

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

Pursuant to the provisions of the Meyers-Milias-Brown Act (MMBA), this Side Letter Agreement (Agreement) is entered into on May 1, 2015, between the City of San Diego (City) and the Deputy City Attorneys Association of San Diego (DCAA) as an amendment to the Memorandum of Understanding covering the term July 1, 2013 to June 30, 2018 (the MOU). DCAA and the City are collectively referred to herein as the “Parties.”

The City and DCAA have met and conferred in good faith in accordance with the Meyers-Milias-Brown Act and San Diego City Council Policy 300-06 concerning the terms and conditions of this Agreement and its implementation and agree to the following:

1. Specific provisions in this Agreement supersede any previous agreements, whether oral and written, regarding the substance of this Agreement. Except as provided in this Agreement, all wages, hours and other terms and conditions of employment presently enjoyed by affected DCAA-represented employees, and in the MOU, remain in full force and effect.
2. The Parties understand and acknowledge that this Agreement will only take effect upon Council approval, and the effective date of this Agreement will be the date of final passage of the Council Resolution required for approval of this Agreement.
3. The Parties understand and acknowledge that, if Council approves this Agreement, the City must modify certain provisions in the City’s Civil Service Rules and Personnel Regulations, to conform to this Agreement.
4. The Parties agree that the following language will be incorporated into the MOU as Article 38:

Article 38

Leave-Sharing Plans

A. Catastrophic Leave Plan Program Description

1. Purpose and Scope

Establish a City of San Diego-administered Catastrophic Leave Bank (Leave Bank) permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a “catastrophic occurrence” is defined as any event that would qualify the employee for a leave under the Uniformed

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

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

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

2. Procedures

- a. The Employee initiates a request for a Catastrophic Leave Bank to be established in accordance with this policy.**
 - 1) The employee must have exhausted or expect to exhaust his or her accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a Leave Bank.**
 - i. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.**
 - 2) The employee must receive approval for an unpaid leave of absence from his or her Department Head.**
- b. Requests to establish a Leave Bank to receive donations will be processed by the Human Resources Department.**
 - 1) An eligible employee must submit a completed "Request to Establish Catastrophic Leave Bank" form to the Human Resources Department, accompanied by:**
 - i. A signed statement by the employee which includes a brief description of the nature and need for the leave and an estimated time the employee will be out of the workplace, or other appropriate documentation supporting the request. Clarifying documentation may be requested by the Human Resources Department. Any employee who misrepresents information on the signed statement provided to the Human Resources**

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Department may be subject to discipline, up to and including termination.

- ii. Evidence of the Department Head's approval of the leave of absence.**
 - iii. Employees must also identify, on the Request to Establish Catastrophic Leave Bank Form, the names of individuals or groups that may be informed, upon request, if the Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Leave Bank is approved by the Human Resources Department.**
- c. Donations of annual leave may be made to an employee eligible for Catastrophic Leave as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.**
- 1) Donations of leave are strictly voluntary; the City will maintain the identity of Leave Bank donors in absolute confidence.**
 - 2) Employees may only donate accrued annual leave.**
 - 3) Donations must be made in whole-hour increments.**
 - 4) Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.**
 - 5) Once donated to the Leave Bank, donated leave cannot be returned to the donor.**
 - 6) Employees who wish to donate leave must complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit it to their department Payroll Specialist who will:
 - i. Verify that the donating employee has the minimum required leave balance of 160 hours;**
 - ii. Convert the donated time to dollars at the hourly rate of the donor; and****

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- iii. **Forward the donation authorization form to the Human Resources Department for tracking and submission to the City Comptroller.**
- 7) **Donation authorization forms that do not contain all requested information will not be processed.**
- d. **Upon receipt of donation authorizations forms, the City Comptroller will:**
 - 1) **Convert the donated dollars as computed above to hours at the recipient's hourly rate. The donor will be taxed for the leave when it is donated to the recipient.**
 - 2) **Retain a confidential file of donation authorizations.**
 - 3) **Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient will be made unless the recipient has notified his or her payroll specialist in writing to cancel deductions.**
 - 4) **Maintain the donation information for each recipient in a summarized spreadsheet (Catastrophic Leave Bank – Donation Spreadsheet) and forward the spreadsheet to the Personnel Department.**
- e. **Upon receipt of the Catastrophic Leave Bank – Donation Spreadsheet from the City Comptroller's Office, the Personnel Department will:**
 - 1) **Subtract the donated time from the donor's designated leave category; and**
 - 2) **Add the donated hours to the recipient's Catastrophic Leave – Annual Leave (CatLv-AL) bucket.**
- f. **Donated Leave is treated as annual leave accrued by the recipient of the donation, but the recipient will not be taxed on the donated annual leave. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.**
 - 1) **Donated Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.**

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- 2) **Employees using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Index Code I-2, Annual Leave.**
 - 3) **Donated Leave can only be used on a going forward basis.**
 - 4) **An employee who receives Donated Leave under this Catastrophic Leave Plan may either take the Donated Leave as compensated time off, or may receive pay-in-lieu of the Donated Leave, consistent with Personnel Manual Index Code I-2, subparagraph E, but may not re-donate that time to a Catastrophic Leave Bank or Medical Leave Bank for use by another employee.**
3. **Notification of the creation of a Catastrophic Leave Bank to potential donors is the responsibility of the employee, not the department. No City equipment, including the e-mail system, may be used to disseminate information about a Leave Bank. Employees may work with their recognized employee organizations to disseminate the request for leave through means other than the City e-mail system. However, if requested by the employee in the Request for Establishing Catastrophic Leave Bank form, the City will publicize on the Human Resources Department's *Citynet* webpage, the employee requestor's name, and the dates the Leave Bank opens and closes.**

B. Medical Leave-Sharing Plan Program Description

1. Purpose and Scope

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

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

For purposes of this plan, a "major health crisis" is defined as: (1) the employee's own medically certified "serious health condition," as defined by the federal Family and Medical Leave Act, (2) the medically-certified "serious health condition" of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-relative in one of these relationships), (3) the medically-certified "serious health condition" of the employee's registered domestic partner, or (4) the death of the employee's spouse, parent, child, sibling, grandparent, or grandchild (or in-law or step-

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relative in one of these relationships), or employee's registered domestic partner (provided that a City of San Diego Affidavit of Domestic Partnership has been submitted). The determination of whether a major health crisis exists is made by the Human Resources Department Director or designee.

2. Procedures

- a. Employee initiates a request for a Medical Leave Bank to be established in accordance with this policy.**
 - 1) The employee must have exhausted or expect to exhaust his or her accrued leave, from both the employee's annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a Leave Bank.**
 - i. If an employee is diagnosed as terminally ill, a Medical Leave Bank may be established without meeting this requirement. In such cases, the donated leave will be paid out when the employee leaves work due to illness.**
 - ii. A recipient's total annual leave balance including donated leave cannot exceed 2,080 hours.**
 - 2) The employee must receive approval for an unpaid leave of absence from his or her Department Head.**
- b. Requests to establish a Medical Leave Bank to receive donations will be processed by the Human Resources Department.**
 - 1) An eligible employee must submit a completed "Request to Establish Medical Leave Bank" form to the Human Resources Department, accompanied by:**
 - i. A medical statement from the attending physician, including a brief statement describing the nature of the illness or injury and an estimated time the employee will be unable to work, or other appropriate documentation supporting the request.**
 - ii. Evidence of the Department Head's approval of the leave of absence.**
 - iii. Employees must also identify, on the Request to Establish Medical Leave Bank Form, the names of individuals or groups that may be informed, upon**

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request, if the Medical Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the Medical Leave Bank is approved by the Human Resources Department.

- c. Donations of annual leave may be made to an employee eligible for medical leave because of a major health crisis, as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.**
- 1) Donations of leave are strictly voluntary; the City will maintain the identity of Medical Leave Bank donors in absolute confidence.**
 - 2) Employees may only donate accrued annual leave.**
 - 3) Donations must be made in whole-hour increments.**
 - 4) The donor will not be taxed on the value of the leave he or she donates, but also cannot claim an expense, loss deduction, or charitable contribution for the donated leave.**
 - 5) Donors must have at least 160 hours of annual leave (which includes donated Medical Leave) and Catastrophic Leave remaining after the donated time has been deducted.**
 - 6) Once donated to the Medical Leave Bank, donated leave cannot be returned to the donor.**
 - 7) Employees who wish to donate leave must complete a "Confidential Authorization for Medical Leave Donation" form and submit it to their department Payroll Specialist who will:
 - i. Verify that the donating employee has the minimum required leave balance of 160 hours;**
 - ii. Convert the donated time to dollars at the hourly rate of the donor; and**
 - iii. Forward the donation authorization form to the Human Resources Department for tracking and submission to the City Comptroller.****

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- 8) **Donation authorization forms that do not contain all requested information will not be processed.**
- d. **Upon receipt of donation authorization forms, the City Controller will:**
- 1) **Convert the donated dollars as computed above to hours at the recipient's hourly rate. The recipient will be taxed for the leave when it is taken.**
 - 2) **Retain a confidential file of donation authorizations.**
 - 3) **Ensure that all deductions (e.g. health premiums, parking, credit union, union dues, etc.) that have previously been authorized by the recipient are made unless the recipient has notified his or her payroll specialist in writing to cancel deductions.**
 - 4) **Maintain the donation information for each recipient in a summarized spreadsheet (Medical Leave Bank – Donation Spreadsheet) and forward the spreadsheet to the Personnel Department.**
- e. **Upon receipt of the Medical Leave Bank – Donation Spreadsheet from the City Comptroller's Office, the Personnel Department will:**
- 1) **Subtract the donated time from the donor's designated leave category; and**
 - 2) **Add the donated hours to the recipient's annual leave balance.**
- f. **Donated Medical Leave is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.**
- 1) **Donated Medical Leave does not alter the employment rights of the City or the recipient, nor does it extend or alter limitations otherwise applicable to leaves of absence or annual leave, except as noted in this Plan.**
 - 2) **Employees who are using donated annual leave hours will continue to accrue annual leave in accordance with Personnel Manual Index Code I-2, Annual Leave.**
 - 3) **Donated Medical Leave can only be used on a going forward basis.**

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3. Notification of the creation of a Medical Leave Bank to potential donors is the responsibility of the employee, not the department. No City equipment, including the e-mail system, may be used to disseminate information about a Medical Leave Bank. Employees may work with their recognized employee organizations to disseminate the request for leave through means other than the City e-mail system. However, if requested by the employee in the Request for Establishing Medical Leave Bank form, the City will publicize on the Human Resources Department's *Citynet* webpage, the employee requestor's name, and the dates the Medical Leave Bank opens and closes.

This Agreement is executed on this 1st day of May, 2015, by the following authorized representatives of each party:

DCAA

City of San Diego

Date: 5/8/15

Date: 5/8/15

By: Signature on File
Mark Mercer
DCAA, President

By: Signature on File
Timothy Davis,
Lead Negotiator

Date: 5/8/15

Date: 5/8/15

By: Signature on File

By: Signature on File

Jim Cunningham
Lead Negotiator

Judy von Kalinowski
Human Resources Director

Date: 5/8/15

By: Signature on File
Abby Jarl-Veltz
Labor Relations Manager
Human Resources Department