

**MEMORANDUM OF UNDERSTANDING**

**between**

**THE CITY OF SAN DIEGO**

**and**

**DEPUTY CITY ATTORNEYS**

**ASSOCIATION OF SAN DIEGO**

*for the period*

*July 1, 2009 to June 30, 2011*

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## **PARTIES TO THE AGREEMENT**

THIS MEMORANDUM OF UNDERSTANDING is made and entered into on **July 1, 2009**, by and between Authorized Management Representatives [“Management”] of the City of San Diego [“City”] and the City Attorney’s Office, on the one hand, and the Deputy City Attorneys Association of San Diego [“DCAA”], on the other hand.

### **PURPOSE**

It is the purpose of this Memorandum of Understanding [“Memorandum” or “MOU”], to promote and provide for harmonious relations, cooperation and understanding between Management and the employees covered by the Memorandum; to provide procedures herein for an orderly and equitable means of resolving any misunderstandings or differences which may arise under this Memorandum; and set forth the understanding of the parties reached as a result of good faith negotiations regarding wages, hours of employment and other terms and conditions of employment of the employees covered by this Memorandum, which agreement the parties intend jointly to submit and recommend for approval and implementation.

### **MEET AND CONFER**

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

## **ARTICLE 1**

### **Recognition**

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

## **ARTICLE 2**

### **Ratification of Agreement**

In negotiating a successor MOU, once the parties reach a Tentative Agreement, that Tentative Agreement will be reduced to writing and taken to the City Council of the City of San Diego, and to the membership of DCAA, for ratification of the Tentative Agreement, as soon as reasonably possible. It is the intent of the parties that the Tentative Agreement shall become binding on the parties once it is adopted by the City Council and ratified by the membership of

DCAA. The MOU effective date will be as set forth in Article 3, Term. When a successor MOU is completed, the parties will work together to get the agreement finalized and signed by a target date of October 1.

### ARTICLE 3

#### Term

The term of this Memorandum of Understanding shall commence at 12:01 a.m. on **July 1, 2009**; **however, the effective date for the initial payroll changes shall be July 11, 2009**. This MOU shall expire and otherwise be fully terminated at 12:00 midnight on **June 30, 2011**.

### ARTICLE 4

#### Renegotiation

Section 1. DCAA shall serve upon the City its full and entire written proposals for a successor agreement by **February 4, 2011**, with the exception of salary or other economic proposals, which shall be presented no later than **February 14, 2011**. Upon receipt of such written proposals, meet and confer shall begin no later than **March 3, 2011**.

Section 2. The City shall serve upon DCAA its full and entire written proposals for a successor agreement by **February 25, 2011**, with the exception of salaries or other economic proposals. Meet and confer shall begin no later than **March 3, 2011**, at which time the City will present its full economic proposal. Notwithstanding the above, if federal or state governments take action that has a direct effect upon the areas which fall within meet and confer, the City and DCAA may submit proposals concerning these areas at later dates.

Section 3. If neither party has proposed a change to a particular Article in this MOU by **March 3, 2011**, that Article shall remain in full force and effect from the date it would have been terminated.

Section 4. Unless otherwise agreed to, the parties agree that final offers by both parties will be made no later than **April 7, 2011**. If an impasse hearing with City Council is necessary, it will be scheduled for on or about **April 15, 2011**. DCAA agrees to provide to the Management Team a written statement of its positions regarding any issues at impasse on **April 7, 2011**.

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

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

## ARTICLE 5

### Salary

#### 1. General Salary

- A. No general salary increase for **FY2010 and FY2011**. Employees in the DROP program will have a pay reduction of 3.2% of base salary, to correspond to the 3.2% employee contribution to CERS by non-DROP employees.
- B. **Effective July 1, 2009, a new structured salary schedule will be implemented. (See Appendix A, "DCAA Salary Schedule," which is attached and incorporated into this MOU)**

#### 2. Mandatory Furlough

- A. **Effective with the pay period beginning on July 11, 2009, each full-time employee will be required to take thirty-two (32) hours of unpaid furlough during FY2010 and FY2011, which will be deducted on a pro-rata basis from each of 25 paychecks over the course of the fiscal year on the same terms and conditions as apply to the City's FY09 Voluntary Furlough Program, except that no discretionary days off shall be made available.**
- B. **A pro-rata adjustment in the number of Mandatory Furlough hours shall be made for those employees who work less than full time (i.e. half time or three-quarter time).**
- C. **A pro-rata adjustment in the number of Mandatory Furlough hours shall be made for any employee who is hired after the beginning of a fiscal year.**
- D. **Each employee will schedule his or her Mandatory Furlough hours in the same manner as vacations are presently scheduled. The City agrees that each employee must be allowed the opportunity to take Mandatory Furlough hours off before the end of each fiscal year covered by this MOU. The parties intend that this Mandatory Furlough program will be conducted on terms that are fair and reasonable to each employee while permitting the City to carry on necessary work. In the event of any dispute over a department's or division's handling of employees' requests to schedule their mandatory furlough days, the City's Human Resources Director will have the authority to hear and direct the Department or Division to resolve the dispute in keeping with the letter and spirit of the parties' agreement.**

## ARTICLE 6

### Flexible Benefits Plan

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

**The City's contribution to the Flexible Benefits Plan, effective July 1, 2009, will be based on the level of FBP annual value set forth below. The City's contribution to the FBP will be pro-rated according to the percentage of time worked if the employee has less than full-time status. The FBP annual value for FY2010 and FY2011 will be as follows:**

**Health Waiver (for those that have other comprehensive health coverage) - \$1,000 plus \$2,220 (Management Benefit).**

**Employee only – \$4,701 plus \$2,220 (Management Benefit).**

**Employee & Children – \$7,126 plus \$2,220 (Management Benefit).**

**Employee & Spouse/Domestic Partner – \$8,212 plus \$2,220 (Management Benefit).**

**Employee & Spouse/Domestic Partner and Children- \$8,579 plus \$2,220 (Management Benefit).**

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

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

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

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

In addition to designated flexible benefits monies to pay for Dental/Medical/Vision or Dependent Care reimbursements, employees may designate a specific amount of pre-tax money (IRS restrictions apply) to be withheld from their paychecks to reimburse eligible out-of-pocket medical, dental, vision or dependent care expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and monies are forfeited if not used within the fiscal year.

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

**Effective FY 2010, AFLAC cancer/intensive care protection and Hyatt Legal Plan will be eliminated as benefit options.**

## **ARTICLE 7**

### **Retirement Benefits**

- 1. Effective July 1, 2009, the City's payment of the offset or "pick-up" of 3.2% of employee pension contribution to the San Diego City Employees Retirement System for employees shall be eliminated.**
- 2. New Pension Plan for Employees Hired On or After July 1, 2009**

**In accordance with the July 24, 2008, Memorandum of Agreement ratified by DCAA on July 25, 2008, and the September 21, 2009, Addendum 1 between the City and DCAA, a new pension plan for DCAA-represented non-safety employees hired on or after July 1, 2009, is established. (See Appendix B, "Memorandum of Agreement and Addendum 1," which are attached and incorporated into this MOU). This plan will be applicable to all non-safety employees hired on or after July 1, 2009, whether unclassified, unrepresented or represented by another Union.**

### **3. Retiree Medical Benefits**

#### **A. Definition of Health Eligible Retiree**

**Effective with service retirements on and after July 1, 2009, to be a "Health Eligible Retiree" under the SDMC section 24.1201, an employee must have a minimum of ten (10) years of creditable service in addition to the conditions already stated therein. A service retiree with at least ten (10) years of creditable service will be entitled to 50% of the annual Retiree Medical Benefit. A service retiree with more than ten (10) years but less than twenty (20) years of creditable service will earn 5%**



more of the annual benefit per year of additional service beyond ten (10) years. For example, a service retiree with fifteen (15) years of creditable service will be entitled to 75% of the annual Retiree Medical Benefit. A service retiree with twenty (20) years of creditable service will be entitled to 100% of the annual retirement medical benefit as a "Health Eligible Retiree." This change will not affect employees who qualify for disability retirements.

**B. Reopening Negotiations, Suspension of Automatic Escalator Provision and Joint Study of Retiree Medical Benefit**

**1. Reopening of Meet and Confer Regarding Retiree Medical Benefits**

By no later than July 1, 2010, the parties will reopen negotiations on Retiree Medical Benefits. The parties will complete negotiations and be in agreement or at impasse no later than April 1, 2011, in order to fulfill obligations under the City's Impasse Procedure. The purpose of the negotiations will be to address:

- (a) The serious threat the unfunded liability poses to the on-going viability of the current Retiree Medical Benefit;
- (b) The major implications of the unfunded liability to the City's long-term fiscal health; and
- (c) The threat presented by the unfunded liability to the parties' ability to reach future agreements on satisfactory terms and conditions of employment.

**2. Joint Study Committee Regarding Retiree Medical Plan**

Beginning no later than July 1, 2009, the parties will conduct a joint study in a concerted effort to address the following:

- (a) The three issues stated above;
- (b) Determining the appropriate level of contributions and potential recurring funding sources;
- (c) Evaluating benefit redesigns that could generate savings or reduce the unfunded liability, including medical plans with favorable premium pricing, blending rates for retirees and actives, increasing the deductibles and co-pays for retirees, fully integrating Medicare benefits for Medicare eligible retirees, and establishing a defined contribution plan;
- (d) Evaluating the appropriate legal vehicles for holding and investing contributions, including a retiree medical trust;
- (e) Designing a governance structure for any legal vehicle that includes employee representation and that will be responsible for the plan's administration, the determination of benefit levels for individual or pooled accounts, the investment of the funds, and the employment of actuarial, legal and accounting staff;
- (f) Conducting the appropriate actuarial analyses needed by the study group;
- (g) Conducting the appropriate legal analyses needed by the study group;
- (h) Evaluating whether non-Health Eligible employees should be included in the plan with segregated benefits, or should remain in a plan separate from Health Eligible employees; and

- (i) Evaluating the connection between medical benefits for current employees and the cost of benefits for current retirees; and
- (j) Monitoring any relevant changes in medical care due to federal or state reforms.

The Joint Study Committee shall be composed of three representatives appointed by each party, with additional guests or participants being included by agreement when their special expertise is needed. The Committee shall complete a written report to the City and DCAA by no later than February 1, 2010. In lieu of the above Joint Study Committee, DCAA may opt to participate in a joint study on this subject with the City and other City Employee Unions on terms acceptable to DCAA and the City.

### **3. Suspension of the Retiree Medical Escalator Provision**

For the two fiscal years covered by this MOU during which the parties will be engaged in the aforementioned effort, the Retiree Medical Benefit in effect for Health Eligible Retirees as codified in the SDMC, Article 4: "City Employees' Retirement System," Division 12: "Retiree Health Benefits," will remain in effect in the amount set for FY09. No increase based on the annual escalator feature set forth in SDMC 24.1202, subdivision (d) will be implemented, and this feature of the benefit will be suspended. This means that an employee who retires on or after July 1, 2009, and on or before June 30, 2011, will receive the FY09 maximum Retiree Medical Benefit but that no upward adjustment will be made based on the projected increase for National Health Expenditures published by the Centers for Medicare & Medicaid Services, Office of the Actuary.

### **4. Reservation of Rights, Failure to Reach Agreement and Return to the *Status Quo Ante***

- (a) Had a successor MOU not been agreed upon, and had the City instead unilaterally implemented a change in the Retiree Medical Plan effective July 1, 2009, the parties acknowledge that litigation challenging the imposition would have been instituted and defended by the parties. The purpose of this subsection ("B. 4") is to preserve the parties' claims, challenges and defenses as they existed on June 30, 2009, and at the same time provide incentives to the parties to reach agreement after meeting and conferring as required by subsection "B. 1" of this section. Nothing in this subsection shall be construed as prohibiting the parties from reaching mutual agreement on changes to the Retiree Medical Plan, effective on or before July 1, 2011. This subsection's sole purpose is to address circumstances where the City, after completing the City's impasse procedure, might or might not unilaterally impose a change in the Plan on the issues specified in subsection "B. 1".
- (b) If any litigation arises over the suspension of the escalator as described in section "B. 3" or over any future unilateral imposition of a Retiree Medical Benefit change after meeting and conferring as required in subsection "B. 1", neither party will be deemed to have waived any legal position related to Retiree Medical Benefits or the requirements of the City Charter or SDMC by virtue of having entered into this agreement. In addition, if the City imposes a last, best and final offer changing Retiree Medical Benefits effective upon the expiration of this MOU, each party reserves its right to take any and all steps available to it to challenge, defend, or raise any claim related to such unilateral imposition, including but not limited to the ground that a vested benefit has been unlawfully impaired, or that the statute of

limitations bars any action. By this agreement, the parties expressly toll any appropriate statute of limitations that would otherwise apply because of the two-year suspension of the medical benefit escalator.

- (c) To avoid impairing any right reserved in subsection “B. 4(b)” above, the parties agree further that:
  - i. For purposes of meeting and conferring in good faith as contemplated by the Meyers-Milias-Brown Act, (MMBA) Government Code section 3500 *et seq.*, the *status quo ante* will be defined as the same Retiree Medical Benefit as employees would have obtained on June 30, 2009, if the temporary suspension of the escalator had not occurred; and
  - ii. For purposes of any litigation challenging the City’s unilateral imposition after negotiations specified in “B. 1” on a change in the Retiree Medical Benefit on any basis other than a violation of the MMBA, and if the challenge is successful, active employees and those individuals who retired on or after July 1, 2009, and before the June 30, 2011, will have the same rights and Retiree Medical Benefits as existed on June 30, 2009.
- (d) In any instance, if the City imposes its last, best and final offer changing any Retiree Medical Benefit, that change will be effective on July 1, 2011, and will only cover those active employees covered by this agreement who retire or leave DROP on or after that date.

#### **5. Eligibility Standards for Retiree Medical**

Effective with service retirements on and after July 1, 2009, to be a “Health Eligible Retiree” under the SDMC section 24.1201, an employee must have a minimum of ten (10) years of creditable service in addition to the conditions already stated therein. A service retiree with at least ten (10) years of creditable service will be entitled to 50% of the annual Retiree Medical Benefit. A service retiree with more than ten (10) years but less than twenty (20) years of creditable service will earn 5% more of the annual benefit per year of additional service beyond ten (10) years. For example, a service retiree with fifteen (15) years of creditable service will be entitled to 75% of the annual Retiree Medical Benefit. A service retiree with twenty (20) years of service will be entitled to 100% of the annual retiree medical benefit as a “Health Eligible Retiree.” This change will not affect employees who qualify for disability retirements.

#### **4. 2009 Benefit Changes**

##### **A. Re-Opener Related to DROP**

If during the term of this MOU, a court of competent jurisdiction or PERB issues a final determination that any aspect of the Deferred Retirement Option Plan (DROP) is an employment benefit subject to mandatory meet and confer, the parties will reopen negotiations on those aspect(s).

**B. The City has also indicated its intention to conduct a “cost neutrality” study related to DROP and has stated that it will negotiate with DCAA on the impacts, if any that result from the City defining DROP’s “cost neutrality.” In the event the City proposes to change DROP during the term of this MOU as a result of defining DROP’s “cost neutrality,” DCAA reserves its right to meet and confer over any proposed change if DCAA determines that the proposal is a mandatory subject of bargaining and/or to challenge any such proposed change as an unlawful impairment of a vested, Constitutionally-protected benefit.**

**C. Interest will be credited to the Member’s DROP accounts at a rate determined by the SDCERS Board.**

**5. For employees hired after July 1, 2005, the following modifications will apply:**

- **Eliminate the purchase of service provisions.**
- **Eliminate DROP**
- **Eliminate the 13<sup>th</sup> Check benefit.**
- **Eliminate all formulae except 2.5% at 55**
- **Exclude from existing retiree medical program and create defined contribution Retiree Medical Trust with understanding that employees’ right applies only to actual employee contributions and investment earnings on those contributions, but not to the benefit itself. DCAA and the City will meet and confer on Trust establishment, SPSP conversion, administration, plan design and distribution options. Pending establishment of Trust, employee contributions and City match will be held in escrow with SDCERS, but combined with other SDCERS funds for investment purposes only.**

## **ARTICLE 8**

### **Bereavement Leave**

The City will provide paid bereavement leave of up to three days upon the death of an employee’s spouse, father, mother, brother, sister, son, daughter (including step-, foster, or adopted), or state-registered domestic partner, with a limit of one eligible death per fiscal year. Submission of written documentation of such loss within 30 days **will** be required as a condition of payment. **Proof of death, including but not limited to, death certificate, obituary or funeral notice, must be provided in order to receive Bereavement Leave.**

## **ARTICLE 9**

### **Mileage and Travel Reimbursement**

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

## ARTICLE 10

### Management Rights

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

- A. All rights vested in the City Attorney pursuant to Section 40 of the City of San Diego City Charter;
- B. The right to determine the mission of the office of the City Attorney and all of its departments;
- C. The right of full and exclusive control of the management of the City Attorney's office; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
- D. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City Attorney's office;
- E. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;
- F. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City Attorney work, and to contract out for work;
- G. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
- H. The right to establish and enforce employee performance standards;
- I. The right to schedule and assign work;
- J. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
- K. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City or City Attorney investigation;
- L. The right to maintain order, effective and efficient operations; and

- M. The right to establish rules for the management and operation of the office of the City Attorney, including rules to maintain discipline and efficiency.
- N. Nothing in this Article shall be construed to limit or abrogate any constitutional or statutory rights of any employee.

## **ARTICLE 11**

### **DCAA Communications**

#### A. Bulletin Boards

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

#### B. Mail Boxes

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

#### C. Email

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

## **ARTICLE 12**

### **Professional Education**

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

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

## ARTICLE 13

### Review of Performance and Discretionary Merit Increases

**Effective July 1, 2009, a new structured salary schedule will be implemented. (See Appendix A, "DCAA Salary Schedule," which is attached and incorporated into this MOU). Management has the affirmative duty to provide the employees with written performance evaluations; however, failure to provide the required written performance evaluation shall not be the basis for the denial of step advancement for employees in DCA I, II, and/or III grade as outlined below. Nothing contained herein shall affect the City Attorney's authority to hire a Deputy City Attorney at any salary.**

#### Deputy I and II

Management of the City Attorney's Office will review the performance of employees in the Deputy I and II **grade** every six months, in approximately **June and December. Effective July 1, 2009, employees in the Deputy City Attorney I and II grade who have served at least six months at their current step will receive a step increase at the time of these reviews, unless there is a written prior finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on July 1 and January 1 of each year.**

#### Deputy III

Management of the City Attorney's Office will review the performance of employees in the Deputy III **grade** once a year, in approximately **June. Effective July 1, 2010, employees in the Deputy City Attorney III grade who have served at least one year at their current step will receive a step increase at the time of these reviews, unless there is a written prior finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on July 1 of each year.**

#### Deputy IV, V and Senior Deputy

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

### Progression Between Grades

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

### DCAA Performance Evaluation Process

**During the term of this Agreement, the parties will continue to meet and confer and use their best efforts to agree upon performance evaluations for the employees and the performance evaluation process.** As such, during the **term of this agreement**, the City Attorney's Office will conduct performance evaluations consistent with the procedures developed above.

## ARTICLE 14

### Grievance Procedure

This Grievance Procedure is provided for the orderly and efficient disposition of grievances. A grievance is any dispute involving the interpretation or application of this Agreement, or relating to working conditions or disciplinary action imposed by the City Attorney or his or her designee, except that this Grievance Procedure does not apply to employment terminations. This grievance procedure in no way limits the management rights of the City Attorney as expressed in Article 10 of this MOU, nor does it change the fact that all employees are employed on an at-will basis, and as such the City Attorney reserves the right, in his or her sole and absolute discretion, to discipline, demote, terminate or alter the employment relationship with any employee at will, either with or without cause or advance notice.

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

The following are the steps in the Grievance Procedure:

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



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

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

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

## **ARTICLE 15**

### **Employment Termination Meeting**

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

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

## **ARTICLE 16**

### **Inspection of Employee Personnel File**

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

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

## **ARTICLE 17**

### **DCAA Matters**

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

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

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

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

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

shall limit or restrict City Management from scheduling such meetings before or after regular duty or work hours under appropriate circumstances.

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

## **ARTICLE 18**

### **Agency Shop**

#### **A. Employee's Responsibilities**

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

#### **B. Implementation of Agency Shop**

##### **1. Notice to Employees**

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

##### **2. Notice to City of Dues and Agency Fees**

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

3. Sufficiency of Employee's Earnings

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

4. Deductions/Remittance of Dues and Fees

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

5. Employee Lists

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

6. Notice to Fee Payers

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

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

C. Employee's Right to Conscientious Objection

An employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining and financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment. The employee shall be required, in lieu of periodic dues, initiation fees, or Agency Shop fees, to pay sums equal to the dues, initiation fees, or Agency Shop fees, to

a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)3 of the Internal Revenue Code, chosen by the employee from the list designated in paragraph D below.

D. Designation of Nonreligious, Non-Labor Charitable Funds

Employees who are eligible conscientious objectors as described in paragraph C above must designate one of the following nonreligious, non-labor charitable funds to which his/her contributions in lieu of dues/agency fees shall be paid: United Way, Inc.; San Diego Volunteer Lawyer Program; or Legal Aid Society of San Diego, Inc.

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

E. Indemnification

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

F. No Concerted Action

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

## **ARTICLE 19**

### **Employee Rights**

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

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

## ARTICLE 20

### Savings Clause

If any part or provision of this Memorandum is in conflict or inconsistent with applicable provisions of federal, state or local laws or regulations, or is otherwise held to be invalid or unenforceable by an agency or court of competent jurisdiction, such part or provisions shall be suspended and superseded by such applicable law or regulations, and the remainder of the Memorandum shall not be affected thereby.

## ARTICLE 21

### Holidays

#### I. Fixed Holidays will be:

- A. January 1;
- B. Third Monday in January, known as “Dr. Martin Luther King, Jr.’s Birthday”;
- C. Third Monday in February, known as “Presidents’ Day”;
- D. March 31, known as “Cesar Chavez Day”;
- E. Last Monday in May, known as “Memorial Day”;
- F. July 4;
- G. First Monday in September, known as “Labor Day”;
- H. November 11, known as “Veterans; Day”;
- I. Fourth Thursday in November, known as “Thanksgiving Day”; and
- J. December 25.

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

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

#### II. Floating Holiday

In each fiscal year covered by the term of this Memorandum each eligible employee available for a duty assignment on July 1, (as defined in Personnel Regulation H-2) shall accrue credit for hours of holiday time equal to the hours worked in the employee’s normal work day of up to eight (8) hours. Each employee accruing such time shall comply with the following conditions:

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

## **ARTICLE 22**

### **Direct Deposit**

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

## **ARTICLE 23**

### **Transportation**

- A. Employees who utilize the Concourse Parkade and pay on a monthly basis will be charged 50% of the prevailing general public monthly rate.
- B. The City will provide 75% reimbursement up to \$100 to those employees who wish to purchase monthly passes for transportation on the public bus and/or trolley and commuter rail service, or who ride bicycles to work and utilize bicycle lockers. Such passes will be for the exclusive use of the employee/purchaser. The City will provide an equal amount to employees who utilize the bay ferry and to employees participating in a City approved vanpool program. Employees must utilize these subsidized transportation services to commute to and from work at least three days a week to be eligible for reimbursements. Employees in violation of these provisions shall have their Transportation Incentives discontinued.
- C. The City will provide reimbursement to employees who utilize the Concourse Parkade and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.

## **ARTICLE 24**

### **Recognition of City Policies**

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

## **ARTICLE 25**

### **Jury Duty Scheduling**

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

## ARTICLE 26

### Notice of Termination

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

## ARTICLE 27

### Employee Representation

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

## ARTICLE 28

### Fingerprinting

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

## ARTICLE 29

### Copies of the Agreement

The DCAA may obtain copies of this Agreement from the City by reimbursing the City for their cost. The City agrees to provide DCAA with 20 free copies of this MOU without charge, and the City will provide DCAA with an electronic version of this Agreement. The MOU will be posted on the City's website in a location easily accessible to all DCAA unit members by **October 1, 2009**.

## ARTICLE 30

### Long Term Disability

When the City proposes a revised LTD plan, the parties shall reopen negotiations on this subject.



**APPENDIX A**

| <b>Current Salary Table for Deputy City Attorneys</b>   |             |               |               |
|---|-------------|---------------|---------------|
| As of July 1, 2009                                      |             |               |               |
| <b>Grade</b>  | <b>Step</b> | <b>Hourly</b> | <b>Annual</b> |
| <b>Deputy I</b>   | A           | \$29.0470     | \$60,417      |
|   | B           | \$30.2070     | \$62,830      |
|   | C           | \$31.4160     | \$65,345      |
|   | D           | \$32.6720     | \$67,958      |
| <b>Grade</b>  |             |               |               |
| <b>Deputy II</b>  | A           | \$33.9790     | \$70,677      |
|   | B           | \$35.3380     | \$73,503      |
|   | C           | \$36.7530     | \$76,446      |
|   | D           | \$38.2210     | \$79,500      |
| <b>Grade</b>  |             |               |               |
| <b>Deputy III</b>                                       | A           | \$39.7500     | \$82,680      |
|   | B           | \$41.3400     | \$85,988      |
|   | C           | \$42.9940     | \$89,428      |
|   | D           | \$44.7140     | \$93,005      |
|   | E           | \$46.5040     | \$96,729      |
|   | F           | \$48.3630     | \$100,594     |
| <b>Grade</b>  |             |               |               |
| <b>Deputy IV</b>  | A           | \$50.2960     | \$104,616     |
|   | B           | \$52.3080     | \$108,801     |
|   | C           | \$54.4000     | \$113,152     |
|   | D           | \$56.5760     | \$117,679     |
|   | E           | \$58.8400     | \$122,388     |
| <b>Grade</b>  |             |               |               |
| <b>Deputy V</b>   | A           | \$61.1920     | \$127,280     |
|   | B           | \$63.6400     | \$132,371     |
|   | C           | \$66.1870     | \$137,668     |
|   | D           | \$68.8350     | \$143,176     |
|   | E           | \$71.5880     | \$148,903     |
|   | F           | \$74.4510     | \$154,858     |
| <b>Grade</b>  |             |               |               |
| <b>Senior Deputy</b>                                    |             | \$74.1740     | \$154,282     |
|   |             | \$86.1020     | \$179,093     |
| Additional steps are at the discretion of City Attorney |             |               |               |

**APPENDIX B**

**(Insert July 24, 2008 MOA ratified by DCAA membership on July 25, 2008 (4 pages) and September 18, 2009 Addendum 1 (1 page) for a total of 5 pages)**

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PAGE 3 OF 4 – MEMORANDUM OF AGREEMENT

PAGE 4 OF 4 – MEMORANDUM OF AGREEMENT

PAGE 1 OF 1 – ADDENDUM 1

IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding effective July 1, 2009 – June 30, 2011, to the appropriate bodies.

Date: \_\_\_\_\_, 2009

**DEPUTY CITY ATTORNEYS  
ASSOCIATION OF SAN DIEGO**

**CITY OF SAN DIEGO**

\_\_\_\_\_  
Shirley Lee, Lead Negotiator

\_\_\_\_\_  
William Kay, Lead Negotiator

\_\_\_\_\_  
Joan N. McNamara

\_\_\_\_\_  
Jan Goldsmith, City Attorney

\_\_\_\_\_  
Christina Bellows

\_\_\_\_\_  
Scott Chadwick

\_\_\_\_\_  
Daniel Rawlins

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Kim Nguyen

\_\_\_\_\_  
R. Clay Welch

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\_\_\_\_\_  
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