# MEMORANDUM OF UNDERSTANDING

***Between The Representative of the***

***Costa Mesa City Employees Association***

***And the City of Costa Mesa***

**2013**

**2016**

# CMCEA

# MEMORANDUM OF UNDERSTANDING

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## ARTICLE 1 - RECOGNITION/PREAMBLE

1.1 By resolution of the City Council of the City of Costa Mesa and pursuant to the provisions of the Meyers-Milias-Brown Act, Section 3500 et. Seq. of the California Government Code, the City of Costa Mesa (hereinafter called the "City") has recognized the Costa Mesa City Employees Association (hereinafter referred to as "ASSOCIATION" or "CMCEA") as the exclusive representative and agent for collective bargaining for the employees in job classifications set forth herein.. The Association and the City are the Parties to this agreement and are jointly recognized herein below as "The Parties."

1.2 This Memorandum of Understanding (MOU) has been prepared by representatives of the City and representatives of CMCEA who have met and conferred in good faith, examining a number of proposals and counter proposals concerning wages, hours of employment, fringe benefits and other terms and conditions of employment for the employees of the City as defined in Section 1.1 herein.

1.3 It is the mutual understanding of the City and Association that this MOU shall be submitted to the Costa Mesa City Council with the joint recommendation of the parties that the terms of this MOU be adopted and that said City Council will take such other action as may be needed to implement its provisions.

1.4 The wages, hours and other terms and conditions of employment specifically referenced in this MOU shall remain in effect unless and until modified, amended or deleted by means of future meet and confer processes, including impasse resolution procedures. If a tribunal of competent jurisdiction holds that any part of this MOU is found to be insufficient, in conflict or inconsistent with other laws, regulations or the obligations of the Parties as defined herein, or is otherwise held to be invalid, unlawful or unenforceable, such part or provision, and only such part or provision shall be severed from this MOU or shall be suspended or superseded by such applicable laws and regulations, to the extent that the implementation thereof falls within the scope of representation , shall be controlled by the provisions of Government Code Section 3500 et. seq.

1.5 For the term of this MOU, neither party shall be compelled to meet and confer with the other concerning any issue expressly provided for in this MOU. Each Party to this MOU hereby expressly waives its right to demand that the other Party meet and confer concerning any issue expressly covered herein. However, nothing in this MOU shall prohibit these Parties from meeting and conferring over any issue provided for in this MOU.

1.6 Continuous uninterrupted and efficient service to the City of Costa Mesa by the City and its employees, and orderly employer-employee relations are essential considerations of this MOU. Accordingly, CMCEA agrees on behalf of itself and its members, individually and collectively, that there shall not be any strikes, non-informational picketing, boycotting, work stoppages, slow-down strikes or any other concerted job actions or by refusal to render services, including overtime or any other curtailment or restriction of work and services at any time.

1.7 CMCEA recognizes its duty and obligation to comply with the provisions of Section 1.6 of this MOU and to make every reasonable effort to assure that all employees covered by this MOU similarly do so. In the event of any concerted activity by employees in violation of the provisions or intent of Section 1.6, CMCEA hereby agrees to direct its members to cease said action or conduct forthwith. No employee covered by this MOU shall be entitled to any benefits or wages whatsoever while engaged in activities prohibited by Section 1.6.

1.8 The Parties hereby agree that all of the material terms and conditions of previous MOUs have been complied with, and are hereby discharged and superseded by the adoption of this MOU.

1.9 All rights to manage, organize, direct and control the City's business, including all of the terms and conditions of the employment of any employee of the City, which are not expressly limited, modified, amended or eliminated by this or any other MOU, are retained exclusively by the City and its management personnel. City Management also retains exclusive jurisdiction over any residual portions of any managerial rights which have in part been limited, modified or amended by this MOU.

## ARTICLE 2 - TERM OF AGREEMENT

The term of this MOU will commence on April 1, 2013, and will expire in the pay period which includes June 30, 2016.

## ARTICLE 3 - SALARIES AND WAGES

3.1 **COMPENSATION** - Employees covered by this MOU shall be compensated at the monthly base salary rates established for their classification under the Basic Pay Schedule per City Council resolution. An employee occupying a position in the classified service shall be compensated within the range established for his or her position as provided in Rule 6 of the Personnel Rules and Regulations. The minimum rate for the class generally shall apply to an employee upon his or her original appointment. Employees who are re-employed shall receive a rate within the range established for the class and agreed upon by the appointing authority and the employee prior to appointment. Any employees hired by the City on or after City Council adoption of the 2013-16 MOU shall be subject to a modified basic pay schedule which shall reflect an entry level pay step 10% less than Step 1 of the basic pay schedule as the latter may from time to time exist (to be designated Step A) and a second entry level pay step which shall be 5% less than Step 1 of the basic pay schedule as the latter may from time to time exist (to be designated Step B). Additionally, Step 5 of the basic pay schedule, as it may from time to time exist, shall become the maximum step that said employee shall be eligible to attain.

Further, there shall be no modification to Steps 1-7 of the basic pay schedule as it existed immediately prior to City Council adoption of this 2013-16 MOU.

Notwithstanding the above, the Parties agree that there shall be a singular reopener to this 2013-2016 MOU, and that singular reopener shall regard the sole topic of unadjusted based salary (the salary reflected in the "basic pay schedule.") Therefore, on or about June 1, 2015, the parties shall convene the meet and confer process in this singular regard. The Parties acknowledge, understand and agree that convening of this singular meet and confer reopener does not mandate that any agreement be reached by the parties as to a change to the basic pay schedule. Nonetheless, the Parties shall process this meet and confer reopener in accord with the requirements of the Meyers-Milias-Brown Act as that Act shall from time to time exist.

3.2 **MERIT SALARY ADVANCEMENT** - No salary advancement within a classification shall be made so as to exceed the maximum rate established in the pay plan. Advancement shall not be automatic but shall depend upon increased service value to the City as recommended by his or her supervisor based upon performance record, special training undertaken, length of service and other pertinent factors. However, during the term of the 2013-2016 MOU, unit members employed by the City prior to City Council adoption of a 2013-2016 MOU shall not be eligible for salary advancements within a classification. Unit members hired on or after City Council adoption of a 2013-16 MOU shall be eligible for salary advancement within a classification.

3.3 **LABOR MARKETPLACE** The "labor marketplace" however defined, shall not mandate any specific compensation adjustment yet may be one of many factors assessed by the parties in determining levels of compensation. In assessing the labor marketplace, both public and private sector classifications may be given consideration as a factor in assessing the "labor marketplace" indication of total compensation levels. The "total compensation" of employees within the unit and in the "labor marketplace" may be a factor in assessing compensation levels. "Total compensation" shall include but not be limited to the value of City funded base salary, retirement, deferred compensation, retiree medical, health insurance, unemployment insurance and all other forms of City-funded remuneration whether or not reflected in an employee's W2.

## ARTICLE 4 – OVERTIME PAY

4.1 **OVERTIME PAY** - If an employee is required to work longer than the normal work week or shift, said employee shall be compensated for said approved overtime either (1) by being allowed one and one-half (1-1/2) times the amount of actual overtime hours worked, to be taken as compensatory time off ("comp time") without deduction from the employee's regular salary or compensation, or (2) by payment for such overtime actually worked at a rate of one and one-half (1/1/2) times the employee's regular salary rate. The determination of which method of crediting overtime is used is at the discretion of the department director with the approval of the Chief Executive Officer. Compensation for said overtime shall normally be included with compensation for the pay period in which such overtime occurs. An employee may, with the department director's approval, accumulate compensatory time to be taken during subsequent pay periods, with departmental approval, to a maximum accumulation of sixty (60) hours for all other eligible employees. However, all accrued compensatory time off shall be distributed to the employee in cash in December, but not later than December 31 of each year. The distribution shall be at the employee's hourly rate at the time of distribution.

Paid leave shall not be considered hours worked for purposes of computing overtime eligibility.

4.2 **COMP TIME CASH-OUT** - Employees will be allowed to cash-out up to 40 hours of compensatory time (time off accrued in lieu of paid overtime) *in* any payroll period. The maximum accrual of comp time for employees who work with regard to the below-listed holidays shall be 60 hours.

4.3 **COURT ON-CALL PAY** - If an employee receives a job-related subpoena to be on-call for court while in a non-paid status (time off), he or she shall receive two hours at the base salary rate for each court session.

4.4 **MOVE UP OVERTIME** - The base rate applicable to a move-up pay will be included in the calculation of the overtime premium pay.

4.5 **CALL BACK DUTY** - Employees who are recalled to active duty from off-duty not as an extension of the scheduled or normal work shift will be considered to be "on call" and shall receive overtime compensation at one and one-half times (1½) the employee's base rate of pay for time actually worked after reporting to the place of duty or just two (2) hours of overtime pay, whichever is greater. Employees who are able to handle the incident by phone or other electronic means without reporting to duty shall be compensated according to the same callback provisions.

4.6 **CALL RESPONSE DURING LUNCH PERIODS** – Hours worked for computation of overtime eligibility shall include responses to a service call during the lunch period.

4.7. **COMPENSATORY TIME OFF (CTO) FOR NON-SWORN EMPLOYEES IN THE TELECOMMUNICATIONS DIVISION AND POLICE DEPARTMENT WHO WORK WITHOUT REGARD TO HOLIDAYS** – A written request for C.T.O. shall be made and approved no later than 24 hours prior to the requested time off. The shift supervisor of the individual requesting C.T.O. shall approve or deny the request.

All employees (on a first come, first served basis) who submit a request for time off may utilize accrued compensatory time off ("CTO"), provided their vacancy does not result in less than minimum staffing levels on the shift they are scheduled to work. This policy is subject to suspension in emergency situations at the discretion of the Department Director or his/her designee.

Employees assigned to rotating shifts may not submit a CTO request more than 30 calendar days in advance of the shift rotation in which the CTO day off would fall.

Employees will submit their request to the shift supervisor who shall immediately determine if the CTO request may be granted if it does not take the shift below minimum staffing.

If the CTO vacancy would result in less than minimum staffing levels, the employee will be required to identify an alternate date to take CTO or make approved arrangements for a shift trade. A shift trade will not result in paid or CTO compensation for regular hours worked.

The practice of shift trading shall be voluntary on behalf of each employee involved in the trade. The trade must be due to the employee's desire or need to attend to a personal matter and not due to the department's operations. The employee providing the trade shall not have his/her compensable hours increased as a result of the trade; nor shall the employee receiving the trade have his/her compensable hours decreased as a result of the trade. Any premium pay or other extra compensation will be waived for both individuals during the period they work for the other. Any hours worked beyond the normal workday will be credited to the individual actually doing the work.

"Paybacks" of shift trades are the obligation of the two employees involved in the trade. Paybacks are to be completed within the shift deployment of the initial shift trade. Any dispute as to paybacks is to be resolved by the involved employees, and under no circumstances will the department be obligated for any further compensation whatsoever to any of the involved employees. The department is not responsible in any manner for hours owed to employees by other employees that leave the employment of the City or are assigned other duties. Shift trades are not subject to the grievance procedure.

If one individual fails to appear for the other (regardless of the reason), the person who was originally scheduled will be listed as absent without leave and may be subject to disciplinary action.

A record of all initial shift trades and "paybacks" shall be maintained by the involved employees on forms provided by the department ("Shift Trade Log").

## ARTICLE 5 - PREMIUM PAY, SPECIAL PAY AND PAY ADJUSTMENT

According to California Code of Regulations Sections 571(a) and (b) the following premium and special pays will be reported to CalPERS as special compensation:

5.1 **BILINGUAL PAY** - Applicable only to employees in the job classifications determined and approved by the Chief Executive Officer and when assigned to utilize their bilingual abilities: 5% over assigned rate. The City will pay for the training or the skill for bilingual pay, but not both. Employees must be certified annually by their department director and may be tested by the *Human Resources* Division annually to verify their foreign language proficiency in order to maintain eligibility for said bilingual pay. The City will pay for one test per year per employee. An employee may take the test more than once during the year at his or her own expense. A second level of proficiency, designed for employees who are capable of "speaking only" shall receive 2.5% over assigned rate. Testing procedures will be determined and administered by the City. This level of proficiency is not intended to replace "higher" level of proficiency indicated above, nor to "demote" employees currently receiving that level of benefit; providing they maintain appropriate proficiency. The City agrees to receive CMCEA input as to what languages should be considered for the bilingual program.

The following standard of spoken Spanish, Vietnamese, *or American Sign Language* is followed for the 2 ½% Certification:

A. The applicant has the ability to create with language, recombining and adapting learned material to express personal meaning and can handle simple situations and transactions in the course of his/her work such as explanation of procedures, obtaining personal information, instructions to victims and onlookers, among others.

B. The applicant is able to maintain simple face-to-face conversations, asking and answering questions regarding everyday survival on topics most related to self and immediate work environment; courtesy requirements, and personal needs during the course of routine calls not likely to be of a life or death nature.

C. The applicant can be understood with some repetition by a sympathetic native speaker.

D. The applicant demonstrates mastery of work-related vocabulary including: time, days of the week, months, family members, parts of the body, motions and states, greetings, home and community, food and beverages, alphabet and numbers, vehicles, simple commands, interrogatory words, etc.

E. Accuracy is required in the present tense and gender distinctions.

F. Core vocabulary of 300-600 words.

The 5% Certification requires:

A. Accuracy in present and past tenses.

B. Core vocabulary of 600-1200 words.

C. Exhibits good pronunciation, stress, and intonation skills as judged by the ability to be understood with little repetition or confusion by native speaker.

D. Ability to interview the victim of a crime or accident or other situation involving a native speaker of Spanish or Vietnamese and the conduct simple interrogations and investigations which could be of a life or death nature.

E. Ability to understand description, narration, main ideas and details on a variety of topics beyond the immediate situation.

5.2 **MATRON PAY** - The City will endeavor to ensure that non-sworn staff will not be assigned to perform this duty, pursuant to Police Department policy. However, when required as an incidental assignment for non-sworn personnel other than Custody Officer, 5% of base salary will be paid as compensation for a trained person whenever he or she performs the matron duty.

5.3 **"EMD" CERTIFICATION PAY** - Telecommunication Division employees trained, designated and certified to utilize Emergency Medical Dispatch techniques, shall receive 5% above their assigned rate of pay.

5.4 **STANDBY PAY** - Employees who are released from active duty but who are required by their department to leave notice where they can be reached and be available to return to active duty when required by the department at any time other than their regularly scheduled working hours, shall be said to be on standby duty. An employee assigned to standby duty shall be paid at the rate of thirteen (13) straight time hours at his or her regular rate of compensation for each week so assigned, plus compensation for each hour actually worked pursuant to the callback provisions. If a holiday falls within the assigned standby week, an additional four (4) hours at the employee's regular rate will be given to the person assigned to standby. Employees on standby duty must remain within a reasonable commuting distance in which the employee must be able to respond to the worksite within one hour of being called. During standby duty, the employee must refrain from activities that might impair his or her ability to respond or perform assigned duties in a satisfactory manner.

5.5 **SAFETY SHOE ALLOWANCE** - For those employees covered under the City's Safety Shoe Program and who meet the criteria for the replacement, repair or purchase of safety shoes, the City agrees to fully pay for the shoe that meets the minimal standard established by the program. The City's Purchasing Division will annually confirm the amount. All safety shoes/boots purchased under this program must have steel enforced toes and insteps and bear the official stamp of approval from the American National Standards Institute (ANSI).

5.6 **SHIFT ASSIGNMENT PAY** - The City will pay employees in CMCEA-represented classifications who are continuously and regularly assigned to a schedule which requires that he or she actually work a minimum of five (5) hours between the hours of 3:00 p.m. and 7:00 a.m. a shift differential as defined below:

A. A Night Shift Differential of 5% over the assigned rate per shift for all CMCEA represented classifications assigned to work a night (swing) shift schedule which begins at 3:00 p.m. or later.

B. A Morning Shift Differential of 10% over the assigned rate per shift for all CMCEA represented classifications assigned to work a morning (graveyard) shift schedule which begins at 11:00 p.m. or later.

C. Employees working a Cross-Over Shift schedule beginning in one shift, but including at least five (5) hours worked into a Night or Morning Shift as defined above, will be compensated for those five or more hours at the appropriate Shift Differential rate.

5.7 **SHORTHAND ASSIGNMENT PAY** – Shorthand is a desirable requirement for all secretarial classifications. The City will pay a 2.5% monthly assignment differential for each full month that an incumbent in a secretarial classification is assigned by the Department Director to utilize the ability to take dictation at a minimum rate of 70 words per minute. In order to receive and maintain the monthly assignment differential, the incumbent must have successfully passed the City's shorthand test and the Department Director must annually certify that the incumbent routinely utilizes the skill in the workplace.

5.8 **CLASS A and B LICENSE INCENTIVE PAY** Effective August 2, 2009, eligible employees assigned to positions requiring daily operation of equipment requiring a valid Class A/B California Driver's License shall receive an annual $700 incentive bonus, subject to the following eligibility criteria:

A. Eligibility – The employee must meet all of the following in order to be eligible for the annual bonus incentive:

- Employee must be assigned to a position requiring daily operation of equipment requiring a valid Class A/B California Driver's License.
- As a condition of employment, employee must obtain and maintain the required California Driver's license and endorsements (airbrakes, tanker, and manual transmission).
- Employee must have a rating of "meets standards" or higher on the employee's most recent annual performance evaluation.
- Employee must have successfully completed probation.
- Employee must have successfully passed the DMV Medical examination.

B. Payment of Annual Incentive – Upon implementation, each eligible employee shall receive a pro-rated incentive based upon the number of pay periods between August 2, 2009 and the employee's anniversary date subject to satisfactory performance and recommendation from the employee's supervisor. In following years, eligible employees shall receive this annual incentive bonus on their respective anniversary date. Employees must receive a rating of "meets standards" or higher on their most recent annual performance evaluation and submit a copy of their current Class A/B California Driver's License and current DMV medical certification prior to receipt of the bonus. The amount of the annual bonus will be reported to CalPERS as "compensation earnable."

C. Lapse of License – Any eligible employee assigned to positions requiring daily operation of equipment requiring a valid Class A/B California Driver's License who allow their Class A/B California Driver's License to lapse may be subject to discipline up to and including termination. Any annual incentive bonus to be paid on their next anniversary date will be reduced on a prorated basis.

D. DOT Drug and Alcohol Testing Regulations – Eligible employees assigned to positions requiring daily operation of equipment requiring a valid Class A/B California Driver's License will be subject to the DOT Drug and Alcohol Testing Regulations and the City's Drug & Alcohol Policy adopted pursuant to the DOT Regulations.

E. License and DMV Physical Fees – any employees who successfully renew their Class A/B California Driver's Licenses or acquire a new license upon starting a new assignment requiring a Class A/B California Driver's License shall, upon submission of a receipt by the employee, be reimbursed by the City for the difference in fee charged by the DMV between such license and a Class C Driver's license. The cost of the DMV physical/medical exam will be scheduled and paid by the City, provided such exam is performed by the City's designated provider/physician.

## ARTICLE 6 - RETIREMENT

6.1 **CalPERS -** Unit members who do not meet the definition of "new member" under the California Public Employees' Pension Reform Act of 2013 (PEPRA) (those unit members shall be referred to as "classic members") are enrolled in either the CalPERS retirement plan provided for by Government Code § 21354.4, and commonly referred to as the 2.5% at age 55 retirement plan ("tier 1"), or in accord with the Side Letter of Agreement extending the 2004-2009 MOU to March 31, 2013, the 2% at 60 formula provided for by Government Code § 21353 ("tier 2").

6.2 Effective the first payroll period commencing on or after adoption by the City Council of the 2013-2106 MOU, all unit members defined as "classic" members shall individually fund 100% of their statutorily required member contribution to CalPERS, as that amount may from time to time exist. Effective concurrent with adoption of the 2013-2016 MOU, the statutorily required member contribution for tier 1 unit members is 8% of compensation and for tier 2 members, 7% of compensation.

6.3 Effective the first payroll period commencing on or after adoption by the City Council of the 2013-16 MOU, the parties agree pursuant to Government Code § 20516(a)(f), that each unit member (both classic and new members) shall share the cost of the employer CalPERS contributions in the following amounts, which shall be made through payroll deductions:

A. 2.469% of the employer contribution shall be contributed by each individual unit member, in addition to the above described statutorily required 8% or 7% normal classic member contribution and in addition to the Section 6.5, below - described new member normal cost otherwise required by the Public Employees Retirement Law. The 2.469% cost sharing is a continuation of pre-existing practice for "tier 1" "classic" members and a newly instituted requirement for "tier 2" "classic members" and for "new members."

B. In addition to the 2.469% the employee funding of the employer contribution, each unit member (all "classic" and "new members") shall also fund 60% of any and all CalPERS mandated increases in the employer's contribution as that amount shall from time to time exist. Except as otherwise stated herein, said 60% funding shall commence the first payroll period commencing on and after adoption by the City Council of the 2013-2016 MOU.

C. The 2013-14 PERS mandated increase in the employer retirement contribution rate was 3.11%. Effective the first payroll period commencing on and after adoption by the City Council of the 2013-16 MOU, each unit member shall commence paying 60% of said 3.11% employer rate increase, in addition to funding 60% of any employer rate increases mandated thereafter.

D. As of the adoption date of the 2013-2016 MOU, the cost sharing paid by all unit members will not presently be in an amount uniform as to all local miscellaneous members. Therefore, this cost sharing agreement shall be made pursuant to Government Code § 20516(f) which provides that nothing in section 20516 shall preclude a contracting agency and its employees from independently agreeing in a memorandum of understanding to share the costs of any benefit, in a manner inconsistent with this section. Thus, this cost sharing MOU provision shall not be part of the contract between the CalPERS system and the City and shall therefore be effective concurrent with the first payroll period commencing on or after adoption by the City Council of the 2013-16 MOU and shall be made by payroll deductions.

It is the intention of the City and CMCEA that employee-paid employer contributions hereunder ("cost sharing contributions") be designated and treated as pre-tax "pick up" contributions under the provisions of Section 414(h)(2) of the Internal Revenue Code. However, the City does not warrant the treatment of these employee cost sharing contributions as being pre- or post tax. Further, the City shall not be required to commence any action to determine or preserve any pre or post income tax characterization of such contributions. If the IRS or other entity of competent jurisdiction rejects treatment of the "pick up" as being pre-tax, the City shall concurrently comply with such determination. Any effected employee shall be individually responsible for funding any resultant retroactive tax and/or penalty liability. The Association releases the City from bearing any liability to the Association-as regards this Section 6.3 D. except for any intentional acts of malfeasance.

Subject to the foregoing, the parties agree to use reasonable efforts to establish and/or confirm the pre-tax characterization of such contributions. However, the taking of such "reasonable efforts," shall not relieve the City of complying with the directive issued by the IRS or other agency of competent jurisdiction.

6.4 There shall be no sunset date to any provision in this Article 6.

6.5 **The California Public Employees' Pension Reform Act of 2013 (PEPRA)** - As it may from time to time exist, the PEPRA shall in its entirety be given full force and effect. Any provision in the 2013-2016 MOU which contradicts any provision of the PEPRA, shall be deemed null and void, with the contrary PEPRA provision(s) being given full force and effect. Therefore, no provision of PEPRA shall be deemed to impair any provision of the 2013-2016 MOU or any MOU, Agreement, Rule or Regulation predating the 2013-2016 MOU. PEPRA includes, but is not limited to, the provisions described below:

Unit members hired on and after January 1, 2013, deemed to be a "new member" as defined in Government Code § 7522.04, shall individually pay an initial Member CALPERS contribution rate of 50% of the normal cost rate for the Defined Benefit Plan in which said "new member" is enrolled, rounded to the nearest quarter of 1%, or the current contribution rate of similarly situated employees, whichever is greater.

Unit members who are "new members" and miscellaneous employees on and after January 1, 2013, shall be enrolled in the PEPRA provided for 2% @ 62 retirement formula (Govt. Code § 7522.20).

Unit members who are "new members" on and after January 1, 2013, shall have "final compensation" measured by the highest average annual pensionable compensation earned by the member during a period of at least 36 consecutive months (Section 7522.32.), and their retirement benefits shall be calculated based on "pensionable compensation" (Section 7522.10) rather than "compensation earnable" (Section 20636).

## ARTICLE 7 - HEALTH INSURANCE AND RETIREE MEDICAL BENEFIT PROGRAM

7.1 **IRS SECTION 125 BENEFIT PLAN** - The City shall continue to provide the amounts listed below toward the payment of premium for employees covered by this Agreement under an IRS Section 125 Benefit Plan. The current core benefits include life and long term disability insurance. Medical insurance is a core benefit which a City employee is required to carry unless he or she is covered by another medical insurance plan with comparable coverage at the end of the open enrollment period.

7.2 **PERS HEALTH BENEFITS PROGRAM** - Employees shall have the option of choosing medical coverage under the Public Employees' Retirement System Health Benefits Program.

7.3 **CONTRIBUTION AMOUNT** - The City's contribution *as of January 1, 2007 was $674* per month per employee towards a flexible benefit account. *Effective January 1, 2008, the City's contribution amount was $799 per month.* Effective the first payroll period commencing on or after City Council adoption of the 2013-2016 MOU, but not earlier than July 1, 2014, the City's contribution towards a flexible benefit account shall increase to $919 per month.

*7.4* ***DISCONTINUANCE OF MEDICAL PLAN WAIVER*** *– In 1994, the City began deducting $16 per pay period from employees "flex bucket" allocation consistent with the Public Employees' Medical and Hospital Care Act requirement that employees and retirees receive an equal contribution from the city toward the medical plan. In addition, employees who chose to waive medical coverage ("waivered employees") were also charged the $16 per pay period for equity reasons as an administrative fee. Over the years, the Government Code (PERS Law) increased the $16 amount and the employees, retirees and "waivered employees" were required to deduct the new amounts from the flex buckets each month. The amount increased to $32.20 in 2004, $48.40 in 2005, $64.60 in 2006, $80.80 in 2007 and increased to $97 in 2008.* Starting calendar year 2009, the calculated adjustments have been based upon the medical care component of the CONSUMER PRICE INDEX-URBAN (CPIU). During 2013, the amount increased to $115 and will increase to $119 in 2014. The amount of the deduction from the flex bucket is annually adjusted pursuant to Government Code § 22892(b)(F)(2).

*The City and CMCEA mutually agree that there is no continuing need that waivered employees need to be tied to the PEMHCA deduction. Therefore, effective the pay period including July 1, 2007, employees who have provided proof of other medical insurance in accordance with the City's requirements, will be eligible to receive the full flex bucket contribution, without a reduction for medical coverage waiver. This provision acknowledges that this issue is resolved in its entirety and no retroactive adjustments will be made regarding the waiver program.*

7.5 **QUALIFICATION FOR FLEX CONTRIBUTION** - Employees must receive compensation for the entire pay period to receive the flexible benefit contribution amount. Use of accrued leave qualifies as compensation for this purpose. Employees will be ineligible for the flexible benefit contribution if the employee records absence without pay hours within the pay period. Disciplinary actions will not disqualify an employee from receiving the flex contribution. Catastrophic illness leave donations to employees will not meet the qualifications for the flex contribution.

7.6 **RETIRED EMPLOYEES' MEDICAL PROGRAM** – Unit employees hired prior to City Council adoption of the 2013-2016 MOU, will participate in the retiree life and medical insurance programs as defined in City Council Policy 300-1.The City shall continue to provide life and medical insurance for retired employees of the City as defined in Council Policy 300-1.

## ARTICLE 8 - LEAVES

8.1 **LEAVES OF ABSENCE** - For the purpose of computing an employee's entitlement to a leave of absence, an employee's continuous service shall be based on the employee's date of initial probationary employment with the City. This date shall be the employee's anniversary date for vacation and sick leave purposes subject to the provisions contained herein.

8.2 **VACATIONS**

A. The purpose of annual vacation leave is to enable each eligible employee to spend a reasonable amount of time away from his or her job and to return to work refreshed. Any leave of absence without pay shall not accrue vacation leave for each full pay period of such absence.

B. Regular full-time employees in the classified services with an average work-week of forty (40) *hours,* employed by the City prior to adoption by the City Council of the 2013-2016 MOU, shall receive annual vacations with pay in accordance with the following provisions:

1. After continuous full-time service amounting to one (1) year or more, an employee shall have earned paid vacation at the rate of ninety-two (92) working hours per year.

2. Upon completion of three (3) years of continuous full-time service, but less than five (5) years of continuous full-time service, such employee shall earn one hundred sixteen (116) working hours per year.

3. Upon completion of five (5) years of continuous full-time service, but less than ten (10) years of continuous full-time service, such employee shall earn one hundred forty (140) working hours per year.

4. Upon completion of ten (10) years of continuous full-time service, but less than fifteen (15) years of continuous full-time service, such employee shall earn one hundred sixty-four (164) working hours per year.

5. Upon completion of fifteen (15) years of continuous full-time service such employee shall earn one hundred eighty-eight (188) working hours per year.

6. *Upon completion of twenty (20) years of continuous full-time service, such employee shall earn two hundred twelve (212) working hours per year.*

C. Regular full-time employees in the classified service with an average work-week of 40 (forty) hours and who have been employed by the City on and after adoption by the City Council of the 2013-2016 MOU shall receive annual vacations with pay in accordance with the following provisions:

1. Upon completion of a continuous one (1) year of full time service, said employee shall earn forty (40) working hours of vacation.

2. Upon completion of two through and including five (2-5) years of continuous full time service, the employee shall earn eighty (80) working hours of vacation per year.

3. Upon completion of six (6) years of continuous full time service and all years thereafter, the employee shall earn one hundred twenty (120) working hours of vacation per year.

D. **MAXIMUM ACCUMULATION OF VACATION LEAVE**

Effective concurrent with adoption by the City Council of the 2013-2016 MOU, all unit members shall be permitted to accumulate not greater than three hundred twenty ( 320) hours of vacation leave. Any unit member having accumulated in excess of three hundred twenty (320) hours prior to adoption by the City Council of the 2013-2016 MOU shall not accrue any additional vacation leave hours unless or until through use or cash out, said balance becomes less than three hundred twenty (320) vacation leave hours. In no case shall said unit members be allowed to again accumulate in excess of three hundred twenty (320) hours of vacation leave.

E, **VACATION LEAVE CASH OUTS**

1. During the first payroll periods commencing on and after January 1, April 1, July 1 and October 1 of each year, unit members shall have the option of converting up to eighty (80) hours of earned and accrued vacation leave to cash for every forty (40) hours of vacation leave used during said quarterly period of time.

2. During the payroll period commencing each July 1, unit members shall have the option of reducing the three hundred twenty (320) hour maximum vacation leave accrual to two hundred forty (240) hours. Any unit member having in excess of three hundred twenty (320) accumulated vacation leave hours prior to adoption by the City Council of the 2013-2016 MOU, shall have the option of reducing that accumulation to two hundred forty (240) hours by means of cash conversion of those hours in excess of two hundred forty (240).

F. **SCHEDULING OF VACATION LEAVE** - It is the employee's responsibility to request, schedule and use vacation time to avoid exceeding the maximums. However, in the event the maximum is reached, the City has the right to schedule the employee off in order to reduce the accrued hours to be within the cap.

Employees must submit vacation requests in a timely manner in accordance with the Department requirement and as appropriate for the employee's Departmental operational needs.

Departments which have 24 hours a day/7 days a week operations have established request procedures that require significant advance notice so all vacation requests may be coordinated as fairly as possible based upon the *operational needs of the Department and or Division.*

G. **DEPARTMENTAL NEEDS & EXCEPTION** –When an employee submits a timely vacation leave request and the Supervisor and/or the Department Director must deny it due to the operational needs of the City and/or Department, an exception may be granted by the Department Head with a written explanation from the employee's supervisor and advance approval from the Chief Executive Officer. If such an exception is granted, a cash-out of the excess, accrued vacation time in excess of the maximum amount allowed will be processed for the pay period in question. There will be no approvals for Vacation Leave Accrual beyond the Maximum Accrual Level.

Should a scheduled Vacation Leave have to be cancelled by the Department Head due to the operational needs of the City/Department, an exception for a "Cash-Out" may be granted by the Department Head with a written explanation from the employee's supervisor and advance approval from the Chief Executive Officer.

H. **VACATION LEAVE PROCEDURES**

1. Vacation leave taken shall not be in excess of that actually earned at the time it is taken. Regular and probationary represented employees may be granted vacation leave as accrued from date of hire after six (6) months of continuous full-time employment.

2. Annual vacation leave shall normally be taken at one time. However, the department director, upon approval of the Chief Executive Officer, may permit a modification of this requirement.

3. The time during the calendar year at which an employee shall take his or her vacation shall be determined by the department director with particular regard for the need for the employee's services and due regard for the wishes of the employee.

4. In the event one or more municipal holidays fall within a vacation leave, vacation may be extended accordingly for those employees eligible for such holiday.

5. An employee shall not earn vacation entitlement for time spent on a voluntary leave of *absence* without pay.

6. Pay in lieu of vacation will not be granted, except on termination of employment. However, the Chief Executive Officer may authorize pay in lieu of vacation under extenuating circumstances.

I. **TERMINAL VACATION PAY** - Upon termination, a permanent employee will receive compensation at his or her current rate for all unused earned vacation through the date of termination.

## 8.3 SICK LEAVE

### A. THE "SICK LEAVE BANK"

Separate and distinct from the below described primary and secondary sick leave banks (which shall be phased out), effective the first payroll period commencing on or after adoption by the City Council of the 2013-2016 MOU, there shall be established what shall be referenced as "THE SICK LEAVE BANK," Effective the first payroll period commencing on or after adoption by the City Council of the 2013-2016 MOU and the first payroll period commencing on or after July 1 of each year thereafter, there shall be established THE SICK LEAVE BANK in an amount not to exceed one hundred ninety-two (192) hours of available sick leave use. The employee eligible to utilize sick leave shall have the option of the sick leave usage being deducted from either THE SICK LEAVE BANK or from the primary/secondary sick leave bank as described below. Effective July 1 of each year following adoption by the City Council of the 2013-2016 MOU, THE SICK LEAVE BANK shall be augmented with a maximum of ninety-six (96) hours of credited sick leave, but in no case shall the annual augmentation result in more than one hundred ninety-two (192) hours in THE SICK LEAVE BANK on July 1 of any year. (For example, if on July 1 of any given year THE SICK LEAVE bank reflects a balance of one hundred thirty-two (132) hours, that employee's bank would receive a sixty (60) hour augmentation. On the other hand, if THE SICK LEAVE BANK reflected a balance of fifty (50) hours, the employee would receive a ninety-six (96) hour augmentation, resulting in a then total accumulation of one hundred forty-six (146) hours.) The sick leave hours in THE SICK LEAVE BANK shall have no cash value, shall not be convertible to cash or to any other form of compensation and shall not be convertible to PERS service credit.

B. **THE PRIMARY AND SECONDARY SICK LEAVE ACCOUNTS.**

Unit members hired on and after adoption by the City Council of the 2013-2016 MOU shall not be eligible to participate in primary and/or secondary sick leave banks. As regards unit members having funded primary and/or secondary sick leave banks prior to adoption by the City Council of the 2013-2016 MOU, the following governing rules shall apply:

1. Effective on and after adoption by the City Council of the 2013-2016 MOU:

   a. There shall be no augmentation of the primary and/or secondary sick leave banks.
   b. The hours in the primary and/or secondary sick leave banks shall have no cash value and shall not be converted to cash or any other form of compensation.
   c. Notwithstanding the above, the hours within the primary and/or secondary sick leave banks shall at the option of the employee, be convertible to service credit pursuant to Government Code § 20965.

C. Sick leave shall be used in case of a bona fide illness of the employee. Sick leave may also be used for serious illness or emergency of his or her child, parent, spouse or *domestic partner* who is incapacitated and/or requires the service of a physician, and when the presence of the employee is required. At the conclusion of the emergency, said employee shall return to work as soon as possible. The employee taking such sick leave shall notify their immediate supervisor prior to or within one-half (1/2) hour after the time set for the beginning of his or her scheduled shift or the commencement of his or her work assignment, or as otherwise specified by the department. When absence is for more than three (3) scheduled shifts, the employee may be required to present a physician's *release* to the department director indicating that the physician is knowledgeable of the essential functions of the employee's job and that in the doctor's medical opinion that the employee is medically fit to return to the employee's regular job. If the employee is not able to perform the essential functions of his or her job, the physician's release must indicate what essential functions of the employee's job cannot be performed by the employee, and for how long of time the employee will be unable to perform these functions in the doctor's opinion. Said physician's release may be required by the department director. The department director shall forward the certificate to the Administrative Services Director for filing.

D. The Chief Executive Officer, upon written request, may grant that accrued sick leave may be taken by the employee when the employee's services are required by his or her relative which may be outside the employee's immediate household.

E. *Accrued vacation leave normally will be used for sickness when all of an employee's accumulated sick leave has been exhausted. An employee may volunteer to use compensatory time off when all of his or her accumulated sick leave has been exhausted.* This accrued time may also be utilized to supplement Long Term Disability insurance, provided the supplemental does not exceed 100 percent of the employee's regular rate of pay.

F. Sick Leave During Vacation - An employee who becomes hospitalized or seriously ill or injured while on vacation may have such period charged to his or her accumulated sick leave instead of to the vacation provided:

   1. Immediately upon return to duty, the employee submits to his or her department director a written request for sick leave and a written statement signed by his or her physician *stating that the employee had a serious illness or injury* and dates of his or her serious illness or injury.

2. The department director recommends and the Chief Executive Officer approves the granting of such sick leave.

3 Other Limitations - No employee shall be entitled to accrue or to take sick leave with pay while absent from duty for any of the following reasons:

a. Disability or illness arising from employment other than with the City of Costa Mesa.

b. Leave of absence without pay.

c. Absence due to any reason other than certifiable illness.

G. Penalty for Sick Leave Abuse - Employees who abuse sick leave may be denied sick leave pay, and may incur other discipline up to and including termination. When, in the judgment of the department director, the employee's reasons for being absent are inadequate, he or she shall change the payroll time report to indicate that the absence was leave without pay. Employees shall then have the right of appeal through the appropriate administrative processes prior to any loss of pay for suspected abuse of sick leave.

H. Extended Sick Leave - On written request of the employee and recommendation by the department director, the Chief Executive Officer may authorize a leave of absence without pay for the purpose of recovering from an illness, provided:

1. The employee has used up all of his or her accumulated sick leave, but may retain compensatory time and vacation time.

2. The employee presents to his or her department director an estimate of the time needed to recover signed by a physician approved by the City.

3. *An employee returning to work from an extended sick leave will be required to obtain and provide to their supervisor and the Human Resources Division a medical certification stating that he/she is fit to return to work.*

8.4 **LEAVE FOR NON-OCCUPATIONAL DISABILITIES** - The City grants employees a leave of absence due to a medical condition or disability that prevents them from performing or safely performing the essential functions of their positions in accord with state and federal laws as they may from time to time exist.

A. An employee who requires a leave of absence for medical reasons must notify his/her supervisor in writing of the need for such a leave as soon as the employee learns that he or she is, or will become, temporarily disabled and unable to work due to the medical condition. A medical statement signed by a licensed physician must be submitted with the leave request. The medical certificate must state that the employee has a medical condition prohibiting them from performing the essential functions of his/her job, and must provide the anticipated length of absence and any functional limitations that the employee may have upon returning to work.

B. Unless concurrently on a Family Care and Medical Leave, an employee granted a non-occupational disability leave of absence shall utilize available accrued sick leave, and vacation time during the period of his/her disability. The employee may elect to use compensatory time off prior to being granted leave without pay. Paid leave must be exhausted prior to being granted leave without pay unless the employee is concurrently on a Family Care and Medical Leave. (Refer to Administrative Regulation 2.28 - Family Care and Medical Leave).

C. An employee may continue life, health, dental and long-term disability coverages while on leave of absence without pay by paying the full cost of such coverages. The City will pay its share of the employee's health insurance premiums for an employee on FMLA/CFRA unpaid leave of absence for up to 12 weeks. If the employee's portion of the premiums are not paid or the employee fails to pay the premiums after 12 weeks, the employee will be terminated from coverage. (Also refer to Administrative Regulation 2.28 - Family Care and Medical Leave).

D. An employee returning from a non-occupational disability leave must provide a physician's statement that indicates that he/she is fit to return to work.

E. Employees on an unpaid leave of absence will not accrue seniority-related benefits while on leave.

F. If additional leave is desired, the employee may request the additional leave in accordance with the extended leave provision in the Personnel Rules and Regulations.

G. An employee who returns to work at the end of his/her leave of absence will be returned to his/her former position or to a similar position for which he/she is qualified, unless the position has been eliminated due to layoffs.

H. An employee who fails to report to work at the end of the approved leave and has exhausted his/her 12 weeks or 4 months of leave will be deemed to have voluntarily resigned.8.5 **LEAVES OF ABSENCE WITH OR WITHOUT PAY** - The following leaves of absence are for leaves other than statutory leaves:

A. Special Leaves of Absence Without Pay - The department director may authorize special leaves of absence without pay for a period of up to two (2) weeks (14 consecutive days).

B. Ninety (90) Calendar Days or Less - Upon the written recommendation of the department director, the Chief Executive Officer may authorize special leaves of absence without pay for a period or periods not to exceed ninety (90) calendar days for purposes deemed by the Chief Executive Officer to be beneficial to the City.

C. In Excess Of Ninety (90) Calendar Days - The City Council may, upon the recommendation of the Chief Executive Officer, grant leaves of absence with or without pay in excess of ninety (90) calendar days for purposes deemed by the Chief Executive Officer to be beneficial to the City.

D. Continuation Of Benefits - The employee shall be responsible for the continuation of employee benefits when a leave of absence exceeds one (1) full pay period.

8.6 **CATASTROPHIC ILLNESS LEAVE** - All paid leave must be exhausted prior to an employee being able to use catastrophic illness leave donations. Employees will not receive additional leave accruals while using catastrophic illness leave donations.

8.7 **MILITARY LEAVES** - An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code *and* the U.S. Code. An employee requesting such military leave shall present a copy of his or her military orders to his or her department director prior to the beginning of the leave.

Employees are entitled to a temporary military leave of absence not to exceed 180 calendar days per year. Employees having more than one year continuous service and granted a military leave of absence are

entitled to receive the equivalent salary up to the first 30 calendar days of any one military leave, or during any one (1) calendar year. Weekend drills are excluded from the meaning of ordered military leave.

8.8 **SCHOOL ACTIVITY LEAVE** - CMCEA has requested that Labor Code Section 230.8, which deals with unpaid leaves of absence to participate in various school activities of an employee's dependents, specifically be referenced with this MOU. Employees may use accrued leave time or vacation time, or if no time is available, time without pay, for activities describes within this section of the Labor Code. The Employee will provide written verification of any such activity for which they request time off, at the request of their department director.

8.9 **REPORTING ABSENCES** - An employee who is absent from duty shall report the reason for such absence to his or her department director or immediate supervisor prior to the time of expected absence whenever possible, and in no case later than one-half (1/2) hour after the beginning of his or her normal work shift. Absences not reported in such manner may be subject to disciplinary action.

8.10 **BEREAVEMENT LEAVE** - Whenever an employee who is eligible to receive sick leave is compelled to be absent from duty by reason of a death or critical illness where death appears imminent of *grandparent*, father, mother, brother, sister, wife, husband, or child of employee, spouse, or domestic partner such employee shall, upon approval of his or her department director, be entitled to charge such absence as "bereavement leave" to a maximum of five (5) working days in a calendar year. Any additional time that may be required would be charged to sick leave. The Chief Executive Officer, upon written request, may grant bereavement leave to an employee for persons in other relationships to the employee than are listed above.

8.11 **HOLIDAY LEAVE** - The following dates and such other days or portion of days as may be designated by the City Council shall be observed as paid holidays on which City Hall will close: January 1, New Year's Day; third Monday in January, Martin Luther King's Birthday; third Monday in February, Washington's Birthday; last Monday in May, Memorial Day observance; July 4, Independence Day; first Monday in September, Labor Day; November 11, Veteran's Day observance; fourth Thursday in November, Thanksgiving; the Friday immediately following Thanksgiving; and December 25, Christmas Day. In the event any of the above holidays fall on Saturday, the preceding Friday will be observed. In the event any of the above holidays fall on Sunday, the following Monday will be observed.

A. Employees receive 16 hours of floating holiday pay. Employees may schedule with their supervisor any time during the year to use the floating holiday hours. At the end of the calendar year, any remaining holiday hours will be cashed out. Employees hired after January 1st of each year are eligible for the 16 hours of floating holiday pay on a pro-rata basis during the calendar year based on the established City holiday schedule. If an employee separates from the service of the City and has used or been paid for floating holiday pay in advance of Lincoln's Birthday and/or California Admission Day, the City will deduct the cash value for the floating holiday benefits paid, but unearned, from the final paycheck.

B. In order to be eligible for holiday pay an employee must either work or be on paid status the day immediately before, or after the holiday if scheduled.

C. All permanent full-time employees who receive time off for the above listed holidays shall receive full pay.

D. <u>Paid Full Shifts for Holidays</u> - When a holiday is observed by the City, employees who take the holiday off shall record on their timesheets the hours that correspond with their regular workday shift within their established workweek schedule (i.e., employees on the four ten-hour day workweek (4/10) will record 10 hours for the holiday; employees who work on a 9/80 work schedule shall record 9 hours, or 8 hours as applicable, for the holiday; and employees regularly scheduled to eight-hour workday schedules shall record 8 hours for the holiday.)

E. Civilians Who Work Without Regard to Holidays - Prior to the beginning of each calendar year, non-sworn employees in the Telecommunications Division and Police Department who must work without regard to the above listed holidays must irrevocably elect for the next year to either take time off for holidays or cash out holiday pay.

Employees who choose the cash out option will receive the holiday pay bank of 96 hours beginning the first pay period for the new payroll year. The holiday pay bank may be cashed out at any time during the year. At the end of the payroll year, any remaining holiday pay will be cashed out unless the employee previously elects to have it applied as accrued vacation. Throughout the payroll year, if an employee, who has selected this option, decides to take a holiday off, they must use either vacation or comp time, not holiday time.

Those employees who choose to take time off in lieu of the holidays will receive a bank of 96, 108, or 120 hours, depending upon their assigned work schedules. They will be required to record on their timesheets the hours that correspond with their regular workday shift and schedule (e.g., those on the 4/10 schedule, will record 10 hours for holiday time; those on the 9/80 schedule will record 9 hours for holiday time). The hours will be available the first pay period of the new payroll year. Those employees who elect this option must, as in the past, make a request at least four (4) working days prior to the requested time off. Approval of the time off request will be based upon available staffing needs and the needs of the employee. At the end of the payroll year, any remaining hours will be carried over to the next payroll year (however, the subsequent year's bank, or cash out, shall be reduced by the number of hours carried over).

F. Non-sworn employees in the Telecommunications Division and Police Departments who must work without regard to the above listed holidays may accrue compensatory time to a maximum of 80 hours or the employee may select to increase their vacation accumulation cap by the number of City-paid holiday hours (maximum of 96 additional hours per calendar year). Employees hired after January 1 of each year are eligible for holiday pay on a pro-rata basis during the calendar year based on the established City holiday schedule. If an employee separates from the service of the City and has used or been paid for holiday pay in advance of the date(s) or day(s) the holidays actually occurred, the City will deduct the cash value for the holiday benefits paid, but unearned, at the time of separation from the final paycheck. If an employee transfers or promotes to a position not covered by this provision and the employee has been paid in advance of the date(s) or day(s) the holidays actually occurred, the employee will be required to record absence with no pay for the remainder of the holidays that year.

8.12 **JURY DUTY** - Any employee in the classified service who is duly summoned into any court for the purpose of performing jury service, or serving as a witness, shall receive their regular compensation for any regularly scheduled working hours spent in the actual performance of such service.

Employees receiving witness fees or jury service fees, shall remit such fees to the Finance Director in order to be considered at work for payroll purposes during the time spent as such witness or serving on the jury. The employee is entitled to retain any mileage allowance if paid by the court.

8.13 **INDUSTRIAL ACCIDENT LEAVE**

A. In the event that any regular or probationary full-time employee in the classified service is absent from work as a result of any injury or disease arising out of and during the course of employment with the City of Costa Mesa, such absence shall be considered to be industrial accident leave as specified below and nothing contained in this MOU shall be deemed to affect

or limit in any manner the employee's entitlement to medical, surgical and hospital treatment as provided under California's Workers' Compensation laws.

1. Eligibility

   a. If the employee is unable to perform his or her assigned duties due to job-related injury or illness and is entitled to Worker's Compensation Temporary Disability under the provisions of California's Workers' Compensation Act.

   b. If the employee reports all on-the-job or off-the-job injury or illness which may impair his or her ability to perform regularly assigned duties to his or her supervisor within 24 hours (or the next regularly scheduled workday, whichever is sooner) of the incident, except under extenuating circumstances. Extenuating circumstances under which an employee may report an injury beyond the above limits shall include but not be limited to a report at the time the employee realizes the injury is disabling and the medical evidence is consistent with the claim. Failure to report said injury or accident may be grounds for disciplinary action. After review by the Department, said report shall then be forwarded to the Risk Management Division.

   c. Medical treatment is provided and maintained by a licensed physician, chiropractor or a licensed medical practitioner as prescribed by a licensed physician, acceptable to the City's Workers' Compensation Administration. If the employee has notified the Personnel Office in writing prior to a job injury/illness, the employee's own physician may be used if said physician can attest that they previously directed treatment for them and has their medical records including their medical history. After thirty days, an employee has the right to select his or her own physician provided the employee notifies the Workers' Compensation Administrator in writing of the doctor's name and address prior to the first appointment. The employee must *also* be disabled from and unable to perform any work regularly performed by a City employee that the City makes available with priority being in the employee's department and light duty availability.

2. Caveat - If the illness or injury resulted from the failure to wear prescribed safety or personal protective clothing or equipment; use provided safeguards or safety equipment; follow safety rules and regulations, or other departmental work rules; or the employee's gross negligence or willful misconduct was the proximate cause of the absence; *the incident* may be grounds for disciplinary action.

3. Administration

   a. Any employee who is going to be absent from work over one week with an industrial injury shall contact his designated departmental safety representative each Thursday or any other time designated by the departmental safety representative and report his or her medical progress and approximate date of return to work and any other information the designated departmental safety representative deems appropriate.

   b. Employees on industrial leave must report any change in his or her normal place of residence or the address reported where he or she will be during normal business hours while recovering from job-related injuries or illness. Before leaving that location for a period in excess of one (1) day, he or she shall notify the departmental safety representative, and must be available for appointments or consultation as may be required by the City or Workers' Compensation Administrator. The departmental

safety representative shall issue weekly reports to the department director with copies to the Risk Management Division advising of the employee's status.

c. The employee must make available after each medical appointment a medical prognosis for the likelihood of the employee's return to his or her regular and/or light duty with all applicable work restrictions. Industrial leave may not be granted if a light duty job assignment is available within the employee's work restrictions.

d. If further remedial action is indicated, the employee must follow a course of treatment which will enable return to full employment at the earliest possible time.

4. Denial of Industrial Leave - Industrial leave will not be approved when any of the conditions of section 1 above are not met, or when competent medical authority as outlined in 1.d of this section determines the disability to be a result of a pre-employment or non-industrial medical condition/ Industrial leave will also be denied if the leave requested is due to a medical condition for which the employee has already received a Settlement or a Compromise and Release pursuant to a prior legal action , or is requested relative to an injury or illness for which the City has previously denied industrial leave.

5. Industrial Leave will terminate when one of the following occurs:

a. The employee fails to follow the advice of the treating physician by failing to pursue a course of treatment which will lead to recovery in a timely manner.

b. The employee's condition becomes medically permanent and stationary within the guidelines of the state's Workers' Compensation scheme.

c. It is medically determined that the employee will never be capable of performing the duties of his or her classification.

d. The employee no longer qualifies for *a* compensable industrial leave as defined in paragraph C below.

e. The employee is engaged in outside employment or activity which would impede recovery and prolong his or her return to work as determined by competent medical authority.

B. In all cases as specified in Item *8.13* A above where sickness or injury is incurred as a result of employment and is initially compensable under California's Worker's Compensation laws, the employee's full regular salary for the waiting period required under such laws shall be paid by the City.

If there is a question about whether the injury or illness qualifies as an industrial injury under the state's Workers' Compensation laws, the City will conduct an investigation and make a determination as provided under such laws. Compensation for time off due to disability during this determination period will be maintained through the use of the employee's personal accrued leave. If the injury is determined to be industrial, then the time off due to the disability will be converted to Industrial Accident Leave and the personal leave hours used during the determination period will be restored to the employee.

C. All regular or probationary full-time employees, shall be entitled to Industrial Accident Leave and compensation on the following basis:

When any full-time employee of the City (including probationary full time employees) qualifies for temporary disability payment under the State of California Labor Code or the Workers' Compensation benefits, the employee shall receive paid leave for a period not to exceed (up to) sixty-six work days (528 hours) of leave for each separate injury. An injury shall be deemed to continue through a recurrence or aggravation to the original injury. Claimed recurrences or aggravations of any injury approved for industrial leave shall be charged to the balance, if any, of the maximum allowance of such leave for the original injury.

The leave in this section is intended for compensation while the employee is disabled from work and shall not be used to attend doctor's appointments, physical therapy, or other medical appointments when the employee is cleared to work light, modified or regular duty.

D. Employees with accepted industrial injury leave shall continue to receive a flex contribution for benefits in accordance with Section 7,3, Employees under this section will be responsible for the employee portion of health and any other cafeteria plan premiums for the duration of coverage under the plan.

## ARTICLE 9 - HOURS OF EMPLOYMENT

### 9.1 HOURS OF WORK

A. Workweek - The average workweek for all full-time positions, shall be forty (40) hours.

B. Work Shifts - The work shift for employees in specific departments, divisions or sections may be established on a pay period basis, beginning on a Sunday and ending with the second Saturday thereafter, or beginning at noon on a Friday and ending at noon the second Friday thereafter. Such employees who occupy full-time positions shall be scheduled to work eighty (80) hours in each payroll period. Such work periods shall not be implemented without the City and the appropriate employee association first meeting and conferring on such hours of work for each section, division and/or department proposing implementation of such work shifts.

C. Work Schedule - Work schedules for the regular workweek shall be one of the following: five eight (8) hour days on and two days off, or four ten (10) hour days on and three days off. Work schedules for work shifts established on a pay period basis shall usually be ten (10) eight hour days on and four days off. All employees shall be scheduled at least two consecutive calendar days off. The work schedule for each position shall be established by the department director and approved by the Chief Executive Officer. For all employees working a 9/80 work schedule, their work week shall begin exactly four (4) hours into their eighty (80) hour shift on the day of the week which constitutes their alternating regular day off.

D. Exchange of Work Shifts - Exchange of work shifts may be granted by the department director for emergency or other justifiable reasons. Such exchange of work shifts shall be reported to the payroll division of the Finance Department in the form and on the dates specified.

## ARTICLE 10 - ATTENDANCE

Employees shall be in attendance at their work in accordance with Rules regarding hours of work, holidays and leaves. All departments shall keep daily attendance records. Any unauthorized tardiness or absence is cause for disciplinary action.

## ARTICLE 11 - MOVE-UP PAY LIMITATION

Eligible employees temporarily assigned to perform the work of a higher classification for a period of at least two weeks may be compensated at 5% above their current rate of pay for up to 90 days. After 90 days, either the position will be reclassified, the employee will be given an acting appointment, or the move-up duties will be removed from the employee's assignment. Time limits on move-up pay may be extended on an individual basis by prior written, mutual agreement by the City and CMCEA. An acting appointment will be made when the employee is performing all of the duties of the higher-level classification.

## ARTICLE 12 - TUITION REIMBURSEMENT AND PROFESSIONAL DEVELOPMENT

12.1 **TUITION REIMBURSEMENT** - Tuition and/or textbook costs required to complete educational courses which are taken by an employee and which pertain to his or her City employment, may be reimbursed to the employee by the City if reimbursement is recommended by the employee's department director and approved by the Chief Executive Officer. The employee on whose behalf the recommendation is made must also maintain a passing grade which is verified by the Administrative Services Director's receipt of an official copy of the employee's grades prior to any reimbursement.

*A The City will reimburse up to a maximum of $1,250 per fiscal year for qualifying expenses.*

B. The parties agree that the City's budgetary guidelines do not impact the tuition reimbursement program, nor do the guidelines prevent a represented employee from continuing to participate in tuition reimbursement for approved courses.

12.2 **PROFESSIONAL DEVELOPMENT** - The City endorses outside City-paid education and training, attendance at professional meetings and conferences, and dues and memberships in job specific organizations in which the City receives specific benefits for all CMCEA represented employees. Department directors may request in the budget up to $1,000 per full-time department employee per year with appropriate justification from the employee. The up to $1,000 Professional Development budget per full-time department employee limit pertains to education/training, meetings/seminars and conferences (including travel and meals), dues and memberships. Department directors have the right to determine the benefit to the City for the professional development request, staffing requirements and funding availability. Employees have the right to appeal to the *Human Resources* Division if they feel their request did not receive fair consideration by their Department Director.

## ARTICLE 13 - UNIFORM APPLICATION OF RULES

To attempt to maximize the uniform application of policies and rules, the City has an interest in providing training and information to assist employees in understanding their rights. Through the committed efforts of both the City's *Human Resources* Division and CMCEA, attempts will be made to resolve any related problems utilizing processes such as supervisory training, explanation of the harassment policy and informal grievance procedures.

## ARTICLE 14 - COST OF SERVICES

14.1 **POLICY** - It is in the interest of the City of Costa Mesa and CMCEA to establish a consistent policy regarding the City's approach to evaluating the cost of providing municipal services on a regular basis in which CMCEA has an interest. It is recognized that as prudent professionals, the ongoing evaluation of costs should be a collective process of sharing information on a participative basis to develop sound decisions and appropriate practices. The City is interested in involving the employee associations to the greatest degree in this regard; and, as such, agrees to make them part of discussions regarding the contracting services.

14.2 **CONTRACTING OUT** - It is further agreed that should a decision be made to contract out for a specific service which is at the time being performed by employees covered by this MOU, the employees

affected will be given sufficient notice (a minimum of six months) in which to evaluate their own situation and plan for their future. To this end, the City will make every effort to transfer and utilize regular attrition in making the necessary adjustments. The City will assist employees in this endeavor through training and through preferential treatment (under meritorious consideration) when filing vacancies.

14.3 **OUTSOURCING OF STREET SWEEPING FUNCTION** – The City and the CMCEA have been engaged in and continue to be engaged in litigation regarding the ability of the City to outsource work performed in CMCEA-represented job classifications. Notwithstanding said litigation or whatever its resolution may be, the parties agree to a single instance of outsourcing of the street sweeping function and of the personnel, if any, necessary to perform that function. The contracting out of the street sweeping function shall not be subject to the minimum six months notice request in Section 14.2 above or to any other notice or condition precedent to contracting out whether set forth in this MOU or otherwise. This street sweeping function outsourcing shall be effective concurrent with City Council adoption of the 2013-2016 MOU and shall not have a sunset date.

This specific outsourcing agreement shall not be precedent-setting and shall not be construed as CMCEA's agreement that the City may outsource any other work performed in the past or currently performed by employees in job classifications represented by CMCEA.

Additionally, neither this MOU nor the actions authorized regarding this street sweeping function outsource may be introduced as evidence by either party in any judicial or quasi-judicial proceeding between the City, CMCEA, or the Orange County Employees' Association. It is understood that this MOU shall not be construed as any admission or acknowledgement by the City or the CMCEA, respecting the application or non application of Government Code §§ 37103, 53060, or 45007 to the outsourcing of the street sweeping function.

Additionally CMCEA agrees that it will not amend its current lawsuit against the City, bring a new lawsuit against the City, or authorize OCEA or any other entity or person acting or purporting to act on behalf of CMCEA or any of its members, to challenge, on any basis, the outsourcing of the street sweeping function as described herein.

Finally, implementation of this Article 14.3 shall not result in the layoff of any full time unit member.

## ARTICLE 15 - CLASSIFICATION AND COMPENSATION INEQUITY ISSUES

15.1 **REQUEST FOR STUDIES** - Employees seeking a classification/compensation study of their position may request a study through CMCEA. CMCEA may request on or after January 30, 2016 and each January thereafter, that the *Human Resources* Division conduct up to five classification studies. The CMCEA will be responsible for submitting completed Position Analysis Questionnaires for the requested position studies with a cover memorandum explaining the changes in duties, organization or marketplace for each position. The *Human Resources* Division will study the positions and meet with CMCEA with its recommendations.

Commencing July 1, 2016, CMCEA may request that the *Human Resources* Division conduct up to five compensation inequity studies for non-benchmark classifications. The *Human Resources* Division will study the positions and meet with CMCEA in August of each year after July 1, 2016 with its recommendations.

Commencing with the meet and confer process regarding negotiation of a successor to the 2013-2016 MOU, the results of the above studies shall be one of many factors that may be considered by the parties in formulating and considering proposals for a successor to the 2013-16 MOU, however the product of the above studies shall not result in any mandated changes in wages, hours or other terms and conditions of employment.

15.2 **NEW CLASSIFICATIONS** - The City acknowledges its legal obligation to meet and consult with CMCEA prior to the creation of a new classification and to bargain in good faith regarding the appropriate salary for the new classification within its bargaining unit.

## ARTICLE 16 - TEMPORARY EMPLOYMENT IN VACATED CMCEA-REPRESENTED POSITIONS

The City agrees to adhere to the hours limitation as outlined in Administrative Regulation 2.7 to ensure that temporary employees are not hired into vacated CMCEA-represented positions for long durations.

## ARTICLE 17 - LABOR-MANAGEMENT DISCUSSIONS

In the absence of contract re-openers, the City and CMCEA agree to meet not more than twice in a calendar year to discuss issues of mutual interest which may be subject to the meet-and-confer process. This MOU can be only amended by the written agreement of both sides.

## ARTICLE 18 - SUPERVISORY JOB CLASSIFICATIONS

The employees in the classifications identified on *Appendix B* have been determined by the Chief Executive Officer to be supervisory employees. A "supervisory" employee is one who has recommendation authority to hire, transfer, suspend, layoff, recall, promote, discharge, assign, evaluate or discipline other employees, and/or responsibility to direct employees.

## ARTICLE 19 - LAYOFF PROCEDURES

19.1 **PURPOSE** - Employees covered by this MOU may be laid off due to material changes in the essential duties of their job or due to material changes in the organization. Likewise, the shortage of work or funds available to the City may also cause layoffs. If a layoff is deemed necessary, the appointing authority shall notify the Administrative Services Director of the layoff with reasons therefore thirty (30) calendar days before the effective date of layoff. Said employee shall be considered for re-employment as provided by the Personnel Rules.

19.2 **PROCEDURE** - When a position within a class is abolished thereby necessitating a layoff, the following procedure shall be followed:

A. Reductions in the workforce shall be made by class within a department except that, where appropriate, the Chief Executive Officer may authorize a layoff by division or smaller unit within a department. In the event of a comprehensive reduction in the workforce, the Chief Executive Officer may decide to lay off by class City-wide regardless of department.

B. In accordance with Rule 14, Section 9 of the Personnel Rules and Regulations, thirty (30) calendar days before the effective date of layoff, the appointing authority shall notify the Administrative Services Director of the intended action with reasons therefore In the event a decision is made by the City to contract out for a specific service performed by City employees, the City will give the affected employees a minimum of six (6) months advance notification in which to evaluate their own situation and assist in planning for the future. The City shall meet and consult with CMCEA on such matters as the timing of the layoff and the number and identity of the employees affected by the layoff.

C. A reassignment or voluntary demotion within the employee's division or department to an equivalent or lower job class may be made to prevent a layoff, provided the employee is qualified by education and/or experience, is capable of performing the duties of the classification and has satisfactory performance evaluations for the preceding two (2) years. An employee so reassigned or demoted shall be placed on the salary step within the new

classification range closest to the rate of pay which the employee previously received. Whenever an employee is reassigned or demoted to a vacant position in the same class, an equivalent class, or lower class as herein provided, he or she shall retain the same anniversary date for purposes of merit pay increases. An employee so reassigned or demoted shall be reinstated to his or her former job class and salary step status when positions in the former job class within the affected division or department become vacant, provided that the employee has performed satisfactorily in the current position and requests reinstatement to the former position. Such reinstatement shall be on the basis of City-wide seniority.

D. In the event of a layoff, those employees in the classification affected with the least City-wide seniority shall be laid off first. Seniority shall be defined as continuous City service based upon hire date. Strict application of seniority shall prevail unless exceptional circumstances occur of which the concerned employee organization shall be fully apprised in advance. The order of layoff shall be:

1. Part-time and temporary employees in the affected classification shall be separated first.

2. Probationary employees in the affected classification shall be separated next.

3. Permanent employees with the least City seniority will be laid off first. Other affected employees will be laid off in sequential order thereafter.

4. Exceptional circumstances, as used above, includes the City's maintenance of a qualified workforce of competent employees based upon the persons employed having satisfactory performance evaluations for the preceding two (2) years.

5. Exceptional circumstances also include the recognition of the need to retain employees possessing special technical skill, training or knowledge within an affected classification as dictated by the work or services being performed. This exception can only be applied to those classifications within the occupational series utilizing said skills, knowledge or training. The determination to grant such an exception can be made only with the approval of the Chief Executive Officer. The City will share the findings of any proposed exception with CMCEA prior to making any recommendation to the Chief Executive Officer.

6. Employees who have not successfully completed promotional probation by the layoff notification date shall revert back to the last class in which the employee held permanent status for purposes of determining order of layoff.

7. When two (2) or more employees have *equal* seniority, the department shall determine the layoff order for these employees based upon merit and ability as determined by their performance evaluations for the preceding two (2) years and possession of specific technical skills utilized in the job.

E. An employee scheduled to be laid off is entitled to displace, or "bump," into a position in a classification within the same occupational series which is currently being held by an incumbent with less overall City seniority, provided it is in a position in which the employee formerly held permanent status or one in which the employee is qualified by education and/or experience, and is capable of performing.. The employee must exercise his or her displacement rights in writing within five (5) working days from receipt of layoff notification.

F. When the employee with the least City seniority is displaced by the person scheduled for layoff, the displaced employee shall be considered as laid off for the same reason as the person who displaced him or her and shall in the same manner be eligible to displace to a position in the same manner as described above.

G. An employee laid off from City employment shall be eligible for the same sick leave payoff as defined in the Sick Leave Incentive Program for retirees.

H. The name of an employee who has been laid off due to the reduction in the workforce shall be placed on the reemployment list for his or her job class. The reemployment list shall be used by all appointing authorities within the affected division or department whenever a vacancy for that class is to be filled. Names will remain on the appropriate reemployment list for a period of three (3) years from the date of separation. Persons on the reemployment list shall be reemployed within the division or department from which they were laid off at his or her former salary step status when positions in his or her former job class become vacant. Reemployment shall be on the basis of previous City seniority. After separation from City employment for more than one (1) year, a person rehired may be required to successfully pass a physical and competency examination.

I. Whenever an employee is reemployed to a vacant position in his or her former job class, he or she shall be given a new anniversary date for purposes of merit pay increases and performance reviews in accordance with the provisions of the City's Personnel Rules and Regulations.

J. An employee rehired from the reemployment list shall be considered to have continuous service for seniority purposes and may be credited with the amount of accumulated vacation and sick leave he or she had accrued at the time of layoff if he or she remits to the City of Costa Mesa the payments received by the employee under the City's separation provisions and the Sick Leave Incentive Program.

K. Failure to return to work from layoff within twenty-one (21) calendar days after notice to return has been served upon the former employee by certified or registered mail at his or her last known address on file with the City's *Human Resources* Division shall constitute the employee's waiver of any right to return to work and eliminates any future reemployment requirements placed on the City.

L. All other benefits or programs in effect at the time of layoff shall be forfeited upon reemployment unless they are still applied to the old classification at the time of rehire or provided to new hires as of that date.

M. Employees subject to layoff may file a grievance under Rule 25 of the Personnel Rules and Regulations only if there has been an improper interpretation or misapplication of this procedure.

## ARTICLE 20 - GRIEVANCE AND DISCIPLINE PROCEDURES

20.1 **DISCIPLINE AND GRIEVANCE PROCEDURES** - The Discipline and Grievance Procedures have been adopted and are part of this MOU as Appendices *C & D*.

20.2 **MODIFICATIONS** - Said procedures have been modified by the following points:

A. Major Discipline - The parties agree to modify the selection of an arbitrator as identified in paragraph B, by having each party submit five names to complete a listing of ten possible arbitrators. When an arbitrator is needed each party may strike three names. If the parties cannot agree on one arbitrator from the remaining four names, the matter will be heard by the person nominated whose availability fits the time frames associated with the grievance process, and who is available at the earliest possible date.

B. Grievance Procedure - The parties agree to modify the procedure identified in paragraph 6 to include that "should mediation not produce satisfactory resolution, the grievant may request the matter be heard by Chief Executive Officer or *designee*, or an impartial hearing officer (arbitrator). The recommendation of an arbitrator shall be advisory to the Chief Executive Officer or *designee*. Should the matter be submitted directly to the Chief Executive Officer or *designee* he or she shall schedule a meeting or respond in writing. *Each* party shall pay the cost of the arbitration. A court reporter shall be retained only by mutual consent of the parties."

## ARTICLE 21 - PERSONNEL RULES AND REGULATIONS

All applicable City Personnel Rules and Regulations (which have not been included herein) shall be considered incorporated within this MOU, unless expressly demonstrated to be in conflict.

## ARTICLE 22 - DISABILITY DISCRIMINATION

22.1 **DISCRIMINATION AVOIDANCE** - Because the Americans with Disabilities Act ("ADA") and the California Fair Employment and Housing Act ("FEHA") require accommodations for individuals protected under the Acts , and because these accommodations must be determined on an individual case-by-case basis, the parties agree that the provisions of this agreement may be disregarded in order for the City to avoid liability under ADA or FEHA relative to hiring, promotion, granting permanency, transfer, layoff, reassignment, termination, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment, and the accommodation thereof under the Acts. is unnecessary

22.2 **INTERACTIVE PARTICIPATION** - CMCEA recognizes that the City has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. CMCEA will be notified of these proposed accommodations prior to implementation by the City.

22.3 **PAST PRACTICE** - Any accommodation provided to an individual pursuant to the Acts shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in a grievance/arbitration procedure.

## ARTICLE 23 - FAMILY AND MEDICAL LEAVE ACT

23.1 **RIGHTS AND OBLIGATIONS** - As required by State and Federal law ("FMLA") the City will provide family and medical care leave for eligible employees. Administrative Regulation 2.28 sets forth employees' rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth therein are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 (FMLA), and the regulations of the California Fair Employment and Housing Commission implementing the California Family Rights Act (CFRA) (Government Code 12945.2).

23.2 **ENTITLEMENTS** - Rights of qualified employees under FMLA include: (1) entitlement of up to 12 weeks of unpaid leave in a year; (2) continuation of the City's portion of any medical insurance contributions made on behalf of the employee for the duration of the leave; and (3) no loss of seniority.

## ARTICLE 24 - BENEFIT REVIEW COMMITTEE

The Association shall maintain two representatives on the City's Benefit Review Committee. The Committee continually evaluates the City's benefit programs and makes recommendations on plan changes, benefit levels, payroll deductions and the addition or deletion of plans. Participation on the Benefit Review Committee meets the City's obligation to negotiate with the associations on changes to the City's group benefit plans unless an association determines that such changes are detrimental to the interest of its members.

## ARTICLE 25 – COMPUTER LOAN GUARANTEE PROGRAM

Employees who have passed probation are eligible to participate in the City's Computer Loan Guarantee Program. The City shall specify the minimum hardware configuration necessary to participate under the program. It is the employee's responsibility to negotiate the price for the hardware and to bring a copy of the order/quote to the City for approval prior to purchase. The employee shall apply for a loan with the Costa Mesa Municipal Employees Credit Union that will be subject to all current Credit Union lending practices. If the employee qualifies, the City will agree to guarantee the loan thereby lowering the interest rate on the loan. In order for an employee to receive a loan under the program for hardware upgrades, or purchase of hardware components which are part of the City approved minimum configuration, the employee must certify that he/she already owns the remaining components required to meet the minimum hardware configuration.

Notwithstanding the above, an employee who desires to buy computer hardware directly without the benefit of the Computer Loan Guarantee Program shall remain eligible for any City discount that has been negotiated between the City and the vendor of the hardware.

This ARTICLE 25 shall terminate concurrent with adoption by the City Council of the 2013-2016 MOU. Loans then existing shall continue in effect and shall be governed pursuant to this ARTICLE 25. No new loans shall be granted.

REPRESENTATIVES OF THE COSTA MESA CITY EMPLOYEES ASSOCIATION (CMCEA)

KELLY VUCINIC
Crime Prevention Specialist
CMCEA President and Negotiation Team Member

DAVE HOLLISTER
Fire Protection Analyst
CMCEA Negotiation Team Member

LIDIAN ESTECOC
Public Records Shift Supervisor
CMCEA Negotiation Team Member

REPRESENTATIVES OF THE CITY OF COSTA MESA

RICK FRANCIS
Assistant CEO

TAMMY LETOURNEAU
Assistant CEO

LANCE NAKAMOTO
Human Resources Manager

# CMCEA MEMORANDUM OF UNDERSTANDING

## COMPENSATION GROUPINGS

| BENCHMARK CLASS | REPRESENTED CLASSES |
|---|---|
| Accountant | Accountant |
| | Senior Accountant |
| | Budget Specialist |
| | Revenue Investment Specialist |
| | Tax Auditing Specialist |
| Accounting Specialist I | Accounting Specialist I |
| | Accounting Specialist II |
| Assistant Engineer | Assistant Engineer |
| | Plan Checker |
| | Contract Administrator |
| Associate Engineer | Associate Engineer |
| | Senior Engineer |
| | Chief Plans Examiner |
| | Plan Check Engineer |
| Associate Planner | Associate Planner |
| | Assistant Planner |
| | Senior Planner |
| | Principal Planner |
| Building Inspector | Building Inspector |
| | Senior Electrical Inspector |
| | Senior Plumbing and Mechanical Inspector |
| | Chief Of Inspection |
| | Electrical Inspector |
| | Combination Inspector |
| | Chief Construction Inspector |
| | Construction Inspector |
| | Chief of Code Enforcement |
| | Code Enforcement Officer |
| | Business License Inspector |
| Buyer | Buyer |
| | Assistant Storekeeper |
| | Storekeeper |
| Communications Officer | Communications Officer |
| | Communications Supervisor |
| | Senior Communications Officer |
| | Senior Communications Supervisor |

| | |
|---|---|
| Community Services Specialist | Community Services Specialist |
| | Custody Officer |
| | Police Training Assistant |
| | Crime Prevention Specialist |
| | Range Master |
| | Animal Control Officer |
| Crime Scene Specialist | Crime Scene Specialist |
| | Property and Evidence Specialist |
| | Civilian Investigator |
| | Crime Analyst |
| Engineering Technician II | Engineering Technician I |
| | Engineering Technician II |
| | Engineering Technician III |
| | Building Technician I |
| | Building Technician II |
| Equipment Mechanic II | Equipment Mechanic II |
| | Lead Equipment Mechanic |
| | Equipment Mechanic III |
| | Equipment Mechanic I |
| Executive Secretary | Executive Secretary |
| | Office Coordinator |
| | Administrative Secretary |
| | Deputy City Clerk |
| Fire Protection Analyst | Fire Protection Specialist |
| | Fire Protection Analyst |
| | EMS Coordinator |
| | Emergency Services Training Specialist |
| Maintenance Supervisor | Maintenance Supervisor |
| | Assistant Street Superintendent |
| | Senior Maintenance Supervisor |
| | Facilities and Equipment Supervisor |
| | Lead Maintenance Worker |
| | Lead Facilities Maintenance Technician |
| | Senior Lead Maintenance Worker |
| Maintenance Worker | Maintenance Worker |
| | Maintenance Assistant |
| | Facilities Maintenance Technician |
| | Senior Maintenance Technician |
| | Sr. Maintenance Worker |

| | |
|---|---|
| Management Analyst | Management Analyst |
| | Budget Analyst |
| | Accounting Supervisor |
| | Purchasing Supervisor |
| | Revenue Supervisor |
| | Grants Administrator |
| | Recreation Supervisor |
| | Assistant Recreation Supervisor |
| | Recreation Coordinator |
| | Recreation Specialist |
| Office Specialist I | Office Specialist I |
| | Office Specialist II |
| | Office Specialist |
| | Permit Processing Specialist |
| | Messenger |
| PC Networking Assistant | PC Network Assistant |
| | Graphics Designer |
| | Central Services Supervisor |
| | Network Administrator |
| | Computer Operations & Network Supervisor |
| | Electronics Technician |
| | Communications Installer |
| | Offset Press Operator II |
| | Offset Press Operator I |
| Programmer Analyst I | Programmer Analyst I |
| | Senior Programmer Analyst |
| | Programmer Analyst II |
| | Systems and Programming Supervisor |
| | Video Production Coordinator |
| | Video Production Specialist |
| Police Sergeant | Police Training Administrator |
| | Crime Scene Investigation Supervisor |
| | Property and Evidence Supervisor |
| | Police Records Bureau Supervisor |
| | Police Records Administrator |
| Senior Police Records Technician | Senior Police Records Technician |
| | Police Records Technician |
| | Police Records Shift Supervisor |

# CMCEA MEMORANDUM OF UNDERSTANDING

| Supervisory Classifications |
|---|
| Accounting Supervisor |
| Assistant Recreation Supervisor |
| Assistant Street Superintendent |
| Associate Engineer |
| Central Services Supervisor |
| Chief Construction Inspector |
| Senior Electrical Inspector |
| Chief Plans Examiner |
| Senior Plumbing & Mechanical Inspector |
| Chief of Code Enforcement |
| Chief of Inspection |
| Communications Supervisor |
| Computer Operations/Network Supervisor |
| Contract Administrator |
| Crime Scene Investigation Supervisor |
| Deputy City Clerk |
| Executive Secretary |
| Facilities & Equipment Supervisor |
| Lead Equipment Mechanic |
| Lead Facilities Maintenance Technician |
| Lead Maintenance Worker |
| Maintenance Supervisor |
| Management Analyst |
| Office Coordinator |
| Plan Check Engineer |
| Police Records Administrator |
| Police Records Bureau Supervisor |
| Police Records Shift Supervisor |
| Police Training Administrator |
| Principal Planner |
| Property/Evidence Supervisor |
| Purchasing Supervisor |
| Recreation Coordinator |
| Recreation Supervisor |
| Purchasing Supervisor |
| Recreation Coordinator |
| Recreation Supervisor |
| Revenue Supervisor |
| Senior Engineer |
| Senior Accountant |
| Senior Code Enforcement Officer |
| Senior Communications Officer |
| Senior Communications Supervisor |
| Senior Lead Maintenance Worker |
| Senior Maintenance Supervisor |
| Senior Planner |
| Systems & Programming Supervisor |
| Video Production Coordinator |

# CITY OF COSTA MESA

## GRIEVANCE PROCEDURE

### Definition

A "grievance" is a formal, written allegation by an employee, who is the grievant, that he or she has been adversely affected by a violation, misinterpretation or misapplication of the specific provisions of the Memorandum of Understanding and/or provisions of the Personnel Rules and Regulations or other City policies. Other matters for which a special method of review is provided by law, ordinance, resolution, or by administrative regulations and procedures of the City, are not within the scope of this procedure, although other methods of review may be joined with the grievance procedure where the factual basis for the review and the grievance are similar.

This procedure is not to be used in lieu of the Discipline Appeals Procedure.

### Procedure

1. Informal Resolution: Every effort shall be made to resolve a grievance through discussion between the employee and his or her immediate supervisor. It is the spirit and intent of this procedure that all grievances are settled quickly and fairly without any discrimination against employees who may seek to resolve a grievance by invoking this procedure. Every effort should be made to find an acceptable solution at the lowest level of supervision. Within fifteen (15) calendar days after a grievant knew, or by reasonable diligence should have known, of the condition upon which a grievance may be based, the grievant shall attempt to resolve it by an informal conference with the grievant's immediate supervisor.

2. The immediate supervisor shall render his or her decision in writing within fifteen (15) calendar days of the informal conference. If the problem cannot be resolved between the employee and the supervisor, the employee may, within ten (10) calendar days from the date of receiving the answer from his or her supervisor, request and be granted an interview with the division manager, if one exists, in order to discuss the grievance.

3. The division head shall render his or her decision in writing within fifteen (15) calendar days of receiving the appeal. If the division head and employee cannot reach a solution to the grievance, the employee may, within ten (10) calendar days from the date of receiving the answer from the division manager, request, in writing, and be granted an interview with the department director.

4. The department director shall render his or her decision in writing within fifteen (15) calendar days of receiving the appeal. If the department director and employee are unable to arrive at a satisfactory solution, the employee may, within fifteen (15) calendar days from the date of the decision by the department director, submit a written appeal to the Chief Executive Officer or *designee* or request grievance mediation.

5. As an alternative to proceeding directly to the final step of the grievance procedure, the parties may mutually agree to submit a grievance to mediation. A request for mediation may be presented in writing to the Administrative Services Director within fifteen (15) calendar days from the date a decision was rendered by the Department director. A request for mediation will automatically suspend the normal processing of grievance until the mediation process is completed, or the request is denied. The Administrative Services Director shall endeavor to schedule the mediation meeting within thirty (30) calendar days. The mediation process shall be optional, and any opinion expressed by the mediator shall be considered advisory. Within ten (10) calendar after completion

of the mediation process, the employee may request to proceed to the final step of the grievance process.

6. Should grievance mediation not produce satisfactory resolution, the Chief Executive Officer or *designee* shall review the grievance and respond to the employee within twenty (20) calendar days of receiving the appeal. The Chief Executive Officer or *designee* shall have the option of scheduling a meeting to hear the grievance, or a response may be provided in writing based upon the prior written grievance record. This will be considered an expression of management's viewpoint, and shall be the final administrative review.

7. If any of the time limits associated with any of the steps wherein an employee may appeal the determination of a prior step should elapse, the grievance shall be considered withdrawn. Time limits may be extended by mutual consent. If the supervisor or manager responding on behalf of the City fails to respond within the prescribed time limits, the grievance will be deemed to have been denied and the employee may go to the next step.

8. The employee may request the assistance of another person of his or her own choosing in preparing and presenting his or her grievance at any level of review. In the event the employee desires the presence of a representative who is an employee of the City, he or she shall make such request through the supervisor and the supervisor shall make the necessary arrangements for the employee representative to be present. Because this procedure has been approved by the Association under the provisions of the MOU, any representative of the employee must be acceptable to the Association, or said representative shall not assist the employee as defined herein.

9. The employee and/or his or her representative may use a reasonable amount of work time as determined by the appropriate supervisor or department director in presenting the appeal. However, no employee shall absent himself or herself from scheduled work without first being excused by his or her supervisor.

10. No employee shall be required to be represented by an employee organization in processing a grievance.

11. Employees shall be assured freedom from reprisal for using the grievance procedures, or for being a witness in a grievance, by both the City and the employee organization.

12. The settlement terms of a grievance which is processed by an employee individually or by a recognized employee representative shall not conflict with the express provisions of a Memorandum of Understanding between the City and the recognized employee organization for such unit, if any.

13. A group grievance may be filed when one (1) set of circumstances or occurrences affects more than one (1) employee in the same manner or to the same extent. The group may file one (1) document which all members of the group have read and signed. Members of the group shall be limited to those who have signed the grievance. The resolution of a group grievance may not be consistent among all employees in the group grievance due to differences in the circumstances or occurrences that brought about the grievance.

    A group grievance affecting all members of a class or the organization as a whole may be brought by the employee organization itself. In such case the procedure shall be commenced directly at the Chief Executive Officer or *designee* level within fifteen (15) working days after authorized representatives of the employee organization knew or by reasonable diligence should have known of the condition giving rise to the grievance and shall be subject to all applicable time limitations and the provisions set forth above.

# CITY OF COSTA MESA

## DISCIPLINARY PROCEDURES

**Basis for Disciplinary Action**

The tenure of every City employee shall be based on reasonable standards of personal conduct and job performance. Failure to meet such standards shall be grounds for appropriate disciplinary action, which shall be commensurate with the seriousness of the offense and with consideration of the employee's prior performance record. Disciplinary action shall be based upon any of the following grounds, but is not limited to only these grounds:

A. Fraud in securing employment or making a materially false statement on an application for employment or on any supporting documents furnished with or made a part of any application.

B. Incompetence such as failure to comply with the minimum standards for an employee's position for a reasonable period of time.

C. Neglect of duty, such as failure to perform the duties required of an employee's position.

D. Willful disobedience and insubordination such as a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position.

E. Dishonesty involving employment.

F. Using or being under the influence of alcohol or intoxicating drugs while on duty without a prescription. Bringing alcohol or controlled substances onto any City work premises, or onto any location where City business or services are performed by City employees.

G. Addiction to or habitual use of alcoholic beverages, narcotics or any habit forming drug.

H. Inexcusable absence without leave.

I. Conviction of a felony or conviction of a misdemeanor involving moral turpitude. A plea or verdict of guilty, or a conviction following a plea of nolo contendere, to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.

J. Discourteous treatment of the public.

K. Improper or unauthorized use of City property.

L. Violation of the rules and regulations of any department.

M. Any act of conduct undertaken which, either during or outside of duty hours, is of such a nature that it causes discredit to fall upon the City, the employee's department or division.

N. Failure to maintain proper conduct during working hours causing discredit to the employee's department or division. Such as:
   1. Fighting or causing an assault on a fellow worker, citizen or any other person while employed by the City.

2. Abusing City records or information obtained while in the employ of the City.

3. Falsification of City records.

4. Threats of bodily harm perpetrated at work, or toward fellow workers.

5. Failure to observe work schedules, including lunch periods and breaks.

6. Consistent failure to perform work assignments in an acceptable manner or at an acceptable level of output.

7. Destruction of City property.

8. Engaging in any sort of harassment (sexual, racial, ethnic, religious, etc.)

9. Intentionally treating other employees differently because of their race, sex, age, religion, national origin, marital status, physical or mental disability, sexual preference or other protected category.

O. Abuse of sick leave.

P. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of City property.

Q. The employee's failure to resolve a physical or mental infirmity(s) or defect(s), when it is within the capacity of the employee to do so and when directed by his or her supervisor.

R. Outside employment which conflicts with the employee's position and is not specifically authorized by the department director.

S. Acceptance from any source of any emolument, reward, gift or other form of remuneration in addition to the employee's regular compensation, as a personal benefit to the employee for actions performed in the normal course of the employee's assigned duties.

T. Falsification of any City report or record, or of any report or record required to be, or, filed by the employee.

U. Violation of any of the provisions of the City Code, ordinances, resolutions, or any rules, regulations or policies which may be prescribed by the City Council, Chief Executive Officer, department manager or supervisor.

V. Political activities precluded by Local, State or Federal law.

W. Other acts which are incompatible with service to the public.

**Types of Discipline**

Types of discipline include the following: warning/reprimand, suspension, demotion or reduction in pay and dismissal. Voluntary demotions as well as performance evaluations are not considered disciplinary actions. The appeal or the review of a performance evaluation is limited to the supervisor's supervisor, whomever that may be. The following procedures shall be followed when, in the judgment of the department director, an employee has committed an act or omission that justified the disciplinary action indicated. Except for written warnings/reprimands, the department director or his or her designee shall

advise employees of contemplated disciplinary actions in writing and allow the employee an opportunity to respond to such charges prior to taking action.

When life, or employee safety, is endangered, or the self-control of an employee is questionable, a supervisor shall take immediate action to reduce or eliminate the danger or to establish control. In case of an emergency, an employee shall have all of the rights set forth herein, except, in the discretion of the appointing authority, an employee may be placed on administrative leave with pay pending pre-disciplinary procedures. The Administrative Services Director must be contacted immediately.

A. Warning/Reprimand: If the warning/reprimand is in writing it should be signed by the employee acknowledging receipt. The department shall give the employee a copy and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. A written warning/reprimand shall contain a description of the events which necessitated the action, specific expectations of change by the employee, and notice of further action in the event a change by the employee does not occur. An employee shall have the right to attach a written rebuttal and/or file an appeal.

B. Suspension: A department director or his or her designee may suspend an employee with or without pay from his or her position. Any placement of an employee on administrative leave pending pre-disciplinary response shall be with pay. The appointing authority shall advise the Administrative Services Director in writing of such intended action and shall give a copy of such statement to the employee. The written statement shall contain a description of the events which necessitated the suspension, a statement of the charges, notification that the employee may review and be provided with the materials leading to the suspension, the right of the employee to meet with the appointing authority and/or to respond in writing within a reasonable time frame to the charges, and notice of further action in the event a change by the employee does not occur. Unless extended by approval of the Chief Executive Officer or *designee* on written recommendation of the department director, the maximum period of suspension shall be thirty (30) calendar days. These procedures are available prior to the implementation of discipline.

   Disciplinary actions involving suspensions of four (4) work days or less, as well as oral and written reprimands are not exempt from the notification requirements. However, in such disciplinary actions the employee does not have the right to respond to the appointing authority prior to the effective date of the proposed action.

C. Demotion or Reduction in Pay: A department director shall advise the Administrative Services Director in writing of his or her intention to demote or reduce the salary of an employee prior to taking such action. In demoting an employee or reducing his or her salary, the department director shall make a written notice and shall give a copy of said notice for demotion or reduction in pay to the employee and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the demotion, a statement of the charges, notification that the employee may review and be provided with the materials leading to the demotion, the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable time frame to the charges, and notice of further action in the event a change by the employee does not occur.

D. Dismissal: A department director shall advise the Administrative Services Director in writing of his or her intention to dismiss an employee prior to taking such action. In dismissing an employee, the department director shall make a written notice and shall give a copy of said notice of dismissal to the employee and forward a copy to the Administrative Services Director for review and retention in the employee's personal history file. The written statement shall contain a description of the events which necessitated the dismissal, a statement of the charges, notification that the employee may review and be provided with the materials leading to the dismissal, and the right of the employee to meet with the appointing authority and/or respond in writing within a reasonable

time frame to the charges. These procedures are pre-disciplinary in nature.

**Notices**

Written notices will be given to the employee in person whenever possible and the employee's signature obtained to indicate receipt. In the absence of personal service, the notice may be sent by registered mail.

**Employee's Response**

An employee's opportunity to respond to the appointing authority is not intended to be adversarial in nature. An employee has the right to have a representative of his or her own choosing at the meeting. The employee need not be accorded the opportunity to cross-examine a department's witnesses, nor to present a formal case in opposition to the proposed discipline. However, the limited nature of this response does not obviate the appointing authority's responsibility to initiate further investigation if the employee's version of the facts raises doubts as to the accuracy of the department director's information leading to the discipline proposal. An employee may elect not to respond, thereby waiving any further pre-disciplinary response.

The appointing authority will evaluate the proposed discipline in light of the employee's response, if any. Within five (5) working days of the employee's response, or deadline for response, a decision will be transmitted in writing to the employee. Service of the decision will be in person or by registered mail.

**Appeal Procedures**

**Major Discipline**

Any permanent employee in the classified service shall have the right to appeal any termination, suspension of forty (40) hours or more, denial of a merit increase, reduction in salary, or non-probationary demotion. The appeal process shall not be applicable to those positions which may be deemed exempt from the classified service or to probationary employees. The appeal process shall not be applicable to verbal reprimands and performance evaluations.

An employee desiring to appeal the appointing authority's decision shall have ten (10) calendar days after receipt of the response to file an appeal. The employee's request for appeal must be addressed to the Administrative Services Director and received in the *Human Resources* Division so that same is date stamped by the *Human Resources* Division within the 10-day period.

If, within the 10-day appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the appointing authority shall be considered conclusive and shall take effect as prescribed. If, within the 10-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the *Human Resources* Division, an arbitration appeal hearing shall be established as follows (the discipline shall nonetheless be implemented concurrent with the Appointing Authority's determination, subject to later modification as may result from the appeal process):

A. The employee shall file a written request with the *Human Resources* Division for advisory arbitration to the Chief Executive Officer or *designee*. The *City and employee* will be responsible for all arbitration-related expenses, excluding attorney fees and staff time.

B. The Administrative Services Director shall provide a list of five (5) arbitrators registered with the American Arbitration Association, California State Conciliation Service or some other agreed upon source within seven (7) calendars of the employee's request. The employee may delete/strike two (2) names from the list. The Administrative Services Director will then select the arbitrator from the remaining names on the list.

C. The selected arbitrator shall serve as the hearing officer.

D. Where practicable, the date for a hearing shall not be less than 20 calendar days, nor more than 60 calendar days, from the date of the filing of the appeal with the Administrative Services Director. The parties may stipulate to a longer or shorter period of time in which to hear the appeal. All interested parties shall be notified in writing of the date, time, and place of hearing.

E. All hearings shall be private provided, however, that the hearing officer shall, at the request of the employee, open the hearing to the public.

F. Subpoenas and subpoenas duces tecum pertaining to a hearing shall be issued at the request of either party, not less than seven (7) calendar days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.

G. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.

H. Each party shall have these rights: To be represented by legal counsel or other person of is or her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called his or her to testify; and to rebut the evidence against his or her. The employee, may be called by the party bearing the burden of proof and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City, hearing officer, employee/employee representative) mutually agree that same is not necessary.

I. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:

1. The party imposing discipline shall be permitted to make an opening statement;

2. The appealing party shall then be permitted to make an opening statement;

3. The party imposing disciplinary action shall produce the evidence on his or her part; the City bears the burden of proof and burden of producing evidence;

4. The party appealing from such disciplinary action may then open his or her defense and offer his or her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;

5. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason, permits them to offer evidence upon their original case;

6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.

J. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He or she shall base his or her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties and Personnel Division representatives, shall be excluded from the hearing unless the hearing officer, in his or her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he or she believes to be important to reaching a fair and proper decision. The hearing officer shall render his or her judgment as soon after the conclusion of the hearing as possible and in no event later than 30 days after conducting the hearing. His or her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.

K. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He or she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee.

L. The hearing officer's opinion and recommendation shall be filed with the Chief Executive Officer or *designee*, and the Administrative Services Director and shall set forth his or her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the date the employee is recommended to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.

M. The decision of the Chief Executive Officer or Assistant Chief Executive Officer shall be final and conclusive. Copies of the Chief Executive Officer's or *designee*'s decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the Chief Executive Officer or *designee*.

N. *Each* party will be responsible for all arbitration-related expenses, excluding attorney fees and staff time. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee. This process shall not apply to mutual settlements by the parties which result in an arbitration fee.

O. In the case of suspension, demotion, reduction in salary, or dismissal prescribed by the Chief Executive Officer or *designee*, the time of such suspension, demotion or dismissal shall be effective from the first day after such delivery of said decision by the Chief Executive Officer or *designee*, whichever is applicable.

P. The employee may be placed on administrative leave until resolution/conclusion of the appeals process.

Q. The provisions of Section 1094.6 of the Code of Civil Procedure shall be applicable to proceedings under this section, including the appeal the Chief Executive Officer's or *designee*'s final decision into the California Court System, which must be made in accordance to the time standards and procedures established by Section 1094.6 and 1094.5 of the Code of Civil Procedure.

## Minor Discipline

Any permanent employee in the classified service shall have the right to appeal any written reprimand and/or suspension of four (4) days or less. The appeal process shall not be applicable to those positions which may be deemed exempt from the classified service or to probationary employees.

If the problem cannot be resolved between the employee and the supervisor, the employee may, within ten (10) calendar days from the date of receiving the answer from his or her supervisor, request and be granted an interview with the department director or his or her designee, in order to discuss the appeal.

The department director or designee shall render his or her decision in writing within fifteen (15) calendar days of receiving the appeal. If the department director and employee are unable to arrive at a satisfactory solution, the employee may, within fifteen (15) calendar days from the date of the decision by the department director, submit a written appeal to the Chief Executive Officer or *designee*. The Chief Executive Officer or *designee* will respond or his or her designee will respond or schedule a meeting within fifteen (15) calendar days. The Chief Executive Officer or *designee* shall render his or her judgment as soon after the conclusion of the hearing as possible and in no event later than 30 days after conducting the hearing. His or her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.

**APPENDIX E**

## Side Letter of Agreement Regarding the Implementation and On-going Review and Management of a 3 day/12 hour Schedule for Communications Officers in the Telecommunication's Division of the Administrative Services Department

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This Letter of Agreement has been prepared to address the terms and conditions for implementing a **3-day/12-hour work schedule plus one 8-hour shift** ("**3/12 schedule**") for the Communications Officers, Senior Communications Officers, and Communications Supervisors ("Communications Officers") in the Telecommunication Division of the Administrative Services Department of the City of Costa Mesa.

In response to a request from the Communications Officers of the Costa Mesa City Employees Association (CMCEA), management participated in a series of meetings with the Communications Officers and representatives of the CMCEA. The request from the Communications Officers was for the City of Costa Mesa ("City") to consider the implementation of a 3-day/12-hour work schedule plus one 8-hour shift during the pay period for the Communications Officers.

The Administrative Services Director met with both the Supervisory Officers and then with all of the full-time Communications Officers to discuss the proposed work schedule. Operational issues surrounding the implementation of a 3-day/12-hour work schedule were then evaluated and an implementation plan was developed. Based on these meetings and discussions, the terms and conditions for the implementation of the 3-day/12-hour work schedule plus one 8-hour shift during the pay period were developed.

Based upon the presentations made and the information developed by the Communications Officers, certain operational benefits are expected to be achieved with the implementation of the 3/12 schedule. The Communications Officers have agreed to a number of provisions and modifications to implement the 3/12 schedule. These provisions and modifications, as detailed in this Letter of Agreement, will be monitored throughout the 18-month trial period. Negative impacts at any time during the trial period could necessitate reverting to the 5-day/8-hour work schedule prior to the end of the 18-months.

### Term and Conditions for Implementation

The Communications Officers, as members of CMCEA, and management agree on the following terms and conditions for implementing the 3/12 schedule. These terms and conditions will be monitored throughout the 18-month trial period. Negative impacts to the operations of the Communications Center and/or service to the public at any time during the trial period could necessitate reverting to the 5-day/8-hour work schedule prior to the end of the 18-months. Per this Letter of Agreement, the following terms and conditions are agreed to as follows:

## 1. Implementation and Sunset Date

The 3/12 schedule will commence with the new pay period that begins at 12:00 a.m. on Sunday, January 8, 2006.

The 3/12 schedule is a new undertaking within the City. As such, it will be evaluated under a "sunset" date of eighteen (18) months from the inception of the new schedule. The sunset date will be Saturday, July 7, 2007 at 11:59 p.m. Throughout the trial period and prior to the sunset date, the 3/12 schedule will be evaluated for continuation based upon the impacts to the community and operations. Any negative impacts that are identified at that time or prior to the sunset date may necessitate reverting to the 5-day/8-hour work schedule prior to the end of the 18-months. On or before June 15, 2007, the 3/12 schedule will be evaluated by management for continuation beyond the sunset date.

## 2. Shift Differential Pay

Implementation of the 3/12 schedule will have the Communications Officers working one of two different 12-hour schedules (4am-4pm or 4pm-4am) plus one 8-hour shift (8am-4pm or 4pm-midnight) scheduled during the pay period. The shift differential provisions provided for in the 2004-2007 CMCEA Memorandum of Understanding will be rescinded to the Communications Officers who work under the 3/12 schedule. With the implementation of the 3/12 schedule, the shift differential period will be from 6:00 p.m. to 6:00 a.m. All Communications Officers shall receive a shift differential of **7.5%** for those actual hours worked between the hours of 6:00 p.m. to 6:00 a.m. only.

## 3. Shift Coverage

Under the 3/12 schedule staff will not fall below the minimum staffing of 4 persons at any time. The increased coverage with the 3/12 schedule is due to the scheduling of the 8-hour shift each employee will work during the 80-hour pay period.

## 4. Part-time as First Fill for Vacancies

Part-time personnel are given and will continue to be given the first opportunity to fill all vacancies (scheduled or unscheduled). The division has formalized this management practice in the following procedure that is agreed to and followed by all of the Telecommunication Division staff:

**PART-TIME PERSONNEL**
**VACANCY FILL PROCEDURES**

**Filling Vacancies:**
Part-time personnel are to be given the first opportunity to fill all vacancies, scheduled or unscheduled, including vacation extensions and sick leave. The only exception to this will be that of the 2 week, scheduled vacation periods filled by the Vacation Relief Officer.

**Time-Off Requests:**
Before submitting a time-off request, the person requesting time-off will contact all part-time Communications Officers to obtain a definite "yes" or 'no" answer regarding his/her ability to work during the requested time off. If part-time Communications Officers are not available to work, the time-off request will be submitted to the Senior Supervisor who will then evaluate the request and determine if full-time personnel will be allowed to work overtime to fill the time-off.

**Minimum Hours:**
All part-time Communications Officers shall work a minimum of 16 hours per month. All part-time Communications Officers shall work a minimum of 8 hours per month on each of the 2 defined shifts, if the opportunity exists.

**Shift Assignments:**
All part-time Communications Officers shall be capable of working any shift without restriction. The Division may assign specific working hours to part-time Communications Officers based on the needs of the Division.

## 5. Time-off Requests

A written request for compensatory time off shall be made and approved no later than 24 hours prior to the requested time off. Exceptions to this time limit may be allowed on a case-by-case basis. The Senior Communications Supervisor or the Senior Communications Supervisor's designee shall approve or deny any request for time off.

All Communications Officers, on a first come first served basis, who submit a request for time off may utililize accrued compensatory time off (CTO), holiday time or vacation time off provided an approved fill is obtained from the Senior Communications Supervisor and/or their vacancy does not result in less than minimum staffing and does not negatively impact dispatch operations. This policy is subject to suspension in emergency situations at the discretion of the Department Director or his/her designee.

Communications Officers may submit a request for time off (CTO, holiday or vacation) only if the individual requesting such time off has that time available on record at the time of the request.

With regard to the practice of shift trades, Communications Officers will continue to follow the division's Standard operation Procedures as outlined in Telecommunications Division DSOP Section 62.

## 6. Comp Time & Overtime Accrual

Due to the Communications Officer vacancies that have existed over the past months, overtime and comp time accrual has increased due to the need to backfill these vacancies. Due to the additional days off provided by the 3/12 schedule and the prospect of filling the existing vacancies, it is expected that overtime and comp time accrual will be reduced. To what level it will be reduced is uncertain because many factors outside of the 3/12 schedule (i.e., a long-term absence, unplanned absences, vacancies) can impact the need for overtime. Still, this will be an area that will be monitored for fiscal impacts to the City over the 18-month trial period.

## 7. Holiday Time: Time Off Bank and Cash Out Option

Prior to the beginning of each calendar year, employees will have a choice to make an irrevocable election for the upcoming payroll year to either (a) take time off for the holidays or (b) cash out holiday pay

Section 8.11 of the 2004-2007 Memorandum of Understanding with CMCEA provides for the cash out and/or banking of annual holiday time for civilians who work without regard to Holidays. The leave bank hours provided for in Section 8.11 of the CMCEA MOU are as follows: 8hr shift = 96 hrs; 9hr shift = 108 hrs; and 10hr shift = 120 hrs. Under the terms and conditions of the 3/12 schedule, it is agreed that Communications Officers working a 3/12 schedule will receive a holiday hours' bank of ten (10) hours for each holiday in the payroll year should the employee choose a bank of time rather than cashing out of the holiday hours.

### a. Time Off Bank

Those employees who choose to take time off in lieu of the holidays will receive a bank of ten (10) hours for each holiday that occurs in the payroll year. These employees will be required to record on their timesheets the hours that correspond with their regular workday shift and schedule. The hours will be available the first pay period of the new payroll year. The Senior Communications Supervisor shall approve or deny the time off request and approval will be based upon available staffing needs and the needs of the employee. At the end of the payroll year, any remaining hours will be carried over to the next payroll year (however, the subsequent year's bank, shall be reduced by the number of hours carried over).

For purposes of further clarification regarding the payroll year, if the employee chooses the "Time Off", the employee will receive, as stated above, 10 hours for each holiday in the upcoming payroll year. Due to the fact that payroll calendar year will vary, in some years the employee might receive 110 hours of Holiday Time off (11 holidays actually occurring in the payroll year). In another payroll year the amount could be a maximum of 130 hours (13 holidays actually occurring in the payroll year).

b. Cash-out Option

Employees who choose the cash out option will receive the holiday pay bank of 96 hours (8 hours for each holiday occurring in the payroll year) beginning the first pay period for the new payroll year. The holiday pay bank may be cashed out at anytime during the year. At the end of the payroll year, any remaining holiday pay will be cashed out unless he employee previously elects to have it applied as accrued vacation. Throughout the payroll year, if an employee, who has selected this option, decides to take a holiday off, they must use either vacation or comp time, not holiday time.

For clarification purposes, due to the fact that payroll year will vary from the calendar year, in some years the employee will receive 88 hours of Holiday time for cash-out (11 holidays actually occurring in the payroll year at 8 hours each) and in some years it will be 104 hours for cash-out (13 holidays actually occurring in the payroll year at 8 hours each).

## 8. Employees' Well Being

The City is concerned about the possible impacts of the on-going 3/12 schedule on the employees and the well being of the Communications Officers is of foremost concern. Should the 3/12 schedule result in any negative impacts to the employees or the employees' health, the trial period may be shortened or terminated. Such concerns and matters will be evaluated by monitoring sick leave usage and workers' compensation claims as well as other relevant factors.

## 9. Work Schedule Form – Designation of FLSA Work Period

To comply with the Fair Labor Standards Act (FLSA), each non-exempt employee, both full time and part-time, must complete a "Notification of Work Schedule & FLSA Work Period" form before implementation of the 3-12 Schedule and also before each permanent shift change. This is necessary because each Communications Officer may have an FLSA work period that differs from their payroll pay period.

## 10. Final Pay Check Calculations at Termination of Employment and the FLSA Work Period Schedule

Due to the various beginning and ending dates of the differing FLSA work periods under the 3/12 schedule, the calculations of an employee's final paycheck may not equate to a full 80 hours. While all hours worked will always be accounted for, the final day worked may not always be the final day of the FLSA work period.

At the time of separation from the City, the employee's final paycheck will include compensation for actual hours worked plus all accrued leave time "pay offs" as stated in MOU. If for any reason the employee at the time of separation works over the 80 regular hours during pay period, all the time above 80 hrs will be paid as overtime.

At the time of separation, any **Unused Holiday Time Off** that has been banked will be pro-rated for those holidays that have actually occurred and converted to the cash out option, at 8 hours for each pro-rated holiday up the employee's date of separation, and paid to the employee as a cash value.

If the employee **Used Holiday Time Off**, and the holiday(s) for that "time off" have not yet occurred as of the separation date, the value of 10 hours for that holiday time used will be deducted from the final paycheck. This deduction will be calculated based upon the hourly rate that was in effect when the employee took the time off.

If the employee **Cashed-out Holiday Time** at the beginning of the payroll year, and the holiday(s) for that "cash-out" have not yet occurred as of the separation date, the value of 8 hours for each holiday cashed-out will be deducted from the final paycheck. This deduction will be calculated based upon the hourly rate that was in effect when the employee took the cash-out.

## 11. On-going Review and evaluation - Reverting to 5-Day/8-Hour Work Schedule

The Communications Officers and the City understand and agree that if the modified schedule negatively impacts operations of the Telecommunications Center, as determined by management, the Communications Officers will revert to the previous 5-day/8-hour work schedule. The 3/12 schedule will be evaluated from the date of implementation, January 8, 2006, through its sunset date of July 7, 2007.

During this evaluation period, there will be on-going review and assessment by the Administrative Services Director and the Telecommunications Manager. Information from these evaluations and assessments will be communicated to the City Manager for his review. At the end of the 18 months, the 3/12 schedule will be evaluated for continuation based upon the positive and any negative impacts to the community and operations. However, negative

impacts can necessitate reverting to the 5-day/8-hour work schedule prior to the end of the 18-months. While every effort has been made to identify the full impact, both negative and positive, of this work schedule, the City reserves the right to modify terms and conditions should the safety of the community or the operations of the City be adversely affected.

Now therefore, the parties below, representing CMCEA and the City, agree to the implementation of the 3/12 schedule based on the terms and conditions provided for in this Letter of Agreement:

1/6/06
Cherie Pittington — Date
Communications Supervisor

1-6-06
Stephen N. Mandoki — Date
Administrative Service Director

1-6-06
Jana Cacho — Date
Senior Communications Officer

1/9/06
Terri Cassidy — Date
Human Resources Manger

1/6/06
Denise Armijo — Date
Communications Officer

1/6/06
Anna Tellez — Date
Telecommunications Manager

1-10-06
Kelly Vucinic — Date
President CMCEA

1-6-06
Olivia Ramirez — Date
Senior Communications Supervisor

1-10-06
Larry Lykins — Date
CMCEA Representative