

Memorandum of Understanding



This **MEMORANDUM OF UNDERSTANDING (MOU)** was made and entered into at 12:01 am on **July 1, 2020**, and shall expire and otherwise be fully terminated at 11:59 pm on **June 30, 2021**.

By and Between:

The City of San Diego

and

Deputy City Attorneys Association (DCAA)



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PARTIES TO THE AGREEMENT

THIS MEMORANDUM OF UNDERSTANDING (MOU) is made and entered into on July 1, 2020, by and between the City of San Diego (City) and the Deputy City Attorneys Association of San Diego (DCAA), collectively referred to as "Parties".

PURPOSE

It is the purpose of this MOU, to promote and provide for harmonious relations, cooperation, and understanding between Management and the employees covered by this MOU; to provide procedures for an orderly and equitable means of resolving any misunderstandings or differences which may arise under this MOU; and to 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 MOU. The Parties will jointly submit the MOU to the San Diego City Council (City Council) and recommend its approval and implementation.

MEET AND CONFER

City and DCAA agree to meet and confer during the term of this MOU only to the extent required by applicable law. Any agreement reached through required meet and confer will be in writing and signed by the Parties. The Parties will obtain any required ratification and approval before implementation of the new MOU becomes effective.

ARTICLE 1

Recognition

Management formally recognizes DCAA as the exclusive representative for all Deputy City Attorneys (DCA) employed in the Office of the City Attorney (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 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

Implementation 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 City Council, 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 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 **May 12, 2020**. This MOU supersedes and replaces the MOU approved by the City Council, by San Diego for the term of **July 1, 2019 through June 30, 2020**.

ARTICLE 3

Term

The term of this MOU begins 12:01 a.m. on July 1, **2020**. This MOU expires and is terminated at 11:59 p.m. on June 30, **2021**.

ARTICLE 4

Renegotiation

- A. In the event DCAA desires to meet and confer in good faith on the provisions of a successor MOU, it will serve upon the City its written request to commence meeting and conferring in good faith, as well as its written non-economic proposals for successor MOU by no later than **September 2, 2020**. DCAA will submit its economic proposals no later than **October 5, 2020**. Upon receipt of the written notice and proposals, meet and confer over non-economic proposals will begin no later than **November 2, 2020**, and meet and confer over economic proposals will begin no later than **January 21, 2021**.
- B. The City agrees to notify DCAA no later than **September 15, 2020** of its non-economic proposals and will submit its economic proposals no later than **January 21, 2021**. If federal or state governments take action that has a direct effect upon the areas which fall within the scope of representation, the City or the DCAA may submit proposals concerning these areas at later dates. Any terms and conditions of this MOU, not subject to this reopener provision shall remain in force and effect. The impasse hearing will take place in advance of the first reading of the salary ordinance for **Fiscal Year 2022**.
- C. The City will request the City Council to schedule an impasse hearing if necessary after 5:00 p.m. on a regular work day in order to permit DCAA Bargaining Unit members the opportunity to attend and testify.
- D. Unless otherwise agreed to, the Parties agree that DCAA's final offers are due by **February 19, 2021** and the City's final offers are due **March 5, 2021**. DCAA agrees to provide the City a written statement of its positions regarding any issues should there be impasse.
- E. The dates set forth in this Article can be changed by mutual agreement of the Parties, if confirmed in writing.
- F. Nothing in this Article is intended to waive the rights and obligations of either Party under the Meyers-Milias-Brown Act (MMBA) to bargain in good faith.

ARTICLE 5

Salary

A. General Salary.

1. Employees in the Deferred Retirement Option Plan (DROP) program will continue to have a pay reduction of 3.2 percent of base salary, to correspond to the 3.2 percent reduction in the City offset of the employee contribution to San Diego City Employees' Retirement System (SDCERS) by non-DROP employees, which was initially negotiated in prior contract negotiations.
2. **Effective July 1, 2020, or the first full pay period following City Council approval of this MOU, whichever date is later, there will be a general salary increase of 0% for all employees covered by this MOU.**
3. A structured salary schedule for DCAs has been implemented. The DCAA Salary Schedule is attached as Appendix A and incorporated into this MOU.

ARTICLE 6

Flexible Benefits Plan

A. General Nature of Plan and Eligibility

1. The City offers an IRS-qualified cafeteria-style benefits program called the Flexible Benefits Plan (FBP) to all eligible employees. Under the FBP, an annual dollar value is set for each eligible employee who may use these "FBP credits" for a variety of tax-free benefit or cash-in-lieu options, or take these FBP Credits as taxable cash under certain circumstances.
2. An "eligible employee" means any employee in one-half, three-quarter, or full-time status. Employees in non-standard hour positions are not eligible to participate in the FBP.
3. During the annual open enrollment process for the FBP, eligible employees are required to acknowledge that no amount of FBP Credits is included in "Base Compensation" under the SDCERS defined benefit pension plan. Employees are also required to acknowledge that the FBP credits allocated to them for the fiscal year will be paid out over 24 of 26 pay periods, as a lump sum benefit for all hours worked during each month within the fiscal year. For months that have three pay cycles, the middle paycheck will not include any FBP transactions. If an employee separates from City employment, the FBP credits payable through their last day on the City payroll will be added to their final paycheck.

B. FBP Options for Eligible Employees Hired Before July 1, 2020

1. For eligible employees hired before July 1, 2020, total Flex Credits of \$9,942 (Waiver) and \$13,643 (Employee Only) are available for FY21 with the customary cash-back option. These options allow the maximum cash-back opportunity for employees

who waive medical insurance or cover only themselves. However, for FY21, there is also a new option for employees who wish to cover a Spouse or Domestic Partner, Children or Family, where more Flex Credits will be available to them for these tiers of coverage but they will have no cash-back option and no amounts can be deposited into their 401(k) account. Eligible employees hired before July 1, 2020, may change the option they select (Option No. 1 – Cash-Back; Option No. 2 – No Cash-Back) from one fiscal year to the next at the time of open enrollment.

2. Option No. 1 to Choose \$9,942 (Waiver) or \$13,643 (Employee Only) in FBP Credits and Take Cash-Back

During open enrollment for the FY21 fiscal year which begins on July 1, 2020, employees hired before July 1, 2020 who wish to maximize the cash available to them from their total \$9,942 (Waiver) or \$13,643 (Employee Only) in FBP Credits, must select a Life Insurance option and either the Waiver or an Employee-Only Medical Coverage Option from the FBP component plan offerings.

An employee may select the “Waiver” option to opt out of any medical insurance offering under the FBP without providing the City with proof of other medical insurance coverage. After selecting Life Insurance and the Health Waiver or Employee Only Health Coverage, the employee may allocate their remaining Flex Credits: to pay for other FBP insurance offerings; to be deposited to their 401(k) account; to fund an FSA account for dental/medical/vision reimbursements or child/dependent care; or to be returned to them over 24 pay periods as taxable cash.

3. Option No. 2 to Choose Increased City-Paid Medical Coverage for Employee-Plus Tiers and Not Take Any Cash-Back From FBP Credits

During open enrollment for the FY21 fiscal year which begins on July 1, 2020, employees hired before July 1, 2020, will have the option to get more Flex Credits to cover themselves plus a spouse, domestic partner, children or family as follows:

Employee and Children	\$16,150
Employee and Spouse/Domestic Partner	\$18,250
Employee and Spouse/Domestic Partner and Children	\$24,100

Once an employee has selected one mandatory Life Insurance option and one of the above-described tiers for medical coverage, any remaining FBP credits may be used to pay for other FBP insurance offerings or to fund an FSA account for dental/medical/vision reimbursements or child/dependent care. However, no FBP Credits remaining after selecting required or optional coverages or funding FSA accounts may be deposited to their 401(k) account or be taken as cash-back.

C. FBP Options for Eligible Employees Hired On or After July 1, 2020

- For eligible employees hired on or after July 1, 2020, there will be two options available under City’s FBP: (1) a \$1,000 cash-back option for an employee who

provides proof of qualifying medical coverage outside the FBP and selects the waiver; or, (2) a no-cash-back option which provides FBP Credits in varying amounts for Employee Only and for Employee-Plus tiers.

2. **Option No. 1 to Choose \$1,000 in Cash In Exchange for Waiver of Medical Insurance With Proof of Alternative Qualifying Medical Coverage**

This option is an eligible opt-out arrangement under City's FBP. It is the *only* means for an eligible employee to have \$1,000 in taxable cash paid out to them in increments over 24 pay periods of the fiscal year so long as they remain employed and eligible. However, an employee who chooses this option is also forfeiting the opportunity to have thousands of additional Flex Credits available for other qualifying benefit opportunities under the FBP.

During open enrollment, this eligible opt-out arrangement allows an eligible employee to decline medical benefits coverage under the FBP for the upcoming Plan Year and instead receive a \$1,000 cash payment. An eligible employee can waive coverage without restriction, but to receive the \$1,000 cash payment, the eligible employee must provide during open enrollment reasonable evidence of enrollment in "minimum essential coverage" under another employer-sponsored group medical plan (a spouse's plan, for example), or under a qualifying government program, which covers the employee and their tax dependents for the upcoming Plan Year. Individual coverage, including insurance purchased through the Affordable Care Act (ACA) Exchange, will not qualify as minimum essential coverage under the eligible opt-out arrangement. If an eligible employee selects the Waiver to decline medical coverage under City's FBP but fails to provide proof of other qualifying coverage during open enrollment or the City know or has reason to know that the eligible employee and their tax dependents will not be enrolled in minimum essential coverage (other than individual coverage) during the Plan Year, they will not receive any cash payment under the FBP.

To elect and enroll in this opt-out arrangement, an eligible employee must complete and execute an online Election Form and file the completed form -- together with the employee's certification that they and their tax dependents have (or will have) other minimum essential coverage (other than individual coverage) during the Plan Year -- with the City's Risk Management Department during open enrollment before the Plan Year begins for which the opt-out election is to be effective. Once made, an employee's election to participate in this opt-out arrangement is irrevocable until the end of the Plan Year unless the employee is entitled to change their election under the FBP due to a mid-year election change event as described under section 3.07 of the City's FBP.

An eligible employee must provide the certification of other minimum essential coverage (other than individual coverage) annually during each open enrollment period. An employee who elected to participate in this \$1,000 cash-back opt-out arrangement will no longer be eligible to receive cash payments: (1) after the last day of employment if the employee terminates employment with the City; (2) if the employee is no longer eligible to participate in the FBP; (3) if the employee enrolls in a medical plan offered under City's FBP; or (4) if the employee ceases to maintain minimum essential coverage for them and their tax dependents under another employer-sponsored group medical plan or qualifying governmental program. If the

City knows or has reason to know that the eligible employee or any of their tax dependents will not be enrolled in other minimum essential coverage (other than individual coverage) during the Plan Year to which the election to participate in the opt-out arrangement applies, it will not make any cash payment.

An eligible employee who elects the \$1,000 cash-back waiver under this opt-out arrangement will have no remaining FBP Credits to “spend” on other FBP component plan offerings. However, the employee may elect benefits offered through these other component plans by paying for the cost of those benefits with pre-tax salary reduction contributions.

3. **Option No. 2 to Choose A Medical Insurance Option and Use Remaining FBP Credits For Other Benefits But Take No Cash-Back**

All eligible employees hired on or after July 1, 2020, will have the following Flex Credits available for FY21. Once the employee selects a medical plan offered under the FBP for Employee Only or for one of the Employee-Plus tiers below, the employee may use the remaining Flex Credits for other insurance plans offered under the FBP (life, dental, vision), or to fund a flexible spending account (FSA) for dental/medical/vision reimbursements or child/dependent care. However, no FBP credits remaining may be deposited to their 401(k) account or be taken as cash-back. An eligible employee who has other medical coverage outside the FBP may still select the lowest cost Employee Only medical insurance option and then use the remaining Flex Credits for other benefits but no cash-back.

Employee Only	\$ 7,600
Employee and Children	\$16,150
Employee and Spouse/Domestic Partner	\$18,250
Employee and Spouse/Domestic Partner and Children	\$24,100

For employees hired on or after July 1, 2020, only Eligible Employees who elected the “Waiver” under the Option No. 1 “opt-out arrangement” can receive FBP credits in cash-back payments.

Any unused Flex Credits will be forfeited at year-end and cannot be carried over from year-to-year.

- D. On or about April 1 of each year during the term of this MOU or earlier if mutually agreed, the Parties will exchange premium rates for the Parties’ respective plan offerings.
- E. The benefits available through the FBP and the respective annual costs of the benefits are reflected in the Flexible Benefits booklet provided to each employee each year.
- F. **Notes.**

- 1. It is the intent of the Parties that all component plans offered under the FBP comply with all applicable state and federal laws, including IRS regulations as interpreted by

the City Attorney. All disputes over interpretation of this Article shall be submitted to the appropriate agencies for interpretation.

2. Eligible employees who do not have sufficient Flex Credits to enroll in insurance plans offered under the City's FBP, will have appropriate amounts withheld from their paychecks to pay for the cost of coverage they select.
 3. Eligible employees may designate a specific amount of pre-tax money (IRS restrictions apply) to be withheld from their paycheck to reimburse eligible out-of-pocket Health Care Spending Account (HCSA) and Dependent Care Spending Account (DCSA) expenses. These payroll deductions must be designated during the open enrollment period, are irrevocable, and are subject to IRS regulations. These amounts are forfeited if not used within the fiscal year or during the grace period described in the Flexible Benefits Plan document.
 4. 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 for medical, dental, and vision coverage (or a comparable plan if that option is unavailable) including dependent coverage and life insurance will be automatically continued at the same level for the next year as if the employee had elected to keep them. All other benefit options will be cancelled. Employees agree that City may make a payroll deduction for employee and/or dependent medical, dental, vision and life insurance coverage if the FBP Credits are insufficient to pay for the benefit options selected by the employee. Any FBP Credits remaining from the FBP allotment will be paid out as a taxable cash payment if a cash-back option is otherwise available to the employee. All payroll deductions, including HCSA and DCSA reimbursements, will continue and may not be stopped until the following open enrollment period, except when a qualifying event occurs as defined in the FBP document.
- G. With 90-days prior written notice to DCAA, City will have discretion to change the plan year of the City's Flexible Benefits Plan from a fiscal year basis to a calendar year basis beginning January 1, 2022:
1. Rate renewals with group health insurance providers in early calendar year 2021 will need to account for transition to calendar year plan (17-month rate renewal for coverage dates starting in August 1, 2021 through December 31, 2022).
 2. A first open enrollment will be held in June 2021 for short plan year. (Health plan coverage effective dates will be August 1, 2021 through December 31, 2021).
 3. A second open enrollment will be held in November 2021 for a new calendar year plan. (Health plan coverage effective dates will be January 1, 2022 through December 31, 2022).
 4. Thereafter, open enrollment would be held once a year in the late fall for the calendar year plans (effective dates January 1 through December 31), with rate renewals for 12-month coverage periods.
- H. The City has discretion to conduct an audit of employees' dependents at any time of its choosing to ensure that it is providing coverage to employees' dependents on a tax-free basis as required by the Internal Revenue Code.

ARTICLE 7

Retirement Benefits

A. New Pension Plan for Employees Hired on or After July 1, 2009 but before July 20, 2012

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 City and DCAA, a new pension plan for DCAA-represented employees hired on or after July 1, 2009 but before July 20, 2012, is established. (See Appendix B, "Memorandum of Agreement and Addendum 1," which are attached and incorporated into this MOU). This plan will apply to all employees hired on or after July 1, 2009 but before July 20, 2012, whether unclassified, represented by DCAA, unrepresented or represented by another union.

B. Retirement Benefits for Employees Initially Hired on or After July 20, 2012.

On October 1, 2012, the City Council approved an agreement between the City and DCAA on the terms for an interim defined contribution plan under San Diego Charter sections 140 and 150 for employees initially hired on or after July 20, 2012 who are ineligible for the City's defined benefit plan. The agreement is attached as Appendix D and is incorporated into this MOU.

C. Drop

1. City contends that the Deferred Retirement Option Plan (DROP) is an employment benefit subject to modification through the meet and confer process. Despite DCAA's disagreement with this contention, the Parties agree that, during the term of this MOU, they will meet and confer over proposals to modify DROP to make DROP "cost free" to City. The Parties acknowledge that City's proposals will modify DROP to make DROP "cost free" as defined by City and may include any and all aspects of DROP, including but not limited to, all of the DROP alternative plan design proposals set forth in a study by Buck Consultants presented by City to DCAA on March 14, 2012, or any variations of the alternative proposals which change numbers or percentages reflected in the Buck study. However, by agreeing to meet and confer regarding proposals to modify DROP, DCAA is not waiving its right to challenge any proposed modification to DROP on the basis that it may impair a constitutionally protected, individually vested pension benefit, or on any other ground. DCAA further reserves its right to argue, despite any contrary assertion by City, that the current unmodified DROP is, in fact, "cost free" within the meaning of reasonable actuarial principles and appropriate margins of error. Moreover, in agreeing to meet and confer regarding proposals to modify DROP, neither Party is waiving its rights to make any legal arguments or pursue any legal action related to any proposed DROP modification.
2. In the event City and DCAA reach agreement on any modifications to DROP, these modifications will become effective on the date agreed upon. In the event the Parties fail to reach an agreement, any impasse hearing related to DROP will be conducted in accordance with Council Policy 300-06 on a date to be agreed upon by the Parties. However, any impasse hearing related to the Parties' meet and confer over DROP, including the aspects of DROP described above, will be separate from and not combined with any issues remaining for impasse in connection with the Parties' meet and confer process for a new MOU for Fiscal Year 2014.

3. Interest will be credited to the member's DROP accounts at a rate determined by the SDCERS Board of Administration.

D. Retiree Health Benefits.

Notwithstanding any provision in this MOU to the contrary, the retiree health benefits for employees who retire on or after April 1, 2012 are determined by the City's MOU (including amendment with DCAA), which the City Council adopted by San Diego Ordinance O-20133 (February 17, 2012) and amended by San Diego Ordinance O-20174 (June 26, 2012).

E. Interim Death and Disability Plan for Employees Hired on or After July 20, 2012.

Subject to the requirements of Exhibit C, numbered Paragraph 8 Death and Disability, the City provides Interim Death and Disability benefits through the City's Long Term Disability Plan for employees hired by the City on or after July 20, 2012 and who are not members of SDCERS.

ARTICLE 8

Bereavement Leave

Paid Bereavement Leave of 40 hours is available to **each** full-time employees for use during each fiscal year of this MOU upon the death of an employee's spouse **or registered domestic partner**, father, mother, (father and mother to include step-father and step-mother), **father-in-law, mother-in-law**, brother, sister (brother and sister to include: step, foster, or adopted) **son, daughter (son or daughter to include: step, foster, or adopted)**, grandfather, grandmother, granddaughter, and grandson. **Bereavement Leave is not authorized for a death that occurred before the employee's hire date with the City of San Diego. If the death occurs in June, then the employee may use Bereavement Leave in the next fiscal year for that death; however, the employee cannot use Bereavement Leave hours from the previous fiscal year that were unused.** Proof of death (death certificate, obituary, funeral program, etc.) must be provided before an employee can be paid for Bereavement Leave, which is in addition to Annual Leave, and must be submitted within 30 calendar days of when the employee returns to work. The number of hours of Bereavement Leave is prorated for employees working $\frac{3}{4}$ time (30 hours) and $\frac{1}{2}$ time (20 hours).

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 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 Charter section 40;
- B. The exclusive right to determine the mission of the Office and all of its departments;
- C. The right of full and exclusive control of the management of the 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 or positions within the 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 and effective and efficient operations;
- M. The right to establish rules for the management and operation of the Office, including rules to maintain discipline and efficiency.
- N. Take all necessary actions to carry out its mission in emergencies; and
- O. 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 for the exclusive use of DCAA, adequate bulletin boards at reasonable locations. Additional bulletin boards or locations may be made available by mutual agreement as additional changes occur in work site locations during the year. DCAA representatives shall have access at any time to the bulletin boards. The bulletin boards and only these designated bulletin boards shall be used only for the following subjects:

1. Information on DCAA elections and the results, reports and notices.
2. Reports of official business of DCAA, including reports of committees or the Board of Directors.
3. Scheduled DCAA meetings and news bulletins.

DCAA agrees not to post controversial material, political material, or any material that violates the City's harassment policy and to remove dated material in a timely manner.

B. Mail Boxes.

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. DCAA agrees not to place controversial or political material in attorney mailboxes.

C. Email.

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

ARTICLE 12

Professional Education

I. Bar Dues

The City will pay 100% of the cost of employees' California State Bar dues and dues for the San Diego County Bar Association. This section does not entitle an employee to have the City pay section membership dues.

II. Reimbursement for Job-related Training and Professional Development

Effective Fiscal Year 2021, the City will reimburse each employee up to \$2000 per fiscal year for attending Continuing Legal Education, seminars, training and other educational or professional development events which will maintain or enhance the member's job-related skills or knowledge or contribute to the employee's

broadening and diversification of their skills. **Additionally, due to the necessity of performing work remotely during the coronavirus pandemic, for FY21 each employee may use the \$2,000 of professional development funds provided by this Article for purchasing job-related equipment, such as laptops, computer monitors, printers, and workspace equipment.**

Reimbursement is subject to the following requirements:

- A. Employee must submit a request for approval of the proposed reimbursable item in advance of attendance or purchase and obtain pre-approval by the City Attorney. Requests for approval must include the cost of the item or event as well as the likely expenses associated with the event, such as mileage, air fare, hotel, meals, rental car, and taxi expenses. Approval shall not be unreasonably denied by the City Attorney.
- B. Employees must submit a request for reimbursement to the City Attorney within 60 days of completion of the specific course or purchase of the item for which reimbursement is being sought. The request for reimbursement must include receipts for all actual expenses incurred, in order to receive reimbursement. Employees will be reimbursed at the allowable per diem and U.S. GSA rates, as outlined in the City's Travel Policy (A.R. 90.30) or other City policies as applicable.
- C. For participatory related expenses, such as attending conferences, seminars and Continuing Legal Education, the employee must also submit satisfactory evidence of attendance in order to receive reimbursement.
- D. Attendance at pre-approved professional development events under this Article is considered compensable time. An employee will receive his or her salary for up to five working days per event while attending pre-approved professional development events. However, an employee must use leave time for absences for professional development after five days.
- E. The following types of classes, courses, seminars and materials shall be eligible for reimbursement under this section II: Continuing Legal Education, attending conferences, seminars, or trainings, related to the employees' practice or duties, bar association dues, national, state and local bar section dues, subscriptions to legal journals or other legal periodicals, and legal source and reference materials.
- F. **To be eligible for reimbursement under this section II, proposed job-related equipment purchases must (1) fall within an equipment category, (2) meet or exceed minimum specifications, and (3) be within purchase frequency limitations detailed in the City Attorney's Office Equipment Employee Purchase Policy (EPP). The parties agree to meet and confer prior to the implementation of the EPP. The parties will initiate the meet and confer process before June 1, 2020. Reimbursement is not available for job-related equipment purchases prior to receiving approval for reimbursement. Ownership of equipment purchased using funds provided under this section II is determined pursuant to the EPP Ownership Schedule. Reimbursement may not be sought for a portion of the price of job-related equipment. Rather, to obtain reimbursement, an employee must have a sufficient professional development funds balance to receive reimbursement of the entire purchase price.**

III. Discretionary Reimbursement

In addition to reimbursable items under sections I and II above, employees may request reimbursement for additional professional development that (1) does not meet the professional development requirements set forth in section II above or (2) would cause the employee to exceed the \$2,000 per fiscal year cap. **This section III does not apply to reimbursements for the purchase of job-related equipment.** Requests under this section must be pre-approved by the City Attorney in advance and approval shall be subject to the City Attorney's sole discretion. Employees requesting reimbursement under this section III must comply with the requirements of section II A through E above.

ARTICLE 13

Review of Performance and Discretionary Merit Increases

- A. 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.) This salary schedule is established solely pursuant to this Memorandum of Understanding. Deputy City Attorneys at all grades fall under the City employee classification of "Deputy City Attorney" in the Unclassified Service. 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 the DCA I, II, III, or IV grades as outlined below. Nothing contained herein shall affect the City Attorney's authority to hire a Deputy City Attorney at any salary.

1. Deputy I and II.

Management of the Office will review the performance of employees in the DCA I and II grades every six months, in approximately June and December. Employees in the DCA I and II grades who have served at least six months at their current step will receive a step increase at the time of review, unless there is prior written finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on the first day of the last pay period of the fiscal year that includes July 1 and the first day of the first pay period of the calendar year that includes January 1 of each year.

2. Deputy III.

Management of the Office will review the performance of employees in the DCA III grade once per year, in approximately June. Effective July 1, 2010, employees in the DCA III grade who have served at least one year at their current step will receive a step increase at the time of review, unless there is a prior written finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on the first day of the last pay period of the fiscal year that includes July 1 of each year.

3. Deputy IV.

Management of the Office will review the performance of employees in the DCA IV grade once per year, in approximately June.

Employees in the DCA IV grade who have served at least one year at their current step will receive a step increase at the time of review, unless there is a prior written finding in the form of a performance review that the DCA has rendered less than satisfactory performance. See Appendix A. All step increases will be effective on the first day of the last pay period of the fiscal year that includes July 1 of each year.

4. Deputy V and Senior Deputy.

Management of the Office will review the performance of employees in the DCA V and Senior Deputy grades once per year, in approximately the month of June. These employees will be eligible to receive an increase at the time of review, provided that the increase is at the sole and absolute discretion of the City Attorney, is based on merit, and is within the budgetary constraints of the City Attorney.

B. Progression Between Grades.

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

C. DCAA Performance Evaluation Process.

The Parties have developed an agreed-upon performance evaluation process for employees in the DCAA Bargaining Unit. During the term of this MOU, 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 MOU, the Office will conduct performance evaluations consistent with the procedures developed by the Parties.

ARTICLE 14

Grievance Procedure

- A. This Grievance Procedure is provided for the orderly and efficient disposition of grievances. A grievance is **as defined below, except that this Grievance Procedure does not apply to employment termination. This Grievance Procedure in no way limits the City Attorney's management rights as expressed in Article 10 of this MOU, nor does it change the fact that the City Attorney has the sole and absolute discretion to discipline, demote, terminate, or alter the employment relationship with any employee in accordance with Articles 15 and 26 of this MOU.**
- B. The Parties recognize that 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 with an administrative agency or a court of law, once the employee has exhausted this grievance procedure with respect to violations of this MOU.

Definitions

- 1. The term "grievance" means a claimed or charged violation of this MOU, or Management policies or regulations including, but not limited to, applicable Administrative and Departmental Regulations which affect wages, hours, or other

terms and conditions of employment.

2. The term “grievant” means an individual employee or the DCAA.
3. The term “working days” means the actual work days of the individual on whom the time limits are imposed, excluding Saturdays, Sundays, and City holidays.

Policy

1. Employees have the right to file grievances without jeopardizing their positions.
2. Employees may represent themselves or be represented by a DCAA Representative designated pursuant to this MOU at any or all steps in the grievance procedure.
 - a. The employee has the right to the assistance of a DCAA representative in the investigation, preparation and presentation of a grievance.
 - b. Employees may have no more than one employee and one non-employee as representatives for a grievance hearing. A person not acting as a representative may take notes or observe.
3. Grievances may be initiated by the employee and/or a DCAA representative on the employee’s behalf. If an employee chooses to have representation on any formal grievance concerning a matter that directly involves the interpretation or application of the specific terms and provisions of this MOU, the representation must come from DCAA.
4. The employee’s or DCAA’s first contact regarding job and working conditions is with their immediate supervisor. The supervisor and the grievant shall attempt to settle grievances informally at this level.
5. A grievance will normally be presented and processed on City time, and a grievant attending a grievance meeting on their own behalf on City time will not lose pay. In scheduling the time, place and duration of any grievance meeting, the employee, and/or the DCAA Representative and Management will give due consideration to the operations of the City Attorney’s Office. Management has the unequivocal right to schedule grievance hearings as convenient. Hearings may or may not be held during an employee’s normal shift.
6. Actions which are covered in the Management Rights Article of this MOU are not grievable, but this does not preclude employees or their representatives from consulting with Management about the practical consequences the exercise of the Management Rights Article may have on wages, hours, and other terms and conditions of employment. In addition, actions covered by another applicable appeals process are not grievable and cannot be processed through this grievance procedure.
7. If the grievance system is abused by an unreasonable number of submittals by one individual or group, or if the grievances are patently irrelevant or incomprehensible, such grievances will be rejected as non-grievable. The rejection is grievable.

Waivers and Time Limits

1. Failure by Management to reply to the grievant's grievance within the time limits specified in this Article 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 a grievant 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, the failure to appear without an approved excuse by the Appointing Authority entitles 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 the 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 at least twenty-four hours advance notice of the hearing.
8. Management shall provide DCAA with copies of all grievances regarding this MOU filed by employees, within DCAA Bargaining Unit, who choose to represent themselves.
9. DCAA 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 the grievant resorts to remedies outside the grievance process prior to its completion, the grievance process is automatically terminated. When DCAA reasonably believes that an employee will experience immediate and irreparable harm, DCAA will directly contact the Assistant City Attorney – Executive Operations prior to initiating some other type of action. DCAA must allow the City Attorney's Office a reasonable period of time to address the grievance prior to initiating action outside of the City. Use of this procedure shall be deemed to exhaust the grievance procedure.

General

1. Management of the department has the responsibility to inform a grievant of any limitation of a given level of Management's authority to fully resolve the grievance. In this regard, Management shall:
 - a. Supply the grievant with the necessary and relevant information to process the grievance at the proper step of the grievance procedure.

- The Grievance Procedure steps are as follows:

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procedure. After receiving the written grievance, the Assistant City Attorneys or **their** designees, will promptly schedule a meeting to provide the grievant with an opportunity to present the problem personally. Within fourteen calendar days after that meeting or a longer period if required under the circumstances to properly investigate and consider the matter, the Assistant City Attorneys or **their** designees will provide the grievant with a verbal or written response to the grievance.

3. **Third Step – City Attorney:** If a **grievant** is not satisfied with the decision at the Second Step of this procedure, **they** may request in writing, within fourteen calendar days after receiving the response from the Assistant City Attorney, , an appointment to meet with the City Attorney or their designee who **was not previously** involved in the **process** or the issue **subject to** the grievance. The City Attorney, or **their** designee, will discuss the **concern** with the **greivant** and investigate the basis for the grievance. **The Assistant City Attorney’s decision shall be provided to the City Attorney and the grievant, within 14 days and may be reviewed and considered by the City Attorney before any final decision is made.** The City Attorney or **their** designee will provide either a verbal or written decision to the **grievant** within fourteen calendar days after that meeting, unless **they** determine that additional time is required under the circumstances. The decision **regarding the grievance** at this step is the final decision of the City Attorney.
4. 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

Terminations, Suspensions and Lay-Offs

A. Covered DCA Terminations or Suspensions for Cause.

1. A “Covered Deputy City Attorney” (“Covered DCA”) is a Deputy City Attorney who has served continuously as a Deputy City Attorney with the Office for one year or more.
2. For any Covered DCA who is being terminated or suspended by the City Attorney for cause, the following procedural steps will apply:
 - a. Prior to issuing a written notice of termination or suspension, an informal meeting will be held between the Covered DCA and the initial decision-maker **to discuss** the proposed discipline. The advance notice of the proposed discipline, as outlined below, can be given at any time either during or after that meeting. The Covered DCA may be accompanied by a DCAA representative at this informal meeting.
 - b. Fifteen business days prior to the effective date of a termination or suspension for cause, the City Attorney will provide written notice to the Covered DCA, setting forth the grounds for the termination or suspension and the effective date of the action. This “advance notice” will include the specific disciplinary action proposed and disclosure of the **materials** supporting the termination or suspension for cause. The advance notice will notify the Covered DCA subject to the termination or suspension of **their** rights to present witnesses, to confront adverse witnesses,

and to be represented at an appeal hearing. The Covered DCA may be represented by counsel, at the expense of the Covered DCA.

- c. The City Attorney **may place**, the Covered DCA subject to termination or suspension on paid administrative leave, **with the Covered DCA to remain out of the workplace**, pending final resolution of the discipline, including determination after appeal. If not placed on paid administrative leave, the Covered DCA will remain in the workplace and may be subject to a change in **their** assigned work or unit.
- d. Within five business days of receipt of the Advance Notice, the Covered DCA may request an appeal hearing, by submitting a written request to the City Attorney.
- e. If the Covered DCA requests an appeal hearing, it will be held within five business days of submitting the request for an appeal, unless an extension of time is mutually agreed upon in writing. The Appeal Hearing will be conducted by an unbiased hearing officer, who is either an Assistant City Attorney **from a division other than that of the Covered DCA** or at the sole discretion of the City Attorney, a designee from outside the Office. If the appeal hearing officer is to be an Assistant City Attorney, the Covered DCA may choose **the Assistant City Attorney** from a list of at least two Assistant City Attorneys who have not participated in the disciplinary process. The Assistant City Attorney who serves as the supervisor of the Covered DCA, or **their** designee, will present evidence supporting the termination or suspension. The Covered DCA **or their representative** will be provided with an opportunity to confront adverse witnesses and to present witnesses on behalf of the Covered DCA. The City Attorney shall contemporaneously make and maintain a record of the appeal hearing, which may be an audio recording.
- g. f. Following any appeal hearing, the appeal hearing officer will provide the Covered DCA with an appeal decision, setting forth a determination of whether there is sufficient evidence to uphold the charges, the evidence relied upon, and the reasons for the determination made. The appeal hearing officer shall uphold, reverse, or change the proposed discipline. The Appeal Decision will be provided to the Covered DCA within five business days following the appeal hearing. The appeal decision will include a notice of the final effective date of discipline, if applicable.
- h. If the discipline is upheld, the Covered DCA receives the three weeks' pay in lieu of notice from the date of the Advance Notice minus the amount of pay already received, or to be received for the period from the date of Advance Notice.
- i. Regardless of whether the Covered DCA decides to appeal the termination or suspension, the Covered DCA will receive the equivalent of three weeks' notice or three weeks' pay in lieu of notice from the date of the Advance Notice, in conjunction with Article 26 of the MOU.
- j. Nothing included herein precludes the City Attorney from being involved in making the original disciplinary decision.

B. Non-Covered DCA Terminations, Other than Layoffs.

Any DCAA represented employee , who is not a Covered DCA within the meaning of Paragraph A above, who has been terminated for any reason, other than a layoff due to lack of work, lack of funds, or reorganization, may, within five business days of **their** termination, request a meeting with the City Attorney or **their** designee, in order to discuss the termination decision. The meeting will occur within ten business days of receipt of the request.

C. Layoffs.

1. In the event the City Attorney decides a layoff of Deputy City Attorneys is necessary, due to lack of work, lack of funds, or reorganization, the City Attorney will comply with the Meyers-Milias-Brown Act (MMBA).
2. The Parties will continue the current negotiations regarding a layoff procedure in accordance with San Diego Charter sections 30 and 40.

ARTICLE 16

Inspection of Employee Personnel File

- A. Each employee has the opportunity to inspect the contents of **their** personnel file at reasonable times and at reasonable intervals, provided sufficient advance notice is given to Management of the Office of the employee's desire to do so. The inspection is limited to those records that the employee has the right to inspect under California Labor Code section 1198.5.
- B. 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 signed and dated by the author. At the employee's request, the Office will place into an employee's personnel file a written response to any adverse document placed in an employee's personnel file.

ARTICLE 17

DCAA Matters

- A. DCAA may, with the prior approval of Management, be granted the use of City Attorney meeting room facilities for meetings of its members. Membership meetings shall not be held during work hours.
- B. City agrees to provide DCAA with an opportunity to make presentations to new employees during the benefits portion of the City's New Employee Orientation Program or a separate meeting with new employees who do not attend the City's New Employee Orientation Program. These presentations will be, but not exceed one-half hour, and will be restricted to employees in job classifications represented by DCAA. DCAA will be provided a separate room for their presentation.
- C. The City must provide DCAA with access to the City's New Employee Orientations. The City will provide not less than 10 days' notice in advance of an orientation, except that a shorter notice may be provided in a specific instance where there is an urgent need critical to the City's operations that was not reasonably foreseeable. The structure, time, and manner of the DCAA's access will be determined by mutual agreement, subject to the

requirements of California Government Code section 3557. The City must not disclose the date, time, and place of the orientation to anyone other than the City's agents involved in the New Employee Orientations, the employees, DCAA, or a vendor contracted to provide a service for purposes of the orientation. Absent the ten (10) day notification, the DCAA will be provided the identity of the new employee and an opportunity to meet with him/her at a City location while employee is on duty.

- D. The City Attorney recognizes the right of DCAA to designate employee representatives from the employees in the Bargaining Unit. DCAA reserves the right to designate the method of selection of employee representatives. DCAA shall notify management of the 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.
- E. When formal meetings are scheduled for the purpose of meeting and conferring on subjects within the scope of representation, 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. Additional representatives may attend upon mutual written agreement of the Parties. These employees may attend these meetings during regular work hours without loss of compensation or other benefits. Nothing provided in this Article limits or restricts Management from scheduling meetings before or after regular duty or work hours under appropriate circumstances.
- F. 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.
- G. The City will provide DCAA, at least every thirty (30) days, with a current alphabetized list of DCAs contact information.

ARTICLE 18

Union Security

- A. The City agrees to deduct and transmit to DCAA all membership dues. The City will deduct membership dues on a bi-weekly basis, in accordance with the provisions of this section. The City and DCAA agree that the system of authorized dues deductions will be operated in accordance with the Government Code, or other controlling federal or state law. If anything in this Article conflicts with any existing or future federal, state, or local law or regulation, then the law or regulation controls and the conflicting provision in this MOU is deemed void and unenforceable. In the event there is a change to controlling federal or state regulations, the City and DCAA agree to meet and confer over an impacts subject to bargaining in accordance with the Meyers-Milias-Brown Act.
- B. DCAA will set the amount of membership dues and other lawful deductions and notify the City of these amounts in writing. DCAA will also provide the City with the list of DCAA employees who have affirmatively consented to or authorized dues deductions. The City will not request DCAA to provide a copy of any member's authorization unless a dispute

arises about the existence or terms of the authorization. To the extent permitted by law, the City will rely on the information provided by DCAA in processing dues deductions for DCAA members. DCAA is responsible for providing the City with timely information regarding changes to member employees' dues deductions.

- C. DCAA agrees to indemnify, defend, and hold harmless the City, including its officers, representatives, and agents, against all liability arising from any claims, demands, or other action relating to the City's compliance with this Article. This agreement to defend and indemnify includes liability arising from or related to the active or passive negligent acts or omissions of the City, its officers, representatives, and agents, which may be in combination with the active or passive negligent acts or omissions of the DCAA, its employees, agents, or officers, or any third party. In addition, the DCAA will refund to the City any amounts paid to it in error after the City provides DCAA with supporting evidence of the error.
- D. When a member is in a non-pay status for an entire pay period, the City will not deduct any dues to cover that pay period from any future earnings nor will the member deposit (with the City) the amount that would have been withheld if the member had been in a pay status during that period. When an employee is in a non-pay status during only a part of the pay period and the employee's wages are not sufficient to cover the full dues amount, the City will not deduct any dues to cover that pay period.
- E. No provisions of this Article nor any disputes arising from it are subject to the grievance and arbitration procedure set forth in this MOU.
- F. Payroll Deductions
 - 1. The City will deduct DCAA dues bi-weekly from the wages of employees, who are members of DCAA, when the deductions are certified by DCAA, in accordance with federal and state law. The City will remit the aggregate amount of all DCAA dues deductions bi-weekly after completing the payroll process for each pay period in which DCAA dues' deductions were made.
 - 2. The City will deduct DCAA dues in a specified amount based on the information provided by DCAA. DCAA must provide information on dues' deduction authorizations and cancellations on a timely basis, in accordance with state law. If an employee submits a payroll deduction authorization change to the City which has not been processed by DCAA, the City will direct the employee to the DCAA promptly. The City will continue to deduct dues in reliance on the information provided by the DCAA, until the DCAA notifies the City of a deduction change authorization.
 - 3. Payroll authorization may, at the election of the DCAA, be for a specific term. The responsibility to enforce this provision lies solely with the DCAA.

ARTICLE 19

Employee Rights

- A. The Parties mutually recognize and agree to fully protect the rights of all employees covered by this MOU to join and participate in the activities of DCAA (outside of work time).

- B. No employees shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.
- C. The Parties, in the conduct of their affairs, shall apply the provisions of this MOU equally to all covered employees without favor or discrimination based on any of the protected classes or categories listed in City's Equal Employment Opportunity (EEO) Policy – Annual Statement, or because of political or religious opinions or affiliations.

ARTICLE 20

Provisions of Law

If any part or provision of this MOU 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, those parts or provisions shall be suspended and superseded by applicable laws or regulations, and the remainder of the MOU shall not be affected.

ARTICLE 21

Holidays

A. Fixed Holidays.

1. 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; and
 - k. Every day appointed by the City Council for a public fast, thanksgiving or holiday.
2. If City Council changes City holidays, the Parties will re-negotiate the holidays for employees.
3. If January 1, March 31, July 4, November 11, or December 25 fall on a Sunday, the Monday following is City-observed holiday. If any of the dates listed in this section fall on a Saturday, the preceding Friday is City-observed holiday.

B. Floating Holiday.

1. In each fiscal year covered by the term of this MOU, each eligible employee available for a duty assignment on July 1, (as defined in Personnel Regulation Manual Index Code 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 hours.

Each employee accruing such time shall schedule **their** floating holiday to comply with the following conditions:

- a. Employee must schedule the floating holiday prior to June 1;
- b. The floating holiday 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. The floating holiday must be taken at a time convenient to the City Attorney or **their** designee.

ARTICLE 22

Direct Deposit

The City Attorney agrees to offer direct deposit of employee paychecks. **All employees who choose to electronically deposit their paychecks to a financial institution of their choice (subject to electronic compatibility) will be required to provide authorization to the Department of Finance. Employees will not be required to change financial institutions if their financial institution is not compatible with the Automated Clearing House (ACH) transfer.**

ARTICLE 23

Transportation Alternatives

- A. Employees who use the Concourse Parkade, Central Library, or Civic Center Plaza, 101 Ash Street and any other facility as designated by the City; and pay on a biweekly basis will be charged **25** percent of the prevailing general public monthly rate.
- B. **The City may expand parking opportunities to other facilities designated by the Mayor, including Horton Plaza. The City will engage DCAA in an impact bargaining required under the MMBA, related to new parking opportunities.**
- C. Employees participating in the Transportation Alternatives Program (TAP) shall pay 50 percent of the public daily rate, for up to fifty-two occurrences per year. Participation in TAP is limited and is available to employees on a first-come, first-serve basis.
- D. The City will provide the following reimbursements, up to a maximum of \$100 per month, to those employees who purchase monthly passes for transportation on the public bus, trolley, and commuter rail services, or who ride bicycles to work and use bicycle lockers. Transportation passes will be for the exclusive use of the employee. Employees must use these subsidized transportation services to commute to and from work at least three days per week to be eligible for reimbursements. Employees in violation of these provisions shall have their Transportation Incentives discontinued. Employees must purchase monthly passes through Risk Management no later than the twelfth day of the month prior to the month of intended use. Payment is loaded on to issued Compass Cards.

Reimbursements are paid in accordance with the following terms:

1. The monthly Adult 2-Zone Coaster Pass and Adult 3-Zone Coaster Pass are subsidized

- at 90% subject to the \$100 monthly reimbursement cap.
2. The SDM Coaster pass (3-Zone Senior Coaster Pass) is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 3. The Senior/Disabled SDM Regional Pass is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 4. The Adult Regional Rapid Express Pass is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 5. The Senior/Disabled SDM Regional Rapid Express Pass is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 6. The Youth Regional Pass is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 7. The All Trolley/Local Bus Route Pass (Adult Regional) is subsidized at 75%, subject to the \$100 monthly reimbursement cap, or \$18.00 per month in Fiscal Year 2020. The City will offer an All Trolley/Local Bus Route (Adult Regional) Annual Pass through a contractual agreement with San Diego Metropolitan Transit System's (SANDAG MTS) ECO Program. Through this program, employees can purchase the annual pass at a 90% subsidy. Payment for the annual pass must be received by the TAP Main Office no later than May 15th of each year through the term of the MOU. Restrictions issued by SANDAG MTS for this annual pass for the term of this MOU include:
 - a. No refunds
 - b. No opting out of months
 - c. Employees are responsible for registering and replacing a lost Compass Card
 8. A City approved vanpool program is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 9. Use of the San Diego Bay Ferry is subsidized at 90%, subject to the \$100 monthly reimbursement cap.
 10. If SANDAG MTS discontinues or modifies the employer discount program during the term of this MOU, the City will meet and confer before it adjusts the costs of the program, but in no event, will the reimbursement be less than 75%, subject to the \$100 monthly reimbursement cap.
- E. City will provide reimbursement to employees who use the Concourse Parkade, Civic Center Plaza, **101 Ash** or **Central Library** and carry riders. The rate of reimbursement will be calculated so that an employee who carries three riders will receive free parking.
- F. Management agrees to make its best effort to negotiate with Parking Facility Providers reduced rates comparable to those at the Concourse for employees assigned to City facilities.

ARTICLE 24

Recognition of City Policies

During the term of this MOU, all existing City policies and Administrative Regulations currently applicable to DCAs will remain in effect. In addition, the following Administrative Regulations will apply:

1. A.R. 45.10 - Employee Transportation Authorization
2. A.R. 63.00 - Industrial Leave
3. A.R. 75.40 - Administration of Light Duty Program
4. A.R. 95.60 - Conflict of Interest and Employee Conduct
5. A.R. 95.89 - Parental Leave
6. A.R. 95.90 - Unused Sick Leave and Accrued Annual Leave Reimbursement
7. A.R. 95.91 - Rewards and Recognition
8. A.R. 97.00 - Substance Abuse Policy
9. A.R. 97.10 - Threat Management Policy
10. A.R. 97.20 - Weapon - Free Work Place

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 MOU who has been employed by the Office as a DCA for at least two years, the City Attorney agrees to provide three weeks advance notice before terminating the employee, or three weeks' pay in lieu of notice, or a combination of notice and pay, at the City Attorney's discretion. Any pay in lieu of notice paid pursuant to this Article will be paid at the end of said period. In either case, the employee will take appropriate steps to transition **their** duties to other attorneys in the Office.

ARTICLE 27

Employee Representation

An employee is entitled, upon **their** 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 **their** representative, 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 City. However, DCAA representative can make suggestions, additions, or clarifications at an appropriate time during the interview, investigation or meeting. Performance Review meetings are specifically excluded from this Article.

ARTICLE 28

Fingerprinting

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

ARTICLE 29

Copies of the Agreement

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

ARTICLE 30

Long Term Disability

City will issue a RFP to fully insure and administer the LTD Program by an outside vendor. The Parties will meet and confer over any impacts as a result of the implementation of a new LTD program.

ARTICLE 31

Weapon-Free Workplace

DCAA represented employees are prohibited from possessing or storing firearms, even if lawfully owned, on the job or in City-controlled parking locations.

ARTICLE 32

Volunteers

- A. City's Volunteer Program is governed by City Council Policy 300-01. A "volunteer" is defined as an individual or groups of individuals who offer themselves for some service or undertaking without being compensated by City.
- B. In accordance with City Council Policy No. 300-01, City will continue to optimize the use of volunteers where it is economically feasible, by developing volunteer opportunities throughout City. Volunteers are to be utilized only to supplement and complement the work performed by City personnel and without decreasing bargaining unit work or displacing existing City personnel.
- C. Parties understand that departments participating in City's Volunteer Program shall utilize volunteers to perform a number of tasks necessary to support volunteer programs. Projects performed by volunteers include, but are not limited to, the following:
 - 1. Legal Interns - supervised by Deputy City Attorneys, assist in drafting pleadings and conducting legal research.
 - 2. Volunteer Attorneys (both Civil and Criminal Division) - attorneys who want

experience in criminal prosecution, community justice, civil litigation and civil advisory matters.

3. Retired Deputy City Attorneys – acting in a mentoring role based on extensive years of experience with City.

ARTICLE 33

Labor Management Committee

The Management Team, as designated by the City Attorney, and DCAA will establish a joint Labor Management Committee (LMC) for the purpose of informally discussing issues and maintaining open communication between the Parties. The LMC shall meet at least four (4) times per year for a duration that is mutually agreeable to both the Management Team and DCAA. Each party may appoint up to three members to the LMC. The Parties understand that any discussions or proposals made during LMC meetings are not considered meet and confer negotiations under the MMBA. The Parties also understand that only agreements reached by mutual consent, reduced to writing, and signed off on by authorized representatives of both Parties will be binding.

ARTICLE 34

Telecommuting Pilot Program

The parties agree to re-open discussions on the **creation and implementation** of a Telecommuting program at the City Attorney's Office within **1 year** of the signing of the subsequent MOU. Either party may make the request to **reopen discussions on** this item.

ARTICLE 35

Discretionary Leave

- A. During the term of this MOU, all full-time employees will receive twenty-four (24) hours of Discretionary Leave for use during each fiscal year of this MOU and the Discretionary Leave identified in this Section has no eligibility requirements except as set forth in this Section. Three-quarter time employees will receive eighteen (18) hours of Discretionary Leave for use during each fiscal year of this MOU. Half-time employees will receive twelve (12) hours of Discretionary Leave for use during each fiscal year of this MOU.
- B. Each employee will schedule **their** Discretionary Leave hours in the same manner as annual leave is presently scheduled pursuant to the Office's annual leave guidelines.
- C. All leave granted under this Article must be used by June 30 of each fiscal year, or it will be forfeited. The discretionary leave under this article does not have any cash value.
- D. Section C above does not amend, modify or alter any discretionary leave that may be granted under Administrative Regulation 95.91 (Employee Recognition and Rewards Program).

ARTICLE 36

Leave-Sharing Plans

A. Catastrophic Leave Plan Program Description

1. Purpose and Scope

Establish a City of San Diego-administered Catastrophic Leave Bank permitting City employees to assist other City employees who face extended leaves without pay due to a catastrophic occurrence in their lives. For the purpose of this plan, a “catastrophic occurrence” is defined as any event that would qualify the employee for a leave under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Americans with Disabilities Act (ADA), other local, state, or federally protected leave, and other extraordinary circumstances as determined by the Human Resources Director or designee. Although this Program establishes a mechanism for leave transfers, participation is entirely voluntary.

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

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

2. Procedures

- a. The Employee initiates a request for a Catastrophic Leave Bank to be established in accordance with this policy.
 - 1) The employee must have exhausted or expect to exhaust **their** accrued leave, from both the employee’s annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department Payroll Specialist), as a result of a qualifying event in order to establish a **Catastrophic** Leave Bank.
 - 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 their Department Head.
- b. Requests to establish a **Catastrophic** 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 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 **Catastrophic** Leave Bank has been approved. Employees who include a mailing address on the Request will be notified when the **Catastrophic** Leave Bank is approved by the Human Resources Department.

c. Donations of annual leave may be made to an employee eligible for Catastrophic Leave as defined in the Purpose and Scope of this document. The donor's annual leave donation will be deducted from the donor department in the amount donated.

- 1) Donations of leave are strictly voluntary; the City will maintain the identity of **Catastrophic** Leave Bank donors in absolute confidence.
- 2) Employees may only donate accrued annual leave.
- 3) Donations must be made in whole-hour increments.
- 4) **Donation authorization requests that do not contain all requested information will not be processed.**
- 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 **Catastrophic** Leave Bank, donated leave cannot be returned to the donor.
- 7) Employees who wish to donate leave must **submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Catastrophic Leave Donation" form and submit it to the Human Resources Department.**

d. Upon receipt of donation authorizations forms, the City's **SAP System** will:

- 1) **Verify that the donating employee has the minimum required leave balance of 160 hours.**
- 2) **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.**
- 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 their Payroll Specialist in writing to cancel deductions.**

- 4) **Subtract the donated time from the donor's designated leave category; and**
 - 5) **Add the donated hours to the recipient's Catastrophic Leave – Annual Leave (CatLv-AL) bucket.**
- e. **Donated Catastrophic Leave is treated as annual leave accrued by the recipient of the donation, but the recipient will not be taxed on the donated annual leave. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.**
- 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.**
 - 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 **Catastrophic** Leave under this Catastrophic Leave Plan may either take the Donated **Catastrophic** Leave as compensated time off or may receive pay-in-lieu of the Donated **Catastrophic** Leave, consistent with Personnel Manual Index Code I-2, subparagraph E, but may not re-donate that time to a Catastrophic Leave Bank or Medical Leave Bank for use by another employee.**
3. **Notification of the creation of a Catastrophic Leave Bank to potential donors is the responsibility of the employee, not the department. An employee may use City e-mail for a one-time notification to other City employees regarding the creation of their Catastrophic Leave Bank. Such e-mail should not contain confidential information (e.g. details of their medical condition). All policies and procedures regarding ethical conduct, and the use of e-mail, apply to such notices sent by employees. Employees are encouraged to only send e-mails to employees they know and refrain from sending "e-mail blasts" (officewide or citywide e-mails) that may be viewed as a nuisance to a reasonable person. Employees may work with their recognized employee organizations to disseminate their request for leave donation. If requested by the employee in the Request for Establishing Catastrophic Leave Bank form, the City will publicize on the **Leave Administration section of the City's SAP System**, the employee requestor's name, and the dates the **Catastrophic** Leave Bank opens and closes.**

B. Medical Leave-Sharing Plan Program Description

1. Purpose and Scope

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

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

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

2. Procedures

- a. Employee initiates a request for a Medical Leave Bank to be established in accordance with this policy.
 - 1) The employee must have exhausted or expect to exhaust **their** accrued leave, from both the employee’s annual leave and Catastrophic Leave – Annual Leave (CatLv-AL) buckets (to be verified by the department payroll specialist), as a result of a qualifying event in order to establish a Leave Bank.
 - 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 **their** 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 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) **Donation authorization requests that do not contain all requested information will not be processed.**
 - 5) The donor will not be taxed on the value of the leave **they** donate, but also cannot claim an expense, loss deduction, or charitable contribution for the donated leave.
 - 6) 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.
 - 7) Once donated to the Medical Leave Bank, donated leave cannot be returned to the donor.
 - 8) Employees who wish to donate leave must **submit an electronic request through the Leave Administration section of the City's SAP System. Employees without access to the City's Active Directory may complete a "Confidential Authorization for Medical Leave Donation" form and submit it to the Human Resources Department.**
- d. Upon receipt of donation authorization forms, the **City's SAP System** will:
- 1) **Verify that the donating employee has the minimum required leave balance of 160 hours.**
 - 2) 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.
 - 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 **their** 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.
 - 5) **Add the donated hours to the recipient's annual leave balance.**

e. Donated Medical Leave is treated as annual leave accrued by the recipient of the donation. Payments up to 80 hours per pay period will be made to the recipient until the donated leave has been exhausted.

- 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.
3. Notification of the creation of a Medical Leave Bank to potential donors is the responsibility of the employee, not the department. **An employee may use City e-mail for a one-time notification to other City employees regarding the creation of their Medical Leave Bank. Such e-mail should not contain confidential information (e.g. details of their medical condition). All policies and procedures regarding ethical conduct, and the use of e-mail, apply to such notices sent by employees. Employees are encouraged to only send e-mails to employees they know and refrain from sending "e-mail blasts" (officewide or citywide e-mails) that may be viewed as a nuisance to a reasonable person.** Employees may work with their recognized employee organizations to disseminate their request for leave donation. If requested by the employee in the Request for Establishing Medical Leave Bank form, the City will publicize on the **Leave Administration section of the City's SAP System**, the employee requestor's name, and the dates the Medical Leave Bank opens and closes. **The automated Catastrophic and Medical Leave Programs will be implemented January 1, 2020.**

C. Child Care Annual Leave Exchange

Annual Leave may be transferred between **any city of San Diego** employees who jointly parent a child (which includes a biological, adopted, or foster child, a stepchild, or a legal ward, and is under 18 years old or has a mental or physical disability and is incapable of self-care), for the purpose of the birth of the child or joint adoption of the child, or for child care purposes, in accordance with the City's policies, upon the request of both the receiving employee and the transferring employee, and upon approval of the employees' appointing authority, under the following conditions:

1. The receiving employee is required to be absent from work due to the birth of the employee's child or due to the joint adoption of a child, or for child care purposes.
2. Each transfer must be for a minimum of (8) hours and in whole hour increments thereafter.
3. The transferring employee 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.
4. The total annual leave received by an employee for the purposes of the Child Care Annual Leave Exchange bucket shall normally not exceed 350 hours per fiscal year; however, if approved by the employee's appointing authority, the total credits may be

up to 700 hours. Total annual leave hours in excess of 700 hours will be considered on a case-by-case basis by the City Attorney.

5. The transfers are irrevocable and will be placed in a separate bucket for Child Care Annual Leave Exchange. The leave cannot be used for pay-in-lieu cash outs. The transferring employee will be taxed for the leave when it is transferred to the receiving employee.
6. The transfers shall be administered according to the rules and regulations promulgated by the City beginning on January 1, 2020.

ARTICLE 37

Military Leave

- A. Employees who provide service in the “Uniformed Services,” meaning the Armed Forces, the Army National Guard, and the Air National Guard when engaged in active duty for training, inactive duty training, or full-time National Guard duty, the commissioned corps of the Public Health Service, and any other category of persons designated by the President in time of war or national emergency, are entitled to the rights and benefits provided by the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), codified at 38 U.S.C. sections 4301 through 4335, and as amended in the future.

These members are also entitled to the leaves of absence provided by the California Military and Veteran’s Code, as stated in Civil Service Rule X, codified at San Diego Municipal Code section 23.1107, and Personnel Manual Index Code I-10, Military Leave. Specifically, employees who have been regularly employed by the City for one year or more immediately prior to requested military leave will receive their regular City compensation during the military leave, but not to exceed 30 calendar days in any fiscal year. Calendar days are computed in the manner stated in the Personnel Regulations Index Code I-10.

- B. Employees must give no less than 21 days of notice to their supervisors prior to the start of the requested military leave, unless there are exceptional circumstances beyond the control of the employee originating from the employee’s military unit. If exceptional circumstances occur, employees must provide reasonable notice. Employees must submit Form CS-14-25A (Request for Leave of absence) showing Military Leave.
- C. Union members may use annual leave, compensatory time, or special leave without pay, in addition to military leave to provide military service.
- D. If an employee is scheduled to work on a day of inactive duty training, City management will take all reasonable steps necessary to adjust the employee’s schedule to facilitate the military leave.
- E. The Union agrees that the City Council may determine to extend these benefits beyond what is provided in this MOU in cases of national emergencies without an obligation to first meet and confer.

Article 38

Job-Sharing

Requests for job-sharing between two members may be submitted for consideration in a manner consistent with the Office Job-Sharing Policy. All job-sharing arrangements must be confirmed in writing via the Job-Sharing Agreement to be established by the City Attorney's Office. The grant, denial, suspension, or cancellation of a job-sharing agreement is not grievable.

City agrees to provide the reasonable notice provisions requested by DCAA in the policy.

Article 39

Flexible-Work Schedule

The City Attorney may approve an alternative work schedule for a unit, division or for individual members. Regardless of the schedule adopted, unless approved as a part-time schedule (e.g. job-share), it is an expectation and performance metric that in the normal course employees are required to work at least 80 hours per pay period.

Flexible-Work schedules include:

- a. Flextime – The employee works hours that differ from the standard work schedule (8:00 a.m. to 5:00 p.m.) or by one or more hours. For example, the employee works 7:00 a.m. to 3:30 p.m. or 9:00 a.m. to 5:30 p.m., with one-half hour for lunch.
- b. Compressed Work Weeks – Employees must work 80 hours per pay period; however, they may work fewer days per week and more hours per day to ensure the same total number of hours worked. For example, the employee works four 10-hour days Monday through Thursday with Friday off.
- c. All alternative work schedules are subject to the Office Flexible-Work Schedule Policy and must be pre-approved in writing via the Flexible-Work Schedule Agreement to be established by the Office. A Flexible-Work Schedule may be suspended or terminated at any time for any reason at the discretion of the City Attorney. The grant, denial, suspension or termination of a Flexible-Work Schedule is not grievable.

City agrees to provide the reasonable notice provisions requested by DCAA in the policy.

ARTICLE 40

Identification Badges

City agrees to provide flat badges for sale by Department to employees working in the **Criminal and Community Justice Divisions**. The flat badge remains property of the City, and at the time of employee termination, the badge must be returned to the Department without reimbursement to the employee. However, if the employee **transfers** to the Civil division or **ends their employment at the City Attorney's office, the employee may choose to sell the badge to another eligible attorney in the Criminal or Community Justice Divisions or have the flat badge encased at the employee's expense.**

ARTICLE 41

Legal Representation

Upon request of an employee and subject to any limitations provided by law, the City will provide for the defense of any civil action or proceeding initiated against the employee by a person or entity other than the City in a court of competent jurisdiction on account of any act or omission occurring within the course and scope of his/her employment as an employee of the City.

Nothing herein shall be deemed to require the provision of such defense when the discretion to provide such defense is vested in the City pursuant to the provisions of the California Government Code, now and as amended or where the act or omission was not within the scope of the employee's employment, or the employee acted or failed to act because of actual fraud, corruption or actual malice.

Nothing herein shall be construed to grant to any employee any rights or privileges in addition to those provided in the said Government Code, or to abrogate any rights provided under the Government Code.

ARTICLE 42

Personal Security

An employee who is the subject of a threat verified by law enforcement or is wounded or seriously injured as the result of a criminal act by another during an incident arising from or directly related to the performance of his/her duties may, upon the determination of the appointing authority or their designee, be provided with appropriate security during the occasion of the threat and or during his/her period of hospitalization. The determination of appropriate security rests solely with the appointing authority and is not subject to the grievance and arbitration procedure.

ARTICLE 43

Pay-In-Lieu

- A. Effective for all calendar years beginning on and after January 1, 2019, employees may convert up to 125 hours of annual leave to cash as pay-in-lieu each calendar year, subject to the following rules:**
- 1. If an employee fails to elect by December 1st each year or by the preceding Friday if December 1st falls on a Saturday or Sunday, to receive any of the annual leave hours they will earn in the following calendar year as pay-in-lieu, their annual leave will accrue in accordance with the applicable Personnel Regulation, Index Code 1-2.**
 - 2. If an employee irrevocably elects by December 1st each year or by the preceding Friday if December 1st falls on a Saturday or Sunday, to receive a portion of the annual leave hours they will earn in the following calendar year, not to exceed 125 hours total for the calendar year, as pay-in-lieu, the City will create an account where the employee's designated pay-in-lieu**

accruals will be credited. This account will be referred to as a "pay-in-lieu bucket" ("PIL Bucket") and will be kept separate from the employee's annual leave accrual account or "annual leave bucket" ("AL Bucket"). The employee's election must designate the amount of their annual leave being earned each pay period which they wish to have credited to the PIL Bucket; this designation may be stated as an even percentage (e.g., 10%, 20%, 30%, 40%, etc.) of the leave earned during each pay period up to 100%. Starting with the first pay period of the calendar year, the PIL Bucket will be credited with the designated amount of the employee's annual leave each pay period until the employee's full election amount is reached, not to exceed 125 hours. Any annual leave being earned in a pay period which is not credited to the employee's PIL Bucket will be credited to the employee's AL Bucket. The balance available in the employee's PIL Bucket, if any, will be specified on their timecard and paystub. In addition, the employee's anniversary date and AL cap will also be displayed on the employee's timecard.

3. An employee must make an irrevocable election by December 1st each year or by the preceding Friday if December 1st falls on a Saturday or Sunday, if the employee wishes to participate in the pay-in-lieu of annual leave program for the following calendar year. Elections will not carry over from one calendar year to the next calendar year. An employee who fails to elect by December 1st each year or by the preceding Friday if December 1st falls on a Saturday or Sunday, to participate in the pay-in-lieu of annual leave program for the following year will be deemed to have elected not to participate and they will be prohibited from receiving any pay-in-lieu during that year except as, and only to the extent, permitted under Section 6.
 4. At least 60 days in advance of this annual December 1st deadline, the City will provide employees with notice and an explanation regarding the need for an irrevocable election as well as the relevant form for making the election. At the same time, the City will remind employees of the citywide cap maximums and how the pay-in-lieu election affects that cap.
 5. All pay-in-lieu hours which accumulate in the employee's PIL bucket must be paid out to the employee in the calendar year in which these hours are earned. Pay-outs will be either employee-initiated or City-initiated. An employee may make up to two requests during the calendar year for a payout from their PIL Bucket. The timing of either request is entirely up to the employee and payment will occur as designated on the City approved form. However, an employee cannot request the pay-out of any pay-in-lieu hours until those hours have been earned and accrued in their PIL bucket. Since no PIL hours may be carried over to the following year, the City will initiate a pay-out of all hours accrued in the employee's PIL Bucket no later than the final paycheck issued in the calendar year regardless of the number of pay periods in the calendar year and regardless of the number of hours.
- B. When pay-in-lieu is cashed out, it will be paid based on the employee's rate of pay at the time it is paid. All pay-in-lieu pay-outs are taxable income, subject to all applicable withholdings and payroll deductions.
- C. Existing caps on the accrual of annual leave will remain in effect. However, any hours up to the 125-hour maximum which an employee allocates to their PIL bucket for the

ensuing calendar year will not count toward the calculation of this cap.

- D. Effective for calendar years beginning on and after January 1, 2019, an employee's election with regard to pay-in-lieu shall be irrevocable except in the event of an unforeseeable financial emergency subject to the following rules:
1. In the event of an unforeseeable emergency, as defined in subsection b, an employee may apply to the Risk Management Department to receive pay-in-lieu of annual leave accrued on or after January 1, 2019, but limited to the amount that is reasonably necessary to satisfy the emergency need, including any amounts that may be necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated as a result of the cash out. If the Risk Management Department approves an employee's application, the City will pay the employee the pay-in-lieu amount the Risk Management Department deems necessary to meet the emergency need.
 2. "Unforeseeable emergency" means a severe financial hardship of the employee resulting from an illness or accident of the employee, the employee's spouse, or the employee's dependent (as defined in Internal Revenue Code section 152, and, without regard to Internal Revenue Code sections 152(b)(1), (b)(2), and (d)(1)(B)); loss of the employee's property due to casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, such as damage that is the result of a natural disaster); or other similar extraordinary and unforeseeable circumstances arising as a direct result of events beyond the control of the employee. For example, the imminent foreclosure or eviction from the employee's home may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a spouse or dependent (as defined in Internal Revenue Code section 152, and, without regard to Internal Revenue Code sections 152(b)(1), (b)(2), and (d)(1)(B)) of the employee may also constitute an unforeseeable emergency. Neither the purchase of a home nor the payment of college tuition is an unforeseeable emergency. Pay-in-lieu of annual leave on account of an unforeseeable emergency will not be paid to the extent that such an emergency is or may be relieved through reimbursement or compensation from insurance or otherwise, by liquidation of the employee's assets, to the extent liquidation of such assets would not itself cause severe financial hardship. For this purpose, an employee cannot receive any pay-in-lieu of annual leave on account of an unforeseeable emergency to the extent that they have unused amounts accrued in their PIL Bucket, if any.

ARTICLE 44

Drug and Alcohol Testing Post Accident

City employees are prohibited from consuming alcoholic beverages or being under the influence of a controlled substance or alcohol during their work shift. City employees may be required to undergo mandatory drug and alcohol testing if reasonable suspicion exists, in accordance with A.R. 97.00, Substance Abuse Policy. Furthermore, employees involved in an on-the-job accident while operating a vehicle or power equipment are required to

undergo drug and alcohol testing.

ARTICLE 45

Overpayments to City Employees and Repayment of Funds

A. Overpayment

If it has been discovered that an overpayment or unauthorized payment has been made to a City employee, it is the responsibility of the department to notify the employee in writing and supply the employee with the documentation used to determine the overpayment.

If the employee contends that any portion or the entire amount is not owed, they shall be entitled to request a meeting with the appointing authority to attempt to resolve the disagreement. If the dispute about the payment originates in another department, the employee has a right to request a meeting with the Appointing Authority in that department. The department will notify the employee that they shall be entitled to have a Union representative attend such meeting(s) with them. If the dispute regarding overpayment arises from the interpretation of a personnel regulation or administrative regulation, the employee shall be entitled to grieve this matter directly to the Department Head level.

B. Repayment of Funds.

An employee will pay no penalties, fees or interest as a result of the overpayment. The employee shall have the right to select one of the three following options for the repayment of the funds:

1. A lump sum payment with a date mutually established by the employee and the department.
2. Biweekly installment payments through payroll deduction (Installment payments must be a minimum of \$10.00 and repayment must be completed within twenty-six pay periods).
3. Any other repayment arrangement mutually agreed upon between the City and the employee but not to exceed a repayment plan of five calendar years.

The final agreement on the repayment plan will be in writing, with the lump sum payment date, or the biweekly amount, and the beginning and ending date of the installment plan identified.

If an employee leaves City employment with an outstanding repayment plan, the employee will be invoiced for any remaining balance owed.

Disputes over repayment of funds which were overpaid to an employee through no fault of the employee, shall not be a factor in Employee Performance Evaluations or discipline.

C. Referral to Collections.

- 1. A department may refer an employee to the City Treasurer, Collections Section, only when the employee, after being duly notified of the overpayment and having had the opportunity to review the relevant documentation, refuses to agree to a repayment of the amount owed.**

The employee will be notified of the referral and informed that the Collections Section will proceed with collection as it would for any other debtor.

APPENDIX A

Salary Table for Deputy City Attorneys						
		FY 2019 Salary		FY 2020 Salary		
Grade	Step	Hourly	Annual Salary	Hourly	Bi-Weekly Rate	Annual Salary
Deputy I	A	\$ 30.0056	\$ 62,411	\$ 32.5561	\$ 2,604.4880	\$ 67,717
	B	\$ 31.2038	\$ 64,903	\$ 33.8561	\$ 2,708.4880	\$ 70,421
	C	\$ 32.4527	\$ 67,501	\$ 35.2112	\$ 2,816.8960	\$ 73,239
	D	\$ 33.7502	\$ 70,201	\$ 36.6190	\$ 2,929.5200	\$ 76,168
Deputy II	A	\$ 35.1003	\$ 73,009	\$ 38.0838	\$ 3,046.7040	\$ 79,214
	B	\$ 36.5042	\$ 75,929	\$ 39.6071	\$ 3,168.5680	\$ 82,383
	C	\$ 37.9658	\$ 78,969	\$ 41.1929	\$ 3,295.4320	\$ 85,681
	D	\$ 39.4823	\$ 82,123	\$ 42.8383	\$ 3,427.0640	\$ 89,104
Deputy III	A	\$ 42.2543	\$ 87,889	\$ 45.4234	\$ 3,633.8720	\$ 94,481
	B	\$ 43.9444	\$ 91,404	\$ 47.2402	\$ 3,779.2160	\$ 98,260
	C	\$ 45.7026	\$ 95,061	\$ 49.1303	\$ 3,930.4240	\$ 102,191
	D	\$ 47.5310	\$ 98,864	\$ 51.0958	\$ 4,087.6640	\$ 106,279
	E	\$ 49.4338	\$ 102,822	\$ 53.1413	\$ 4,251.3040	\$ 110,534
	F	\$ 51.4109	\$ 106,933	\$ 55.2656	\$ 4,421.2480	\$ 114,952
Deputy IV	A	\$ 53.4646	\$ 111,206	\$ 57.4744	\$ 4,597.9520	\$ 119,547
	B	\$ 55.6034	\$ 115,655	\$ 59.7737	\$ 4,781.8960	\$ 124,329
	C	\$ 57.8272	\$ 120,281	\$ 62.1642	\$ 4,973.1360	\$ 129,302
	D	\$ 60.1403	\$ 125,092	\$ 64.6508	\$ 5,172.0640	\$ 134,474
	E	\$ 62.5469	\$ 130,098	\$ 67.2379	\$ 5,379.0320	\$ 139,855
Deputy V	A	\$ 64.4352	\$ 134,025	\$ 69.2678	\$ 5,541.4240	\$ 144,077
	B	\$ 67.0129	\$ 139,387	\$ 72.0389	\$ 5,763.1120	\$ 149,841
	C	\$ 69.6949	\$ 144,965	\$ 74.9220	\$ 5,993.7600	\$ 155,838
	D	\$ 72.4833	\$ 150,765	\$ 77.9195	\$ 6,233.5600	\$ 162,073
	E	\$ 75.3822	\$ 156,795	\$ 81.0359	\$ 6,482.8720	\$ 168,555
	F	\$ 78.3969	\$ 163,066	\$ 84.2767	\$ 6,742.1360	\$ 175,296
Senior Deputy	Min	\$ 76.6217	\$ 159,373	\$ 82.3683	\$ 6,589.4640	\$ 171,326
	Max	\$ 88.9434	\$ 185,002	\$ 95.6142	\$ 7,649.1360	\$ 198,878

APPENDIX B

**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAN DIEGO
AND THE DEPUTY CITY ATTORNEYS' ASSOCIATION**

Preamble. This Memorandum of Agreement ("MOA") is entered on this 24th day of July 2008, by and between the City of San Diego ("City") and the Deputy City Attorneys' Association ("DCAA") for the purpose of establishing a new pension plan for DCAA-represented non-safety employees hired on or after July 1, 2009. This MOA was ratified by a vote of the DCAA membership on July ~~25~~, 2008.

The parties agree that this new plan will be applicable to all non-safety employees hired on or after July 1, 2009, whether unclassified, unrepresented, or represented by another Union, and that the San Diego Municipal Code will be amended by Ordinance to implement the terms of this MOA.

Terms. The parties agree that the City's current pension plan which is codified in the San Diego Municipal Code will be amended to provide the following new pension plan terms for non-safety employees hired on or after July 1, 2009:

A. DEFINED BENEFIT PLAN

(1). Retirement Factors

Age 55: 1.00%	Age 61: 2.12%
Age 56: 1.25%	Age 62: 2.24%
Age 57: 1.65%	Age 63: 2.36%
Age 58: 1.758%	Age 64: 2.46%
Age 59: 1.874%	Age 65: 2.6%
Age 60: 2.00%	

(2) Final Average Compensation

The age-appropriate retirement factor will be applied to the average of the **three** highest years of compensation earned at any time during the employee's employment with the City. A "year" will be defined as it is presently in the Municipal Code. The right to retire at age 55 with twenty years of service or at age 62 with ten years of service remains unchanged.

(3) Cap

The defined benefit which results from this formula will be capped at 80% of the employee's final average compensation.

(4) City and Employee Contribution Rates

The parties understand and agree that this MOA does not establish the contribution rates to be paid by the City and participating employees for this new pension plan since this is a matter within the plenary authority of SDCERS pursuant to both the City Charter and the California Constitution. However, nothing in this MOA addresses or is intended to limit the rights or privileges the City or any other party may have, if any, with regard to SDCERS' setting of these contribution rates.

B. DEFINED CONTRIBUTION PLAN

A new defined contribution plan will be established by the City and administered by SDCERS. A mandatory contribution of 1% will be paid into this plan by both the City and the participating employee. Additional voluntary employee contributions, with no City match, will be permitted to the extent otherwise allowed by law.

C. RETIREE MEDICAL TRUST

A .25% mandatory City contribution and a matching mandatory .25% employee contribution will be paid into a Retiree Medical Trust.

The City will establish a Retiree Medical Trust and will engage in further meet and confer to determine collaboratively the details related to (1) the manner and means of administering such a Trust, and (2) the nature and scope of the benefits to be available and on what terms. Additional voluntary employee contributions, with no City match, will be permitted to the extent otherwise allowed by law.

D. NO PARTICIPATION IN THE CITY'S SUPPLEMENTAL PENSION SAVINGS PLAN

Employees covered by this new plan will not participate in the City's Supplemental Pension Savings Plan. However, the City's current 401(k) and 457 Plans will remain available to employees covered by this new plan on the same terms as are available to employees not covered by this new pension plan.

No Other Changes to the SDMC.

Except as described above, all other provisions of the San Diego Municipal Code related to the City's pension plan will remain unchanged and be applicable to non-safety employees hired on or after July 1, 2009.

Waiver of Legal Claims. The parties agree that this MOA resolves all issues related to the establishment of a new employee pension plan and a proposed ballot measure. Accordingly, each party waives the right to challenge the proceedings which

led to this MOA through PERB or in any other forum.

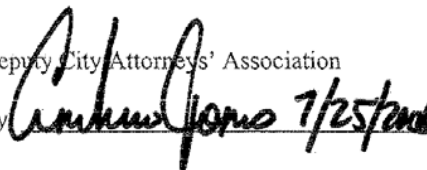
However, this MOA does not constitute a waiver or otherwise affect the rights of the parties as to other issues related to the 2008 labor negotiations; nor can this MOA be used as evidence in any such claim before PERB or in any other legal proceeding.

IN WITNESS THEREOF, the undersigned agree to submit this MOA to the City Council for adoption.

Deputy City Attorneys' Association

City of San Diego

By:

 7/25/08

By:

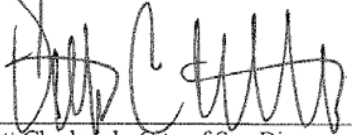


**MEMORANDUM OF AGREEMENT
BETWEEN THE CITY OF SAN DIEGO AND THE DEPUTY CITY ATTORNEYS
ASSOCIATION (DCAA)
REGARDING NEW PENSION PLAN FOR
EMPLOYEES HIRED ON OR AFTER JULY 1, 2009**

Addendum 1

The parties agree that the retirement factor for Age 64 under the Defined Benefit Plan should be 2.48% and not 2.46% as previously noted on the July 24, 2008, agreement ratified by DCAA on July 25, 2008.

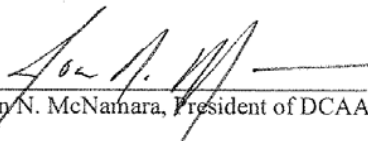
This addendum is executed by the following authorized representatives of each party:



Scott Chadwick, City of San Diego

21 SEP 09

Date



Joan N. McNamara, President of DCAA

September 18, 2009

Date

**COALITION
AND
CITY OF SAN DIEGO**

**FY2013 PROPOSITION B IMPLEMENTATION NEGOTIATIONS
TENTATIVE AGREEMENT**

The San Diego Municipal Employees Association, International Association of Fire Fighters, Local 145 ("Local 145"), International Brotherhood of Teamsters, Local 911, Deputy City Attorneys Association of San Diego and Local 127 American Federation of State, County, and Municipal Employees (collectively the "Coalition"), and City of San Diego ("City") have negotiated and reached a tentative agreement on certain terms for an Interim Defined Contribution (DC) Plan on August 16, 2012. Negotiations between the Coalition and City (collectively the "Parties") continue over a Permanent DC Plan.

In accordance with Ground Rule 5, the Parties agree that final approval of the tentative agreement is subject to approval of the City Council.

TERMS FOR INTERIM DC PLAN

INTRODUCTION

1. The purpose of this proposal is to provide a means for an Interim DC Plan to be established expeditiously to accommodate the City's hiring needs without undermining the time otherwise needed for a good faith meet and confer process over the terms of a Permanent DC Plan with disability/death benefit features pursuant to Proposition B. Non-safety employees initially hired after July 19, 2012, who are excluded from SDCERS, will not participate in the 2009 401(a) Plan.
2. The Parties acknowledge and agree that, by entering into this agreement on terms for an Interim DC Plan neither party is prevented from making different proposals during negotiations on the Permanent DC Plan over any aspect of the DC Plan, including the vehicle, vesting schedule for City contributions, the definition of compensation which could include a cap on eligible compensation, the death benefit, disability benefit, and/or the percentage for employer and employee contributions

SPSP-H VEHICLE

3. The SPSP-H Plan (as proposed and modified by this agreement) will be used for purposes of this Interim DC Plan. The City also agrees that any and all "reservation of City's rights" as stated in the SPSP-H Plan document, which relate to employees' rights or benefits under the Plan, is limited by the City's obligations under an agreement for an Interim DC Plan, as well as its obligations under the Meyers-Milias-Brown-Act ("MMBA").

CITY CONTRIBUTIONS

4. Effective October 2, 2012, the City's total mandatory contribution for each Eligible Class Employee as defined in SPSP-H Plan document Article I, section 1.15, subdivision (a)(ii) will be 9.2% for non-safety employees and 11% for safety employees under the Interim DC Plan. These percentages will apply to all compensation as defined in Article I, section 1.10 of the Plan document. For the purpose of this agreement, Eligible Class Employees excludes all hourly employees.
5. The SPSP-H Plan document will also be amended to expand the definition of compensation to include pay in lieu of compensatory time and pay in lieu of cycle time.

EMPLOYEE CONTRIBUTIONS

6. Effective October 2, 2012, the total mandatory post-tax contribution for each Eligible Class Employee will be 9.2% for non-safety employees and 11% for safety employees under this Interim DC Plan. These percentages will apply to all compensation as defined in Article I, section 1.10 of the SPSP-H Plan document and as amended under paragraph 5 above.

VESTING

7. The employee will be 100% vested at all times in all amounts held in his or her SPSP-H account whether contributed by the employee or by the City.

DEATH/DISABILITY

8. The City agrees that the terms of the disability/death benefit adopted in conjunction with a Permanent DC Plan will be made retroactively applicable to any Eligible Class Employee or his/her beneficiary(ies) who suffers a qualifying event during the period of time when this Interim DC Plan is in effect. By this provision, the City agrees to extend to any such Eligible Class Employee or beneficiary the full benefits and rights which would otherwise have been available to him or her had the disability/death benefit adopted in conjunction with a Permanent DC Plan been in effect when the incident giving rise to the Eligible Class Employee's disability or death occurs.

NO UNILATERAL CHANGES

9. No benefits or monies received by employees may be altered by the City during this Interim DC Plan. The Parties acknowledge that negotiations are continuing over a Permanent DC Plan. After the effective date of the Permanent DC Plan the terms may change as set forth in paragraph 2.


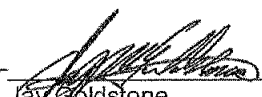
RESERVATION OF RIGHTS

10. Each union is participating in this proposal for an Interim DC Plan under continuing protest and objection and while expressly reserving its claims which include but are not limited to the following: (a) Proposition B is unlawful as applied to represented employees due to the City's violation of the MMBA; (b) the City's insistence on altering the terms and conditions of employment for new hires due to the chaptering of Proposition B – and after unilateral imposition of a hiring freeze – is unlawful because each Union has an MOU in effect, which was adopted and made final and binding by the City Council on June 18, 2012, and these MOUs establish the terms and conditions of employment for all new hires through June 30, 2013.

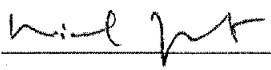
MAKE-WHOLE

11. The parties acknowledge that this agreement for an Interim DC Plan may eventually be impacted by any order or decision in pending consolidated unfair practice cases before PERB once such order or decision becomes final after the exhaustion of all appeals under Government Code section 3509.5.

FOR THE CITY

	9/5/2012		
Timothy Davis	Date	Jay Goldstone,	Date
Lead Negotiator, City of San Diego		COO, City of San Diego	

FOR MEA

 9/5/12
Date

FOR LOCAL 145

 9/5/12
Date

COALITION AND CITY OF SAN DIEGO
FY2013 PROPOSITION B IMPLEMENTATION NEGOTIATIONS
TENTATIVE AGREEMENT

FOR LOCAL 127

FOR LOCAL 911

Jim Byrd 9.5.12
Date

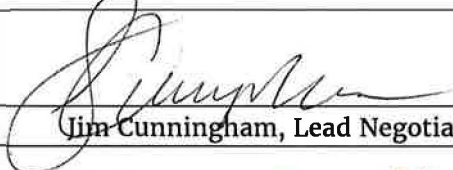
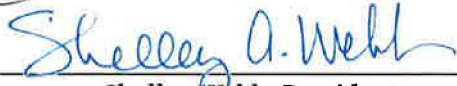
Chris Zgodan 9-5-2012
Date

FOR DCAA






Michael Malone 9.5.12
Date

IN WITNESS WHEREOF, the undersigned agree to submit this Memorandum of Understanding effective **July 1, 2020**, to the appropriate bodies.

Deputy City Attorneys Association

 Jim Cunningham, Lead Negotiator	<u>4-22-2020</u> Date
 Shelley Webb, President	<u>June 19, 2020</u> Date

City of San Diego

 Timothy L. Davis, Lead Negotiator	<u>July 1, 2020</u> Date
 Jim McNeill, Assistant City Attorney	<u>July 1, 2020</u> Date
 Abby Jarl-Veltz, Assistant Human Resources Director	<u>June 30, 2020</u> Date
 Manuel Quintero, Senior Human Resources Officer	<u>June 29, 2020</u> Date
 Tanya Tomlinson, Senior Administrator, Office of the City Attorney	<u>June 30, 2020</u> Date

APPROVED AS TO FORM: MARA ELLIOTT, CITY ATTORNEY

By: 
Jim McNeill, Assistant City Attorney

DATE SIGNED: July 1, 2020