

# **Memorandum of Understanding**

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**Between the City of Desert Hot Springs and the City of Desert Hot Springs Employees**

**Union ("DHSEU")**

**July 1, 2023 through June 30, 2025**

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## **PREAMBLE**

It is the intent and purpose of this Memorandum of Understanding to set forth the wages, hours and /or other items and conditions of employment of the employees of the City of Desert Hot Springs represented by the City of Desert Hot Springs Employees Union ("DHSEU") and the City of Desert Hot Springs (City"), in accordance with California Government Code section 3500, et seq.

## **IMPLEMENTATION**

This Memorandum of Understanding shall not take effect until the City Council acts, by a majority vote, formally to approve and adopt said Memorandum of Understanding.

## **ARTICLE I**

### **RECOGNITION**

#### **SECTION 1 – ADMINISTRATION**

- 1.1 The City of Desert Hot Springs (hereinafter the "City") recognizes the City of Desert Hot Springs Employees Union, AFSCME Local 760 (hereafter "DHSEU") in all matters concerning wages, hours and working conditions.

#### **SECTION 2 – DHSEU RIGHTS**

- 2.1 All general employees of the City, included in this Memorandum of Understanding and members of DHSEU, shall continue and maintain their membership in DHSEU for the duration of this Memorandum of Understanding.
- 2.2 Any DHSEU employee covered by this Memorandum of Understanding is subject to an Agency Shop provision and must become a member or pay an "agency" fee equivalent to dues upon hire with the City of Desert Hot Springs to the extent permitted by law.
- 2.3 Any employee member of DHSEU may authorize the City to deduct from his/her wages, DHSEU membership dues and/or any other authorized deduction by submitting the appropriate written authorization form to both DHSEU and the City Manager or designee. The City shall deduct DHSEU membership dues or agency fees from the wages of such an employee.
- 2.4 The City shall remit any deductions made pursuant to this provision to DHSEU or authorized labor representative, together with an itemized statement setting forth the name of each employee from whose wages such deductions have been made, and the amount(s) deducted during the period covered by the remittance.
- 2.5 The City and the DHSEU recognize the right of the employees to form, join and participate in lawful activities of employee organizations and the equal alternative right of employees to refuse to join or participate in employee organizations.
- 2.6 The City shall provide for the DHSEU use of designated bulletin boards or portions thereof, where employees in the bargaining unit have access to DHSEU information

during regular business hours. All postings for bulletin boards must contain the date of posting and the identification of the organization. The DHSEU shall not post information which is defamatory, derogatory, or obscene; such posting shall result in the immediate removal of the material and nullifying the "right to post" for a period not to exceed 90 days.

- 2.7 The City shall deduct one-half of the authorized dues or agency fee amount from employees from the last two paychecks of each month and remit to the DHSEU. The deducted amounts shall be forwarded to the designated Union representative within two weeks of the deduction of the second half of the monthly dues amount.
- 2.8 All DHSEU business shall be conducted by employees and DHSEU representatives during non-business hours. Nothing herein shall be construed to prevent a DHSEU representative or an employee from contacting the City Manager or designee regarding employee relations matters during work hours.
- 2.9 The authorized DHSEU Business Agent shall be given access to work locations during working hours provided that, prior to visiting any work location, the DHSEU representative shall:
  - a. Contact the City Manager or designee, to state the purpose of his/her visit and which location he/she will be visiting, and
  - b. The City Manager or designee determines that such visit shall not interfere with the operations of the department. In the event the requested time and/or location of such visit by the DHSEU Business Agent is denied, the City Manager or designee shall set an alternative time and/or location for such visit which is within 72 hours.
  - c. The DHSEU may schedule non-business hour meetings in City conference rooms or the City Council Chambers at times when these facilities are not in use, by submitting a written request to the City Manager or designee, which shall include the date, time, number of people expected, and the general reason for the meeting. Approval shall be granted in the same manner as is granted to other organizations requesting use of these facilities.
- 2.10 The DHSEU shall notify the City, in writing, of the names of DHSEU stewards. DHSEU stewards shall be allowed reasonable paid release time to participate in meetings or training related to labor relations, grievances, and negotiations, in accordance with the following:
  - a. A steward shall be provided release time during his/her regular work hours for the purposes of representation at a meeting that is reasonably expected to result in discipline when the DHSEU Business Agent is not available to be present, including but not limited to representation at a grievance hearing; representation at a special meeting with City Manager or designee; representation at a meeting with the DHSEU Business Agent to resolve problems within the scope of bargaining; and, reasonable release time for the preparation, investigation, or processing of disciplinary issues, grievances, or other DHSEU business.

- b. To facilitate the process, the steward shall contact the City Manager or designee to arrange the time to conduct DHSEU business as described above.
  - c. Not more than one (1) of the designated steward representatives may participate in any special meeting to resolve a problem within the scope of bargaining or grievance hearing at one time, unless authorized by the City Manager.
  - d. Subject to a minimum of 14 calendar days advanced notice by DHSEU, the City shall allow three days per year for each steward to attend Union sponsored training seminar.
  - e. Time spent on steward activities outside of normal working hours shall not be compensable by the City.
- 2.11 The City shall provide fifteen (15) business days' notice, prior to final implementation, of changes to wages, hours of work, or other terms and conditions of employment within the scope of negotiations. Upon written notice from the DHSEU outlining the area(s) of concern, together with the DHSEU's proposal, the City shall meet and confer on those matters that are within the scope of this MOU.
- 2.12 The DHSEU shall provide and maintain with the City a current list of the names of all authorized DHSEU non-employee business representatives.
- 2.13 The DHSEU agrees to indemnify and hold the City harmless against any and all suits, claims, demands and liabilities that may arise out of, or by reason of, any action that shall be taken by the City for the purpose of complying with this Section.

## **ARTICLE II**

### **COMPENSATION**

#### **SECTION 1 – SALARY**

- 1.1 The salary ranges and base salary rates for all DHSEU employees shall take effect the first day of the first pay period of fiscal year 2023-2025.
- 1.2 A one time cash payment of \$1,500.00 shall be made to each employee on the first pay period following July 1<sup>st</sup> 2023.
- 1.3 The City shall re-open the MOU in May 2024 to bargain over wages. If the most current CPI, at the time bargaining commences, is 2% or greater, a pensionable wage increase may be negotiated to become effective July 1, 2024. If the most current CPI, at the time bargaining commences, is less than 2%, a one-time cash bonus may be negotiated to be paid the next pay period after adoption.
- 1.4 Employees will receive twenty (20) "wellness hours" for fiscal year 2023-2024 only, in-lieu of pay raises. The wellness hours may be used for paid time-off with supervisor approval, but will expire on June 30<sup>th</sup> 2024, and cannot be cashed out.

## **SECTION 2 – SALARY ADVANCEMENT**

- 2.1 All employees shall receive an evaluation of their job performance at the completion of their probationary period and annually on or about their merit date.
- 2.2 Salary advancement shall mean a pay rate increase given to an employee, contingent upon an overall rating of "Meets Job Requirements" or better on a performance evaluation, within the pay range established for the employee's classification.
- 2.3 An employee's step increase shall be effective on the first day of the pay period in which the merit date falls. If a department has not submitted a signed performance evaluation within 30 days of the employee's merit date, a step increase may be automatically processed by the City's Human Resources Department.
- 2.4 The City shall retain the flexibility to hire employees with exceptional skills, experience, or qualifications at a pay rate above Step A.
- 2.5 The City's full time pay range consists of five (5) merit steps, A through E. The first step (A) shall require at least six (6) months performance at the designated step before eligibility for a merit increase. The last four (4) steps (B through E) shall require at least twelve months performance at the designated step before eligibility for a merit increase to the next step through the final step 5 (E).
- 2.6 The City Manager may accelerate merit step advances for employees based upon exceptional performance as recommended and documented by the employee's supervisor.

## **SECTION 3 – ACTING DUTY PAY**

- 3.1 The City Manager may appoint an employee to acting duty status to perform the duties of a higher classification that is a vacant or newly created classification.
- 3.2 An employee may serve in acting duty status only until such time as the City Manager makes a regular appointment to the classification or until such time as the incumbent employee returns to work.
- 3.3 An acting duty appointment may be effective for a period of thirty (30) days. The City Manager may extend an acting duty appointment at his/her sole discretion.
- 3.4 An employee appointed to acting duty status shall be paid at a pay rate not less than the minimum pay rate in the pay range for the acting duty classification, but such acting duty pay rate shall be at least five percent (5%) more than the employee's prevailing pay rate immediately prior to acquiring acting duty status.
- 3.5 An employee shall not be paid more than the maximum pay rate in the pay range for the acting duty classification.
- 3.6 While serving in acting duty status, the employee shall continue to be eligible to receive any pay adjustments or advancements granted to the employee's permanent classification.

- 3.7 An employee appointed to acting duty status shall receive acting duty pay immediately upon assuming the acting duty position, provided the duration of the assignment is at least a scheduled work shift.
- 3.8 An employee has the right to refuse any acting duty assignment without justification, upon submittal of such in writing to the City Manager.
- 3.9 An employee appointed to acting duty status can discontinue the acting duty assignment by notifying his/her immediate supervisor in writing one (1) week in advance of the employee's intention to return to regular status.
- 3.10 An employee may be removed from acting duty status after serving in the acting assignment for one (1) workweek, at any time, at the discretion of the City Manager.

**SECTION 4 –ASSIGNMENT PAY**

- 4.1 Assignment pay for certain additional duties of an employee's existing classification may be warranted and approved by the City Manager. Employees assigned such duties shall receive assignment pay at 5% of the employee's base rate of pay. The assignment pay shall cease when the employee is not assigned such duties.
- 4.2 Employees assigned the classification of Dispatchers and work the night shift from 6PM-6AM shall be paid 5% in addition to their base rate.

**SECTION 5 – EDUCATIONAL INCENTIVE**

- 5.1 Employees appointed to the classification of Animal Care and Control Supervisor shall be paid 10% in addition to their base rate for the possession of a valid Registered Veterinary Technician certification.
- 5.2 Employees who attain or possess a qualified educational degree as detailed in Section 5.3, that is above and beyond the minimum requirement of the job classification for their position shall be paid as follows to their base pay:

- Associate degree or equivalent -5.0%
- Bachelor's degree – 5.0%
- Master's degree - 5.0%

(Cumulative Maximum: 10%)

- 5.3 The qualified educational degree must be in the field of their job classification or a similar field as approved by the City Manager, and must be obtained from an accredited educational institution.
- 5.4 Tuition Incentive: The City shall reimburse employees for actual expenses upon successful completion of the class or classes not covered by other sources. The class or classes must be related to the employee's position and provide direct benefit to the City. Advance approval of the course must be obtained in order to be covered by reimbursement. The City will reimburse the employee for fifty percent (50%) of the incurred costs of tuition, books and fees, subject to a fiscal maximum of \$1,500, and a lifetime maximum of \$4,500.



- 5.5 If available, and should an employee enroll in the Working Scholars City Government program, the City will cover the cost of the program. Employees are expected to progress through the program at a reasonable pace. Any employee not meeting minimum participation milestones will be dropped from the program.

#### **SECTION 6 – ALLOWANCE FOR MILEAGE**

- 6.1 The City shall reimburse employees for use of their personal automobile for official City business at the prevailing IRS rate.
- 6.2 Employees may use personal vehicles for official City business only with the expressed approval of a supervisor, and only when proof of a valid California's driver's license and required insurance are on file in the Human Resources Department.

#### **SECTION 7 – COURT SERVICE/JURY DUTY COMPENSATION**

- 7.1 Employees summoned to court to (a) perform jury service, or (b) to provide testimony when called on behalf of the City, or (c) as directed by the department director, City Manager, or City Attorney shall be paid their prevailing pay rate for such court service.
- 7.2 Pay for jury duty shall be limited to twenty (20) working days in any one calendar year; any extensions of such service must be approved by the City Manager, whose approval shall not be unreasonably withheld.

#### **SECTION 8 – OVERTIME POLICY**

- 8.1 Employees are eligible to receive overtime, in either paid or compensatory time-off, calculated at the rate of one and one-half (1½) times their base pay rate.
- 8.2 No employee shall work overtime unless authorized to do so in advance by the Department Head, City Manager, or designee.

#### **SECTION 9 – WORKDAY AND WORKWEEK**

- 9.1 For purposes of determining overtime, a workday shall be defined as the twenty-four (24) hour period consisting of the eight (8) hours prior to the start of the work shift and sixteen (16) hours after the start of the work shift.
- 9.2 The normal work week shall start at 12:01 a.m. Saturday and end at 12:00 midnight Friday.
- 9.3 Overtime shall not be paid for hours worked during the scheduled work shift.
- 9.4 The City Manager shall reserve the right to establish the standard work week to facilitate operations of City Hall for each employee classification included in this Memorandum of Understanding.

9.5 Regardless of work schedule, the standard work week shall be 40 hours.

#### **SECTION 10 – OVERTIME COMPENSATION**

- 10.1 Employees shall receive overtime paid at one and one-half (1½) times their prevailing pay rate; or compensatory leave time, credited at one and one half (1½) hours, for the overtime work performed as follows.
- a. Work performed in excess of eight (8) hours in a workday in a five (5) day work week.
  - b. Work performed in excess in nine (9) hours in a workday in a nine (9) day work schedule.
  - c. Work performed in excess of ten (10) hours in a workday in a four (4) day work week.
  - d. Work performed in excess of forty (40) hours in a workweek.
- 10.2 For purposes of determining an employee's eligibility for overtime compensation, only actual hours worked shall be considered toward overtime calculation.

#### **SECTION 11 – HOLIDAY COMPENSATION**

- 11.1 Full time employees shall be allowed time off with pay at the employee's straight time hourly rate for any holiday provided in this Memorandum of Understanding, unless required to report to work by the department head in order to maintain City services.
- 11.2 Holiday pay shall be paid equivalent to the employee's work shift.
- 11.3 Employees required to work on a holiday shall receive either paid time, calculated at one and one-half (1½) times their base pay rate, or compensatory leave time, credited at one and one-half (1½) hours, for each hour worked on the holiday. The one and one-half (1½) pay rate is in addition to the hours paid in section 11.2.
- 11.4 Part-time employees whose scheduled work time falls on a holiday will receive that holiday off with pay for the hours they were scheduled to work.
- 11.5 Employees appointed to the Animal Care and Control Department, and Dispatchers, in lieu of all City recognized holidays, shall be paid 5.0 hours per pay period at their standard straight time hourly rates, and shall not be included for the purpose of overtime calculations.
- 11.6 Two new holidays will be added to the total paid holidays, Juneteenth Day and Cesar Chavez Day, to make a total of 13 holidays.

#### **SECTION 12 – CALL BACK/STANDBY PAY**

- 12.1 Employees assigned the classification of Public Works Supervisor, Maintenance Technician, Lead Maintenance Technician, Lead Facilities Maintenance Technician, Code Compliance Officer, Building Inspector, and Crime Scene Investigator are required to be available on an "on-call" basis during non-work

hours, designated days off, Saturday, Sunday and/or holidays. The schedule to be set by their supervisor.

- 12.2 Employees "called back" to work due to an emergency, or to complete a critical work assignment during their regularly scheduled work week shall be paid a minimum of three (3) hours overtime when called back to work.
- 12.3 Employees required, by virtue of their position or assigned responsibilities to be available on an "on-call" basis during non-work hours, designated days off, Saturday, Sunday and/or holidays, shall be compensated a minimum of three (3) hours overtime, per non-workday.
- 12.4 The City may discontinue the practice of allowing employees that are subject to call-back to take a City-owned vehicle home.
- 12.5 Employees shall respond to a call as soon as possible and be able to return to the site of a need for service within sixty (60) minutes from the initial call-out.
- 12.6 Employees required by virtue of their position or assigned responsibilities to be available on an "on-call" basis on days the employee is scheduled to work and has completed their workday, shall be compensated a minimum of two (2) hours overtime, per workday.
- 12.7 Employees required by virtue of their position or assigned responsibilities to be available on an "on-call" basis, shall NOT be "on-call" on the days they are "sick" or on "vacation," and shall NOT be compensated any "on-call" overtime hours for those days.

### **SECTION 13 – CLASS A/B LICENSE PAY**

- 13.1 The City shall pay employees required to possess a Class A or B California Driver's License, \$75 per month, during the course of employment. This shall be made by adding .44 cents to the employees' hourly rate.
- 13.2 To qualify for such compensation, the Class A or B driver's license must be required to perform the duties of the employee's assigned classification.
- 13.3 Employees required to operate vehicles that require possession of a Class A or B driver's license, shall be enrolled in the City's Federally mandated drug testing program.

### **SECTION 14– ALLOWANCE FOR UNIFORMS**

- 14.1 The City shall provide uniforms or uniform rental services for the designated employees affected by this Memorandum of Understanding as described in Sections 14.2 and 14.3.
- 14.2 Newly appointed employees assigned the classification of Community Service Officer; Crime Scene Investigator; Property and Evidence Technician, Police Records Specialist, Animal Control Supervisor, Animal Control Officer and Animal Care Center Technician shall receive: four (4) sets of City issued uniforms to include belts, and necessary outerwear. Thereafter, employees in the above listed classifications shall receive a monetary allowance of one hundred dollars

(\$150) per month payable on a bi-monthly (\$75.00 twice per month) basis. Allowance shall be used to acquire and maintain the specific departmental uniform in a neat and proper manner. The City shall incur all costs of uniform replacement if uniform is soiled by hazardous waste, damage beyond repair in course of employment, or if there are any changes in the uniform requirements.

- 14.3 Employees assigned the classification of Public Works Supervisor, Maintenance Technician, Lead Maintenance Technician, Lead Facilities Maintenance Technician, and Code Compliance Officer shall be provided with uniforms upon hire and replaced at the expense of the City as needed.
- 14.4 All other employees classified under this MOU will be provided four (4) shirts and one (1) jacket or sweater every fiscal year. Employees who regularly interface with the public are expected to wear City-issued shirts, at the discretion of their Department Head.
- 14.5 Employees shall not be permitted to wear work uniforms while not on duty.
- 14.6 Employees assigned to the classification of Dispatchers will be provided four (4) shirts, one (1) jacket or sweater every fiscal year, and one (1) Class A uniform for formal use as needed.
- 14.7 Employees assigned the classification of Public Works Supervisor, Maintenance Technician, Lead Maintenance Technician, Lead Facilities Maintenance Technician, and Code Compliance Officer shall be provided with safety uniforms/vests/gear upon hire and replaced at the expense of the City as needed.

#### **SECTION 15 – ALLOWANCE FOR SAFETY SHOES**

- 15.1 Employees assigned to the following classifications: Community Resources Specialist, Community Service Officer; Crime Scene Investigator, Property and Evidence Technician, Maintenance Technician, Lead Maintenance Technician, Lead Facilities Maintenance Technician, Animal Control Supervisor, Animal Control Officer, Animal Care Center Technician, Code Compliance Supervisor, Code Compliance Officer, Building Inspector, Public Works Supervisor, and Police Records Specialist are required to wear safety shoes at all times during the course of a workday.
- 15.2 Such employees shall receive \$275 upon hire and annually on the 1<sup>st</sup> paycheck of July of each fiscal year thereafter to purchase safety shoes approved by the City.
- 15.3 Employees are solely responsible to ensure safety shoes are purchased when needed and worn daily during the course of a workday.
- 15.4 Employees assigned to the Code Compliance Administrative Assistant, Cannabis Compliance Administrative Assistant, Planning Technician and Assistant Planner classifications will be provided one pair of safety shoes as needed.

**SECTION 16 – BILINGUAL/AMERICAN SIGN LANGUAGE PAY**

- 16.1 The City shall provide bilingual/sign language incentive pay, in the amount of \$152.53 per month, to those employees who pass a bilingual/sign language proficiency test. This incentive payment shall be made by adding .88 cents to the employees' hourly rate.
- 16.2 In order to qualify for the bilingual incentive pay, the employee must pass a bilingual proficiency test which shall be given to those employees requesting proficiency certification.

**ARTICLE III**

**BENEFITS**

**SECTION 1 – HEALTH INSURANCE BENEFITS**

- 1.1 The City shall pay the premium amounts for employees and their eligible dependents that are enrolled in the City's Health plans subject to the maximum amounts set forth in Section 1.2. The City may reopen negotiations during the term of the MOU to address the impact of the Affordable Care Act, provided that no changes may be made by the City unless they are either (1) mandated by the ACA or (2) mutually agreed upon by the parties
- 1.2 The City's maximum monthly contribution amounts for each employee shall be as follows:

Coverage Level	Monthly Maximum Contribution Amount for 2022 Calendar Year
Employee Only	\$876.01
Employee and Spouse	\$1789.19
Employee and Child(ren)	\$1622.15
Employee and Family	\$2320.04

- 1.3 The City and DHSEU members will each pay 50% of the increased cost of monthly health insurance contributions.
- 1.4 Deductions for health insurance will be made from DHSEU employee paychecks twice per month.

**SECTION 2 – DENTAL PLAN BENEFITS**

- 2.1 The City shall pay the premium amounts for employees and their eligible dependents that are enrolled in the City's Dental plans, subject to the maximum amounts set forth in Section 2.2.
- 2.2 The City's maximum monthly contribution amounts for each employee shall be as follows:

Coverage Level	Monthly Maximum Contribution Amount for 2022 Calendar Year
Employee Only	\$60.13
Employee and Spouse	\$113.51

Employee and Child(ren)	\$141.35
Employee and Family	\$131.68

- 2.3 The City and DHSEU members will each pay 50% of the increased cost of monthly dental insurance contributions.
- 2.4 Deductions for health insurance will be made from DHSEU employee paychecks twice per month.

**SECTION 3 –VISION PLAN BENEFITS**

- 3.1 The City shall pay the premium amounts for employees and their eligible dependents that are enrolled in the City's Vision plan subject to the maximum amounts set forth in Section 3.2.
- 3.2 The City's maximum monthly contribution amounts for each employee shall be as follows:

Coverage Level	Monthly Maximum Contribution Amount for 2022 Calendar Year
Employee Only	\$14.74
Employee and Spouse	\$25.26
Employee and Child(ren)	\$25.79
Employee and Family	\$33.52

- 3.3 The City and DHSEU members will each pay 50% of the increased cost of monthly dental insurance contributions.
- 3.4 Deductions for vision insurance will be made from DHSEU employee paychecks twice per month.

**SECTION 4 – LIFE INSURANCE PREMIUM**

- 4.1 The City shall provide each full-time employee with term life insurance coverage in the amount of "\$50,000" subject to the eligibility requirements of the insurance carrier.

**SECTION 5 – PUBLIC EMPLOYEE'S RETIREMENT SYSTEM (P.E.R.S.)**

- 5.1 For employees hired on or before January 1, 2013, the City shall include "Tier 1" employees in the PERS 2.7% at 55 Plan including the following specified public agency contract provisions:
- Single Highest Year
  - Sick Leave Credit
  - Optional Settlement 2W –Preretirement Death Benefit
  - 2% per year COLA
  - \$500 Lump sum post-retirement death benefit
- 5.2 For employees hired after January 1, 2013, the City shall include "Tier 2" employees in the PERS 2% at 60 Plan.

- 5.3 Tier 1 and Tier 2 employees shall be responsible for payment of the Employee's contribution to PERS at the current contribution rate of 8.0% of includable compensation.
- 5.4 **The California Public Employees' Pension Reform Act of 2013 (PEPRA)** - 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).

#### **SECTION 6 – DEFERRED COMPENSATION PROGRAMS**

- 6.1 The City shall offer deferred compensation programs to DHSEU employees as a voluntary employee election.

#### **SECTION 7 – STATE DISABILITY INSURANCE**

- 7.1 Employees shall no longer participate in the State Disability Insurance (SDI) program.
- 7.2 The City shall provide group Short-term and Long-term Disability coverage for all full-time employees. The costs for the premiums for such coverage shall be the responsibility of the employee. The City shall provide for payroll deductions for such premiums.

#### **SECTION 8 – EMPLOYEES' ASSISTANCE PROGRAM (EAP)**

- 8.1 The City shall offer Employees' Assistance Program in categories to include marriage, family/relationship problems, alcohol/drug abuse, legal matters, financial and credit problems, childcare consultation, and elder care. The City will pay the employee's monthly premium amount.
- 8.2 Services shall be provided as defined in the EAP pamphlet on file with the City's Human Resources Department.

#### **SECTION 9 – PROMOTION**

- 9.1 "Promotional Opportunity" shall consist of the appointment of a unit employee to a position in another classification with a higher salary range.

- 9.2 All testing for promotions shall be administered by the Human Resources Department. All tests shall be administered equitably and fairly for all applicants. Answers to tests or copies of the tests shall not be given in advance to any applicant.
- 9.3 It shall be the City's policy to encourage advancement of personnel within the organization where feasible. Whenever, the City opens a recruitment for which unit employees will have the opportunity to apply for promotion, notice of such recruitment shall be posted on City bulletin boards. Interested employees may obtain application forms from the Human Resources Department.
- 9.4 Promotional selection will be made based upon factors including, but not limited to, performance, ability, training, experience, and education. Length of continuous service with the City shall be considered in promotions where it is the only significant difference among employees with equal qualifications. The City reserves the right to open all recruitments to obtain applications from persons most qualified for the job opening.
- 9.5 Probation Upon Promotion. An employee who has been promoted to a higher classification shall serve a new probationary period of one (1) year. An employee who fails to complete probation in a classification to which he/she has promoted will be reinstated to his/her previous classification if there is a vacant and budgeted position available in the classification. The employee does not have the right to demote into a filled position.

**SECTION 10 - EXTENSION OF PROBATION**

- 10.1 With the approval of the City Manager or designee, the probationary period may be shortened or extended. Absences from work for any reason during the probation shall result in an automatic extension of the probationary period by the same number of days the employee was absent. The employee shall attain regular status in the class upon successful completion of the probationary period. Prior to that time, the employee shall serve at the will and pleasure of the City.

**ARTICLE IV**

**LEAVES**

**SECTION 1 – SICK AND VACATION LEAVE**

- 1.1 Employees shall no longer receive annual leave. Rather, employees will separately accrue vacation leave and sick leave.
- 1.2 The amount of sick leave earned by employees shall be limited to 80 hours per year. Sick leave shall be accrued at a rate of 3.08 hours per pay period. There is no maximum accrual for sick leave.
- 1.3 The amount of vacation leave earned by employees shall be limited to the following schedule:

<b>Length of Employment</b>	<b>Hours/Pay Period</b>	<b>Hours/Year</b>
Less than 5 years employment	3.08	80



5-10 years	4.62	120
11-15 years	6.15	160
16 plus years	6.92	180

- 1.4 Employees cannot accrue more than three hundred (300) hours of vacation leave. Any employee exceeding 300 hours will not earn vacation leave hours until their vacation leave balance drops below 300 hours.

If an employee retires, resigns, or is terminated for any reason, unused accumulated vacation leave will be paid to him or her in one lump sum, at base salary rates. Unused accumulated sick leave will not be paid to the employee upon termination.

- 1.5 Employees are encouraged to use their accrued vacation leave. An employee who fails to submit a vacation request to his or her supervisor, or to sign up for vacation time during any twelve-month period may be assigned by the City Manager or designee to use vacation leave for a vacation.

- 1.6 Employees may use sick leave to receive their regular pay when they are absent from work because of an illness or injury. Subject to applicable federal law, if an absence because of illness or disability extends beyond four (4) consecutive workdays, the employee may be required to submit a physician's written certification (release to return to work).

- 1.7 Upon four (4) weeks advanced notice to the City's Payroll Department, an employee may cash out accrued, unused vacation leave, at base salary rates. No employee may cash out vacation leave hours more than twice per calendar year. The maximum number of hours that may be cashed out at any time shall be eighty (80) hours; however, an employee may not cash out hours that would result in his or her accumulated vacation leave to drop below 80 hours.

- 1.8 An absence due to vacation, illness, injury, or other approved paid leave shall not affect accumulations for vacation and sick leave. Employees who are on an unpaid leave of absence shall not accumulate any leave during such an absence.

- 1.9 Eligible part-time employees who work at least 30 hours per week may accrue pro-rated vacation leave. A part-time employee who works less than 30 hours per week and 30 or more days within a year from the commencement of employment with the City accrues 24 hours or 3 workdays, whichever is greater, of paid sick leave per fiscal year after their first 90 days of employment. Accrued and unused sick leave carries over to the following year but is limited to 48 hours or 6 workdays, whichever is greater.

**SECTION 2 – COMPENSATORY LEAVE**

- 2.1 Reasonable requests for use of compensatory leave shall not be denied.
- 2.2 Employees shall not use less than one (1) hour of compensatory leave at any one time.

- 2.3 Employees may use compensatory leave in conjunction with any other authorized paid leave with approval of the department head.
- 2.4 An employee may carry to the next calendar year a maximum of eighty (80) hours of compensatory leave. Exceptions to this policy may be approved by the City Manager, upon recommendation of the department head. The City will shall comply with the Fair Labor Standards Act (FLSA) regarding maximum accruals allowed by law.
- 2.5 When an employee separates from City service for any reason, the employee shall be compensated for any accrued compensatory leave at the employee's rate of pay at the date of separation.

**SECTION 3 – HOLIDAY LEAVE**

- 3.1 The City shall provide employees holiday pay as stated herein.
- 3.2 The following days shall be approved City holidays:
  - January 1 (New Year's Day)
  - The third Monday in January (Dr. Martin Luther King, Jr.)
  - The third Monday in February (President's Day)
  - The last Monday in May (Memorial Day)
  - July 4 (Independence Day)
  - The first Monday in September (Labor Day)
  - November 11 (Veteran's Day)
  - Thanksgiving Day
  - December 24 (Christmas Eve)
  - December 25 (Christmas)
  - Juneteenth Day
  - Cesar Chavez Day (*upon City Council Approval*)
  - One (1) Floating Holiday per fiscal year
- 3.3 Every day proclaimed by the Mayor of this City as a public holiday.
- 3.4 When any day, granted as holiday, falls on a Friday, the preceding Thursday shall be considered the holiday; if the holiday falls on a Saturday or Sunday, the following Monday shall be considered the holiday. When consecutive holidays fall on Thursday and Friday, the City may either: recognize the holidays on Wednesday and Thursday; or may recognize the holidays by providing a holiday on Thursday and adding a day of Annual Leave to the employee's leave balance.
- 3.5 In order to be paid for a holiday, the employee must work the scheduled work period immediately before and after the holiday, unless the employee is absent from the scheduled work period immediately before and after as a result of authorized paid or protected leave.

**SECTION 4 – BEREAVEMENT LEAVE**

- 4.1 Employees shall be entitled to a maximum of five (5) days bereavement leave per incident.

- 4.2 Eligibility for bereavement leave shall apply to the death of a member in the immediate family, as defined in Article XIII.

**SECTION 5 – WORKER'S COMPENSATION LEAVE**

- 5.1 The City shall immediately cover employees with worker's compensation insurance for any job-related illness or accident that prevents an employee from working.
- 5.2 The City shall make all reasonable efforts to provide employees with modified duty assignments.

**SECTION 6 – MILITARY LEAVE**

- 6.2 The City shall grant military leave to employees as provided in the California Military and Veterans Code Sections 389 through 395.4.
- 6.3 Employees on ordered military leave shall receive monthly salary and benefits based upon the following schedule:
- a. 3 months of continued salary and benefits for 1-5 years of service.
  - b. 6 months of continued salary and benefits for 6-15 years of service.
  - c. 12 months of continued salary and benefits for 16 or more years of service.

**SECTION 7 – LEAVE OF ABSENCE WITHOUT PAY/FAMILY MEDICAL LEAVE ACT/CALIFORNIA FAMILY RIGHTS ACT**

- 7.1 The City has the authority to grant or deny an employee's request for leave of absence from work without pay, except that the City shall not unreasonably deny a request for unpaid leave due to the medical disability of the employee or a member of his/her immediate family.
- 7.2 An employee on an unpaid leave, unrelated to any protected leave, for 61 days or more shall not accrue seniority for that portion of the leave over 60 days.
- 7.3 After the expiration of the unpaid leave, the employee shall be assigned to his/her former classification unless the position has ceased to exist.
- 7.4 Probationary employees are not eligible for unpaid leaves of absence, except as required by law.
- 7.5 Employees requesting family medical leave shall state in writing the reasons for the request and shall provide at least 30 calendar day's advanced notice of the need for the leave, if the need for the leave is foreseeable. If such advance notice is not practicable, the employee shall provide as much advance notice as possible. In all cases, the City Manager shall retain exclusive authority for approving such leave and its duration. This employee shall have no appeal rights with respect to this decision.
- 7.6 The City shall comply with the California Pregnancy Disability Leave, the Family Medical Leave Act of 1993, and the California Family Rights Act of 1993 in all

respects. Such leaves shall be implemented pursuant to Sections 10.10 and 10.11 of the City's Personnel Rules and Regulations.

- 7.7 When a request for unpaid FMLA and/or CFRA leave has been approved, an employee shall be required to use and exhaust any and all accrued leaves, including sick leave, vacation leave and compensatory time off, to be run concurrently with the FMLA and/or CFRA leave. An employee will only be required to use and exhaust sick leave if the unpaid FMLA and/or CFRA leave would otherwise qualify as sick leave under the terms of this Agreement and City policy. If an employee is receiving paid disability benefits, he or she will only be required to use the proportionate share of paid leaves so that they are receiving up to the full value of their regular base salary.

#### **SECTION 8 – TIME OFF FOR VOTING**

- 8.1 The City shall provide employees with time off for voting.
- 8.2 When an employee claims not to have sufficient time outside of working hours to vote at a statewide election, the employee may, without loss of pay, with the approval of supervisor, use working hours which, when added to the voting hours available outside of working hours, shall enable the employee to vote.
- 8.3 The supervisor may not authorize an employee to use more than two (2) hours away from work with pay for voting.
- 8.4 The authorized time for voting shall be at the beginning or end of work period only, whichever allows the employee the most time for voting and the least time away from work.
- 8.5 If the employee knows or has reason to believe that time off for voting shall be necessary on election day, the employee must notify his/her supervisor of that fact at least two (2) days in advance.

#### **SECTION 9 – LUNCH PERIOD**

- 9.1 An uninterrupted lunch period of thirty (30) minutes or one (1) hour shall be afforded to each employee, based upon the employee's approved work shift.
- 9.2 The lunch period may not be combined with rest periods to compensate for a late arrival or early departure from work, unless pre-approved by the employee's immediate supervisor.

### **ARTICLE V**

#### **LAYOFF**

##### **SECTION 1 – PREREQUISITE FOR LAYOFF**

- 1.1 When, as a result of a reduction in workforce (RIF), it becomes necessary to initiate a layoff of employees affected by this Memorandum of Understanding, the following shall be the prerequisite to such a layoff.

- 1.2 Management shall meet and confer with the representative of DHSEU on alternative courses of action to avoid such layoff.
- 1.3 All non-classified part-time, temporary, seasonal and/or recurrent and probationary employees working in the class shall have been released from the class first.
- 1.4 Employees in the class have been given the opportunity to seek lateral transfer to existing vacant positions. Such transfer requests shall not be denied except for just cause. The employee shall be required to meet the minimum standards of the class.
- 1.5 Notice of actual layoff shall be given no less than forty-five (45) calendar days before the date of implementation.
- 1.6 Notice of layoff shall include: classification where layoff is to occur; seniority list by total continuous City seniority of employees in the affected class; list of current vacancies in all classes represented by this Memorandum of Understanding.
- 1.7 Separate notice shall be provided to any employee in the class who has two (2) or more below standard evaluations within the preceding three (3) years.

## **SECTION 2 – ORDER OF LAYOFF**

- 2.1 Employees who have two (2) or more below standard annual evaluations within the preceding three (3) years shall be laid off first.
- 2.2 Next layoff shall occur on the basis of City-wide seniority, the least senior employee based on total continuous employment shall be laid off first; any subsequent layoff shall proceed to the next, least senior employee.
- 2.3 Where the total and continuous employment of two (2) employees is of the same length, the seniority shall be decided by drawing lots.

## **SECTION 3 – VOLUNTARY DEMOTION**

- 3.1 An employee affected by a Reduction in Force (RIF) may choose voluntary demotion to avoid layoff.
- 3.2 Such voluntary demotion may be to a lower or equal class of previous standing, or to a lower or equal class in the same occupational grouping.
- 3.3 If the voluntary demotion causes a layoff in the lower or equal class, such layoff shall follow the provisions of this Article.
- 3.4 In no event can an employee displace someone with more seniority, except as permitted by Section 2.1 of this Article.

## **SECTION 4 – RECALL**

- 4.1 Employees who laterally transfer, take a voluntary demotion, or are affected by a Reduction in Force pursuant to the provisions of this Article, shall have their names placed on a recall list for the classification of original standing.

- 4.2 Such a list shall be in inverse order of layoff, lateral transfer, or demotion.
- 4.3 The recall list shall be maintained by the City Manager and shall be used when any vacancy for that class is to be filled.
- 4.4 The list shall be maintained until all names have been offered an opportunity for recall or at the end of one (1) year, whichever occurs first.
- 4.5 The appointing authority shall offer appointment to the first name on said list. If the individual accepts, he/she shall be appointed within sixty (60) days.
- 4.6 The employee recalled shall be required to take a medical examination to ensure that the employee is capable of performing the duties of the class.
- 4.7 The employee recalled shall be required to meet the minimum standards of the class.

## **ARTICLE VI**

### **NON-DISCRIMINATION**

The City shall not discriminate in the treatment of an employee on the basis of race, color, religious creed, gender, ancestry, political party or activity, national origin, sexual orientation, age, marital status, medical condition (cancer related), pregnancy, or pregnancy related conditions, physical or mental disability, Association activity or Association membership.

## **ARTICLE VII**

### **HEALTH AND SAFETY**

#### **SECTION 1 – SAFETY RESPONSIBILITIES**

- 1.1 The City shall make a good faith effort to provide and maintain a safe and healthful place of employment.
- 1.2 Employees shall perform their assigned duties safely using the practices, means, methods, operations, and processes prescribed by law, occupational safety or health standard, City safety order, or safety rules and regulations.
- 1.3 Employees shall report any unsafe practices, equipment, or hazardous conditions promptly to their immediate supervisor.
- 1.4 The City shall not require nor permit any employee to enter any employment or job site which is not reasonably safe and healthful.
- 1.5 The City shall not discipline any employee for refusing to perform tasks in the performance of which any law, occupational safety or health standard, or safety order would be violated, or if such violation would create a real hazard to the individual employee.

## **ARTICLE VIII**

## **DISCIPLINE AND DISCHARGE**

### **SECTION 1 – JUST CAUSE – NON-PROBATIONARY EMPLOYEES**

- 1.1 As set forth in the previously adopted City Personnel Rules and Regulations a DHSEU employee may be suspended without pay, demoted, or discharged for just cause.
- 1.2 Discipline may be achieved through a permanent or temporary decrease in a step without any loss of work by the employee.
- 1.3 A step decrease shall not affect the employee's merit date.
- 1.4 DHSEU employees, except probationary employees, shall have the right of appeal pursuant to Article X of this Memorandum of Understanding.

### **SECTION 2 – REPRESENTATION**

- 2.1 Employees may be represented by a DHSEU representative, legal counsel, or a representative of their choice at pre-disciplinary conferences and/or post-disciplinary appeal hearings. Nothing in this section is intended to grant any pre-termination protections or other property rights to employees who are deemed "at will" employees under the City's Personnel Rules or under applicable law.
- 2.2 Notwithstanding references in this Article, the Police Officers' Bill of Rights shall apply to any/all Public Safety employees represented by this Memorandum of Understanding.

## **ARTICLE IX**

### **GRIEVANCE PROCEDURE**

#### **SECTION 1 – GRIEVANCE DEFINED**

- 1.1 Grievance shall be defined as a complaint by an employee that there has been a violation of this Memorandum of Understanding.
- 1.2 The employee, or employees bringing such a claim, shall state in writing, the manner in which the violation affects their wages, hours, working conditions, or job security as specified in this Memorandum of Understanding.

#### **SECTION 2 – INFORMAL DISCUSSION OF GRIEVANCE**

- 2.1 An employee filing such a grievance, and/or the employee's designated representative, shall first informally discuss the matter with the employee's immediate supervisor within ten (10) working days from the incident or decision generating the grievance.
- 2.2 If, after discussion with the immediate supervisor, the complaint has not been satisfactorily resolved, the employee and/or employee's designated representative shall have the right to discuss the complaint with the supervisor's immediate superior.

- 2.3 If, after such a discussion, the complaint has not been satisfactorily resolved, the employee shall have the right to file a formal, written grievance.

### **SECTION 3 – FORMAL GRIEVANCE PROCEDURE**

- 3.1 A formal grievance process shall be used to resolve an employee's complaint not satisfactorily resolved through Section 2 of this Article.
- 3.2 An employee shall have the right to present a formal grievance, in writing, within five (5) working days after an unsuccessful resolution of the informal grievance with the immediate supervisor and the immediate supervisor's superior.
- 3.3 All formal grievances shall state in writing the violation of this Memorandum of Understanding and the manner in which it affects the employee's wages, hours, working conditions or job security.
- 3.4 The formal grievance shall be presented to the employee's supervisor, who shall discuss the grievance with the employee and/or the employee's designated representative, within five (5) working days after receipt of the formal grievance.
- 3.5 Within ten (10) working days of this discussion, the supervisor shall render a written decision regarding its merits.
- 3.6 If the supervisor's decision does not satisfactorily resolve the complaint, the employee and/or employee's designated representative may present the formal grievance to the City's designated Employee Relations Officer.
- 3.7 The grievance shall be considered resolved and no further review of the subject matter of the grievance shall be permitted under this Article when the employee does not seek further review of the grievance within ten (10) working days after the receipt of the decision of the supervisor.
- 3.8 Failure of the supervisor to render a written decision on the grievance within five (5) working days constitutes a decision denying the grievance.
- 3.9 When the employee presents a formal grievance to the designated Employee Relations Officer, the Employee Relations Officer shall discuss the grievance with the employee and/or the employee's designated representative.
- 3.10 Within ten (10) working days after receipt of the formal grievance, the Human Resources Director shall render a written decision regarding its merits.
- 3.11 If the decision of the Employee Relations Officer does not resolve the complaint, the employee and/or the employee's designated representative may present the formal grievance to the City Manager.
- 3.12 The grievance shall be considered resolved, and no further review of the subject matter of the grievance shall be permitted when the employee does not seek further review of the grievance within ten (10) working days after receipt of the decision of the Employee Relations Officer.



- 3.13 When the employee presents a formal grievance to the City Manager, the City Manager shall discuss the grievance with the employee and/or the employee's designated representative.
- 3.14 Within ten (10) working days after receipt of the grievance, the City Manager shall render a written decision regarding its merits.
- 3.15 The decision of the City Manager shall resolve the grievance and no further review of the subject matter of the grievance shall be permitted within the City's administrative procedures.
- 3.16 Should the City Manager fail to render a written decision within ten (10) working days, the employee may consider the administrative procedures completed and file for redress of the grievance.

#### **SECTION 4 – NON-DEPARTMENTAL GRIEVANCES**

- 4.1 Grievances resulting from decisions or actions outside the departmental chain-of-command shall be initiated first at the department from which a complaint generates and shall follow the procedures as detailed in Sections 2 and 3 of this Article.
- 4.2 When the grievance involves an action or decision of the Employee Relations Officer, the grievance shall be first informally discussed with the Employee Relations Officer.
- 4.3 If the informal discussion does not satisfactorily resolve the grievance, the formal grievance procedure detailed in Section 3 shall be initiated.

#### **SECTION 5 – REPRISALS**

- 5.1 The City shall not institute any reprisals against any employee or designated representative resulting from the use of the grievance procedure.
- 5.2 The City Manager may designate a third party to serve as the final reviewer for employee grievances.

### **ARTICLE X**

#### **DISCIPLINE APPEAL**

##### **SECTION 1 - DISCIPLINE APPEAL PROCEDURE**

- 1.1 Pre-discipline procedure – Whenever a non-probationary unit employee is terminated, suspended for five (5) days or more or demoted, the employee will be entitled to the following, prior to the discipline being imposed:
  - a. The employee will be provided with written notice of the proposed discipline prior to the discipline being imposed. Such notice shall also contain the date the action is intended to become effective and the specific grounds and particular facts upon which the action is based. Along with this notice, the employee shall be provided with written materials upon which the action is based.

- b. The employee shall be afforded the right to respond either orally or in writing or both to the proposed charges within ten (10) working days after the date of the notice. (Skelly Rights)
- c. If the proposed action is dismissal and if determined to be required by the City, the City may place the employee on paid administrative leave during the period afforded to the employee to respond to the proposed dismissal action.

**SECTION 2 - APPEAL PROCEDURE – DISMISSAL, REDUCTION IN PAY OR SUSPENSION WITHOUT PAY OF FIVE (5) DAYS OR MORE**

- 2.1 Whenever discipline of dismissal, reduction in pay, or suspension without pay of five (5) or more days or demotion is to be imposed, the following appeal procedure shall apply:
- 2.2 Following a review of a proposed disciplinary action, if discipline is to be imposed, the Human Resources Director shall cause to be served on the employee affected, by registered mail or personal delivery, a notice of intended discipline indicating the department head's decision to impose discipline and the specific charges against the employee. Such notice shall also state that the employee has the right, within ten (10) working days after receipt of this notice, to request a hearing on the charges by filing the request with the Human Resources Director. The City shall have the authority to impose discipline on the effective date indicated in the notice whether or not the employee requests such appeal.

If, within the ten (10) working day appeal period, the employee involved does not request such appeal, unless good cause for failure is shown, the action of the City shall be considered conclusive.

- 2.3 If, within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Human Resources Department Director, the City and the employee or his/her representative shall have ten (10) working days from the date of the appeal to attempt to mutually agree to a hearing officer. If no agreement is reached, the City shall request a list of at least five (5) potential hearing officers who specialize in employee discipline hearings from the California State Conciliation Service. Within ten (10) days following receipt of the list of hearing officers the parties shall confer to select the hearing officer. The parties shall alternately strike one name from the list of hearing officers (the party to strike the first name to be determined by lot) until one name remains, and that person shall be the hearing officer.
- 2.4 Where practicable, the date for a hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the Human Resources Department Director. The employee and his/her designated representative shall be notified in writing of the date, time, and place of hearing.
- 2.5 All hearings shall be private provided, however, that the hearing officer shall, at the request of the employee and the concurrence of the City, open the hearing to the public unless opening it to the public would not be in the best interest of the City.

- 2.6 Subpoenas and subpoenas duces tecum relevant to a hearing maybe issued at the request of either party, not less than five (5) working 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.
- 2.7 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 on 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 and criminal 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.
- 2.8 Each party shall have these rights at the appeal hearing:
- a. To be represented by legal counsel or another person of his/her choice.
  - b. To call and examine witnesses; to introduce evidence.
  - c. To cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination.
  - d. To impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her.
- 2.9 If the employee does not testify in his/her own behalf, he/she may be called 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 and employee/employee representative) mutually agree that recording is not necessary.
- 2.10 The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
- a. The party imposing discipline shall be permitted to make an opening statement.
  - b. The appealing party shall then be permitted to make an opening statement.
  - c. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence.
  - d. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof.

- e. The employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted.
  - f. 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.
  - g. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- 2.11 The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence.
- 2.12 During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision.
- 2.13 The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after conducting the hearing. His/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. The opinion shall be advisory only.
- 2.14 The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee.
- 2.15 The hearing officer's opinion and recommendation shall be directed to with the City Manager, with a copy sent to the employee and the Human Resources Department Director and shall set forth his/her findings and recommendations. If it is an appeal of dismissal and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the recommended effective date the employee is 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.
- 2.16 Within thirty (30) days of the receipt of the hearing officer's recommendation, or a transcript (which is optional), whichever date is later, the City Manager shall adopt, amend, modify, or reject the recommended findings, conclusions, and/or opinions of the hearing officer. The City Manager shall not conduct a de novo hearing. The City Manager may, at his/her option, allow limited oral arguments and/or may request and review written statements from either side. The decision of the City Manager shall be final and conclusive. Copies of the City Manager'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 City Manager.
- 2.17 Each party shall bear equally the cost of facilities, fees, and expenses of the hearing officer, including the court reporter and transcripts. 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.

- 2.18 If discipline is reversed or reduced, the appropriate pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate deducting any income the employee earned which resulted from his/her dismissal or suspension.

### **SECTION 3 - APPEAL PROCEDURE - SUSPENSIONS OF FOUR (4) DAYS OR LESS**

- 3.1 Whenever an employee is suspended without pay for four days or less, the following appeal procedure shall apply:
- 3.2 Following a review of a proposed disciplinary action, if discipline is to be imposed, the Human Resources Department Director shall cause to be served on the employee affected, by registered mail or personal delivery, a notice of discipline signed by the department head indicating the department head's decision to impose discipline, the specific charges against the employee that he/she has the right, within ten (10) working days after receipt of this notice, to request a hearing before the City Manager on the charges by filing the request with the Human Resources Department Director. The City shall have the authority to impose discipline on the effective date indicated in the notice whether or not the employee requests such an appeal.
- 3.3 If, within the ten (10) day appeal period, the employee involved does not file said appeal, unless good cause is shown., the action of the City shall be considered conclusive.
- 3.4 If, within the ten (10) day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Human Resources Department Director, the City Manager shall where practicable, set a date for the hearing not less than twenty (20) and not more than sixty (60) working days from the date of the filing of the appeal with the Human Resources Director.
- 3.5 All hearings with the City Manager under this Section 3 shall be conducted as provided for in Sections 2.5 through Section 2.14, above.
- 3.6 At the City Manager's option, the City Manager may assign the conduct of the appeal hearing to an alternate hearing officer, selected by the parties as described in Section 2.3. If the City Manager elects to assign the conduct of the hearing to an alternate hearing officer, the hearing shall be conducted as provided for in Sections 2.5 through Sections 2.18, above.
- 3.7 The City Manager's decision shall be served on the employee and the Human Resources Department Director.
- 3.8 If discipline is reversed or reduced, the appropriate pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate.

### **SECTION 4 – OTHER DISCIPLINARY ACTIONS**

- 4.1 Oral and Written Reprimands shall not be subject to the above requirements for pre-disciplinary due process, nor shall such actions be subject to review or appeal.

## **ARTICLE XI**

### **CITY RIGHTS**

#### **SECTION 1 – EXCLUSIVE MANAGEMENT RIGHTS AND AUTHORITY**

- 1.1 The City shall retain the exclusive right to manage and direct the performance of City services and the work force performing such services.
- 1.2 The following matters shall be within the exclusive management authority of the City.
- a. Determine issues of public policy.
  - b. Determine and change the facilities, methods, means and personnel by which City operations are to be conducted.
  - c. Expand or diminish City services.
  - d. Determine and change the number of locations, relocations, and types of operations and the processes and materials to be employed in providing all City services, including but not limited to the right to contract or outsource any work or operation.
  - e. Determine the size and composition of the work force, to assign work to employees in accordance with requirements as determined by the City, and to establish and change work assignments.
  - f. Determine job classifications.
  - g. Appoint, transfer, promote, demote, and lay off employees for lack of work or financial resources.
  - h. Initiate disciplinary action.
  - i. Determine policies, procedures, and standards for selection, training, and promotion of employees.
  - j. Establish employee standards, including but not limited to quality and quality standards.
  - k. Maintain the efficiency of governmental operations.
  - l. Exercise complete control and discretion over its organization, and the technology of performing its work and services.

- m. Establish reasonable work and safety rules and regulations in order to maintain the efficiency and economy desirable in the performance of City services; and
  - n. Determine any and all necessary actions to carry out its mission in emergencies.
- 1.3 The exclusive decision-making authority of the City and its management on matters involving City rights and authority shall not, in any way, directly or indirectly, be subject to the grievance procedure.

## **ARTICLE XII**

### **MODIFICATION**

#### **SECTION 1 – SEVERABILITY**

Notwithstanding any other provisions of this Memorandum of Understanding, in the event that any Article, Section, or Subsection of this Memorandum of Understanding shall be declared invalid by any court or by any State or Federal law or regulation, or should a decision by any court or any State or Federal law or regulation diminish the benefits provided by this Memorandum of Understanding, or impose additional obligations on the City, all other Articles, Sections or Subsections of this Memorandum of Understanding not affected shall continue in full force and effect

## **ARTICLE XIII**

### **DEFINITION OF TERMS**

#### **SECTION 1 – ACTING DUTY**

The temporary assignment of an employee to a higher paid classification to perform the major, essential duties of the classification.

#### **SECTION 2 – CLASSIFICATION**

A position or positions that describe the duties, responsibilities, and qualifications for that job title.

#### **SECTION 3 – DAY**

A calendar day of 24 hours.

#### **SECTION 4 – DEPARTMENT HEAD**

An individual assigned to management or supervisory positions designated as a department head by the City Manager.

#### **SECTION 5 – EMPLOYEE**

An individual compensated through the City payroll and appointed to one of the classifications listed in Appendix A.

**SECTION 6 – FULL-TIME**

The work period of an employee in the classified service in a classification authorized and budgeted by the City Council to work an average of 30 or more hours in a designated work week.

**SECTION 7 – IMMEDIATE FAMILY**

Shall include an employee's spouse, children, parents, stepparents, brothers, sisters, grandparents, spouse's grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, the employee's spouse's children, domestic partner, or any relative, including a foster child, living in the immediate household.

**SECTION 8 – LEAVE**

An authorized absence from work.

**SECTION 9 – MANAGEMENT**

An employee assigned to classifications by the City Manager, responsible for the supervision or management of departments, divisions, or program

**SECTION 10 – POSITION**

The duties and responsibilities assigned to an employee within a classification.

**SECTION 11 – BASE RATE**

The basic pay rate within a pay range paid to an employee for the performance of the duties of a classification.

**SECTION 12 – SENIORITY**

A status acquired by an employee based on the employee's period of continuous service for the City.




REPRESENTATIVES OF THE  
DESERT HOT SPRINGS EMPLOYEES UNION



FLOYLAINA SMITH  
DHSEU President

REPRESENTATIVES OF THE CITY  
OF DESERT HOT SPRINGS



DORIA WILMS  
INTERIM CITY MANAGER



JERRYL SORIANO  
CITY CLERK

## APPENDIX A

Positions affected by this Memorandum of Understanding shall include:

Accountant  
Administrative Assistant I  
Administrative Assistant II  
Animal Care and Control Supervisor  
Animal Care and Control Officer  
Assistant Planner  
Building Inspector  
Code Compliance Officer I  
Code Compliance Officer II  
Community Service Officer  
Counter Permit Technician I  
Counter Permit Technician II  
Crime Scene Investigator  
Maintenance Technician  
Lead Facilities Maintenance Technician  
Lead Maintenance Technician  
Police Records Specialist I  
Police Records Specialist II  
Property and Evidence Technician  
Public Works Inspector  
Public Works Supervisor  
Receptionist  
Recreation Center Activities Coach  
Recreation Center Clerk  
Recreation Center Program Teacher  
Recreation Center Teacher Aide/Driver  
Dispatchers