Participant is medically certified as totally disabled as defined in Section 4.03.
- (G) Any disability caused by employment with the City of San Diego.
- (H) Any disability caused by mental or nervous disorders.

#### Article V, 5.10

#### Flexible Benefits

[A] The City will continue to pay the Participant's flexible benefits. Flexible benefits will be paid up to a maximum of one year of combined industrial leave and/or Long Term Disability, if applicable. These premiums will be paid from the Long Term Disability Fund.

[B] The City shall pay the Participant's flexible benefits while the Participant is receiving Long-Term Disability Benefits even if the LTD benefit is 100% offset by other income benefits.

[C] Participants who are in a Long Term Disability status during the City's annual open enrollment for its Flexible Benefits Plan shall be enrolled in Flexible Benefits as required during open enrollment. Participants shall keep their current health and life insurance coverage, while receiving Long Term Disability. Participant's will be allowed to change health care plans provided the health care plans so stipulate.

[D] The City shall pay the Participants health and life insurance for a maximum of one year of combined industrial leave, and/or Long Term Disability. After one year, the Participant will be referred to COBRA for health insurance.

#### ARTICLE 64

##### Transfers, Demotions and Status Changes

Transfers shall be revised to permit employees with less than satisfactory performance ratings to be placed on transfer eligible lists. It is the responsibility of the appointing authority to verify an employee's performance rating through the employee's current department or by reviewing the employee's personnel file prior to making a selection.

#### ARTICLE 65

##### Substance Abuse

The City of San Diego implemented an expanded substance abuse policy on 7/1/91.

#### ARTICLE 66

##### Accident Reports

Local 127 and City agree to refer the issue of the sealing or separate filing of obsolete accident reports to the Labor Management Committee for resolution.

#### ARTICLE 67

##### 401 K

The City agrees to change the structure of the 401K Plan in order that each employee participant may determine the type and mix of his or her investment in the 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 fee will be established on each 401K account to fund the administration in Risk Management.

#### ARTICLE 68

##### Executive Board Meetings

The City agrees to release Local 127 elected Executive Board Members on City time to attend Board meetings.

#### ARTICLE 69

##### Inter-Office Mail Distributions

The City and Local 127 agree that Local 127 may use the City's inter-office mail system to distribute its "Hand in Hand" newsletter or equivalent communication to employees in its bargaining unit. Management shall provide Local 127 with a current list of employees in its bargaining unit and their mail stations. This list will be provided in July of each year in the term of this agreement.

#### ARTICLE 70

##### Manual Refuse Collection Incentive System

In accordance with current longstanding practices, once refuse collection crews have completed their assigned collection routes, and have been released by their supervisors, they shall be paid for the entire shift. Routes are designed based on target average tonnages. When unavoidable shortages of equipment or personnel occur, crews are expected to complete collection of all refuse routes

assigned for the day. The incentive system shall apply only to manual collection processes and shall not apply to automated collection or semi-automated collection processes.

## ARTICLE 71

### Catastrophic Leave Plan

#### Purpose

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 under the Family Medical leave Act as determined by the City Manager. Catastrophic Leave determinations are non-grievable.

#### Procedures

- A. 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.

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 at termination. A recipient's total annual leave balance including donated leave cannot exceed 2080 hours.

2. The employee has received approval for an unpaid leave of absence from his/her Department Head.
- B. Requests to establish a Catastrophic Leave Bank for receipt of donations will be processed by the City Manager's office.
1. An eligible employee will submit a completed "Request to Establish Catastrophic Leave Bank" form to the Labor Relations Manager, accompanied by:
- a. 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.
  - b. 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 donors will be held in absolute confidence.
2. Employees may only donate accrued annual leave.
3. Donations may 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 shall complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit to their Department Payroll Specialist who will:
  - a. verify that donating employee has the minimum required leave balance (160 hours),
  - b. convert the donated time to dollars at the hourly rate of the donor and subtract from designated leave category, and
  - c. forward to the Labor Relations Manager for tracking and submission to the Auditor-Controller.

Donation authorization forms which do not contain all requested information shall not be processed.

- D. Upon receipt of donation authorizations, the Auditor-Controller shall take the following action:
1. Convert donated dollars as computed above to hours at the hourly rate of the recipient, and add to recipient's annual leave balance. Recipient will be taxed for the leave when taken.
  2. Retain a confidential file of donation authorizations.
  3. All deductions (e.g. health premiums, parking, credit union, union dues, etc.) which have previously been authorized by the recipient will be made unless notified in writing by the recipient to cancel deductions.

E. Donated time 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.

1. Donated time does not alter the employment rights of the 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 utilizing donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Section I-2, Annual Leave.

## EXHIBIT A

### Maintenance, Labor, Skilled Trades and Equipment Operator Unit

Airport Operations Assistant	Landfill Equipment Operator
Apprentice	Lead Cemetery Groundskeeper
Assistant Reservoir Keeper	Light Equipment Operator
Assistant Waste Water Plant Operator	Lithographic Technician
Assistant Water Plant Operator	Locksmith
Bindery Worker I	Machinist
Bindery Worker II	Motive Service Technician
Bindery Worker III	Motive Service Trainee
Boat Operator	Motor Sweeper Operator
Body and Fender Mechanic	Nursery Gardener
Building Service Technician	Offset Press Operator
Carpenter	Painter
Cement Finisher	Parking Meter Technician
Cement Gun Operator	Pesticide Applicator
Communications Technician	Plant Operator Trainee
Construction Estimator	Plant Process Control Electrician
Custodian I	Plant Technician I
Custodian II	Plant Technician II
Custodian III	Plant Technician III
Electrician	Plasterer
Electronics Technician	Plumber
Equipment Mechanic	Pool Technician
Equipment Operator I	Power Plant Operator
Equipment Operator II	Public Service Career Trainee
Equipment Operator III	(if target class is in this unit)
Equipment Painter	Pump Station Operator
Equipment Service Writer	Pump Station Operator Trainee
Equipment Technician I	Ranger/Diver I
Equipment Technician II	Ranger/Diver II
Equipment Technician III	Refrigeration Mechanic
Firearms Technician	Reservoir Keeper
Greenskeeper	Roofer
Grounds Maintenance Worker I	Sanitation Driver I
Grounds Maintenance Worker II	Sanitation Driver II
Grounds Maintenance Worker III	Sanitation Driver Trainee
Heating Technician	Senior Airport Operations Assistant
Heavy Truck Driver I	Senior Boat Operator
Heavy Truck Driver II	Senior Communications Technician
Instrumentation and Control Technician	Senior Locksmith
Irrigation Specialist	Senior Motive Service Technician
Laborer	Senior Offset Press Operator
	Senior Parking Meter Technician

Senior Refrigeration Mechanic  
 Senior Stable Attendant  
 Senior Stadium Groundskeeper  
 Seven Gang Mower Operator  
 Sign Painter  
 Stable Attendant  
 Stadium Groundskeeper  
 Stadium Maintenance Technician  
 Tank Service Technician I  
 Tank Service Technician II  
 Traffic Signal Technician I

Traffic Signal Technician II  
 Tree Maintenance Crew Leader  
 Tree Trimmer  
 Utility Worker I  
 Utility Worker II  
 Waste Water Plant Operator  
 Water Plant Operator  
 Water Utility Worker  
 Welder  
 Work Service Aide

## EXHIBIT B

### Shop Stewards

For Maintenance, Labor, Skilled Trades and Equipment Operator Unit

City Operations Building .....	1
Mt. Hope Cemetery .....	2
Equipment Division:	
Day Shift .....	3
Night Shift .....	3
Print Shop .....	1
San Diego Stadium .....	2
Refuse Collection Division:	
Rose Canyon .....	1
Chollas .....	1
20th & B .....	1
San Ysidro .....	1
Miramar .....	1
Refuse Disposal Division:	
Miramar Landfill .....	1
Street Division:	
Rose Canyon .....	1
Chollas .....	1
Utilities Division:	
Rose Canyon .....	1
Chollas .....	2
Miramar Filtration Plant .....	1
Alvarado Filtration Plant .....	1
Point Loma Sewage Treatment Plant .....	1
20th & B .....	1
Lake Murray .....	1
Crafts and Trades:	
Chollas .....	1
20th & B .....	1
Police Department .....	1
City Administration Building .....	1
Fire Repair Facility .....	1
Park and Recreation Department:	
Central Division .....	2
Community Parks & Recreation .....	2
Coastline Parks & Golf Division .....	2

Alternates may be designated to act if the steward is absent from work (such as vacation or sick leave).

If the City consolidates work locations or creates new work locations, the Union and the City shall consult on the appropriate number of stewards for the new or consolidated work locations. The Union may maintain the total number of stewards designated in this article for the life of this agreement.

### EXHIBIT C

#### Smoking Policy

No smoking in the workplace.

### APPEARANCE GUIDELINES FOR EMPLOYEES REPRESENTED BY LOCAL 127

All City employees shall maintain a professional appearance through appropriate attire reflecting the specific requirements of his/her job duties.

All employees shall report to work in clean clothing.

Each employee shall maintain an unoffensive level of personal hygiene.

Each employee shall wear any required safety equipment.

For office personnel, shorts, tank or midriff tops, see-through clothing and flip-flops or thongs are inappropriate.

For office personnel whose job assignments include contact with the public, sweat or jogging outfits or T-shirts of any kind are inappropriate.

Field personnel shall wear full shirts and pants or approved shorts, as well as sturdy, enclosed shoes for safety reasons. For field personnel, inappropriate apparel includes tank or midriff tops, see-through clothing and cut-off shorts.

Hats, shirts, and jackets are not to include references to alcohol or drugs, contain sexually explicit language, contain profane language, or, in the reasonable judgment of the supervisor, be inappropriate, unprofessional dress for a field employee.

Sunglasses are not to be worn in indoor meetings.

Exceptions to these guidelines include the following or similar circumstances:

1. Uniformed personnel.
2. Special occasions designated by the Department Director or designee.
3. Employees relocating offices, or performing other atypical or unusual job duties.
4. An offensive level of personal hygiene which results from an employee performing his duties during the work shifts.

These guidelines establish minimum standards normally applicable. They will be reasonably applied in order to accommodate the various situations not susceptible to enumeration.

No disciplinary action may be taken when a violation of this dress code agreement is caused by the performance of the employee's duties during the work shifts.

A reasonable amount of time will be given to employees to clean-up and/or change their clothing to conform with the Appearance Guidelines, whenever extraordinary circumstances dictate.

#### FLEXIBLE BENEFITS PLAN COVERAGES

1. Effective July 1, 1995, CIGNA's Indemnity Dental Plan was added for employees represented by Local 127 only.
2. The City's Safeguard Dental Plan is only available to current enrollees in that plan.
3. The City's Mutual of Omaha Dental Plan is only available to current enrollees in the City's indemnity dental plan.
4. Domestic Partner coverage will continue to be available for all plans through non-Flex payroll deduction.
5. Kaiser has added "sponsored dependents" as eligible for coverage if residing with and financially dependent upon the employee as determined by affidavit and tax records. A dependent child attending an accredited educational institution will be eligible for coverage to age 25.
6. The City's Life Insurance carrier was changed to Northwest National Life with coverage enhancements as described in the plan document.
7. The City's mental health/chemical dependency managed care carrier changed to U.S. Behavioral Health.

## NOTES

CITY OF SAN DIEGO

Cathy Lepore  
Sharon Marshall  
Dean Abbott  
Theresa Rading  
Joan Kraschel  
Charles C. Becker