AGREEMENT NO. 19-100

MEMORANDUM OF UNDERSTANDING

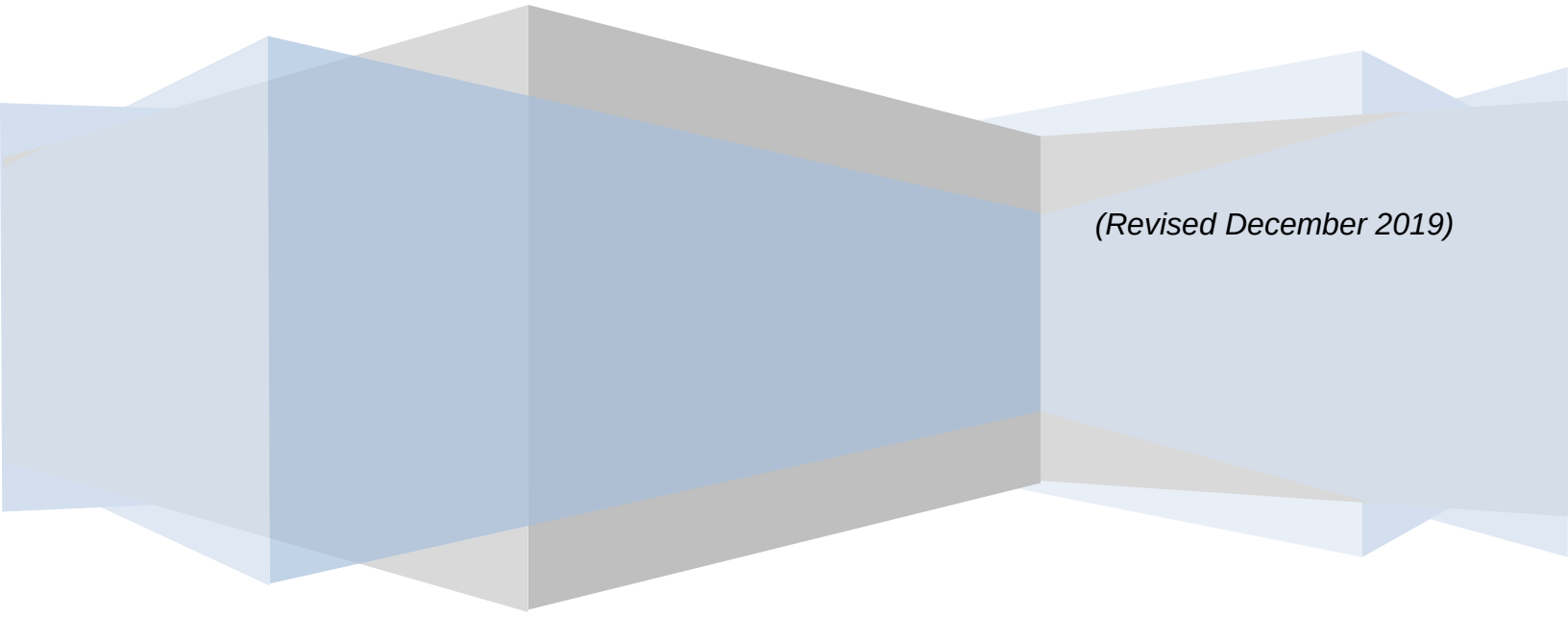
BETWEEN THE

CITY OF MONTCLAIR

AND THE

MONTCLAIR FIRE FIGHTERS ASSOCIATION

July 1, 2019 – June 30, 2020



(Revised December 2019)

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MONTCLAIR AND THE MONTCLAIR FIRE FIGHTERS ASSOCIATION

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MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MONTCLAIR AND THE MONTCLAIR FIRE FIGHTERS ASSOCIATION

ARTICLE 1: PREAMBLE

It is the intent and purpose of this Memorandum of Understanding (MOU) to set forth the understanding of the parties reached as a result of meeting and conferring in good faith regarding, but not limited to, matters relating to the wages, hours, and terms and conditions of employment between employees represented by the Montclair Fire Fighters Association (MFFA) and representatives of the City of Montclair (City).

The Association agrees to recommend ratification to its membership, and City representatives agree to recommend to the City Council. Upon such adoption, all terms and conditions of this memorandum shall then become effective without further action by either party.

ARTICLE 2: SAVINGS CLAUSE

If any section, subsection, subdivision, sentence, clause, or phrase of this MOU is, for any reason, held to be illegal or unconstitutional, such decision shall not affect the validity of the remaining portions of this MOU.

ARTICLE 3: MANAGEMENT RIGHTS

A. Except as otherwise specifically provided, the City has and retains the sole and exclusive rights and functions of management, including, but not limited to, the following:

1. To determine the nature, standards, and extent of services to be performed, as well as the right to determine and implement its public function and responsibility.

2. To manage all facilities and operations of the City, including the methods, means, and numbers and kinds of personnel by which City operations are to be conducted.

3. To contract out work and transfer work out of the unit; provided, however:

    a. The Association will receive notice prior to the City contracting out work.

    b. Upon notification by the City, and pursuant to state law, the Association may request to meet and discuss the proposal to contract out work.

4. To direct the working forces, including the right to hire, assign, promote, demote, or transfer any employee.

5. To assign work and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments upon reasonable notice.

6. To discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees in accordance with applicable law.

7. To determine policies, procedures, and standards affecting the selection, training, and promotion of employees.

8. To establish, assess, and implement employee performance standards, including, but not limited to, quality and quantity standards; the assessment of employee performances; and the procedures of said assessment.

9. To establish and enforce dress and grooming standards.

10. To determine time, reasons, methods, and means to relieve its employees from duty because of lack of work, lack of funds, or other lawful reasons.

11. To maintain the efficiency of governmental operations.

12. To determine safety, health, and property protection measures.

13. To determine methods of financing.

14. To determine style and/or types of City-issued wearing apparel, equipment, or technology to be used.

15. To determine and/or change the facilities, methods, technology, means, organizational structure, and size and composition of the work force, and allocate and assign work by which the City operations are to be conducted.

16. To determine and change the number of locations, relocations, and types of operations, means, methods, processes, equipment, and materials to be used in carrying out all City functions including, but not limited to, the right to transfer work out of the unit, contract for, or subcontract any work or operations of the City.

17. To establish, modify, determine, or eliminate job classifications.

18. To take all necessary actions to carry out its mission in emergencies.

19. To exercise complete control and discretion over its organization and the technology of performing its work.

20. To take such other and further action as may be necessary to organize and operate the City in the most efficient and economical manner and in the best interest of the public it serves.

B. MFFA recognizes that the City has and will continue to retain, whether exercised or not, the unilateral and exclusive right to operate, administer, and manage its municipal services and work force, performing those services in all respects subject to this MOU.

ARTICLE 4: ASSOCIATION RIGHTS

Reasonable access to employee work locations shall be granted to officers of the Association and its official representatives for the purpose of processing grievances or contacting members of MFFA concerning business within the scope of representation. Such officers or representatives shall not enter any work locations without the consent of the City or its authorized representative(s). Access shall be restricted so as not to interfere with the normal operations of the Department or with established safety or security requirements.

Association meetings may be held during work hours with the prior approval of the department head or designee. The department head shall not unreasonably withhold such approval provided the proposed Association meeting does not interfere with the normal operations of the Department. On-duty personnel may not attend such meeting without prior approval of the appropriate supervisor.

Solicitation of membership and activities concerned with the internal management of an employee organization, such as collecting dues, campaigning for office, conducting elections, and distributing literature, will not be permitted during working hours.

ARTICLE 5: UNIT DESCRIPTION

The following classifications are represented by the Association and are members of this unit:

Classifications

Fire Engineer
Firefighter

ARTICLE 6: MEMBERSHIP AND PAYROLL DEDUCTIONS

All current employees and all employees who are hired after this MOU is approved by City Council, and who are in a job classification within the MFFA representation unit covered by this MOU as identified in Article 5 (Unit Description) are to be represented exclusively by MFFA. All current employees and all employees who are hired after this MOU is approved by City Council shall be immediately bound by the terms of this MOU, regardless as to whether the employees or newly hired employees become dues paying members of MFFA.

Section 6.01. Identification of MFFA Officers

Within 30 days of the election of MFFA officers, MFFA shall notify the Director of Administrative Services, or his/her designee, in writing of the name of the President, Vice President, Secretary, Treasurer, and the names of any other members authorized to act on behalf of MFFA. If such positions are vacant, the notification shall identify them as vacant. This identification shall designate the person authorized to receive any funds generated from payroll deductions and the address to where such funds shall be delivered.

Section 6.02. Certification of Membership and Dues Deduction

Within 30 days of the ratification of this agreement, and any other time a member is added or deleted from MFFA's membership, MFFA will submit to the Finance Director, or his/her designee, a "Certification of Membership and Dues Deduction" ("CMDD"). The CMDD will include the following: (1) the amount of dues to be deducted for each member; (2) the frequency of the deduction (e.g., monthly, each pay period, etc); (3) a list of the names of all of the existing dues paying member employees from whom dues are to be deducted; (4) a list of the names of new dues paying member employees from whom dues are to be deducted; (5) a list of names of former dues paying member employees from whom dues are no longer to be deducted; and (6) a certification from an MFFA representative that the CMDD is true and accurate. That certification shall state:

> "I, [name of individual certifying], [MFFA Title], hereby certify, under the penalty of perjury, that the above is true and accurate. This certification is executed on [date] in Montclair, California.
>
> [Signature].
> Printed Name, MFFA Title "

Payment of the dues shall be through payroll deduction to MFFA. Dues withheld by the City shall be transmitted to the MCCEA officer designated by MFFA in the notification required in Section 6.01. The City shall only deduct monies specifically requested by the CMDD; however, the City shall not deduct monies specifically earmarked for a Political Action Committee (PAC) or other political activities.

MFFA shall be fully responsible for expending funds received under this Article consistent with all legal requirements for expenditures of employee dues that are applicable to public sector labor organizations.

When a CMDD submitted to the City directs the City to halt all payroll deductions, a CMDD will not be required again until such time MFFA desires to resume payroll deductions, at which time the requirements outlined earlier in this Section must be met.

Section 6.03. New Members

MFFA shall be solely responsible for the recruitment and enrollment of new members. MFFA shall provide to any prospective member a membership, enrollment, and/or dues deduction forms and MFFA shall keep and maintain such forms for the duration of the employee's membership with MFFA in the event of a dispute as identified in Section 6.04. In no way will the City be responsible for the dissemination, explanation, or collection of any MFFA membership, enrollment, and/or dues deduction forms.

The City will conduct periodic "Orientations" of new employees and MFFA will be provided at least fourteen (14) calendar days' notice of the orientation. The notice will provide the name and classification of the employee(s) attending the orientation to permit one MFFA representative the opportunity to make a presentation during the orientation. The date, time and place of the orientation shall remain confidential and will only be disclosed to those employees attending the orientation, the exclusive representative(s) of the employee(s), and any vendor contracted to provide services at the orientation. In the event MFFA desires to participate in the orientation, MFFA shall notify the Director of Administrative Services or his/her designee at least 24 hours prior to the date and time of the orientation. MFFA shall limit its presentation to 10 minutes and, if there is a PowerPoint presentation or similar MFFA wishes to be included, the digital file shall be provided to the Director of Administrative Services or his/her designee at least 24 hours prior to the date and time of the orientation. Once MFFA provides its intent to attend the orientation, the Director of Administrative Services or his/her designee shall provide MFFA with the time its presentation shall take place.

All new members, from whose paychecks MFFA desires dues to be deducted, shall be identified on the CMDD as defined under Section 6.02, before any deductions are made. The deduction of dues will take effect within 30 calendar days of MFFA's submission of the CMDD to the City.

Section 6.04. Disputes

In the event an employee comes to the City requesting that dues no longer be deducted from his/her paycheck, the City will inform the employee that he/she must process that request with his/her Association. However, if a dispute arises between an employee and MFFA regarding dues deductions, and the employee seeks resolution through City intervention, upon request of the City, MFFA shall provide to the City the membership, enrollment, and/or dues deduction form in an effort to verify a deduction is authorized.

Section 6.05. Indemnification

MFFA shall defend, indemnify, and hold harmless the City and its officers and employees from any claim, loss, liability, cause of action, or administrative proceeding arising out of the operation of this Article. Upon commencement of such legal action, administrative proceeding, or claim, MFFA shall have the right to decide and determine whether any claim, administrative proceeding, liability, suit, or judgment made or brought against the City or its officers and employees because of any application of this Article shall not be compromised, resisted, defended, tried, or appealed. Any such decision on the part of MFFA shall not diminish MFFA's defense and/or indemnification obligations under this MOU.

The City, immediately upon receipt of notice of such claim, proceeding, or legal action, shall inform MFFA of such action, provide MFFA with all information, documents, and assistance necessary for MFFA defense or settlement of such action, and fully cooperate with MFFA in providing all necessary employee witnesses and assistance necessary for said defense. The cost of any such assistance shall be paid by MFFA.

MFFA, upon its compromise or settlement of such action or matter, shall immediately pay the parties to such action all sums due under such settlement or compromise. MFFA, upon final order and judgment of a court or of competent jurisdiction awarding damages or costs to any employee, shall pay all sums owing under such order or judgment.

In the event the City needs to retain legal counsel to enforce the provisions of this indemnification provision, MFFA agrees to pay for the costs of such legal counsel. It is the sole discretion of the City to retain any legal counsel of its desire.

This provision in no way precludes the City from asserting any rights provided to it by statute or law in regards to a defense, immunity, or rights of indemnification.

ARTICLE 7: COMPENSATION

Section 7.01. Wages

Employee wages are adopted by resolution of the City Council. The monthly salaries specified in the salary resolution determine an employee's hourly pay rate and represent the employee's "current rate of pay," or "base pay."

Salary Adjustments for 2019-20

Effective the first full pay period after City Council approval of this agreement, the salary range for all classifications represented by MFFAshall be increased by 6 percent.

Section 7.02. Medicare

City to contribute 1.45 percent of covered payroll toward Medicare coverage for employees hired after March 31, 1986. A 1.45 percent deduction will be made from employees' earnings, in compliance with applicable law. In compliance with H.R. 3128, all full-time, part-time, temporary, and seasonal employees hired after March 31, 1986, must participate in the Medicare program.

Section 7.03. Salary Advancement

Assigned salary ranges normally contain 5 steps. Employees move through these steps on the basis of performance.

Regular, full-time employees shall be eligible for salary advancement consideration, as follows:

1. To the "B" step of the salary schedule after successful completion of 1 year at the "A" step. The date of this increase shall become the employee's pay review date for purposes of eligibility for future merit increases.

2. To the "C" step after successful completion of 1 year at the "B" step.

3. To the "D" step after successful completion of 1 year at the "C" step.

4. To the "E" step after successful completion of 1 year at the "D" step.

When an employee is hired at a step other than Step "A" of the salary range assigned to the position, the employee shall be eligible for a step increase 1 year from the date of employment, and this date shall become the employee's pay review date for purposes of eligibility for future merit increases. Thereafter, the above merit pay procedure shall be followed, with the exceptions noted below:

1. In cases where an employee demonstrates exceptional ability and proficiency in performance, the employee may be given more than a 1-step salary increase at any time, subject to the approval of the City Manager and the Personnel Committee.

2. **Shift Employees**

   If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 15 consecutive shifts, the evaluation period shall be automatically extended for a similar period of time; provided, however, the department head may evaluate the employee's past performance and submit to the City Personnel Committee a separate, written recommendation justifying granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 30 consecutive shifts, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Article 26: Performance Appraisal*).

   If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 26: Performance Appraisal*).

3. **Nonshift Employees**

   If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 45 consecutive calendar days, the evaluation period shall be automatically extended for a similar period of time; provided, however, the department head may evaluate the employee's past performance and submit to the City Personnel Committee a separate, written recommendation justifying granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 90 consecutive calendar days, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Article 26: Performance Appraisal*).

   If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 26: Performance Appraisal*).

Salary advancements are granted for continued meritorious and efficient service, and after continued improvement in assigned tasks, in conjunction with performance appraisal procedures. Recommendations are initiated by immediate supervisors and are then forwarded to the department head for approval. These, in turn, shall be transmitted to the City Manager and Personnel Committee for final approval.
When an employee is denied a merit increase, the employee shall be informed of such and the reasons therefor. The employee may be reconsidered for advancement at any subsequent time recommended by management of the Fire Department. Denial or postponement of a merit increase shall not change an employee's anniversary date or future pay review date.

Employees who have received internal promotions, if assigned to the next higher step of the new range offering a minimum 2 1/2 percent salary increase, shall be eligible for a step increase upon successful completion of 6 months in the new position. If employees are placed on a higher step that results in a salary adjustment greater than 2 1/2 percent (based upon the recommendation of the department head and approval of the City Manager), they shall be eligible to advance to the next step of the range 1 year from the date of their promotions, and this date shall also become the employee's pay review date for purposes of eligibility for future merit increases. (For additional information on pay increases and probationary requirements after a promotion, also refer to *Article 22: Appointments and Promotions* and *Article 23: Probation*.)

Section 7.04. Education Grant Program

Employees are encouraged to attend education courses that relate to their jobs and advance their academic level. Insofar as possible, and within budgetary considerations, the City makes available to employees an Education Grant Program. Courses eligible for consideration under the Education Grant Program shall be:

1. Any course specifically related to an employee's occupation, provided such course, or a similar course of the same general course description and at the same academic level, has not previously been taken by said employee; further provided that the taking of such course holds out a reasonable promise of improving employee's general job knowledge; and further provided that if said employee demonstrates a proclivity for taking courses on a regular basis, such courses, when considered as a whole, must be part of an integrated and structured student study plan through an accredited institution of learning leading toward a curriculum certificate or advanced degree; or

2. Any course advancing an employee's academic level, provided the course is part of an integrated and structured student study plan through an accredited institution of learning leading toward an advanced certificate or degree; further provided said employee affirms his/her intention to complete the certificate or degree program; and further provided that the certificate or degree program must bear a reasonable relationship to the

nature of the job duties performed by said employee, or will assist in advancing the employee within his/her job area with the City.

The City will reimburse for tuition, books, parking, and classroom/lab supplies in an amount not to exceed $1,300 per fiscal year per employee for qualifying course work recently completed at an accredited academic institution; e.g., 2-year college, 4-year college or university, post-undergraduate college or university. The Education Grant Program is not intended to reimburse for the full cost of an employee's education; rather, the program is intended to assist the employee with education-related costs accrued in the current fiscal year, or fiscal year just ending, in which the qualifying course(s) was/are completed.

An employee requesting an education grant shall be required to provide information concerning each course to be taken. The City Manager or his/her designee shall have final determination on whether or not a course qualifies under the Education Grant Program. All education grants must be approved, prior to the first day of class, by the City Manager and the department head.

The education grant shall not be prepaid and shall be provided only if the employee completes each course while employed with the City with a grade of "C" or better. If, for whatever reason exclusive of retirement, an employee receiving an education grant leaves the City within 1 year from the date of completing the qualifying course work, the employee shall reimburse to the City the full value of the grant.

Each employee participating in the Education Grant Program must submit satisfactory proof of course completion to the City Manager to be eligible for an education grant. Any employee who fails to obtain a passing course grade of "C" or better, who fails to complete a course, or who fails to submit satisfactory proof of course completion shall be ineligible to receive an education grant. Any employee on academic probation or expelled from a school, course, or degree program shall be ineligible for an education grant until such time said employee can satisfactorily prove to the City Manager that the situation has been rectified.

Section 7.05. Acting Pay

The City shall pay an acting pay differential to employees for "eligible time" worked acting in a position above the employee's regular job classification. The acting pay differential shall be paid at a rate of 5 percent above the employee's base salary. "Eligible time" for Fire safety shift personnel shall be defined as a full shift worked in a position above an employee's regular job classification. No acting pay will be paid if a full shift is not completed performing the full range of responsibilities and duties of the higher classification. Each acting assignment must be authorized in writing by the shift Fire Captain, Division Chief, or Fire Chief, with a copy of such authorization submitted to the Personnel Committee. No acting pay will be paid if the employee is not charged with performing the full range of responsibilities and duties of the higher classification. No acting pay will be paid if a Firefighter has not been certified by the department head to

perform as Acting Fire Engineer. No acting pay will be paid if a Fire Engineer or Firefighter has not been certified by the department head to perform as Acting Captain. No employee shall serve in an acting position for more than 180 consecutive calendar days without reauthorization from the City Personnel Committee.

Section 7.06. Hazardous Standby-Duty Pay

A. The City shall pay hazardous materials standby-duty pay of $100 per month, not to exceed $1,200 per fiscal year, to each employee designated by the department head to perform this duty. Notwithstanding any other provision in this section, not more than 3 qualified employees shall be designated by the department head to be eligible, on a regular basis and at any one time, to receive hazardous materials standby-duty pay.

B. An employee shall be eligible to receive hazardous materials standby-duty pay upon meeting the following qualifications:

1. He/she is certified by the proper authorities in the State of California and/or County of San Bernardino as a hazardous materials specialist.

2. He/she retains proper hazardous materials training/certification throughout his/her appointment to the duty.

3. He/she is specifically assigned by the department head to serve as a hazardous materials specialist and is designated to receive hazardous materials standby-duty pay—subject to approval by the City Personnel Committee.

C. For each partial month that an employee is assigned hazardous materials standby duty (e.g., new appointees or terminating employment with the City), hazardous materials standby-duty pay for that month shall be prorated based on the following formula:

The basic monthly stipend rate shall be divided by the number of days in the subject month. The resulting answer is then multiplied by the number of days in the subject month the employee was assigned to hazardous materials standby duty.

D. Hazardous materials standby-duty pay shall, to the extent possible, be paid and evenly distributed to the eligible employee for each payroll period during the fiscal year it is earned.

E. Except as may otherwise be required by CalPERS, the City does not recognize standby pay or stipends in any form as defined in this MOU to be a component of an employee's basic pay and, therefore, a wage obligation to be maintained. These forms of additional compensation are based on City need for the related duty to be

performed; requirements for the specified number of employees designated by the City Council to receive the compensation; the employee retaining any valid certification necessary to perform the specified duty; the ability of the employee to be on standby and respond, if required, within a time designated by the department head to perform the specified duty; the employee possessing the physical, emotional, and/or mental capacity to perform the specified duty; and the employee working regularly in an assignment where he or she can perform the specified duty.

F. The department head retains the following authority:

1. To reassign eligible employees to hazardous materials standby duty.

2. To discontinue hazardous materials standby-duty pay for any qualified employee based on the needs of the department and/or the City.

3. To discontinue or suspend an employee from receiving hazardous materials standby-duty pay because of disciplinary action, or the employee's inability to actively serve as hazardous materials specialist.

Section 7.07. Uniform Program

The purpose of this uniform program is two fold: (1) to identify City employees who have direct contact with the public on a regular basis, and to enhance the image of City operations generally performed by City personnel in public view; and (2) to provide uniforms to those personnel who are required to perform duties that result in their clothing becoming excessively dirty or in duties that require identifying uniforms. Any uniforms and/or identifying patches, badges, etc., purchased by the City for an employee, must be returned to the City when an employee terminates City employment.
To make the program effective, all eligible employees shall be required, as a condition of their employment, to participate in accordance with this policy. All personnel required under the program to wear uniforms must comply with the departmental rules and regulations. The City will provide the following:

1. Within 30 days after successful completion of the probationary period, employee will make arrangements with the department for purchase of the complete dress uniform. This purchase and all approved replacements thereafter will be at City expense.

2. Each uniformed employee will be allowed to purchase work uniforms during each fiscal year, as needed, up to a maximum reimbursable cost of $450. The department head shall submit to the City Manager his recommendations for articles of clothing to be considered essential uniform components, and no article of clothing shall be considered an essential uniform component until it receives such approval from the City

Manager. No uniform component shall be replaced unless and until the component to be discarded is turned in to the department head for disposal. Employees shall obtain approval of the department head prior to the purchase of uniform components. Uniform purchases shall comply with procurement procedures established in the City of Montclair Purchasing Manual. All invoices for uniform purchases made during each fiscal year, delineating purchases for each employee, shall be provided on a timely basis to the Administrative Services Department. Only actual uniform purchases for each employee, up to a maximum total of $450 per fiscal year, shall be reported to CalPERS.

3. Safety equipment, as required, will be furnished by the City and remains the sole property of the City.

4. Uniforms shall be worn in accordance with departmental regulations, and shall be appropriately maintained by the employee.

Section 7.08. Deferred Compensation Plan

A deferred compensation plan is available to all employees, providing tax-deferred savings and/or a retirement supplement. An employee may annually contribute to the City's designated deferred compensation plan up to the maximum amount allowed by federal and state law through a payroll deduction program (also see *Section 8.01. Benefit Fund Contribution; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance).*

Pursuant to federal and state law, employees attaining the minimum age of 46 ("3 % @ 50" retirement plan) or 51 ("3% @ 55" retirement plan) or 53 (“2.7% @ 57” retirement plan), as applicable, and who are within 4 years of their planned retirement date/normal retirement age (NRA), may take advantage of the 457 Deferred Compensation Plan "Catch-Up" provisions and allowances as defined in the City's Great West 457 Plan document. Employees may not make "Special Section 457 Catch-Up" contributions in the year they actually retire/attain their NRA.

To the extent allowed by federal and state law and the City's deferred compensation plan, the City will allow, in 1 or more of the 3 calendar years ending prior to an employee's planned retirement date/NRA (or alternate NRA), the conversion of accrued sick leave at a rate of 2.25 hours for 1 hour of cash contribution, at the employee's base rate of pay in effect at the time of conversion, to the City's 457 Deferred Compensation Plan.

Sick leave conversion contributions for the "457 Catch-Up" will normally be distributed over the 3 calendar years ending prior to an employee's planned retirement date/NRA (or alternate NRA). However, based on the total amount of "457 Catch-Up" contributions available to the employee, accumulated sick leave hours, and the employee's designated retirement date/NRA (or alternate NRA), "457 Catch-Up" contributions may occur over a

shorter period of time prior to retirement; in no event, however, shall any contribution occur in the year the employee actually retires/attains his/her NRA.

To be eligible to participate, the employee must be within 4 years of his/her planned retirement date, have "457 Catch-Up" privileges available to him/her, be enrolled in the City-sponsored 457 Deferred Compensation Plan, and maintain a minimum of 192 hours (270 hours for Fire shift employees) of sick leave in his/her accrual account after conversion during each year of participation. For purposes of this paragraph only, sick leave hours used for the "457 Catch-Up" shall be the first earned with respect to accumulation. (For additional benefit conversion instructions, restrictions, and policies also see *Article 14: Leaves, Section 14.01.C.4.*)

Section 7.09. Bilingual Pay

The City provides a bilingual pay program with a stipend of $50 per month, not to exceed $600 per fiscal year, for qualifying employees. Bilingual pay shall, to the extent possible, be paid and evenly distributed to the eligible employee for each payroll period during the fiscal year it earned. To qualify, employees must pass probation and an oral examination. The examination shall be administered by the City or a third party selected by the City. The City may establish an in-house testing site, or require an employee to test on his/her own time. The City agrees to pay the cost of testing for all successful applicants. Incidental costs such as travel time and mileage to the third-party test site shall be borne by each applicant.

An employee's continuation in the bilingual program is subject to periodic evaluation and retesting. Periodic evaluations shall be conducted no sooner than 1 year after each employee's original anniversary date in the program, or no sooner than 1 year after the last date of evaluation. An employee receiving bilingual pay who, at any time, fails to cooperate in providing the bilingual service required by the City Manager or the department head, shall be subject to elimination from the bilingual program.

Evaluations are based on the City's bilingual requirements, including need for an employee's bilingual skill, changing skill level requirements, changing demographic needs, the employee's cooperation in providing bilingual service, and ability of the employee to periodically demonstrate skill level through the retesting program. Each employee participating in the bilingual program shall receive a copy of the bilingual policy and any program guidelines, including evaluation guidelines.

Retesting may be conducted at the discretion of the department head or bilingual program administrator. The bilingual program administrator shall be the City Manager or his/her designee. The purpose of retesting is to evaluate skill maintenance by the employee receiving the bilingual stipend. The City will pay the administrative cost for retesting participating employees (excluding mileage and travel time). At the discretion of the City, retesting shall be conducted on City premises, or at the administrative office of the third-party test administrator.

Employees who received their bilingual education through a City-sponsored grant program shall be ineligible to receive bilingual pay until the grant is reimbursed. An employee can reimburse the City by participating in the bilingual pay program and foregoing receipt of the monthly bilingual allowance until the grant is paid back.

No employee will be eligible to receive multiple bilingual allowances at any one time.

No more than 7 unit members will be eligible for concurrent participation in the bilingual program. The City Manager shall approve any level of unit participation beyond 7 members. The department head shall determine the need for bilingual requirements in his/her respective areas of responsibility and, when necessary, annually forward to the City Manager or his/her designee the names of employees to be evaluated or tested for participation in the bilingual program. No unit member shall be tested or authorized to receive bilingual pay without the recommendation of the department head.

Notwithstanding the provisions of this section, bilingual pay shall not be paid to any employee hired because he/she possessed bilingual skills or when a recruitment specified that bilingual skills were/are necessary or desirable; and further provided that the bilingual pay program shall end and the payment of bilingual stipends shall cease when a cumulative total of 35 percent or higher of the City's total full-time workforce is bilingual. The bilingual stipend shall not be PERSable to the extent that its exclusion is allowed by CalPERS regulations.

Section 7.10. Paramedic Pay

A. The City shall pay a monthly stipend of $696.90 for each full month (paramedic pay period) an employee is assigned to serve as a paramedic.

   For each partial month that an employee is assigned to serve as a paramedic (e.g., new hires, advancements, or personnel terminating employment with the City), paramedic pay for that month shall be prorated based on the following formula:

   > The basic monthly stipend rate shall be divided by the number of days in the subject month. The resulting answer is then multiplied by the number of days in the subject month the employee was assigned to work as a paramedic.

B. Paramedic pay shall, to the extent possible, be evenly distributed and paid to the eligible employee for each payroll period during the fiscal year it is earned.

C. An employee shall be eligible to receive paramedic pay only upon meeting the following qualifications:
   1. He/she is licensed as a paramedic through the State of California;

   2. He/she has local accreditation/certification as a paramedic through the County of San Bernardino;

3. He/she retains proper Firefighter and paramedic accreditation/ certification throughout his/her employment with the City, and

4. He/she is specifically assigned to work as a paramedic for the City.

D. Paramedic pay is subject to overtime for the purposes of calculating regular and FLSA overtime.

E. Increases and/or decreases in the number of assigned paramedics eligible to receive paramedic pay at any one time shall be determined by the City Manager, pursuant to direction from the City Council/Personnel Committee.

Section 7.11. Repayment of Wages and Expenses Owed

In the event of an overpayment to an employee, the employee shall be obligated to repay the full amount of the overpayment to the City. The City shall support any claim of overpayment with appropriate documentation. If the overpayment occurred over a period of time, and the employee cannot make immediate and full repayment without suffering a verifiable hardship, the City Manager, or his designee, may authorize a repayment schedule (e.g., repaying the amount of the overpayment within the timeframe the overpayment was received). The City reserves the right to recoup such overpayment by such means as the City deems reasonable, including, but not limited to, deductions from the employee's paycheck.

If, for whatever reason, an employee's personal liabilities, including but not limited to educational fees, fines, clothing expenses, credit card charges, or any expenses of a personal nature are charged to the City, the employee shall be obligated to reimburse to the City the full amount of the charges. The City will support any claim it presents for expenses due with appropriate documentation and payment due shall be reimbursed as soon as practical thereafter. In any event, an employee owing the City money shall pay to the City the full amount due prior to his/her separation from City employment or the City, at its discretion, may deduct the amount due from the employee's final payroll check.

Section 7.12. Return of City Property

In the event an employee leaves City service without returning all City-issued property, the City may deduct from the employee's final paycheck such amount as will fairly compensate the City for the value of the unreturned property. Such deduction is not meant to waive any other rights the City may have regarding obtaining the return of City property or seeking damages for the failure to return such property. This provision does not apply to the Employee Purchase Program (EPP) for computer systems, which is covered under separate agreement between the employee and the City, except that an employee owing the City money as a result of his/her participation in the EPP shall pay to the City the full amount due prior to his/her separation from the City or the City, at its discretion, may deduct the amount due from the employee's final paycheck.

ARTICLE 8: MEDICAL, DENTAL, AND OPTICAL BENEFITS

The City makes available to employees a choice of group medical, dental, and optical insurance programs. The City also makes available for employees, through a benefit fund, a monthly contribution toward the premiums for the City's selected health care plans. An employee may cover eligible dependents under these plans by paying, through a payroll deduction, any premium in excess of that paid by the City. The balance of the City's monthly benefit fund contribution not paid toward employee and dependent premiums for health care coverage will be deposited in a City-sponsored deferred compensation plan (also see *Section 8.01*).

The nature and extent of insurance coverage provided, as well as the City's contribution toward the benefit fund, will be reviewed periodically by the City Manager, representatives of employee organizations, and the City Council/Personnel Committee. Any costs in excess of the City's agreed-upon contribution will be paid by the employee, including all copayments and deductibles required by the health care provider. The benefit fund contribution is not PERSable; i.e., it is not reported to CalPERS as income for purposes of determining an employee's compensation at any time, or for any employment- or retirement-related benefit or purpose.

Section 8.01. Benefit Fund Contribution; Excess Funds to Deferred Compensation; Medical, Dental, and Optical Insurance

A. The City agrees to contribute to a benefit fund at a rate of $850 per month, per employee. The City contribution will be directed to the employee-selected medical, dental, and optical plans sponsored/made available by the City. After deductions for medical, dental, and optical insurances, any remaining balance shall be deposited in the City-sponsored deferred compensation program or directed to dependent coverage at the employee's discretion. In the event that excess funds from the benefit fund are available, and the employee is not directing excess funds toward dependent coverage and employee is not participating in a City-sponsored deferred compensation plan, the employee will be automatically enrolled in, and excess funds shall be deposited with, the Great-West Daily Interest Guarantee Fund. Employees may change this investment option by contacting the City's Great-West Retirement Services representative or by going online to the company's website at www.gwrs.com—website changes require a Personal Identification Number (P.I.N.).

Implementation of a benefit fund for active employees shall not change, redefine, alter, or otherwise affect the City's contribution toward retiree-medical insurance or terms of the retiree-medical benefit as provided for in Section 8.03 and/or other relevant sections of this MOU.

In order to maintain Internal Revenue Service bona fide status for City-provided health care plans, there shall be no payroll/income disbursement to the employee of any portion of the City's contribution to the benefit fund.

To satisfy participation requirements imposed by health care providers and brokers of health care plans, and to prevent the negative impact employee dropout would have on premium rates for City-provided health care plans, the City is restricted in its capacity to allow less than 100 percent employee participation; therefore, at a minimum, each employee is required to maintain, or enroll in, "employee-only" coverage for City-provided medical, dental, and optical insurance plans; each employee shall also be responsible for paying any copayment, deductible, emergency room fee, and/or other associated costs related to health care.

B. Effective July 2016, the City agrees to increase the benefit fund contribution, as defined in subsection “A” of this section, from $925 per month to $1,025 per month, per employee.

Section 8.02. COBRA

Under the provisions of the Consolidated Omnibus Budget Reconciliation Act (COBRA) of 1986, employees and/or their families have the opportunity to temporarily extend health care coverage when the following specific situations occur:

Qualifying Events and Length of Coverage

1. Termination from employment (other than for gross misconduct) - 18 months.

2. Reduction of hours, which results in loss of eligibility - 18 months.

3. Death of an employee - 36 months.

4. Divorce or legal separation - 36 months.

5. Employee becomes eligible for Medicare - 36 months.

6. Dependent child reaches age of majority - 36 months.

Employees and dependents who are not covered under any other group insurance plans may continue coverage under Montclair's group plans in which they are enrolled at the time a qualifying event occurs. If continuation coverage is desired, employees and/or dependents must pay the full premiums, plus a 2 percent administrative fee.

It is the employee's obligation to notify the Administrative Services Department when any of the following occurs:

1. Your marriage is dissolved.

2. You become legally separated from your spouse.

3. A child stops being an eligible dependent under the plan.

4. You and/or an eligible dependent become eligible for Medicare or obtain coverage under another health plan.

Additional requirements and procedures are contained in materials provided to employees at time of initial employment and separation.

Section 8.03. Medical Insurance (Retirees)

A. Eligibility to participate under the terms of this section is not provided for those employees retiring under a disability pensions, except as required by COBRA (*also see* Section 8.02. COBRA).

B. The City's contribution/reimbursement limit for a retiree's medical insurance is defined by the City's contribution/reimbursement limit in effect on the date of retirement, as established by the MOU in place at the time of the employee's retirement. Notwithstanding any other provision in this MOU, at no time shall the City's contribution/reimbursement toward retiree medical exceed the retiree-medical contribution/reimbursement cap in place in the MOU in effect at the time of employee's retirement.

C. Normal Service Retiree Benefits – Retired on or after July 1, 2019:

1. For the employee with a minimum of 25 years of continuous, full-time service to the City, and having attained the City-established minimum retirement age of 50, the City will reimburse up to $532.16 per month toward premiums paid by the retiree for any health insurance premium and subject to additional terms as outlined below.

2. If the employee retires on or after the age of 50 (the minimum age of retirement from the City by MOU), but before reaching the age of the retiring employee's CalPERS retirement formula (e.g., age 57 under the 2.7% @ 57 retirement formula), then the monthly value of the reimbursement shall be up to $332.16 per month, effective upon retirement until the retiree reaches the normal age of the applicable CalPERS retirement formula the employee retired under (e.g., when the employee reaches the age of 57 under the 2.7% @ 57 retirement formula), at which time and upon written request by the retiree to the City, up to $532.16 per month toward the City-provided retiree medical reimbursement amount shall be restored.

3. Upon retirement, the employee is no longer eligible to remain on City-provided health care plans and must obtain his/her own health insurance. The retiree is then entitled to receive a monthly reimbursement for health insurance premiums, Medicare Part A, Part B, or Part C, or toward enrollment in Medicare Advantage (Parts A, B, and C, or as Medicare Advantage is otherwise defined and provided

for by Medicare) up to the limits as outlined in Sections 8.03.C.1. and C.2. above. To receive this reimbursement benefit, the retiree must submit the following documentation: (1) a completed Request for Reimbursement; (2) a copy of the health insurance payment slip (and other documentation) verifying that the retiree is covered under that particular health insurance plan; and (3) proof of payment. The Request for Reimbursement, payment slip, and proof of payment must be submitted to the City within 30-days of making such payment. Failure by the retiree to timely submit a request for reimbursement within 90-days, inclusive of the original 30-days, for which reimbursement should have been applied, shall disqualify the retired employee from eligibility to receive all retiree-medical benefits; however, under extraordinary circumstances, the City Manager may consider agreeing to a 180-day reimbursement grace period, inclusive of the original 30-days for which reimbursement should have been applied. "Extraordinary circumstances" shall be approved by the City Manager, and shall mean to exclusively include an extended hospital stay where the retiree was incapacitated and could not communicate an invoice for reimbursement to the City. An application for "extraordinary circumstances" shall not extend beyond 180 days.

4. Upon retirement, the retiree and/or his/her dependents are not authorized to remain on City-provided dental or optical plans, at which time the retiree and/or his/her dependents may be entitled to COBRA coverage, as provided by law, at the retiree's sole expense.

D. Except as otherwise provided, any future retiree-medical reimbursement amount increases shall apply only to those employees who retire on or after the date the retiree-medical adjustment is effective.

E. All retiree health care benefits, provided pursuant to this Section, terminate upon the death of the retired employee or as outlined in Section 8.03.C.3. above.

ARTICLE 9: LIFE AND ACCIDENTAL DEATH AND DISMEMBERMENT INSURANCE

Employees receive, at the expense of the City, $50,000 of life insurance and accidental death and dismemberment insurance. Further, the City makes available to retiring employees the opportunity to continue life insurance benefits (to a maximum of $20,000) under the City's group plan and group rate, at the employee's expense.

ARTICLE 10: LONG-TERM DISABILITY INSURANCE

The City provides long-term disability (LTD) income insurance for employees. This insurance is designed to provide long-term income to an employee off work due to a disability, injury, or illness. Policy provisions may change based on the LTD provider's contract requirements.

A. Nonwork-Related Disability, Injury, or Illness

Long-term disability insurance benefits are payable after 60 consecutive calendar days of total disability (the benefit waiting period) up to a maximum of 66 2/3 percent of the employee's current base salary—predisability earnings reduced by deductible income. The maximum LTD benefit amounts follow:

Current Base Salary/ Predisability Earnings Cap	Maximum Benefit Amount
$6,000 per month	$4,000 per month

Prior to the start of the LTD insurance benefit, the City contributes to the eligible employee in the amount of 66 2/3 percent of the employee's base salary for the 41st through the 60th calendar days of the deductible period—that period defined as the first 60 consecutive calendar days that an employee is off work due to a nonoccupational-related disability, injury, or illness. During the first 40 consecutive days of total disability, the employee shall use available sick leave (or other leave time if sick leave is not available) to maintain his/her income and eligibility for City-provided benefits. During the 41st through the 60th calendar days of the deductible period, and during the period an employee is eligible to receive LTD insurance benefits, the employee shall use available sick leave (or other leave time if sick leave is not available) to supplement the LTD benefit at full salary.

Long-term disability insurance premiums are paid by the City; therefore, moneys received under this program are reportable as income and are taxable.

Notwithstanding any other statement or provision in this MOU, the LTD benefits—including coverage features, the maximum benefit period, disabilities excluded from coverage, disabilities subject to limited pay periods, and other benefit conditions and exclusions—are defined in the City's LTD insurance policy and may dictate changes, variances, limitations, restrictions, subtractions of salary and benefits, and other requirements that may not be consistent with the provisions contained herein. In each and every instance, terms contained in the LTD policy shall supersede the provisions contained herein.

B. Work-Related Disability, Injury, or Illness

Safety employees who suffer a work-related disability, injury, or illness may be eligible for "4850" time for up to 1 year after the date of disability, injury, or illness.

Temporary disability payments and/or LTD benefits may also be available after a 1-year waiting period from the date of disability, injury, or illness subject to approval of the application for coverage submitted by the employee. In no event, however, shall a safety employee suffering from a work-related disability, injury, or illness be eligible for LTD benefits until the 1-year waiting period has expired or concurrently collect LTD benefits and "4850" time benefits.

ARTICLE 11: RETIREMENT

The City is a member of the California Public Employees' Retirement System (CalPERS). All regular, full–time employees are required to become members of the system. For full–time employees, and except as otherwise provided for in this Article, the City pays the required CalPERS employer contribution rate, the Employer Paid Member Contribution Rate (EMPC) to the extent agreed upon by the MOU, and the cost of administration. Employee contributions in excess of those paid by the City shall be withheld from the employee's salary up to the amount required by CalPERS, or as required by the provisions of this MOU. It is the combination of the employer and employee contributions that constitutes the total contribution to CalPERS.

For employees hired before January 1, 2013, the City's agreement with CalPERS provides for a retirement allowance based on each employee's 12 highest–paid consecutive months of service with the City. CalPERS determines the age and vesting requirements that establish when an employee can retire from the system under normal service or industrial disability retirement. Generally, an employee must be at least 50 years of age with 5 or more years of CalPERS–credited service in order to retire with a normal service retirement through the CalPERS system based on the specific provisions of the service retirement formula in effect for the employee at the time of retirement.

Effective January 1, 2013, the Public Employees' Pension Reform Act (PEPRA) was implemented, which establishes a new benefit formula and final compensation period for new employees. In addition, PEPRA establishes new contribution requirements for employees hired on or after January 1, 2013, who meet the definition of a new member.

The City's service retirement formulas for employees are as follows but may subject to change based upon new statutory or case law:

1. **Employees Hired On or After June 27, 2005 and On or Before December 31, 2012:** Employees are covered by the CalPERS "3% @ 55" benefit formula. This plan provides 3 percent of pay at age 55 for each year of service credited with the City

    a. Effective the first full pay period in September 2018, or the first full pay period after ratification, whichever is later, employees will pay 10 percentage points of the total required contribution to CalPERS on a pretax basis.

    b. Effective the first full pay period in July 2019, the City pays fifty percent (50%) of the normal cost rate to be calculated by CalPERS, and the employee pays fifty percent (50%) of the normal cost rate on a pretax basis to be calculated by CalPERS and the cost of administration.

2. **Employees Hired On or After January 1, 2013:** Effective January 1, 2013, new members to CalPERS or an agency with CalPERS' reciprocity, and employees to the City who have a 6-month or greater break in service between employment with the City and employment in a CalPERS (or reciprocal) agency, will be subject to the

provisions of the Public Employees' Pension Reform Act of 2013 (PEPRA) and will receive the "2.7% @ 57" benefit formula. This plan provides 2.7 percent of pay at age 57 for each year of service credited with the City. The City pays fifty percent (50%) of the normal cost rate to be calculated by CalPERS, and the employee pays fifty percent (50%) of the normal cost rate on a pretax basis to be calculated by CalPERS and the cost of administration. In addition, new members must be at least 50 years of age with 5 or more years of CalPERS–credited service in order to retire with a normal service retirement through the CalPERS system, and their retirement allowance will be based on the average of their last 3 years of compensation prior to retirement.

Employees not currently or previously enrolled under PEPRA and who are current members of CalPERS or an agency with CalPERS' reciprocity, or who have less than a 6–month break in service between employment in a CalPERS (or reciprocal) agency, or who have previously been employed by the City of Montclair as a CalPERS member and are required to be enrolled under the formula specified in this paragraph, will be enrolled in the "3% @ 55" formula.

Except as otherwise provided for in this MOU for retiree–medical benefits and CalPERS–related retirement benefits, to retire from the City to be eligible for City–provided retirement benefits other than CalPERS retirement benefits, an employee must be at least 50 years of age with 25 or more years of continuous service to the City and retire with a normal service retirement; e.g. to receive the 25–year–retiree–medical benefit, an employee must be at least 50 years of age and have a minimum of 25 consecutive years of service with the City.

If an employee should leave City employment prior to age 50, and is no longer eligible for membership in the CalPERS system, the Employer Paid Member Contribution (EPMC) and Member Contribution (both as calculated by CalPERS) will be paid to the employee by CalPERS after termination. An employee with 5 or more years of CalPERS–credited service may, however, leave the EPMC and member contributions on deposit in the system, with interest, for future withdrawal; however, no further contributions by the employer or member shall be paid into the CalPERS system.

For plans with less than 100 active safety members, CalPERS mandates participation in risk pools based on each qualifying agency's service retirement formula. Once a plan is in a risk pool, it will not be allowed to leave and become a stand–alone plan. CalPERS mandates certain contract provisions for plans participating in risk pools. Mandated benefits include:

1. Pre–Retirement Optional Settlement 2 Death Benefit – i.e., a death benefit payable to the spouse of an active member eligible to retire, equal to what the spouse would have received if the member retired, elected the 100 percent joint and survivor form of benefit, and then died.

2. The ability for employees who separate under a normal service retirement to convert unused sick leave to retirement service credit, at the employee's discretion (also see section on "Sick Leave") – previously available to MFFA members.

3. The ability for members to convert, at their own expense, prior eligible military service and prior eligible public service to CalPERS retirement service – previously available to MFFA members.

4. The cancellation of any remaining payments owed by the member for the purchase of optional service credit upon the employment related disability of the member (i.e., upon industrial disability retirement).

5. Local system service credit included in basic death benefit.

The City also provides safety members with the "Third Level of 1959 Survivor Benefits."

ARTICLE 12: HOLIDAYS

Section 12.01. Holiday Leave

Holiday leave is provided by the City to allow employees the opportunity to celebrate recognized holidays. Except as may otherwise be required for shift personnel, an employee celebrating a City-recognized holiday will not be permitted to use any City-provided leave time other than holiday leave. Except as otherwise provided for in this MOU, each employee shall use holiday leave on City-recognized holidays. Holiday leave shall be earned as holidays occur, shall be used in the fiscal year earned, and shall not be carried over to the following fiscal year.

A. **Shift Employees**

Shift employees shall receive the following days of paid holiday leave each year for a maximum of 157.29 hours:

- New Year's Day (15.73 hours earned)
- Martin Luther King, Jr.'s Birthday (15.73 hours earned)
- Presidents Day (15.73 hours earned)
- Memorial Day (15.73 hours earned)
- Independence Day (15.73 hours earned)
- Labor Day (15.73 hours earned)
- Veterans Day (15.73 hours earned)
- Thanksgiving Day (15.73 hours earned)
- Christmas Eve Day (15.73/7.86 hours earned—one-half of the shift labor unit will receive 15.73 hours off, the other half of the shift labor unit will receive 7.86 hours off, as determined by the department head)
- Christmas Day (15.73 hours earned)
- New Year's Eve Day (15.73/7.86 hours earned—one-half of the shift labor unit will receive 15.73 hours off [that part of the workforce that received 7.86 hours off on Christmas Eve Day], the other half of the shift labor unit will receive 7.86 hours off, as determined by the department head)

Effective July 1, 2009, through June 30, 2010, shift employees shall be furloughed (a temporary, unpaid leave of absence) on each of the designated paid holidays up to a maximum of 146.9 holiday leave furlough hours annually. To minimize the economic impact of the holiday leave furlough program on employees for the pay period in which a holiday or holidays may occur, 5.65 hours of wages calculated at the employee's base rate of pay shall be deducted from each of the 26 consecutive pay periods during the fiscal year for a maximum annual total of 146.9 hours.

An employee scheduled to work a holiday as part of his/her normal work schedule, shall be compensated at straight time; however, holiday leave hours normally

earned and accruing to the employee's holiday leave bank shall be accrued as deferred time off without additional compensation (holiday buyback). An employee not scheduled to work the holiday shall temporarily accrue holiday leave hours for use as time off without additional compensation.

Holiday leave hours accrued (not to exceed 31.46 holiday leave hours) in a previous fiscal year may be carried over into the succeeding fiscal year for a period not to exceed 31 days. Such holiday leave hours shall be used only for deferred time off and shall be forfeited if not used as required in this section.

To the extent that economic conditions may allow, the City Council may authorize a reduction in the number of holiday leave furlough hours. Such reduction may be determined by the City Council to be one-time or permanent. The city agrees to eliminate or modify the holiday leave furlough program as soon as economic conditions make it feasible.

In the event that furloughing an employee pursuant to the provisions of this section would impact the employee's highest 12 months for the purpose of calculating retirement compensation, City shall consider an alternative, cash-equivalent cost-reduction measure (e.g., the City may deduct accrued vacation time from the employee's vacation accrual bank upon employee's provision of a statement of intent to retire at the end of the succeeding 12-month period.

B. **Nonshift Employees**

Nonshift employees shall receive the following days of paid holiday leave each year for a maximum of 104 hours:

- New Year's Day (10 hours earned)
- Martin Luther King, Jr.'s Birthday (10 hours earned)
- Presidents Day (10 hours earned)
- Memorial Day (10 hours earned)
- Independence Day (10 hours earned)
- Labor Day (10 hours earned)
- Veterans Day (10 hours earned)
- Thanksgiving Day (10 hours earned)
- Christmas Eve Day (10/4 hours earned—one-half of the nonshift labor unit will receive 10 hours off, the other half of the nonshift labor unit will receive 4 hours off, as determined by the department head)
- Christmas Day (10 hours earned)
- New Year's Eve Day (10/4 hours earned—one-half of the nonshift labor unit will receive 10 hours off [that part of the workforce that received 4 hours off on Christmas Eve Day], the other half of the nonshift labor unit will receive 4 hours off, as determined by the department head)

Effective July 1, 2009, through June 30, 2010, nonshift employees shall be furloughed (a temporary, unpaid leave of absence) on each of the designated paid holidays for a maximum of 104 holiday leave furlough hours annually. To minimize the economic impact of the holiday leave furlough program during each pay period in which a holiday or holidays may occur, 4 hours of wages calculated at the employee's base rate of pay shall be deducted from each of the 26 consecutive pay periods during the fiscal year for a maximum annual total of 104 hours.

An employee scheduled to work a holiday as part of his/her normal work schedule, shall be compensated at straight time; however, holiday leave hours normally earned and accruing to the employee's holiday leave bank shall be accrued as deferred time off without additional compensation (holiday buyback).

To the extent that economic conditions may allow, the City Council may authorize a reduction in the number of holiday leave furlough hours. Such reduction may be determined by the City Council to be one-time or permanent. The City agrees to eliminate or modify the holiday leave furlough program as soon as economic conditions make it feasible.

In the event that furloughing an employee pursuant to the provisions of this section would impact the employee's highest 12 months for the purpose of calculating retirement compensation, City shall consider an alternative, cash-equivalent cost-reduction measure (e.g., the City may deduct accrued vacation time from the employee's vacation accrual bank upon employee's provision of a statement of intent to retire at the end of the succeeding 12-month period).

In the event any of these holidays fall on a Sunday, the following Monday shall be considered as the holiday. If a scheduled holiday should fall on a Friday or Saturday, the preceding Thursday shall be considered as the holiday, or applicable hours shall be credited to the employees' holiday banks. The City Manager may change the holidays on Christmas Eve and New Year's Eve to the working day immediately preceding or following the working day on which Christmas Day and/or New Year's Day will be celebrated.

In the event that the City returns to a 5-day, 40-hour workweek, Lincoln's Birthday, Personal Day, and Friday after Thanksgiving Day will be reinstated as 8-hour holidays; Christmas Eve and New Year's Eve will be converted back to 4-hour holidays; and all other recognized holidays will be converted back to 8-hour holidays.

If, for reasons of protecting the public safety or welfare, or upon approval of the City Manager, any nonshift employee is required to work on a City-recognized holiday, earned holiday hours shall be credited to the employee's holiday accrual bank. Earned holiday hours credited to the holiday accrual bank shall be equal to the actual time worked by the employee, but not greater than the maximum number of hours earned for the holiday.

Shift employees whose regular work schedules preclude them from celebrating holidays on the designated days, shall have credited to their holiday accrual banks 15.73 hours for

each full-day City holiday in lieu of holiday pay, and 23.59 hours for the combined holidays of Christmas Eve and New Year's Eve in lieu of holiday pay.

Employees leaving City service with accrued holiday leave shall be paid the amount of accrued holiday hours to the date of termination. Payments for accrued holiday time shall be at the employee's current hourly rate of pay.

Section 12.02. Holiday Accrual Bank

For those employees whose regular work schedules preclude them from celebrating City-recognized holidays on the designated days, a holiday accrual bank shall be used for recording earned holiday hours. The maximum amount of holiday hours to be accrued during any fiscal year shall not exceed 104 for nonshift employees and 157.29 for shift employees. Holiday leave shall be used in the year it is earned and shall not be carried over to the following fiscal year. On July 1 of each year, any remaining holiday leave accrual from the previous fiscal year will be forfeited. Holiday leave taken on a day other than an actual City-recognized holiday shall be granted at the discretion of the department head.

Employees leaving City service with accrued holiday leave shall be paid the amount of accrued holiday hours to the date of termination. Payments for accrued holiday time shall be at the employee's current hourly rate of pay.

Section 12.03. Holiday Pay Option

In June of each year, and in lieu of time off for accrued holiday hours, the City will buy back from each shift employee up to 78.65 accrued holiday hours from the holiday accrual bank at the employee's hourly rate of pay in effect at the time of the buyback. In addition, each employee may request payment for the remaining holiday accrual balance, up to 78.65 holiday hours, at the discretion of the City Manager. Time off for accrued holiday leave shall be granted at the discretion of the department head. Holiday leave not used or sold back to the City in the year it is earned will be forfeited.

ARTICLE 13: VACATION

A. Full-time, regular employees shall be eligible for annual vacation leave as follows:

Nonshift Employees

Continuous City Service	Hourly Biweekly/ Annual Accrual	Maximum Allowable Accrual
0-5 years (0-60 months)	3.08 hours/80 hours	160 hours
6-10 years (61-120 months)	4.62 hours/120 hours	240 hours
11-20 years (121-240 months)	6.15 hours/160 hours	320 hours
21+years (241+months)	7.69 hours/200 hours	400 hours

Shift Employees

Continuous City Service	Hourly Biweekly/ Annual Accrual	Maximum Allowable Accrual
0-5 years (0-60 months)	5.58 hours/145.21 hours	290.16 hours
6-10 years (61-120 months)	8.38 hours /217.79 hours	435.76 hours
11+ years (121+ months)	11.17 hours/290.40 hours	580.84 hours

B. In the event the Fire workweek is further reduced or increased, the following formula will be used as a basis for calculation of the revised annual vacation accumulation:

Annual Vacation Accumulation (In Effect at the Time)		New Vacation Accumulation (X)
Average Workweek (In Effect at the Time)	=	New Workweek

C. Vacation hours are accumulated biweekly (per pay period). Vacations may be taken only after completion of 6 months of continuous service.

D. Vacations may not be accumulated in excess of 2 times the amount accrued in any 1 year. Upon reaching the maximum allowable vacation accrual (based on years of service to the City), an employee will no longer earn additional vacation time until the vacation balance falls below the maximum allowable accrual. No employee, however, shall lose earned vacation time because of the urgency of work.

E. The time at which an employee may use vacation leave shall be determined by the department head with particular regard for the City's needs, but also, insofar as possible, considering the employee's wishes.

F. If a holiday recognized by the City falls within the vacation period, it shall not be counted as vacation time.

G. Employees may not work their vacation and receive double compensation for their work.

H. Employees leaving City service with accrued vacation leave shall be paid the amount of accrued vacation hours to the date of termination. Payments for accrued vacation time shall be at the employee's current rate of pay.

I. In accordance with Government Code Sections 53250 through 53252, titled Firemen's Vacations, Firefighters shall be granted a minimum of 15 consecutive calendar days off annually.

ARTICLE 14: LEAVES

Section 14.01. Sick Leave

A. **Accrual and Use of Sick Leave Hours**

Employees shall accrue annual sick leave. Such leave shall not be considered a benefit that an employee can use at the employee's discretion, but shall be allowed only in the following cases: (1) actual sickness or disability of the employee; (2) medical and dental appointments; or (3) illness of a person in the employee's immediate family, as provided for in this section.

Notwithstanding any definition or provision in this MOU, members of "immediate family" shall be defined as follows:

1. The employee and any lawful relative, by blood, marriage, domestic partnership, or legal status (including adoption or guardianship) who is currently a member of the employee's household (those who legally dwell together under the same roof as a family)—provided no judicial decree has divested the employee of his/her statutory relationship to any member of the household; the parent, grandparent, sibling, or child of the employee by blood or legal status, regardless of residence—provided no judicial decree has divested the employee of his/her statutory relationship to any of the aforementioned.

2. The parent, grandparent, sibling, or child of the employee's current legal spouse/domestic partner, by blood or legal status, regardless of residence—provided no judicial decree has divested the spouse/domestic partner of his/her statutory relationship to any of the aforementioned.

Further provided that the purpose of sick leave is to allow the employee time off to care for himself/herself during an illness or to directly provide primary responsibility for the care of the member of the employee's immediate family who is suffering from a serious health condition (an illness, injury, impairment, or physical or mental condition that involves continuing treatment by a health care provider) that significantly prevents a minimal level of self-care, that such time off shall include only incidental and minimal travel time related to the care of the ill person, and that such time shall be preapproved in writing by the department head.

Sick leave accrual shall begin on the first day of employment. Nonshift employees shall accrue sick leave at the rate of 8 hours for every completed full month of service, or a maximum total of 96 hours of sick leave per year. Fire shift employees shall accrue sick leave at a rate of 5.21 hours of sick leave for every completed full pay period or a maximum total of 135.46 hours of sick leave per year. Sick leave is

credited biweekly through the payroll system, and it may be taken after 2 months of service have been completed. The department head or designee shall have the option of requesting a doctor's certificate if an employee is absent for more than 3 consecutive days, or 3 consecutive shifts for Fire shift personnel, on sick leave; in the case of suspected sick leave abuse (e.g., pattern of absences on the first or last days of the workweek or pay period, or the day before/after a holiday; a history of exhausting available sick leave each year; etc.); or where the employee's fitness for duty is in question.

The City may credit an employee who is coming from another governmental agency with one-half of the employee's accumulated sick leave, up to a maximum of 240 hours. The purpose of this provision is to facilitate lateral recruitment of experienced employees to the City.

All accumulated sick leave is forfeited upon termination, other than for normal service retirement as allowed for in item "C" of this section. Credited sick leave from another agency will be deducted from a retiring employee's total sick leave accumulation for the purpose of calculating redemption under item "C" of this section.

B. **Annual Sick Leave Redemption Program**

Sick leave may be accumulated indefinitely, or an employee may exercise the following option once a year (this option to be exercised automatically by the City unless otherwise advised by the employee): In order to encourage regular attendance at work, an employee may, during the month of December, convert one-half of the unused sick leave hours accrued during the preceding "accrual period" (December 1 through November 30), up to a maximum of 48 hours for nonshift personnel and 67.73 hours for Fire shift personnel, to cash, computed using the base salary rate in effect on November 30 of the calendar year in which the conversion is applicable. (This option is suspended from July 1, 2009, through June 30, 2010.) The balance of remaining sick leave time will be credited to the employee's sick leave accrual account. The above plan applies only to:

1. Persons having been employed on a full-time basis with the City for the 2 years that immediately precede December 1 of each year;

2. Employees who accrued and maintained a minimum of 1 year's accrued sick leave (96 hours for nonshift employees and 135.46 hours for shift employees) prior to December 1 of the preceding year (the accrual period); and

3. Employees who, in the year that immediately precedes December 1 of each year (the accrual period) did not use, either separately or in combination, sick leave, FMLA, IOD, LTD, pregnancy leave, and/or

leave without pay that, in total, is greater than 133 hours for shift employees, and 94 hours for nonshift employees.

C. **Redemption of Sick Leave Hours Upon Retirement**

Employees retiring from the City under a normal service retirement as established under the terms of this MOU may redeem unused sick leave at the time of retirement by selecting one of the conversion methods authorized in this subsection—all conversions are computed using the base pay in effect for the applicable conversion period. Credited sick leave from another agency will be deducted from a retiring employee's total sick leave accumulation for the purpose of calculating the redemption. To qualify for use of this benefit, employees hired before July 1, 2005, must have at least 15 years of continuous service with the City, be at least 50 years of age, and utilize one of the sick leave redemption options included in this subsection on or before June 30, 2020. For an employee utilizing sick leave redemption options on or after July 1, 2020, and for an employee hired on or after July 1, 2005, the employee must have at least 25 years of continuous service with the City and be at least 50 years of age or, in the case of option "C.4" of this subsection, be at least 46 ("3% @ 50" retirement plan) or 51 (3% @ 55" retirement plan), as applicable, years of age and within 4 years of his/her planned retirement date/normal retirement age (NRA). This option is not available to employees who retire with a disability retirement.

1. Unused sick leave may be redeemed during the final pay period prior to retirement for a lump-sum cash settlement paid at the rate of 2 hours of accumulated sick leave redeemed for 1 hour of wages at the employee's current base rate of pay. Applicable payroll taxes would apply.

2. The City's CalPERS contract provides an option for normal service retirees to receive additional time-in-service credit by converting sick leave at the rate of 8 hours of sick leave accrual for .004-year-of-service credit.

3. Pursuant to federal and state law, employees attaining the minimum age of 46 (3% @ 50" retirement plan) or 51 (3% @ 55" retirement plan), as applicable, and who are within 4 years of their planned retirement date/NRA may take advantage of the 457 Deferred Compensation Plan "Catch-Up" provisions and allowances as defined in the City's Great West 457 Plan document. Employees may not make "Special Section 457 Catch-Up" contributions in the year they actually retire/attain their NRA.

   To the extent allowed by federal and state law and the City's deferred compensation plan, the City will allow, in 1 or more of the 3 calendar years ending prior to an employee's planned retirement date/NRA (or alternate NRA), the conversion of accrued sick leave at a rate of 2.25 hours for 1 hour of cash contribution, at the employee's base rate of pay in effect at the time of conversion, to the City's 457 Deferred Compensation Plan.

Sick leave conversion contributions for the "457 Catch-Up" will normally be distributed over the 3 calendar years ending prior to an employee's planned retirement date/NRA (or alternate NRA). However, based on the total amount of "457 Catch-Up" contributions available to the employee, accumulated sick leave hours, and the employee's designated retirement date/NRA (or alternate NRA), "457 Catch-Up" contributions may occur over a shorter period of time prior to retirement; in no event, however, shall any contribution occur in the year the employee actually retires/attains his/her NRA.

To be eligible to participate in this conversion method, the employee must be within 4 years of his/her planned retirement date, have "457 Catch-Up" privileges available to him/her, be enrolled in the City-sponsored 457 Deferred Compensation Plan, and maintain a minimum of 192 hours (270 hours for Fire shift employees) of sick leave in his/her accrual account after conversion during each year of participation. For purposes of this paragraph only, sick leave hours used for the "457 Catch-Up" shall be the first earned with respect to accumulation. Contributions made pursuant to this paragraph shall be reported as City contributions and shall not be fully vested with the employee until the actual date of retirement.

An employee leaving City service by means other than normal service retirement shall be required to reimburse to the City all cash contributions to the deferred compensation plan that were converted from accrued sick leave; reimbursement to be enforced by agreement with the administrator of the City-sponsored defined contribution plan. In the event that such action for reimbursement cannot be effected through the deferred compensation plan administrator, the employee grants to the City the right to withhold payment on other leave balances due to the employee at the time of separation. The City retains the right to pursue other legal remedies appropriate to recovering disbursed moneys. Moneys not recovered by the City shall be reported to the Internal Revenue Service as a benefit conversion to cash subject to personal income taxes.

It is the employee's responsibility to select one of the options defined herein and notify the Administrative Services Department of his/her choice in a timely manner sufficient to allow implementation. If option "C.3" is selected, remaining sick leave in the employee's accrual bank will be converted to a cash settlement in the final pay period prior to retirement pursuant to the provisions contained in option "C.1."

Section 14.02. Bereavement Leave

In the event a death occurs in an employee's immediate family, the nonshift employee shall be granted no more than 40 hours of bereavement leave with pay, per occurrence, to attend the funeral and/or make arrangements regarding the funeral. A shift employee shall be eligible for up to 2 consecutive working shifts (no more than 48 hours and 24 minutes) of bereavement leave at his/her request. Members of "immediate family"

shall be defined as any lawful relative, by blood, marriage, domestic partnership, or legal status (including adoption or guardianship) who is currently a member of the employee's household (those who legally dwell together under the same roof as a family)—provided no judicial decree has divested the employee of his/her statutory relationship to any member of the household; the parent, grandparent, child, grandchild, or sibling of the employee by blood or legal status, regardless of residence—provided no judicial decree has divested the employee of his/her statutory relationship to any of the aforementioned; or the parent, grandparent, child, grandchild, or sibling of the employee's current legal spouse/ domestic partner, by blood or legal status, regardless of residence—provided no judicial decree has divested the spouse/domestic partner of his/her statutory relationship to any of the aforementioned.

All bereavement leave requires prior approval by the department head.

Section 14.03. Family and Medical Care Leave

A. Statement of Policy

In accordance with the Federal Family and Medical Leave Act (FMLA) and the California Family Rights Act (CFRA), the City will provide family and medical care leave and military family leave for eligible employees, as defined.

B. Definitions

1. 12-Month Period

A rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.

2. Child

A person under 18 years of age, or a person 18 years of age or older who is incapable of self-care because of a mental or physical disability. An employee's child is one for whom the employee has actual day-to-day responsibility for care and includes a biological, adopted, foster, or step-child; a legal ward; the child of a domestic partner; or a child of a person standing in *loco parentis* (in place of a parent).

A child is "incapable of self-care" if he/she requires active assistance or supervision to provide daily self-care in 3 or more of the activities of daily living or instrumental activities of daily living—such as, caring for, grooming and hygiene, bathing, dressing and eating, cooking, cleaning, shopping, taking public transportation, paying bills, maintaining a residence, using telephones and directories, etc.

3. **Parent**

The biological parent of an employee or an individual who stands or stood in *loco parentis* (in place of a parent) to an employee when the employee was a child. The term does not include parents-in-law.

4. **Spouse**

A husband, wife, or domestic partner as defined or recognized under California law.

5. **Servicemember's "Next of Kin"**

A covered servicemember's "next of kin" is the servicemember's nearest blood relative, other than the covered servicemember's spouse, parent, son, or daughter, in the following order of priority:

a. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;

b. Brothers and sisters;

c. Grandparents;

d. Aunts and uncles;

e. First cousins; and,

f. Another blood relative specifically designated by the covered servicemember for the purpose of military caregiver leave under FMLA.

6. **Serious Health Condition**

An illness, injury, impairment, or a physical or mental condition that involves one of the following events:

a. Inpatient care (i.e., an overnight stay) in a hospital, hospice, or residential medical care facility, including any period of incapacity (i.e., inability to work, or perform other regular daily activities due to the serious health condition, treatment involved, or recovery therefrom); or

b. Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following situations:

1. A period of incapacity (i.e., inability to work or perform other regular daily activities) due to a serious health condition of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition that also involves the following events:

   - Treatment 2 or more times by a health care provider, by a nurse or a physician's assistant under direct supervision by a health care provider, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by, a health care provider; or

   - Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider. This includes, for example, a course of prescription medication or therapy requiring special equipment to resolve or alleviate the health condition. If the medication is over-the-counter and can be initiated without a visit to a health care provider, it does not constitute a regimen of continuing treatment.

2. Any period of incapacity due to pregnancy or for prenatal care.

3. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one that falls into the following categories:

   - Requires periodic visits for treatment by a health care provider, or by a nurse or physician's assistant under direct supervision of a health care provider;

   - Continues over an extended period of time, including recurring episodes of a single underlying condition; and

- May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, and epilepsy). Absences for such incapacity qualify for leave even if the absence lasts only 1 day.

4. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider.

5. Any period of absence to receive multiple treatments, including any period of recovery therefrom, by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, either for restorative surgery after an accident or other injury, or for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.

7. **Military Family Leave Entitlements**

Eligible employees with a spouse, son, daughter, or parent on active duty or call to active duty status in the armed forces, including the National Guard or Reserves, in support of a contingency operation may use their 12-week leave entitlement to address certain qualifying exigencies. Qualifying exigencies may include attending certain military events, arranging for alternative childcare, addressing certain financial and legal arrangements, attending certain counseling sessions, and attending post-deployment reintegration briefings.

FMLA also includes a special leave entitlement that permits eligible employees to take up to 26 weeks of leave to care for a covered servicemember during a single 12-month period. A covered servicemember is a current member of the armed forces, including a member of the National Guard or Reserves, who has a serious injury or illness incurred in the line of duty on active duty that may render the servicemember medically unfit to perform his/her duties for which the servicemember is undergoing medical treatment, recuperation, or therapy; or is in outpatient status; or is on the temporary disability retired list.

8. **Health Care Provider**

Anyone in one or more of the following occupations:

a. A doctor of medicine or osteopathy who is authorized to practice medicine or surgery by the State of California;

b. Individuals duly licensed as a physician, surgeon, or osteopathic physician or surgeon in another state or jurisdiction, including another country, who directly treat or supervise treatment of a serious health condition;

c. Podiatrists, dentists, clinical psychologists, optometrists, and chiropractors (limited to treatment consisting of manual manipulation of the spine to correct subluxation as demonstrated by X-ray to exist) authorized to practice in California or performing within the scope of their practice as defined under California law;

d. Nurse practitioners, nurse midwives, and clinical social workers who are authorized to practice under California law and who are performing within the scope of their practice as defined under California law;

e. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts; and

f. Any health care provider from whom an employer or group health plan's benefits manager will accept certification of the existence of a serious health condition to substantiate a claim for benefits.

C. **Reasons for Leave**

1. Leave is only permitted for the following reasons:

a. The birth of a child or to care for a newborn of an employee;

b. The placement of a child with an employee in connection with the adoption or foster care of a child;

c. Leave to care for a child, parent, or a spouse who has a serious health condition;

d. Leave because of a serious health condition that makes the employee unable to perform the functions of his/her position;

e. Leave because of a qualifying exigency arising out of the fact that a child, spouse, or parent is on active duty or call to active duty status in support of a contingency operation as a member

of the armed forces, including the National Guard or Reserves; or

f. Leave because of a serious injury or illness of a child, spouse, parent, or next of kin who is a covered servicemember.

2. Except as otherwise provided for in this MOU (also see *Article 34: Outside Employment)*, no employee shall engage in, seek, pursue, or otherwise use FMLA leave time for outside employment, or otherwise obtain FMLA leave by fraudulent means. An employee seeking, pursuing, or otherwise engaging in outside employment while on FMLA leave, or otherwise obtaining FMLA leave by fraudulent means shall be subject to disciplinary action, up to and including discharge from City employment.

D. **Employees Eligible for Leave**

An employee is eligible for leave if the employee:

1. Has worked for the City for at least 12 months; and

2. Has worked for the City for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

E. **Amount of Leave**

Eligible employees are entitled to a total of 12 workweeks of unpaid leave during any 12-month period. As of January 2008, FMLA was amended to include a special leave entitlement that permits eligible employees to take up to 26 weeks of unpaid leave to care for a covered servicemember during a single 12-month period. No more than 26 workweeks of leave may be taken within any single 12-month period.

1. **Minimum Duration of Leave**

If leave is requested for the birth, adoption, or foster care placement of a child of the employee, leave must be concluded within 1 year of the birth or placement of the child. In addition, the basic minimum duration of such leave is 2 weeks. An employee, however, is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least 1 day, but less than 2 weeks duration on any 2 occasions.

If leave is requested to care for a child, parent, spouse, or the employee himself/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, the notice and medical certification provisions of this policy must be complied with.

2. **Spouses Both Employed by the City**

In any case in which a husband and wife, or domestic partners, both employed by the City are entitled to leave, the aggregate number or workweeks of leave to which both may be entitled may be limited to 12 workweeks during any 12-month period if leave is taken for the birth or placement for adoption or foster care of the employees' child (i.e., bonding leave), and the aggregate number of workweeks of leave to which both may be entitled may be limited to 26 workweeks in a single 12-month period to care for a covered servicemember. This limitation does not apply to any other type of leave under this policy.

F. **Employee Benefits While on Leave**

Leave under this policy is unpaid. While on leave, employees will continue to be covered by the City's group health insurance to the same extent that coverage is provided while the employee is on the job. Employees may make the appropriate contributions for continued coverage under the preceding benefit plan by payroll deductions or direct payments made to these plans. Employee contribution rates are subject to any change in rates that occurs while the employee is on leave. If an employee fails to return to work after his/her leave entitlement has been exhausted or expires, the City shall have the right to recover its share of health plan premiums for the entire leave period unless the employee does not return because of the continuation, recurrence, or onset of a serious health condition which would entitle the employee to leave, or because of circumstances beyond the employee's control. The City shall have the right to recover premiums through deduction from any sums due the City (e.g., unpaid wages, vacation pay, etc.).

G. **Substitution of Paid Accrued Leaves**

If an employee requests leave for any reason permitted under this policy, he/she must exhaust all accrued leaves (except sick leave and compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act) in connection with the leave. The exhaustion of accrued leave will run concurrently with the leave under this policy.

Notwithstanding the above, if an employee requests leave for his/her own serious health condition, in addition to exhausting accrued leave, the employee must also exhaust accrued sick leave.
If an employee takes a leave of absence for any reason which is FMLA/CFRA qualifying, non-FMLA/CFRA leave shall run concurrently with the employee's 12-week FMLA/CFRA leave entitlement.
If an employee requests to utilize accrued vacation leave or other accrued paid time off without reference to a FMLA/CFRA qualifying purpose, the City may not ask the employee if the leave is for a FMLA/CFRA qualifying purpose. However, if the City denies the employee's request and the employee provides information that the requested time off is for a FMLA/CFRA qualifying purpose, the City may inquire

further into the reason for the absence. If the reason is FMLA/CFRA qualifying, the employee shall exhaust accrued leaves as described above.

H. Medical Certification

Employees who request leave for their own serious health condition or to care for a child, parent, or a spouse who has a serious health condition, must provide written certification from the health care provider of the individual requiring care. If the leave is requested because of the employee's own serious health condition, the certification must include a statement that the employee is unable to perform the essential functions of his/her position.

1. Time to Provide Certification

When an employee's leave is foreseeable and at least a 30-day notice has been provided, if a medical certification is requested by the City, the employee must provide it before the leave begins. When 30 days' notice is not possible, the employee must provide the requested certification to the City within 15 days of the request from the City, unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good-faith efforts.

2. Consequences of a Failure to Provide an Adequate or Timely Certification

If an employee provides an incomplete medical certification the employee will be given a reasonable opportunity to cure any such deficiency. However, if an employee fails to provide a medical certification within the time frame established by this policy, the City may delay the taking of FMLA/CFRA leave until the required certification is provided.

3. Questions Regarding the Validity of a Certification

a. Employee's Own Serious Health Condition

If the City has reason to doubt the validity of a certification, the City may require a medical opinion of a second health care provider chosen and paid for by the City. If the second opinion is different from the first, the City may require the opinion of a third provider jointly approved by the City and the employee, but paid for by the City. The opinion of the third provider will be binding. An employee may request a copy of the health care provider's opinion when there is a recertification.

b. Serious Health Condition of a Family Member

The certification for a family member will be deemed sufficient if it includes all of the following:

1. The date on which the serious health condition commenced;

2. The probable duration of the condition;

3. An estimate of the amount of time that the health care provider believes the employee needs to care for the individual requiring the care; and

4. A statement that the serious health condition warrants the participation of a family member to provide care during a period of the treatment or supervision of the individual requiring care.

4. **Recertification**

Upon expiration of the time period which the health care provider originally estimated that the employee needed for his/her own serious health condition, the City may require the employee to obtain recertification if additional leave is requested.

5. **Intermittent Leave**

If an employee requests leave intermittently (a few days or hours at a time) or on a reduced leave schedule to care for an immediate family member with a serious health condition, the employee must provide medical certification that such leave is medically necessary. "Medically necessary" means there must be a medical need for the leave and that the leave can be best accomplished through an intermittent or reduced leave schedule.

I. Employee Notice of Leave

If possible, an employee must provide at least 30 days' advance notice for foreseeable events, such as the expected birth of a child or planned medical treatment for the employee or family member. For events which are unforeseeable, the employee must notify the City, at least verbally, as soon as he/she learns of the need for the leave.

The employee shall consult with the City and make a reasonable effort to schedule any planned medical treatment or supervision so as to minimize disruption to the City's operations. Any such scheduling, however, shall be subject to the approval of the health care provider of the employee or the employee's child, parent, or spouse.

If an employee fails to give 30 days' notice for a foreseeable leave with no reasonable excuse for the delay, the City may delay the taking of FMLA leave until at least 30 days after the date the employee provides notice to the City of the need for FMLA leave.

J. Reinstatement Upon Return from Leave

1. Right to Reinstatement

Upon expiration of leave, an employee is entitled to be reinstated to the position of employment and salary step held when the leave commenced, or to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment. Employees have no greater rights to reinstatement, benefits, and other conditions of employment than if the employee had been continuously employed during the FMLA/CFRA period.

If a definite date of reinstatement has been agreed upon at the beginning of the leave, the employee will be reinstated on the date agreed upon. If the reinstatement date differs from the original agreement of the employee and the City, the employee will be reinstated within 2 business days, where feasible, after the employee notifies the City of his/her readiness to return.

2. Employee's Obligation to Periodically Report on His/Her Condition

Employees may be required to periodically report on their status and intent to return to work. This will avoid any delays to reinstatement when the employee is ready to return.

3. Fitness-for-Duty Certification

As a condition of restoration of an employee whose leave was due to the employee's own serious health condition, not intermittent, and which made the employee unable to perform his/her job, the employee must obtain and present a fitness-for-duty certification from the health care provider that the employee is able to resume work. Failure to provide such certification will result in denial of reinstatement.

K. Required Forms

Employees must fill out the following applicable forms to be eligible for leave under this policy:

1. "Family Care/Medical Leave Request Form" provided by the City (employees will receive a response to their request from the City, which will set forth certain conditions of the leave);

2. Medical certification—either for the employee's own serious health condition or for the serious health condition of a child, parent, or spouse;

3. Authorization for payroll deductions for benefit plan coverage continuation;

4. Fitness-for-duty certification to return from leave;

5. Certification of Qualifying Exigency for Military Family Leave; and

6. Certification for Serious Injury or Illness of Covered Servicemember for Military Family Leave.

Section 14.04. Pregnancy Leave

A. Except as provided herein, an employee disabled because of pregnancy, childbirth, or a related medical condition shall be entitled to the same benefits as are provided to other employees who are temporarily disabled for medical reasons.

B. An employee disabled because of pregnancy, childbirth, or a related medical condition shall be entitled to take up to 4 months of leave of absence due to such disability. The employee may utilize any accrued vacation time or other paid leave during the otherwise unpaid portion of any pregnancy leave.

C. Any employee who plans to take any pregnancy disability leave shall give the City reasonable notice of the date the leave will commence and the estimated duration of any leave.

1. The City reserves the right to require written confirmation from the employee's physician or other licensed health care practitioner that she is or will be disabled by pregnancy, childbirth, or related medical conditions before granting pregnancy disability leave.

2. The City reserves the right to require written verification from the employee's physician or other licensed health care practitioner that her disability has ceased before the employee returns to work.

D. When the employee is ready to return from pregnancy leave (of 4 months or less, or such additional time as provided by the CFRA), the employee shall be entitled to return to her original position unless either:

1. The job ceases to exist because of legitimate business reasons unrelated to the employee's pregnancy disability leave; or

2. Each means of preserving the job for the employee would substantially undermine the City's ability to operate safely and efficiently.

If the employee cannot return to her original position because of either of the foregoing reasons, she shall be entitled to a substantially similar position unless either:

1. There is no substantially similar position available; or

2. A substantially similar position is available, but filling the available position with the returning employee would substantially undermine the City's ability to operate safely and efficiently.

E. When a female employee returns from pregnancy leave, the City will provide a reasonable amount of breaktime to accommodate the employee desiring to express breast milk for her infant child. Any time required to express breast milk beyond the employee's normal breaktime is unpaid. The City will also make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private (also see *Article 42: Lactation Accommodation*).

Section 14.05. Jury Duty

Employees requested to serve on jury duty shall notify their immediate supervisor who shall in turn notify the department head. While serving on jury duty, an employee shall receive regular salary from the City and, also, shall remit to the City all per diem compensation received as a result of serving on jury duty, excluding per diem received by the employee while serving jury duty on a day other than a regularly scheduled workday, and excluding mileage reimbursement when an employee uses a personal vehicle. In cases where the employee's personal car is used to attend jury service and mileage reimbursement is provided by the court of jurisdiction, such reimbursement need not be remitted to the City; in the event a City-provided vehicle is used, mileage reimbursement shall be remitted to the City. The City does not provide mileage reimbursement for jury duty.

In appropriate cases, the City may request that an employee be excused from serving on jury duty, because the employee's duties are such that it would be in the best interests of the City to request such an exemption. The City Manager will request an exemption in only special circumstances that are permitted by law and, in the City Manager's judgment, warrant this action.

Section 14.06. Military Leave

After 1 year of employment with the City, and except as otherwise provided for by action of the City Council as noted below, employees shall be eligible for up to a maximum of

30 days' paid annual military leave, as specified by the California Military and Veterans' Code. Employees anticipating taking military leave must submit a written request to the City Manager, with a copy of orders attached, at least 2 weeks prior to the first day of leave. Employees employed less than 1 year shall receive a leave of absence without pay.

In accordance with City Resolution No. 01-2364, and notwithstanding existing military leave provisions, the following military leave benefits are provided by the City. Continuation of wages, in whole or in part, for employees ordered to active military duty does not obligate the City to pay for medical, dental, optical, or life insurance; Workers' Compensation; or other claims related to death, illness, or injury incurred or aggravated during active military service.

A. **Wages**

For a period not to exceed 180 cumulative days in any 1 calendar year, military reservists employed by the City and ordered to military duty shall continue to receive his or her monthly wages from the City, provided that such wages are based on the employee's step rate and job classification at the time military duty began; and further provided that, after the first 30 calendar days of military service, combined monthly earnings for City and military service shall not exceed the employee's base monthly gross earnings with the City. Earnings for military service shall include base wages and all supplemental payments, including, but not limited to, the following allowances: housing, temporary duty, hazardous duty, combat, and flight pay. An employee ordered to military duty shall provide to the City copies of his or her monthly military pay statements for the purpose of verifying earnings for military service and calculating wages due from the City. Such wages shall be paid in arrears for the military pay period just ending.

B. **Health Care Coverage**

An employee ordered to active military duty is covered immediately by the military's health care system, and the employee's dependents are provided health care under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). However, an employee on military leave may elect to continue health care coverage through the City for a maximum period of 18 months, as provided for under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA). An employee who elects to continue such coverage while on active military duty shall be charged 102 percent of the full premium under the plan associated with such coverage. In the case of military reservists whose coverage under the employer health plan was terminated by reason of military service, the City will not impose an exclusion or waiting period in connection with the reinstatement of employer-provided health care coverage.

C. **Leave Accrual**

After the first 30 days of active military service in any one calendar year, employees shall not accrue City-paid vacation, holiday, or sick leave benefits or other forms of paid leave; provided, however, that any public employee on military leave for intermittent training periods shall continue to accrue the same vacation, sick, and holiday leave up to a maximum period of 180 cumulative days per calendar year as if the employee had not been on military leave.

D. **Retirement Benefits**

Retirement benefits continue to accrue for employees on military leave for training and for active duty up to a maximum period of 180 cumulative days per calendar year.

E. **Other Benefits/Supplemental Pay**

After the first 30 days of active military service, employees shall not be eligible to earn or receive other forms of City compensation including, but not limited to, education grants, acting pay, special additional pay, FLSA and regular overtime, deferred compensation, bilingual pay, training pay, life insurance, health insurance, and uniform allowance.

F. **Reemployment Rights**

Employees returning from military leave are entitled to reemployment rights if the following criteria are met:

1. Advance written notice of such military service is provided to the City;

2. The cumulative length of all absences from the City for reasons of military service does not exceed 5 years, unless otherwise provided for by law; and

3. The returning employee on active military duty for less than 31 consecutive days submits a written request for reemployment no later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of military service; and no less than 14 days after the completion of service for an employee on active duty for more than 30 days but less than 181 days.

Section 14.07. Leaves of Absence Without Pay

Leaves without pay may be granted in cases where such absence would not be contrary to the best interest of the City. Such leave is not a right but a privilege granted for extraordinary reasons, and shall not exceed 12 months.

An employee on leave without pay shall receive no compensation and shall accumulate no vacation or sick leave while on such leave. All leaves without pay shall be approved by the City Manager.

An employee returning to work from leave without pay shall be placed on the salary step achieved prior to such leave. If the leave exceeds 2 biweekly pay periods, the employee's anniversary date shall be postponed by the number of days of the leave.

Section 14.08. Injury on Duty/Workers' Compensation

California Workers' Compensation Law, a no-fault insurance plan paid for by the City and supervised by the state, covers an employee's medical expenses and salary while off work due to a job-related injury or illness. This protection begins immediately upon being hired by the City, and applies to first-aid-type injuries as well as serious accidents and illness.

A. Benefits

Specifically, the California Workers' Compensation Law guarantees an employee three kinds of benefits:

1. Medical care to cure the injury or illness, with no deductibles.

2. Rehabilitation services necessary to get an employee back to work.

3. Cash payments to replace lost wages; additional payments are made if the injury or illness is serious or results in death.

These benefits are established by the California Legislature, and the amount of cash payments as well as when and how they will be paid are part of state law. Only the state Legislature can change the amounts.

As a supplement to Workers' Compensation Payments, if a nonsafety employee is unable to work for 3 or more calendar days, full salary continuance will be paid by the City for a maximum of 30 calendar days following an injury. Montclair will also coordinate Workers' Compensation payments with an employee's sick leave and vacation balances, to provide full salary continuance for as long a period as possible.

If a safety employee is unable to work for 3 calendar days, full salary continuance will be paid by the City for a period of up to 1 year. Workers' Compensation wages (4850 time) paid to safety employees are fully exempt from income tax.

Montclair is self-insured for Workers' Compensation. All doctor bills, hospital expenses, etc., will be paid directly by the City's Workers' Compensation administrator on the City's behalf.

B. Reporting Requirements

Prompt reporting is the key to receiving Workers' Compensation benefits in a timely manner. A work-related injury or illness should be reported to an employee's supervisor immediately. Supervisors act as Montclair's agent(s); therefore, notice to a supervisor of an injury or illness is viewed by law as notice to the employer, and failure by the supervisor to follow through with an accident report and/or direction for medical aid could place the City in a penalty situation.

Claims are established by Montclair's Workers' Compensation administrator, upon notification of injury or illness, usually through the "Employer's Report of Occupational Injury or Illness" form and the "Workers' Compensation Claim Form (DWC 1)." These two forms are completed only if an employee obtains medical attention; in cases of first-aid-type injuries or illness or damage to City equipment, only Montclair's "Supervisor's Report of Accident" form is required. Occupational illness or injury should also be immediately reported to the Administrative Services Department. Most claims, if handled promptly and properly, will be resolved successfully and efficiently.

C. **Medical Treatment**

Of first priority is treatment of the injured/ill employee, if immediate medical care is required. In the case of questionable claims, where immediate medical treatment is not necessary, contact the Administrative Services Department for a determination. Procedures for obtaining medical treatment for work-related injury or illness are as follows:

1. First-aid-type illness or injury can be treated at the Human Services Division clinic.

2. For more extensive injuries or illness, supervisors are to contact the Administrative Services Department for scheduling of a doctor appointment.

3. In emergency situations, employees may report to the emergency room at Montclair's hospital, or another medical facility if closer, in order to obtain the best treatment available. After receiving medical care, injury or illness should be reported to a supervisor as quickly as possible, so necessary follow-up examinations can be scheduled by the Administrative Services Department.

4. In cases where an employee does not realize an injury or illness has occurred until several hours or days after an incident, the employee should notify the immediate supervisor and the City will make a determination as to the appropriate procedure for treatment. If, however, an employee first realizes a work-related injury or illness has occurred on a weekend, holiday, or after normal work hours, and feels immediate medical attention is required, the employee may go

to a free-choice physician or facility and report the incident to a supervisor on the first City working day thereafter.

5. If, for any reason, an employee wishes to change doctors, contact the Administrative Services Department. The City is as interested as you are in your prompt recovery and return to work!

6. Thirty days after reporting an injury or illness, employees may choose their own doctor. Report your choice of physicians to the Administrative Services Department as soon as you make it, so bills will be paid promptly.

7. Employees have the right to predesignate a treating physician to provide care in the event of an on-the-job injury or illness; however, the Administrative Services Department must be notified of the physician's name, in writing, before the injury or illness occurs. Designated physicians must be the employee's regular physician, maintain the employee's medical records, and be in accordance with California Labor Code, Section 4600, Note 73.

8. In the case of severe injury, illness, or death, the Administrative Services Department must be notified immediately.

ARTICLE 15: HOURS OF WORK, WORK PERIODS, AND PAY PERIODS

A. **Nonshift Employees**

The standard workday for nonshift employees shall be 10 hours and the standard workweek shall be 40 hours. A 7-day work period shall be utilized commencing at 12:01 a.m. (0001) on a Monday and ending at 12:01 a.m. (0001) the following Monday.

B. **Shift Employees**

1. For shift employees, the standard workweek shall consist of an average of fifty-six (56) hours on a shift basis. The normal shift schedule is the 48/96 plan in which employees are assigned to work back-to-back twenty-four (24) hours shifts for a total of forty-eight (48) hours starting at 7:00 a.m. and ending at 7:00 a.m. on the second consecutive day folling the day the shift began.

2. For purposes of implementing FLSA, Section 7(k), a designated 28-day work period shall be utilized for shift employees. A workday within any work period shall commence at 7:00 a.m. (0700) and end at 7:00 a.m. (0700) the following morning.

C. The pay period for all employees shall be biweekly. If a payday falls on a holiday, payday will (if possible) be the first preceding working day prior to the holiday. From time to time, other pay periods and work hours, periods, and days may be designated by the department head, the City Manager, or the City Council.

ARTICLE 16: OVERTIME

Overtime hours worked shall be compensated in accordance with the following provisions.

A. **Regular Overtime**

1. Except as provided herein, overtime for nonshift employees shall be paid for all hours worked in excess of 40 hours in a 7-day work period at a rate of time and one-half the employee's base pay.

2. Prior authorization of employee's supervisor must be obtained prior to working overtime, except in emergency situations.

3. It is the intent of the City to attempt to schedule regular workdays whenever feasible. Said work schedule is subject to change by the City, as services require, and this provision shall not be construed as limiting or preventing the City from establishing other work shifts or hours as the need arises.

4. Compensation for overtime shall be in form of cash payment or, if requested by the employee and approved by the department head, compensatory time off. A maximum of 40 hours of compensatory time may be accrued by each employee.

5. Employees leaving City service with accrued compensatory time off shall be paid for the amount of accrued compensatory time to the date of termination. Payment for accrued compensatory time shall be at straight time based on the employee's current rate of pay.

6. Employees shall be paid at a rate of time and one-half for any emergency recall or mandatory overtime worked, with a minimum of 2 hours paid per call. It will be considered emergency recall any time an employee is asked by the officer in charge to immediately:

    a. Relieve an on-duty employee who is either sick or has been injured.

    b. Respond to an emergency situation or cover a station during an emergency situation.

7. Except as provided herein, overtime for shift employees shall be paid for all hours worked in excess of an employee's regularly scheduled shift at a rate of time and one-half the employee's base pay.

    Shift employees shall be paid at a rate of time and one-half for any emergency recall or mandatory overtime worked, with a minimum of 2 hours paid per call.

It will be considered emergency recall any time an employee is asked by the officer in charge to immediately:

a. Relieve an on-duty employee who is either sick or has been injured.

b. Respond to an emergency situation or cover a station during an emergency situation.

8. For purposes of calculating regular overtime, "hours worked" shall mean only those hours an employee is actually physically working. Paid and unpaid leave time shall not count as hours worked for purposes of determining eligibility for regular overtime. Paid leave time shall include, but not be limited to, vacation leave, holiday leave, sick leave, administrative leave, bereavement leave, military leave, jury duty, disciplinary leave (including suspensions with pay), and all forms of disability leave including 4850/Injury on Duty (IOD)/Workers' Compensation, Short Term Disability (STD), and Long Term Disability (LTD) leaves. At its discretion, the City may require the use of compensatory time at the rate of 1.5 hours off for every hour worked overtime in lieu of paying regular overtime.

B. **FLSA Overtime**

1. Shift employees shall be paid overtime for all hours worked in excess of 212 during a 28-day work period at a rate of time and one-half the employee's regular rate of pay. For purposes of calculating FLSA overtime, and except as otherwise provided for in this section, "hours worked" during a work/pay period shall mean those regular hours worked and all paid leave time used during the work period, exclusive of time off for disciplinary cause (except in those cases where the disciplinary action is reversed on appeal), administrative leave, leave of absence without pay, comp time and IOD time (including 4850/injury on duty, workers' compensation, short- and long-term disability, and all other forms of disability leave); provided, however, that the City does agree to count up to 30 consecutive shifts for each incident of IOD as hours worked; or up to 30 cumulative shifts in any one 12-month period per incident of IOD, including related incidents of IOD, as hours worked.

2. Provisions in this item (*B. FLSA Overtime*) are designed to implement the mandatory provisions of the Fair Labor Standards Act. If, through legislative or judicial determination, it is held that the FLSA is not applicable to the City, overtime eligibility and pay shall be determined solely by the provisions in item *A. Regular Overtime*.

C. The particular overtime to be paid to a shift employee depends upon which type of overtime is the more generous to the employee. Such determination shall be made at the conclusion of each work period.

ARTICLE 17: MILEAGE/AUTOMOBILE ALLOWANCE

Employees who use their personal automobiles for City business may be reimbursed, either by a fixed monthly amount or at a rate of 26 cents per mile, for such use of their automobiles, provided such use is approved in advance by the department head and the city Manager. The amount of reimbursement may be changed from time to time by action of the City Council/Personnel Committee. For employees to be eligible for automobile allowance or mileage reimbursement, the following must be provided and submitted to the City Manager Department:

1. For employees who receive a fixed monthly mileage/automobile allowance check, proof of insurance and proof that one of the employee's automobiles is insured for business purposes; or

2. For employees who use their personal automobiles for City business and are reimbursed at a rate of 26 cents per mile, proof that those individuals have their automobiles insured under the minimum requirements set forth by state law; e.g., $15,000 to $30,000 liability coverage, plus property damage coverage.

ARTICLE 18: ANNUAL AND BIANNUAL PHYSICAL EXAMS

The City shall provide an annual physical exam for safety employees over 45 years of age. The City shall provide biannual physicals for safety employees over 35 years of age. These physicals will be administered by a doctor designated by the City. The type of physical shall also be designated by the City.

ARTICLE 19: PREMIUM PAY PLAN

A. Introduction

This Article and all its provisions are suspended from July 1, 2009, through June 30, 2010.

The City provides bonus pay opportunities in addition to its salary and benefit programs through the Premium Pay Plan (PPP). The purpose of PPP is to serve as a vehicle for promoting higher levels of employee performance and to provide for the recognition of employees for short-term distinguishable contributions in accordance with the criteria that follows.

The PPP is designed to provide award opportunities for both individuals and work groups. Any employee, irrespective of position, duties, and degree of visibility, is eligible. A work group may be a crew, a company, a team, a task force, a squad, etc. in which the interdependency of its members is necessary to achieve results.

Any number of employees or work groups may qualify for a PPP award. Employees and work groups shall receive awards in accordance with the premium pay schedule outlined. Alternative forms of compensation to that of pay are prescribed and may be elected at the option of the employee.

Employees wishing to be considered for premium pay must complete the premium pay application form, which is available from the City Manager Department. The same form may be used by an employee who wishes to recommend another employee for consideration for premium pay. Similarly, any member of an employee group or any non-member may submit an application on behalf of the group.

Applications for single-occurrence awards are reviewed by the Premium Pay Panel. The Panel is composed of three community representatives with experience in related fields, who serve at the pleasure of the City Council for alternating 2-year terms. The Panel sets its own rules of conduct, meets at least quarterly, reviews the applications for conformity, and submits those that qualify to the City Council for its action. No additional evaluations are conducted by supervisors. The Panel is staffed by an employee designated by the City Manager, and it may request more information and conduct such interviews as it deems appropriate. The Panel prepares a statement for publication, which outlines why the contributions of an employee or an employee group were distinguishable and warranted the award recommended.

In order for an employee or an employee group to receive premium pay, the following criteria must be met. The PPP provides a variety of awards for numerous worthwhile employee contributions; both the City and employees benefit mutually.

B. **Criteria for Employees to Qualify for Premium Pay**

The following criteria are set out as the basis upon which individuals and employee groups may receive premium pay or the equivalent. The City's compensation program is designed to ensure that employees have the potential of a salary which is internally justified, reflects the value of the job in the marketplace, and generally provides step increases based on satisfactory or better job performance until the maximum is reached. The Premium Pay Plan provides for the recognition of significant 1-time contributions occurring no more than 1 year prior to the application. The examples provided are for illustration purposes only and should not be construed as limiting the opportunities.

1. **Applications on Behalf of an Individual Employee**

A contribution on behalf of an individual employee that qualifies for a premium pay award may be for a single occurrence. The following criteria are applied to each instance.

The contribution was:

a. Within 1 year of the employee's last annual performance/pay review date,

b. Developed on the employee's own initiative, and

c. Beyond normal job expectations.

The contribution resulted in:

a. Measurable improvement to the City's image and/or services; and/or

b. Better use of manpower, materials, machinery, methods, and/or money.

Examples of employees who received awards are:

a. A park maintenance worker noted that a certain piece of playground equipment was hazardous when children bunched up. The child using the equipment would be run down by the next child in line. The employee constructed a turnstile in his garage at home, which was activated only after each child had completed the tour on the equipment; thus controlling the use of the equipment to one child at a time. He received a Level 1 award.

b. The City's receptionist found that people who came to City Hall were having difficulty finding various offices even with careful directions, signs, and maps. Citizens were frequently irritated at having to be shuffled from one office to another. After careful research of voluntary organizations—including youth groups and service organizations—the employee approached a senior citizen group because of its maturity and the availability of its members. On her own time she conducted a training program for those who wished to serve as guides for visitors to City Hall. She developed a schedule with prescribed additional duties in much the same way as that found in hospitals. She received a Level 2 award.

c. A Firefighter observed that the department's state-of-the-art training program provided extensive orientation for new Fire personnel to the City, but other new City employees did not benefit from a similar process. Although he was not the department's training officer, he gained permission to modify the training materials and audiovisual aids to have broader application to other departments. During his unassigned duty time and days off he produced a video of the community that ultimately was not only used for new employees but for service organizations as well. He received a Level 2 award.

d. An accountant supervisor in the finance department learned that no tracking system existed for citizen complaints. Frequently, managers who had a need to know, citizens who initiated the complaint, and even City Council Members who reported problems, were uninformed as to how a complaint was handled. Having some computer programming experience, the employee generated a software program that recorded incoming complaints easily and quickly and listed all parties who needed to be informed of the problem, who was assuming accountability, and how the problem was handled. As a result, an intern was assigned to monitor the program and perform a telephone follow-up with the complainant, similar to that conducted by auto service and appliance repair organizations. He received a Level 1 award.

2. **Applications on Behalf of an Employee Group**

A contribution on behalf of an employee group for a premium pay award is for events requiring a "team" approach. The following criteria are applied.

The contribution was:

a. Clearly one in which full participation by each member of the group was maintained and an interdependency existed in a "team" sense; and

b. Beyond normal job expectations.

The contribution resulted in:

a. Measurable improvement to the City's image and/or services; and/or

b. Better use of manpower, materials, machinery, methods, and/or money.

Examples of employee groups that received awards are:

a. A tree maintenance crew had been working together for about 1 year. Each crew member was assigned specific tasks; e.g., trimming, feeding, maintenance, cleaning, equipment operation, etc. The demands for tree trimming were high. The City was receiving numerous citizen requests for special trimming, which in most instances were justified. The crew was being diverted from their regular schedule and getting behind. If one member was ill or on vacation the whole system suffered. One afternoon the equipment broke down and the crew members started talking about the situation. The group decided that if each member of the crew knew all the tasks required, a number of benefits would occur. The crew members began to teach each other their various responsibilities, and rotated assignments. Each member was able to help another who was overloaded or replace someone who was absent. Fatigue and boredom disappeared. The cooperative effort led to systematizing how certain tree varieties were approached. The foreman who supervised several crews found that he was relieved from direct supervision and was able to concentrate on citizen contacts. The crew not only caught up with its schedule, but expanded its operations so that the contract for outside services on the City's parks was not renewed. The crew received a Level 1 award.

b. A task force of representative employees from different departments, whose knowledge of the operations was essential, had been assigned to examine an increase in the City's accident level and develop a program of prevention.

During the prior year, a variety of accidents had occurred that had no connection with each other. The incidents ranged from bruised thighs on desk corners to a tragic fatality in a drainage cave-in. The City's insurance premiums were likely to be affected. The group examined the evidence in some depth. It considered recommending a consultant and rejected the idea realizing that if the trend was to be reversed it would have to be done by employees. Working on that premise, the group decided that the best resources were the employees themselves. The process alone would have some benefit in raising the level of consciousness of employees. The task force began by talking to the victims and then expanded to others. Task force members visited accident sites in the City. The group divided its assignments so that each had an equal workload and responsibility. The conclusion reached was that 80 percent of the accidents in the prior year could have been prevented. The group developed a system for categorizing the information into a manageable format. The task force assigned risk levels to representative work environments. Without identifying specific incidents and people, a monthly memorandum was published in which the number of days without accidents for each level was reported. An award system was developed on a graded basis to recognize employees who had no avoidable accidents. The most effective effort was the requirement that for every accident reported, the surviving victim reviewed the circumstances with other employees who had the same level of exposure. The result was that the following year accidents were reduced to below 20 percent. The City received national recognition for its safety record. The task force received a Level 2 award.

c. A Fire Department company believed that it had perfected its routine for gaining control of a fire scene to such a degree that no other company could beat it on time, performance, and safety. The members had observed companies in other agencies from time-to-time and believed that they did not match their level of accomplishment. The members believed that their high standard could be applied to the benefit of other companies. As a result, the members of the company challenged the other suppression companies to beat their record of performance. The other companies took up the challenge. Routines with simulated conditions were laid out with varying degrees of difficulty. Firefighters from other departments were invited to judge the events during regular shift hours. The initiating company prevailed as the members had expected. Their "secrets" to success were then shared with

the other companies and the visitors. The members had developed a highly sophisticated systematic approach to a fire scene much like a football team facing an opponent which involved a system of signals. Once the signals were called by the Fire Captain, each member knew exactly what the "play" was. The members were able to adjust quickly to changing conditions. The visitors were very impressed not only with the company but with the department. The Fire company received a Level 1 award.

C. **Schedule of Awards**

Awards for a single occurrence are assigned by the Premium Pay Plan Panel and recommended to the City Council in accordance with the following schedule. An award is made based on the value of the contribution to the City, and may be for one of two levels in the judgment and sole discretion of the Panel. All premium pay awards are made in one-time payments. Alternative compensation is available in lieu of direct payment, at the option of the recipient.

1. **On Behalf of an Individual Employee For a Single Occurrence**

Level 1: Ten percent of the prior month's base salary.

Level 2: Twenty percent of the prior month's base salary.

2. **On Behalf of an Employee Group**

Level 1: Five percent of the prior month's base salary for each employee.

Level 2: Ten percent of the prior month's base salary for each employee.

3. **Alternative Compensation Schedule**

Employees may, at their option, choose an alternative form of award to that of pay. Awards may be split between pay and the following options.

Alternatives to premium pay may be paid on the basis of the following ratios. Equivalencies for shift personnel in the Fire service shall be in accordance with established practice.

a. **Deferred Compensation**

One dollar for every dollar awarded.

b. **Vacation**

For nonshift employees, 10 hours for each 5 percent of monthly salary awarded, with a maximum of 40 hours taken per year.

For shift employees, 24 hours and 12 minutes for each 5 percent of monthly salary awarded, with a maximum of 56 hours and 28 minutes taken per year.

c. **Education Expenses**

Two dollars for every dollar awarded for job-related programs in accordance with the City's Education Grant Program, except that there will be no annual maximum.

D. **Premium Pay Plan Application Forms**

The premium pay application form must be completed by employees wishing to be considered for premium pay. An application may be made on behalf of an individual or group of employees. An employee who wishes to recommend another employee or group of employees may use the same form. An employee or a group of employees who have received an award for premium pay for a single occurrence are not precluded from submitting another application for a single-occurrence award at any time. The application is submitted to the employee assigned to staff the Premium Pay Panel for processing. The Panel meets at least quarterly; the date of the next meeting can be obtained from the City Manager Department. Applicants are encouraged to provide as much information as possible. The Panel may request further information and/or conduct interviews accordingly.

ARTICLE 20: CLASSIFICATION AND COMPENSATION PLANS

Each position with the City shall be allocated to its appropriate class on the basis of assigned job duties and responsibilities, so that the same qualifications may be reasonably required for and the same schedule of pay may be equitably applied to all positions in the same classification. Positions may, from time to time, be reclassified on the basis of changes in or a reevaluation of the duties and responsibilities of the positions.

The official compensation plan for the City shall provide for a 5-step salary range. The difference between steps within a salary range shall be 5 percent, but there is no specified differential between salary ranges.

ARTICLE 21: MERIT SYSTEM

In keeping with sound public personnel practice, employment in the City shall be based on merit and fitness, taking into account such factors as individual performance, ability, aptitude, experience, training, education, character, personality, and physical fitness as the basis for selection and promotion. Original appointments are normally based on the results of open competitive examinations, which may be written, oral, physical, practical, or a combination thereof. (Merit systems principles—such as competitive examinations, grievance procedures, etc.—may be waived at the sole discretion of the City Manager in the case of part-time or contractual employees.)

The City hereby reaffirms its commitment to fair employment practices related to factors affecting ability to perform and the employment and advancement of persons in protected classes.

ARTICLE 22: APPOINTMENTS AND PROMOTIONS

A. Appointments

Appointments to vacant positions within the City shall be based on merit and fitness, as determined by competitive examinations and/or personal evaluations. The City Manager or designated representative shall coordinate the recruitment and selection procedures in cooperation with the departments involved. An eligibility list of qualified candidates shall be established.

B. Promotions

Vacancies in positions above the entry level may be filled by promotion whenever one or more qualified candidates are available. This shall not, however, be construed to prohibit lateral entry to a promotional position, should an individual outside the City possess higher qualifications than City employees who are eligible for the position. Qualifications may be determined by competitive examination—either open or closed—or by evaluation of the department head. When qualifications are determined by competitive examination, an eligibility list shall be established with the candidates placed according to their total rating in the examination.

The minimum salary to be received by a person promoted from within the City shall be the next higher step of the appropriate new salary range above the employee's base salary immediately prior to promotion; but the salary increase shall in no event be less than 2 1/2 percent above the employee's previous base salary. Employees who have received internal promotions, if assigned to the lowest step of the new range offering a minimum 2 1/2 percent salary increase, shall be eligible for a step increase upon successful completion of 6 months in the new position. Promotions to a step higher than specified by a 2 1/2 percent increase may be made if extenuating circumstances exist, but only with the recommendation of the department head and prior approval of the City Manager. Subsequent pay step increases, however, will not become effective in this instance until 1 year from the date of promotion, and this date shall also become the employee's pay review date for purposes of eligibility for future merit increases. (For additional information on pay increases and probationary requirements after a promotion, also refer to *Article 7 Compensation, Section 7.03. Salary Advancement,* and *Article 23: Probation*.)

Based on the recommendation of the department head, the City Manager makes an appointment/promotion from among the established list of qualified candidates. All appointments for either original employment or promotion must be reviewed by the Personnel Committee.

Eligibility lists, unless exhausted, shall be valid for a minimum of 6 months, with the option of being extended upon the recommendation of the department head and with the approval of the City Manager. In the absence of an eligibility list and in cases of

appointments and promotions where time is a factor, the City Manager may make a provisional appointment to a position for a period not to exceed 6 months or until an eligibility list is established.

The City may also establish programs—including trainee programs—designed to attract and utilize persons with minimal qualifications, but with potential for development, in order to provide career development opportunities among members of disadvantaged groups, handicapped persons, and veterans. Such programs may provide for regular appointment upon the satisfactory completion of the training period without further examination.

ARTICLE 23: PROBATION

Newly appointed, promoted, and reinstated employees shall be subject to a 1-year probationary period. An employee shall pass probation upon the recommendation of the department head, with approval of the City Manager and concurrence of the Personnel Committee. Time in a "trainee" position will not be counted as part of the probationary period when taken out of "trainee" position and placed in a "regular" position.

The probationary period may be extended for up to 6 months, upon the recommendation of the department head and with the consent of the City Manager. If a probationary period is extended, the employee shall be notified of such extension, and the reason(s) for such extension, in writing, prior to the expiration of the original probationary period.

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 7: Compensation, Section 7.03. Salary Advancement*, and *Article 26: Performance Appraisal).*

The work and conduct of probationary employees shall be subject to review and evaluation and, if found to be unacceptable, the probationer may be dismissed by the department head with the consent of the City Manager. Such dismissals while an employee is on probation, or extensions of the probationary period, shall not be subject to further review or appeal. Employees on probation in promotional positions may be demoted to their previous positions without the right of appeal, but may not be terminated without the right of a hearing as described under the section entitled "Disciplinary Action."

ARTICLE 24: TRANSFER

A change of an employee's place of employment from one department to another, or a lateral change of position in a job class or comparable job class on the same salary range, shall be considered a transfer. The purpose of a transfer is to facilitate adjustment of the employee, to improve placement, to provide opportunity to prepare for advancement, to eliminate unsatisfactory relationships between employees, or as a result of a reduction in force.

Transferred employees shall retain all accrued benefits, including sick leave and vacation.

Transfers shall require the approval of the appointing authority involved and the City Manager. Such a transfer may be initiated by request of the employee to the City Manager, by the City Manager, or by the department head or supervisor.

ARTICLE 25: ASSIGNMENT

Section 25.01. Temporary Employees

Employees may be temporarily assigned to perform specialized additional tasks listed in the class specification. The assigned employee must meet or exceed any additional minimum qualifications for the assignment.

Section 25.02. Shift Staffing Level

Any change in the current permanent assigned staffing levels of shift employees shall be cause for immediate meet and confer by and between the City and MFFA regarding such change.

ARTICLE 26: PERFORMANCE APPRAISAL

Performance appraisal is the process of evaluating and recording the performance of each employee. The appraisal should be based upon results shown by the employee in carrying out assigned duties and responsibilities and should be used to help the employee to be aware of and improve personal performance. The performance appraisal is best used:

1. To maintain a high level of efficiency or assist in raising efficiency by commending the employee.

2. To inform the employee of good performance, which may, in turn, lead to promotion and higher pay.

3. To indicate to the employee weak points and suggest the proper means of raising the employee's work performance to the acceptable level.

4. To encourage better working relationships and mutual understanding by letting the employee know where the employee stands with relation to the employee's supervisor's appraisal.

The department head, together with other supervisors familiar with the employee's work, is responsible for proper preparation of the performance appraisal. The supervisor should carefully consider each item on the appraisal sheet separately, in light of the column definition, and select the column that best describes the work of the employee in each category.

Performance appraisal forms will be originated by the Administrative Services Department. Performance appraisals are to be prepared at the end of the probationary period, annually, or more often if the department head so desires. Prior to reaching Step "E," each City employee shall be evaluated at least once a year, normally on the employee's anniversary or pay review date.

A. Shift Employees

If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 15 consecutive shifts, the evaluation period shall be automatically extended for a similar period of time; provided, however, the department head/City Manager may evaluate the employee's past performance and submit to the City Personnel Committee a separate, written recommendation justifying/granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 30 consecutive shifts, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Article 7: Compensation, Section 7.03. Salary Advancement*).

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 7: Compensation, Section 7.03. Salary Advancement,* and *Article 23: Probation*).

B. **Nonshift Employees**

If, for whatever reason, an employee not on probation is unable to perform his/her assigned duties because of absence from work for a period in excess of 45 consecutive calendar days, the evaluation period shall be automatically extended for a similar period of time; provided, however, the department head/City Manager may evaluate the employee's past performance and submit to the City Personnel Committee a separate, written recommendation justifying/granting a merit increase and not extending the evaluation period for a period of time equal to the period of absence. If the period of absence exceeds 90 consecutive calendar days, the employee's performance evaluation and anniversary date will be extended for a similar period of time (also see *Article 7: Compensation, Section 7.03. Salary Advancement*).

If, for whatever reason, an employee on probation is unable to perform his/her assigned duties because of absence from work for any period of time, his/her probation period, merit increase, and anniversary date shall be extended for the same length of the absence (also see *Article 7: Compensation, Section 7.03. Salary Advancement,* and *Article 23: Probation*).

All full-time employees on Step "E" of their salary ranges will be eligible to receive detailed 3-year performance appraisals as an alternative to the normal comprehensive annual appraisals. Between evaluations, a shortened appraisal form or memorandum (indicating the employee's performance continues to meet and/or exceed expectations) will be submitted. If an employee's performance falls below acceptable levels, however, detailed annual appraisals will be completed until an acceptable level of performance is maintained for 2 or more consecutive years. Annual evaluations may also be completed for employees achieving major accomplishments, or whose performance shows significant improvement.

These standards are minimum and appraisals may be required more frequently. Detailed evaluation procedures shall also be subject to department rules and regulations. Upon such evaluation, a completely prepared appraisal form is to be given to the employee with comments to aid the employee in understanding the evaluation.

The performance appraisal shall be discussed with the employee to provide an awareness of those points on which performance is worthy of commendation, as well as those points on which improvement is needed. During the interview, as well as on the performance appraisal form, special attention should be given to discussing specific ways in which the employee can improve job performance.

Performance appraisal forms are to be signed by the employee, the rater, and the department head. The original, signed appraisal form is forwarded to the City Manager and Personnel Committee for review, and then is retained in the employee's official personnel file. A copy is given to the employee.

ARTICLE 27: TERMINATION OF EMPLOYMENT

An employee of the City may terminate employment voluntarily, either by resignation or retirement, or such termination may occur involuntarily as a result of administrative action for disciplinary reasons, failure to meet the minimum requirements of the job, or due to a reduction in workload or funds. Such termination may also be due to organizational adjustments. In addition, an employee absent from the job for 3 consecutive working days or 3 consecutive shifts without authorization shall be considered as automatically resigned from City employment.

In the case of voluntary resignation or retirement, the City requests that the employee give 2 weeks written notice to the department head. In the case of involuntary termination for disciplinary reasons or lack of adequate performance, the department head or authorized representative shall give the employee written notice, citing the reasons for such termination, and the employee shall have the right to appeal in the manner provided for in the section of this MOU entitled, "Disciplinary Action." Except in those instances where an employee's performance is so egregious as to warrant immediate termination, termination for disciplinary reasons that relate to employee performance (e.g., inefficiency, incompetence, or inability to perform required work), shall be preceded by adequate discussion, warning, and corresponding opportunity for the employee to improve. In the case where immediate termination is considered necessary, an employee shall be immediately terminated, with such action subject to the City's appeal process. Terminated employees shall be required to comply with Section D of the "Layoff Procedure."

An employee who is terminated will not receive a final pay check until the employee has turned in all City-owned equipment, including City identification card; has cleared with the department head the disposition of any clothing, tools, or other working materials that have been provided by the City; and has completed all exit interviews and forms which may be required by the City. The exit interview and appropriate forms shall be made available to employees prior to the termination date.

In the event of termination resulting from organizational changes, the employee shall receive at least a 14-calendar-day written notice and shall also have the rights established in the sections of this MOU entitled "Layoff Procedure" and "Disciplinary Action," as applicable. Termination may result from changes in duties or organization, abolition of position, or completion of work for which employment was made.

Newly appointed probationary employees are not subject to the provisions of this section and may be terminated without the right of appeal. Promoted employees not successfully completing the probationary period may be returned to their previously held City position without the right of appeal, but may not be terminated without the right of a hearing, as described under section entitled "Disciplinary Actions."

To the extent permitted by law, any employment-related actions or suits against the City must be brought by the employee within 6 months of the date he/she terminates employment.

ARTICLE 28: REINSTATEMENT

An employee who terminates employment in good standing may be reinstated to a vacant position in the former job class within 1 year of the termination date without requalifying for employment by competitive examination. If the termination date is greater than 1 year, the employee may be required to qualify through competitive examination.

ARTICLE 29: LAYOFF PROCEDURE

Whenever in the judgment of the City Council or City Manager it becomes necessary, due to the lack of work, lack of funds, or other economic reasons, or because the necessity for a position no longer exists, the City Council or City Manager may abolish any position or employment, and the employee holding such position or employment may be laid off or demoted without disciplinary action and without the right of appeal. The City will notify association representatives, within a reasonable period of time, of any potential layoffs or work furloughs in order that potential alternatives to layoffs or work furloughs may be discussed and evaluated. In addition, the following layoff procedures are intended to minimize the impact of staff reduction on City services and ensure that employees are treated fairly in the processing of layoffs.

A. The City shall give employees proposed for layoff not less than 14 calendar days advance written notice of separation and the reason therefor. No regular full-time employee shall be separated under the layoff procedure from a department while emergency, seasonal, probationary, part-time, provisional, or temporary employees are employed and serving in the same classification in the department.

B. In each class within a department, employees shall be laid off according to employment status in the following order: temporary, provisional, probationary, and regular. Temporary, provisional, and probationary employees shall be laid off according to the needs of the service as recommended by the department head and decided by the City Manager. In cases where there are two or more regular employees in the class from which the layoff is to be made, the following criteria are the determining factors:

    1. Employees within each classification shall be laid off based upon the last rating in the class, provided such rating has been on file at least 30 calendar days prior to layoff as follows: first, all employees having ratings of improvement needed; second, all employees having ratings of satisfactory; third, all employees having ratings of very good; fourth, all employees having ratings of outstanding.

    2. Employees within each classification shall be laid off based upon valid indicators of ability to well serve the City, including but not limited to seniority, safety record on the job, amount of sick leave used during the immediate two past fiscal years, etc.

C. Layoffs and demotions which result from a reduction in force shall be made without regard to an employee's race, color, marital status, national origin, religion, sex, age, citizenship, or physical handicap.

D. An employee who is laid off shall not receive a final pay check until the employee has turned in all City-owned equipment, including City identification card, and has cleared with the department head the disposition of any clothing, tools, or other

working materials that have been provided by the City, and has completed all exit interviews and forms which may be required by the City. The exit interview and appropriate forms shall be made available to employees prior to the layoff termination date.

E. Employees shall not be terminated as a result of a layoff before they have been made a reasonable offer of reassignment if such offer is immediately possible.

F. An employee designated to be laid off may bump into any vacant position available in the same class elsewhere in the City. If no such position exists, the employee may bump into the next lower classification within the same department, provided that the employee has previously held regular status in such classification with the City, and provided that the employee notifies the City Manager in writing of the employee's intent to exercise the bumping rights at least 10 calendar days prior to the proposed layoff effective date; otherwise, bumping rights shall be waived and barred to the employee.

Thereafter, an employee may bump into any previously held position in the City provided the conditions noted above are met. An employee who is bumped shall be laid off according to the procedures outlined in this section and shall be considered laid off for the same reason as the person bumping and shall in the same manner be eligible to bump to a position in a class within the City in which the employee formerly held a regular position. Employees who have bumped down to a lower class due to a reduction in force shall not be laid off from the lower class until all employees in the lower class, not previously affected by a layoff, have been laid off.

G. The intent of this paragraph is to avoid use of the layoff procedure by providing for voluntary transfers prior to layoffs. An employee in a classification in which a position has been designated for elimination may request a transfer to a vacant position in the same or a lower classification for which the employee is qualified. Such transfer shall be subject to approval by the City Manager. In cases where the transfer was necessitated by said proposed job elimination, the service time in the position to which the employee has transferred shall be credited to service time in the position from which the employee transferred. The salary step and range assigned to the transferred employee shall be in accordance with the City Personnel Manual and the salary plan.

H. The City Manager may approve the appointment of an employee who is to be laid off to an existing vacancy in a lower class for which the employee is qualified without requiring an examination, provided the department head so recommends.

I. The names of regular employees who have been laid off or bumped down due to reduction in force shall be placed on an appropriate layoff reemployment list according to date separated or bumped down and shall be eligible for reemployment. The last employee laid off or bumped down shall be the first employee on the list, with other employees listed in sequential order thereafter. Each employee on the

layoff reemployment list shall remain on that list for 1 year, at which time the list expires unless extended by the City Manager. Names of employees not responding to written notification of an opening within 10 working days shall be removed from the reemployment list. The City Manager can extend the active period of the reemployment list or individual employee's eligibility on such list for a 6-month period as determined to be in the best interests of the City.

J. Notice of recall from layoff shall be by return-receipt-requested mail and shall specify the date for reporting to work, which shall not be more than 21 calendar days from the date the notice is received. Notice shall be deemed to have been received when sent to the last known address on file with the City and attempted delivery or delivery is certified by the Postal Service. Upon receiving notice, the person on layoff shall have 5 calendar days to accept or decline the recall opportunity. An employee who fails to respond within the 5 calendar days, refuses recall, or fails to report on the prescribed date within the 21 calendar days maximum thereby waives all further right to recall and reinstatement as an employee. Where recall is declined, the City will proceed to the next name on the reemployment list and follow the same notice and response procedure. This process will continue through the list until recall needs are met on the list or the list is exhausted.

K. A person appointed from a reemployment list must serve a new probationary period if recall from such list occurs more than 90 calendar days after the effective date of layoff. The new probationary period in such circumstances shall be 6 months.

L. Reemployed employees shall receive the following:

1. Retention of full-time service seniority accrued at the date of layoff.

2. The salary for the classification in effect as of the date of return, at the same step as the date of layoff.

3. The accrual rate of vacation and sick leave in effect for the employee's seniority level and class at the time of rehire.

4. All the benefits or programs in effect at the time of layoff shall be forfeited unless they are still applied to the classification or salary range at the time of rehire or provided to new hires as of that date.

M. An employee who elects to resign in lieu of layoff, or while laid off, shall forfeit all rights to reemployment and is entitled only to those rights related to severance from City employment.

ARTICLE 30: DISCIPLINARY ACTION

A. Disciplinary actions are construed to include but are not limited to dismissal, demotion, reduction in salary, suspension, reprimand, or warning. Causes for disciplinary action against any employee may include, but shall not be limited to, the following:

1. Insubordination

2. Dishonesty

3. Being Under the Influence of Intoxicants (Including Alcohol), Narcotics, or Controlled Substances While on Duty or City Property

4. Unlawful Use of Narcotics or Drugs

5. Bringing Unauthorized Intoxicants, (Including Alcohol), Narcotics, or Controlled Substances into, or Consuming them in City Facilities, on City Property, and/or While on Duty

6. Discourteous Treatment to the Public and/or Other Employee(s)

7. Misuse or Abuse of City Property or Equipment

8. Violation of City or Departmental Policies, Ordinances, Rules, and Regulations

9. Neglect of Duty

10. Carelessness and/or Inattention to Duty

11. Failure to Prepare and/or Maintain Prescribed Records (e.g., Concealing, Misusing, Mutilating, Falsifying, or Removing)

12. Theft of City Property or Property of Others

13. Incompetency

14. Unexcused or Excessive Absences (Including Tardiness)

15. Conviction of a Felony or of a Misdemeanor Involving Moral Turpitude

16. Falsification of any City Report or Record (Including Application Form)

17. Outside Employment Which is Incompatible With the Employee's Position and Which has not been Specifically Authorized by the Department Head

18. Other Acts Which are Incompatible With Service to the Public—Including Any Conduct or Behavior, Either On or Off Duty, Which Causes Discredit or Would Reasonably Tend to Cause Discredit to Fall Upon the City, its Officers, Agents, or Departments

B. The City Manager, department head, or other authorized person (depending on departmental regulations), may initiate disciplinary action against any employee supervised. The normal procedure for disciplining an employee shall progress in the following order:

1. **Warning**

   Telling an employee that, unless the employee's behavior or productivity improves, disciplinary action will be taken. The warning may be given in a private interview. A record of each official warning will be kept by the department.

2. **Reprimand**

   A formal record of an interview with an employee who has been informed that more serious disciplinary action will be taken unless there is immediate and permanent improvement in the employee's productivity and/or behavior. A copy of this record of reprimand must be given to the employee, a copy retained by the department, and a copy sent to the City Manager Department for inclusion in the employee's official personnel file.

3. **Suspension**

   The temporary separation of an employee from City service without pay. The employee must be interviewed by the department head or designated representative and served with a written notice of suspension. A copy of the suspension notice should be retained by the department and a copy sent immediately to the City Manager Department for inclusion in the employee's official personnel file. The City Manager shall also be notified of any suspension.

4. **Salary Reduction**

   A reduction in pay from one step to another, which is not below the minimum rate established for the position by the salary plan. The employee must be interviewed by the department head or

designated representative and served with a written notice of reduction. The reduction in pay of any regular employee requires the approval of the City Manager. A copy of the notice of reduction shall be sent immediately to the City Manager Department for inclusion in the employee's official personnel file.

5. **Demotion**

A reduction from one class to another class for which a lower maximum rate of compensation is established. The employee must be interviewed by the department head or designated representative and served with a written notice of demotion. The demotion of any regular employee requires the approval of the City Manager. A copy of the notice of demotion shall be sent immediately to the City Manager Department for inclusion in the employee's official personnel file.

6. **Dismissal**

The termination of a regular employee from employment. The employee must be interviewed by the department head or designated representative and served with a written notice of dismissal. The dismissal of any employee requires the advance approval of the City Manager. A copy of the notice of dismissal shall be sent immediately to the City Manager Department for inclusion in the employee's official personnel file.

This procedure will afford due-process-of-law protection to the employee. One or several of these steps may be eliminated from the disciplinary process, depending upon circumstances and the severity of the act that warrants discipline.

C. **Notification of Disciplinary Action/Predisciplinary Review (Skelly Rights)**

Discipline may not be implemented prior to fully affording an employee the written notice-of-intent-to-discipline memorandum and opportunity to respond orally or in writing (predisciplinary review) pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194* (item *C.2. Disciplinary Actions Other than Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less,* below)*, e*xcept for the following: (1) under extraordinary circumstances requiring immediate removal (e.g., imminent threat to health or safety of the employee, other employees, or the public); and (2) in the case of warnings, reprimands, and suspensions without pay of 56 shift hours or 40 hours or less (item *C.1. Warnings, Reprimands, and Suspensions Without Pay of 40 Hours or Less*, below).

1. **Warnings, Reprimands, and Suspensions Without Pay of 56 Shift Hours or 40 Hours or Less**

A regular employee against whom the disciplinary action of oral warning, written reprimand, or suspension without pay of 56 shift hours or 40 hours or less is instituted shall be given written notice (via a written summary of the oral-warning meeting, a written reprimand, or a written notice of suspension, whichever applies) from the employee's supervisor. These three disciplinary actions may be implemented immediately and do not require a 7-day notice-of-intent memorandum. Any documents or materials giving rise to a disciplinary action will be identified in the supervisor's written notification of disciplinary action (if voluminous, the documents will be made available for the employee's inspection upon the employee's request or copies thereof will be provided with the notice when there are only a few).

The written summary of the oral-warning meeting, the written reprimand, and the written notice of suspension (whichever applies) will inform the employee of the following items: (1) the ground or grounds for the disciplinary action; (2) the employee's acts or omissions that form the basis for the discipline; and (3) his/her right to respond to the department head either orally (in a disciplinary review meeting) or in writing within 7 calendar days of receiving the supervisor's written notice of discipline. Although a disciplinary review meeting before the department head is not designed to be a formal evidentiary hearing, the employee may be represented by legal counsel or other individual of his/her choice at such meeting.

A regular employee against whom the disciplinary action of oral warning, written reprimand, or suspension without pay of 56 shift hours or 40 hours or less is instituted has the choice of two options.

Option I

An employee may elect to waive a disciplinary oral or written review, if desired. If an employee does not respond to the department head either orally (in a disciplinary review meeting) or in writing within 7 calendar days of receiving the supervisor's disciplinary action, the disciplinary action taken by his/her supervisor becomes final. The employee's Skelly rights (as provided in item *C. Notification of Disciplinary Action/Prediscipliinary Review (Skelly Rights)*, above) and appeal rights (as provided in item *D. Right of Appeal*, below), are deemed waived and the process is concluded.

Option II

If an employee does respond to the department head either orally (in a disciplinary review meeting) or in writing within 7 calendar days of the supervisor's disciplinary action, the department head, as he/she deems

appropriate, shall implement, modify, or not implement the disciplinary action based upon his/her review of available pertinent written and oral input and shall notify the employee of said decision. An employee who is subject to a disciplinary action may submit an appeal within 10 calendar days following receipt of the department head's determination, as provided in item *D. Right of Appeal*, below.

2. **Disciplinary Actions Other than Warnings, Reprimands, and Suspensions Without Pay of 56 Shift Hours or 40 Hours or Less**

A regular employee against whom disciplinary action (other than warnings, reprimands, or suspensions without pay of 56 shift hours or 40 hours or less which may be implemented immediately and do not require a 7-day notice-of-intent memorandum) is instituted shall be given a written notice-of-intent memorandum from the employee's supervisor at least 7 calendar days prior to the effective date of the disciplinary action. Any documents or materials giving rise to a disciplinary action will be identified in the supervisor's written notification of disciplinary action (if voluminous, the documents will be made available for the employee's inspection upon the employee's request or copies thereof will be provided with the notice when there are only a few).

The written notice-of-intent-to-discipline memorandum will inform the employee of the following items: (1) intended disciplinary action; (2) the ground or grounds therefore; (3) the employee's acts or omissions that form the basis for the proposed discipline; and (4) his/her right to respond to the department head either orally (in a predisciplinary review meeting) or in writing prior to the intended effective date of the disciplinary action pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194,* within 7 calendar days of the supervisor's written notice-of-intent-to-discipline memorandum. Although a predisciplinary review meeting before the department head is not designed to be a formal evidentiary hearing, the employee may be represented by legal counsel or other individual of his/her choice at such meeting.

A regular employee against whom disciplinary action (other than oral warning, written reprimand, or suspension without pay of 56 shift hours or 40 hours or less) is instituted has the choice of two options.

Option I

An employee may elect to waive the above predisciplinary oral or written review, if desired. If an employee does not respond to the department head either orally (in a predisciplinary review meeting) or in writing pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194,* within 7 calendar days of the supervisor's written notice-of-intent-to-discipline memorandum, the disciplinary action proposed by his/her supervisor becomes final. The employee's Skelly rights (as provided in item C*. Notification of Disciplinary Action/Predisciplinary*

Review (Skelly Rights), above) and appeal rights (as provided in item *D. Right of Appeal*, below), are deemed waived and the process is concluded.

Option II

If an employee does respond to the department head either orally (in a predisciplinary review meeting) or in writing pursuant to *Skelly v. State Personnel Board [1975] 15 Cal.3d 194,* within 7 calendar days of the supervisor's written notice-of-intent-to-discipline memorandum, the department head, as he/she deems appropriate, shall implement, modify, or not implement the disciplinary action based upon his/her review of available pertinent written and oral input and shall notify the employee of said decision. An employee who is subject to a disciplinary action may submit an appeal within 10 calendar days following receipt of the department head's determination, as provided in item *D. Right of Appeal*, below.

Nothing contained herein shall be construed to waive any rights an employee may have pursuant to California Government Code Section 3250, *et seq.* of the Firefighters Procedural Bill of Rights Act (FBOR).

D. **Right of Appeal**

Employees shall have the right to appeal a disciplinary action taken under this section, except for warnings. There is no right of appeal for a warning. An appeal of a punitive action (i.e., dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment) will be processed in accordance with *Article 31. Appeal of Punitive Action*.

ARTICLE 31: APPEAL OF PUNITIVE ACTION

A. Statement of Purpose

The following appeal procedures are adopted pursuant to California Government Code Section 3254.5 of the Firefighters Procedural Bill of Rights Act (FBOR) and shall apply to any administrative appeal of a punitive action that is required to be afforded to a "firefighter" under the Act. Only "firefighters" (as defined below) are afforded the rights delineated in this article.

B. Definitions

1. The term "firefighter" means a regular employee who is considered a "firefighter" under Government Code Section 3251(a): i.e., "any firefighter employed by a public agency, including, but not limited to, any firefighter who is a paramedic or emergency medical technician, irrespective of rank." The FBOR and, therefore, Article 31 do not apply to an employee "who has not successfully completed the probationary period established by his or her employer as a condition of employment."

2. The term "punitive action" means any action defined by Government Code Section 3251(c): i.e., "any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment."

C. Appeal of a Punitive Action Involving Written Reprimand; Transfer for Purposes of Punishment; and Demotion, Suspension, or Reduction of Pay of 56 Shift Hours or 40 Hours or Less

Pursuant to California Government Code Section 11445.2, the following informal hearing procedure shall be utilized for an appeal by a regular employee of a punitive action involving a written reprimand; transfer for purposes of punishment; and demotion, suspension, or reduction of pay of 56 shift hours or 40 hours or less.

1. Notice of Appeal

Within 10 calendar days of receipt by an employee of notification of punitive action from the department head (as set forth in Article 30.C.), the employee must notify the City Manager in writing of his/her intent to appeal the punitive action (as set forth in Article 30.D.). The notice of appeal shall specify the action being appealed and the substantive and procedural grounds for the appeal.

2. **Presiding Officer**

In an informal hearing, the City Manager or his/her designee shall be the presiding officer. The City Manager or his/her designee shall conduct the informal hearing in accordance with these procedures (as set forth in Article 31.C.). The determination of the City Manager or his/her designee shall be final and binding.

3. **Burden of Proof**

The City shall bear the burden of proof at the hearing.

a. If the action being appealed does not involve allegations of misconduct against the employee, the limited purpose of the hearing shall be to provide him/her the opportunity to establish a record of the circumstances surrounding the action. The City's burden of proof will be satisfied if the City establishes by a preponderance of the evidence that the action was reasonable. The City's burden of proof may be satisfied even though reasonable persons may disagree about the appropriateness of the action.

b. If the punitive action involves charges of misconduct, the City shall have the burden of proving by a preponderance of the evidence the facts that form the basis for the charge and that the punitive action was reasonable under the circumstances.

4. **Conduct of Hearing**

a. The formal rules of evidence do not apply, although the presiding officer will have discretion to exclude evidence that is incompetent, irrelevant, or cumulative, or the presentation of which will otherwise consume undue time.

b. The parties may present opening statements.

c. The parties may present evidence through documents and testimony.

1. Witnesses shall testify under oath.

2. Subpoenas may be issued pursuant to Government Code Section 11450.05 through Section 11450.50.

3. Unless the punitive action involves a loss of compensation, the parties will not be entitled to confront and cross-examine witnesses.

d. Following the presentation of evidence, if any, the parties may submit oral and/or written closing arguments for consideration by the presiding officer.

5. **Recording of the Hearing**

If the punitive action involves the loss of compensation, then the hearing shall be stenographically recorded by a certified court reporter. If the punitive action does not involve the loss of compensation, then the hearing may be tape recorded. The per diem cost of the court reporter shall be equally borne by the parties. The cost to receive a transcript of the hearing shall be borne by the party requesting the transcript.

6. **Representation**

An employee may be represented by an Association representative or an attorney of his/her choice at all stages of the proceedings. All costs associated with such representation shall be borne by the employee.

7. **Decision**

The decision shall be in writing pursuant to Government Code Section 11425.50. The decision shall be served by first class mail, postage prepaid, upon the employee as well as his/her attorney or representative, shall be accompanied by an affidavit or certificate of mailing, and shall advise the employee that the time within which judicial review (filing a petition for a writ of mandate) of the decision may be sought is governed by Code of Civil Procedure Section 1094.6.

D. **Appeal of a Punitive Action Involving Discharge, Demotion, Suspension, or Reduction of Pay for More than 56 Shift Hours or 40 Hours**

1. In those instances where the procedures in Government Code Section 11400, *et seq.* are inapplicable to an administrative appeal (i.e., a punitive action involving a discharge, demotion, suspension, or reduction of pay for more than 56 shift hours or 40 hours), the administrative appeal shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the California Government Code.

2. **Notice of Discipline as Accusation**

The final notice of discipline that is issued at the conclusion of predisciplinary procedures shall serve as the accusation as described in Government Code Section 11500, *et seq.* The notice shall be prepared and served in conformity with the requirements of Government Code Section 11500, *et seq.*

a. Pursuant to Government Code Section 3254(f), the discipline shall not be effective sooner than 48 hours of issuance of the final notice of discipline.

b. The notice shall be prepared and served in conformity with the requirements of Government Code Section 11500, *et seq.* The notice shall include a post card or other form entitled Notice of Defense which, when signed, will acknowledge service of the accusation and constitute notice of defense under Government Code Section 11506.

c. The accusation shall include or be accompanied by a statement to employee (respondent) stating that the employee may request an appeal hearing by filing a Notice of Defense form as provided in Government Code Section 11506 within 15 calendar days after service of the accusation and that failure to do so will constitute a waiver of the employee's right to a hearing. The statement to employee shall be prepared in conformity with the requirements of Government Code Section 11505.

d. A copy of Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code shall be provided to the employee concurrently with the notice of discipline.

3. **Administrative Law Judge**

Pursuant to California Government Code Section 11512, appeals shall be heard by the City Council or an administrative law judge. If the City Council hears the appeal, an administrative law judge will preside over the hearing, rule on the admission and exclusion of evidence, and advise the City Council on matters of law. The City Council shall exercise all other powers relating to the conduct of the hearing.

4. If an appeal hearing is heard by an administrative law judge, he/she shall advise the City Council with an advisory decision. The City Council shall make the final decision.

5. **Time and Place of Hearing**

Pursuant to Government Code Section 11508, a hearing shall be conducted at City Hall or another location designated by the City Council, at a time to be determined by the City Council.

6. **Notice of Hearing**

   Notice of the hearing will be provided to the parties pursuant to Government Code Section 11509.

7. The burdens of proof and production of evidence shall be borne by the City. The standard of proof shall be by a preponderance of the evidence.

8. Judicial review of the City Council's decision may be had pursuant to Government Code Section 11523 (employee must file a petition for a writ of mandate with the superior court in accordance with the provisions of Code of Civil Procedure Section 1094.5).

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ARTICLE 32: COMPLAINT/GRIEVANCE PROCEDURES

A. **Statement of Purpose**

1. To promote improved employer-employee relationships.

2. To afford employees a systematic means of obtaining expeditious resolution of problems (other than punitive actions) after every reasonable effort has failed to resolve them through discussions.

3. To provide that grievances shall be settled as near as possible to the point of origin.

4. To provide that the grievance procedure shall be as informal as possible.

B. **Definitions**

1. **Days**

Calendar days unless otherwise stated.

2. **Employee**

Any regular, full-time person employed by the City, except those persons elected by popular vote.

3. **Representative**

A person who at the request of the employee or supervisor is invited to participate in the grievance conferences.

C. **Complaint Procedure**

1. A complaint is an allegation or charge by an employee that a wrong has been committed.

2. **Steps in Procedure**

a. An employee who has a complaint should first try to resolve it through discussion with the employee's immediate supervisor without undue delay, but in no event later than 15 calendar days after the wrong has been committed.

b. If the action taken by his/her supervisor does not satisfy the employee, the employee may take his/her complaint to successive levels of

supervision within the applicable department up to and including the City Manager.

D. **Grievance Procedure**

1. A grievance is a formal written allegation by an employee that the employee has been adversely affected by a violation of a specific provision(s) of this MOU. Actions to challenge or change the policies of the City as set forth in the rules and regulations or administrative regulations and procedures, so long as these are consistent with the terms of the MOU, must be undertaken under separate legal processes. Other matters for which a specified method of review is provided by law are not within the scope of this procedure.

2. **Informal Meeting**

An employee who has a grievance should first try to resolve it through discussion with his/her immediate supervisor. Such discussion shall occur as soon as possible, but in no event later than 15 calendar days after the occurrence of the act or omission giving rise to the grievance.

3. **Formal Steps**

a. If the grievance is not resolved at the informal level (see above) the employee may submit the grievance, in writing, to his/her department head within 10 calendar days after the meeting with the supervisor. The grievance shall include the specific section(s) of the MOU alleged to have been violated, a clear, concise statement of the nature of the grievance, and the remedy sought.

b. The department head or designee shall, within 10 calendar days of receipt of the grievance, provide the employee with an opportunity to discuss the grievance. The department head or designee shall render a determination within 10 calendar days after receiving the appeal, or if a meeting is held with the grievant, within 10 calendar days after the date of such meeting.

c. In the event the grievance is not resolved at the department head level, the employee may submit an appeal to the City Manager within 10 calendar days following receipt of the department head's determination.

d. The City Manager or designee shall provide the employee with an opportunity to discuss the grievance within 10 calendar days of receipt of the appeal. The City Manager or designee shall render a determination within 10 calendar days after receiving the appeal, or if a meeting is held with the grievant, within 10 calendar days after the date of such meeting.

4. **Advisory Arbitration**

a. If the employee is not satisfied with the determination of the grievance by the City Manager, the employee (or Association) may submit the grievance to advisory arbitration. If the employee (or Association) determines to pursue the grievance to advisory arbitration, he/she must so notify the City Manager within 10 calendar days after the date of the City Manager's decision. In the event that the employee (or Association) makes a timely request for arbitration, the parties shall request a list of arbitrators from the California State Conciliation Service or any other entity the parties mutually agree upon.

b. The arbitrator shall be selected by the following procedure: The employee (or Association) and the City's representative shall select the arbitrator from the list by eliminating names until one name remains. The one remaining name shall be the arbitrator.

c. Once the arbitrator has been selected, hearings shall commence at the convenience of the arbitrator. The jurisdiction of the arbitrator shall be confined to a determination of the facts and the interpretation of the provisions of the MOU. The arbitrator will have no power to add to, subtract from, or modify the terms of this MOU, or the ordinances, written policies, rules, regulations, and/or procedures of the City.

d. Each party shall bear the full costs for its representation in the arbitration. The cost of the arbitrator shall be divided equally between the City and the employee (or the Association). If either party requests a transcript of the proceedings, that party shall bear the full costs for that transcript. If the parties mutually request a transcript, the total cost of the transcript shall be divided equally between the parties.

e. After the conclusion of the hearing and any post-hearing briefs which may be filed, the arbitrator shall render an advisory decision, in writing, to the parties. If either party is dissatisfied with the arbitrator's decision, the party may appeal the matter to the City Council for its review. Such appeal must be in writing and set forth the basis for the appeal. The appeal must be submitted within 10 calendar days following receipt of the arbitrator's decision.

f. If the grievance is appealed to the City Council, the City shall provide the City Council with a copy of the record, including any transcript, if any, made of the hearing, for City Council's review. Both parties shall have the right to present written argument in support of their positions. Such written argument shall be presented to the City Council not less than 5 days prior to any scheduled meeting. Both parties shall also have the right to present oral arguments in support of their positions. The lengths of oral arguments shall be determined by the City Council. Procedures for consideration of

the appeal shall be determined by the City Council. The City Council shall consider the appeal at a regular, adjourned, or special meeting of the City Council. Following consideration of the appeal, and not later than the second regularly scheduled meeting thereafter, the City Council shall render its decision in writing. The City Council's decision shall be final.

E. **General Provisions**

1. The time limits specified above may be extended to a definite date by mutual agreement of the employee and the reviewer concerned.

2. The employee or the reviewer may request the assistance of another person (i.e., a representative of the employee's or reviewer's own choosing) at any level of review. Each party must be so notified if such is the case.

3. The employee and the employee's representative may be privileged to use a reasonable amount of work time, as determined by the department head, in preparing and conferring about the appeal.

4. The employee shall have the right to be present at all formal discussions outlined in this procedure.

5. The employee shall be given at least 2 working days' notice of any meeting requiring the employee's appearance, throughout the grievance procedure. This provision may be waived by mutual agreement.

6. All communications, notices, and papers required to be in writing shall be served personally or by United States mail (return receipt requested), as specified in the foregoing procedures.

7. Any grievance should be treated as confidential information by all parties concerned until after the final decision has been rendered.

8. Employees shall be assured freedom from reprisal for using the grievance procedure.

9. To process a grievance through the levels of review, the employee must notify the last reviewer, in writing, that the employee is not satisfied with the reviewer's decision and that the employee is carrying the grievance to the next level of review.

10. Failure by the employee (or Association, as applicable) to meet any of the time lines specified herein shall constitute a withdrawal of the grievance.

11. Any member of the unit may at any time present grievances to the City and have such grievances adjusted without the intervention of the Association, as

long as the adjustment is reached prior to City Council review and the adjustment is not inconsistent with the terms of this MOU.

ARTICLE 33: AWARD PROGRAMS

Section 33.01. Employee Suggestion Awards Program

A. **Purpose**

The Suggestion Awards Program is designed to encourage employee participation in improving the efficiency and effectiveness of their job and City operations. It is intended to motivate employees toward problem identification and to stimulate creativity in problem solving. The program provides a means to communicate the high value City management places on constructive ideas, through recognition and reward.

B. **Evaluation Procedure**

1. All suggestions submitted will be acknowledged by memo to the suggester from the department head.

2. Suggestions shall be subject to the following rules and regulations:

    a. Suggestions must be submitted in writing on approved forms.

    b. Suggestions must be signed and dated by the person(s) submitting.

    c. No suggestion will receive consideration if it is submitted more than 30 calendar days after its date of adoption.

3. In order for a suggestion to become eligible for a monetary award, it should generally result in the improvement of equipment or practices through new or revised methods. Such changes should be of a nature as to result in one or more of the following:

    a. Savings in time or materials.

    b. Improvements in procedures, tools, or equipment.

    c. Increased efficiency.

    d. Elimination of hazards to personnel.

    e. Improvements in working conditions.

    f. Improvements in public relations.

    g. Improvements in public service without increased costs.

4. Any suggestion which falls within any of the following categories shall not be eligible for a monetary award, but if approved by the City Manager on the recommendation of the department head is eligible for an award of commendation.

    a. Any idea that does not pertain to Montclair City Government.

    b. A solution to any problem that falls within the scope of an officially assigned task or responsibility.

    c. Any suggestion which in the opinion of the department head duplicates or is very similar to any suggestion received previously.

    d. Any suggestion for a change that was already under consideration prior to the receipt of the suggestion.

    e. Any suggestion that fails to offer a constructive solution to any problem.

    f. Request for obvious replacement, repairs, or maintenance of equipment.

    g. Petitions or anonymous suggestions.

C. **Determination of Awards**

1. Suggestion awards, whether monetary or awards of commendation, shall be based upon the recommendation of the department head to the City Manager. The City Manager has final approval of all awards.

2. Suggestion awards shall be granted on the following scale:

    a. Solutions to significant problems with limited applications - $10 to $25.

    b. Solutions to major problems with limited application or significant problems with broad application - $25 to $50.

    c. Solutions to major problems with broad application - $75 to $100.

    d. Certificates of commendation in lieu of monetary award may be issued for any suggestion which may be adopted.

3. Many suggestions will involve substantial expenditures and cannot be considered except in the context of annual budget preparation. If this is the determination of the department head, the suggester will be notified and that suggestion will be placed in a pending status for consideration during budget

preparation. The value of the suggestion will be evaluated by the department head within a 3-month period following adoption of the preliminary budget.

D. **Additional Rules and Regulations**

1. Any full-time or part-time employee of the City, except those classified as management employees, is eligible for full consideration under the Suggestion Awards Program.

2. The following must be submitted with each suggestion to make its evaluation easier:

    a. Clear and complete explanation of the benefit.

    b. Evaluation of all consequences of the adoption of the suggestion, both beneficial and negative.

    c. As specific as possible estimation of savings.

    d. Specific explanation of all costs to implement the suggestion with explanation of offset savings.

3. All suggestions are to be reviewed by the department head within 30 calendar days after submission. If it is apparent a determination of application cannot be made within 30 calendar days, the suggester will be notified by memo. All pending suggestions will be reviewed by executive staff on a quarterly basis.

E. **Benefits of the Employee Suggestion Awards Program**

1. **Employee Benefits**

The Suggestion Awards Program permits the employee to contribute to the improvement in City functions, operations, and safety. In addition to monetary awards, employees also gain recognition from co-workers and management for their creative efforts. Even nonacceptance of a suggestion can be beneficial of the employee is given sound reasons for the nonacceptance.

2. **Management Benefits**

Management realizes that responsibility and leadership regarding work method improvements and economies are being fulfilled when employees are encouraged to develop their creative-thinking abilities. Accepted suggestions have the immediate and tangible benefits of improving the morale and operating efficiency of departments and of making the work easier and safer.

3. **Benefits to the City of Montclair**

The suggestion system provides a means whereby employees and management work toward a common objective—to provide better service at a lower cost.

ARTICLE 34: WORK DISRUPTION

It is agreed and understood that there will be no strike, work stoppage, slowdown, refusal, or failure to fully and faithfully perform job functions and responsibilities, or other interference with the operations of the City by the Association or by its officers, agents, or members during the term of this MOU, including compliance with the request of other labor organizations to engage in such activity.

The Association recognizes the duties and obligations of its representatives to comply with the provisions of this MOU and to make every effort toward inducing employees to do so. In the event of a strike, work stoppage, slowdown, or other interference with the operation of the City or its agents by employees who are represented by the Association, the Association agrees in good faith to take all necessary steps to cease such employee action.

It is agreed and understood that any employee violating this Article may be subject to discipline up to and including termination. It is understood that in the event this Article is violated, that in addition to any other legal remedies available to it, the City shall be entitled, consistent with applicable law, to withdraw any rights, privileges, or services provided for in this MOU or in City rules from any employee, if the employee violates the terms of this MOU, and/or the Association, if the Association violates the terms of this MOU. It is agreed that no lockout of employees shall be instituted by the City during the term of this MOU, unless such work disruptions occur.

ARTICLE 35: OUTSIDE EMPLOYMENT

A. **Policy**

A City employee shall not engage in any employment, activity, or enterprise which is inconsistent, incompatible, or in conflict with his/her duties, functions, or responsibilities as a City employee.

B. **Authorization**

1. Any officer or employee wishing to engage in any occupation or outside activity for compensation shall inform the department head of such desire, providing information as to the time required and the nature of such activity, and such other information as may be required. The department head shall determine whether or not such activity is compatible with the employee's City employment.

2. If the department head determines such activity is compatible he/she may authorize the activity, in writing, with a copy to the Personnel Officer.

3. Said authorization shall be valid only for the work and period prescribed herein.

C. **Determination of Inconsistent Activities**

In making a determination as to the consistency or inconsistency of outside activities, the department head shall consider among other pertinent factors whether the activity:

1. Involves the use (for private gain or advantage) of City time, facilities, equipment, and supplies, or the badge, uniform, prestige, or influence of one's City office or employment; or

2. Involves receipt or acceptance by the officer or employee of any money or other consideration from anyone other than the City for the performance of an act which the officer or employee, if not performing such act, would be required or expected to render in the regular course or hours of his City employment or as a part of his duties as a City employee; or

3. Involves the performance of any act in other than his/her capacity as a City officer or employee which act may later be subject directly or indirectly to the control, inspection, review, audit, or enforcement by such officer or employee or the department by which he/she is employed; or

4. Involves conditions or factors which would probably directly or indirectly lessen the efficiency of the employee in his/her regular City

employment, or conditions in which there is a substantial danger of injury or illness to the employee.

D. **Revocation**

Permission for outside employment may be for any length of time deemed appropriate by the department head and included in the written authorization (also see B.2. above). All authorizations are subject to revocation by the department head, City Manager, or City Council.

E. **Use of City Equipment Prohibited**

1. No City-owned equipment, vehicles, instruments, tools, supplies, machines, or any other item which is the property of the City shall be used by any officer or employee while said officer or employee is engaged in any outside employment or activity, for compensation or otherwise, except upon prior written approval of the City Manager.

2. No officer or employee shall allow any unauthorized person to rent, borrow, or use any of the items mentioned in E.1. above, except upon prior written approval of the City Manager.

F. **Violations and Penalties**

Any violation of the provisions of this Article, shall constitute sufficient grounds for disciplinary action, up to and including dismissal.

ARTICLE 36: POLITICAL ACTIVITIES

No employee shall solicit political campaign funds or campaign for or advocate the election or nonelection of any political cause, measure, or candidate for national, state, county, or local office while on City time, during working hours, or in a City uniform whether on or off duty. Employees shall not disseminate political material of any kind while on duty, during work hours, or in a City uniform on or off duty.

ARTICLE 37: SEEKING NEW EMPLOYMENT

The City encourages individual initiative and does not wish to stand in the way of an employee applying for a position of advancement elsewhere. By applying for such a position, an employee in no way impairs job security in Montclair. However, job-hunting activities shall not interfere with an individual's City duties; time off for interviews will be charged against the individual.

ARTICLE 38: HARASSMENT IN EMPLOYMENT POLICY

A. Policy Statement

All employees are to be treated with respect and dignity. Harassment of an applicant or employee by a supervisor, manager, or co-worker on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age will not be tolerated.

This policy applies to all terms and conditions of employment, including, but not limited to, hiring, placement, promotion, disciplinary action, layoff, recall, transfer, leaves of absence, compensation, and training.

Disciplinary action up to and including termination will be instituted for behavior described in the following definition of harassment.

Any retaliation against a person for filing a harassment charge, making a harassment complaint, or otherwise being involved in a harassment investigation is prohibited. Employees found to be retaliating against another employee shall be subject to disciplinary action up to and including termination.

B. Definitions

Harassment includes, but is not limited to:

1. Verbal Harassment

Epithets, derogatory comments, or slurs on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age. This includes inappropriate sex-oriented comments on one's appearance, including dress or physical features, or race-oriented stories and jokes.

2. Physical Harassment

Assault, impeding or blocking movement, offensive touching, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age. This includes pinching, grabbing, patting, propositioning, leering, or making explicit or implied job threats or promises in return for submission to sexual acts.

3. **Visual Forms of Harassment**

Derogatory posters, notices, bulletins, cartoons, or drawings related to race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, pregnancy, sexual orientation, sex, or age.

4. **Sexual Harassment**

Unwanted sexual advances, requests for sexual favors, and other acts of a sexual nature where the following exist:

a. Submission is made an explicit or implicit term or condition of employment;

b. The submission to or rejection of the conduct is used as the basis for employment decision(s); or

c. When the conduct is intended to or actually does, unreasonably interfere with an individual's work performance, or creates an intimidating, hostile, or offensive working environment.

Even though one incident of any of the conduct described above may not necessarily constitute a violation of state or federal law, one incident alone may constitute a violation of this policy.

C. **Complaint Procedures**

1. An employee who believes he/she has been harassed, or any employee who believes he/she has witnessed or has knowledge of any harassment at the work place, may make a complaint orally or in writing with any of the following:

a. Immediate supervisor;

b. Department head;

c. Personnel Officer; or

d. City Manager.

2. The department head or supervisor who receives a harassment complaint, observes or otherwise learns of harassing behavior in the workplace, should notify the Personnel Officer promptly.

3. Upon receiving notification of a harassment complaint, the Personnel Officer or designee will notify the complaining employee of his/her rights and the procedures available to redress any violation of the employee's rights to be free from harassment. The Personnel Officer or designee will conduct an investigation which shall include, but will not necessarily be limited to, the following:

    a. Interviews with the complainant, the accused harasser, and any other persons the investigator has reason to believe have relevant knowledge concerning the complaint.

    b. Review of the factual information gathered during the investigation to determine whether the alleged conduct occurred and whether such conduct constitutes harassment under this policy based on the totality of the circumstances, including the nature of the verbal, physical, visual, or sexual conduct, and the context in which the alleged incident(s) occurred.

    c. Preparation of a written report setting forth the results of the investigation and the determination of whether or not harassment occurred. The results shall be reported to the appropriate persons, including the complainant, the alleged harasser, the supervisor, and the department head. If discipline is imposed, the type of discipline will not be communicated to the complainant.

    d. The City will make its best effort to protect the privacy of all individuals who are interviewed or consulted during the investigation process.

4. **External Complaint Procedure**

    If an employee believes that he/she has been harassed as defined above, the employee may pursue a claim against the City with the Department of Fair Employment and Housing (DFEH) and the Fair Employment and Housing Commission (FEHC). The DFEH is the state administrative agency with jurisdiction to investigate and prosecute complaints of harassment. The FEHC is the state administrative agency with jurisdiction to adjudicate claims of harassment. The complaint procedures for these agencies are as follow:

    a. The employee must contact one of several DFEH district offices in person, by telephone, or in writing to schedule an intake interview.

b. A DFEH consultant will conduct the interview and decide whether to accept the complaint. If the DFEH accepts the complaint he/she will draft the complaint and send it to the employee for verification and signature.

c. The DFEH will then file the complaint and serve it on the employer. The complaint must be filed within 1 year of the alleged act of harassment. The DFEH will then request a response to the employee's allegations and answers to specific questions from the employer.

d. The DFEH will then decide whether to close the case, attempt settlement, or proceed with investigating the allegations.

e. If the DFEH investigates and determines that the claim has no merit, it will close the case and issue a right-to-sue letter to the employee.

f. If the DFEH finds that there is merit and no settlement can be reached, it will issue an accusation which initiates the administrative proceeding before the Fair Employment and Housing Commission (FEHC).

g. At any time after the complaint is filed, the employee may request a right-to-sue letter.

5. **Legal Remedies Available Through the FEHC**

If the FEHC finds that the employer engaged in unlawful harassment under the FEHA, it must state its findings of fact and determination. The FEHC must also issue and serve a cease and desist order on the employer.

The FEHC is authorized to provide the following types of relief to an aggrieved employee:

a. The hiring, reinstatement, or upgrading of employees, with or without back pay.

b. The payment of actual damages, as may be available in FEHA civil actions.

c. Affirmative or prospective relief to prevent the recurrence of the harassment.

d. A report to the FEHC regarding the manner of compliance with the FEHC's order.

e. Administrative fine.

6. **How to Contact the DFEH**

An employee may contact the DFEH by telephone at 1-800-884-1684.

D. Remedial Action

1. If harassment occurred, prompt and effective remedial action shall be taken against the harasser. The action taken shall be commensurate with the severity of the offense.

2. Reasonable steps shall be taken to protect the complainant from further harassment.

3. Reasonable steps shall be taken to protect the complainant from retaliation as a result of communicating the complaint.

4. If appropriate, action shall be taken to remedy the victim's loss, if any, which resulted from the harassment.

E. Other Provisions

1. Dissemination of Policy - All supervisors and the Personnel Officer will take such steps as are necessary to make the policy against harassment and the procedures available for remedying any harassment known to all employees and regularly communicated to them.

2. If an employee who feels that he or she has been the victim of harassment is not satisfied with the results of the procedure outlined in subsections C and D above, he or she can institute the formal grievance procedure. The time limits specified in the formal grievance procedure will begin as of the date of notification to the complaining employee at the conclusion of the investigation or of final action taken.

3. The City's designated Equal Employment Opportunities/Affirmative Action Officer is Deputy City Manager/Administrative Services Director Starr. If there are any questions regarding this policy, please contact Deputy City Manager/Administrative Services Director Starr (909/625-9405) or Personnel Officer Charleston (909/625-9406).

ARTICLE 39: CREDIT UNION

Membership in a City-approved credit union is available to all employees. Repayment of loans or the establishment of a savings plan can be accomplished through automatic payroll deductions with payment to the credit union. Additional information concerning payroll deductions may be obtained from the Administrative Services Department.

ARTICLE 40: NEPOTISM, MARITAL STATUS, AND DATING POLICY

A. No employee, prospective employee, or applicant shall be improperly denied employment or benefits of employment on the basis of marital status or relationship to another employee or official of the City. For the purpose of this Article, marital status is defined as an individual's state of marriage, non-marriage, divorce or dissolution, separation, widowhood, annulment, or other marital state. For the purpose of this Article, a relative shall be defined as a member of the immediate family. Immediate family is defined to mean spouse, domestic partner, children, parents, brothers, sisters, grandparents, grandchildren of the employee, and the corresponding relationships by affinity.

B. Notwithstanding the above provisions, the City retains the right:

1. To refuse to place one party to a relationship, as defined in item "A" above, under the direct or indirect supervision of the other party to a relationship.

2. To refuse to place both parties to a relationship, as defined in item "A" above, in the same department, division, or facility where there is a potential for creating adverse impact on supervision, safety, security, or morale, or that involves potential conflicts of interest.

3. To disqualify one party to a relationship, as defined in item "A" above, for a position privy to confidential personnel matters who has a relative already in the City's employment when the relationship may compromise confidential information.

C. For purposes of this Article, "relationship" shall refer to both marital status and relative, as defined in item "A" above.

ARTICLE 41: DOMESTIC PARTNER

Pursuant to federal and/or state law and, where necessary to implement the rights of domestic partners under such laws, gender-specific terms referring to spouses, children, and/or family members of married members as referenced in MOUs, employee agreements, policies, provisions, and procedures of the City related to City employees and their family members shall be construed to include domestic partners.

To establish a domestic partnership, the following criteria must be met:

1. Both persons share a common residence.

2. Both persons agree to be jointly responsible for each other's basic living expenses incurred during the domestic partnership.

3. Neither person is married or a member of another domestic partnership.

4. The 2 persons are not related by blood in a way that would prevent them from being married to each other in this state.

5. Both persons are at least 18 years of age.

6. Either of the following:

    a. Both persons are members of the same sex.

    b. One or both of the persons meet the eligibility criteria under Title II of the Social Security Act as defined in 42 U.S.C. Section 402(a) for old-age insurance benefits or Title XVI of the Social Security Act as defined in 42 U.S.C. Section 1381 for aged individuals. Notwithstanding any other provision of this section, persons of opposite sexes may not constitute a domestic partnership unless one or both of the persons are over the age of 62.

7. Both persons are capable of consenting to the domestic partnership.

8. Neither person has previously filed a *Declaration of Domestic Partnership* with the Secretary of State pursuant to this section that has not been terminated under Section 299.

9. Both file a *Declaration of Domestic Partnership* with the Secretary of State pursuant to this section.

The City is prohibited from requiring proof of *Declaration of Domestic Partnership* for benefits eligibility if proof of *Marriage Certificate/License* for benefits eligibility is not required.

ARTICLE 42: LACTATION ACCOMMODATION

When a female employee returns from pregnancy leave, the City will provide a reasonable amount of breaktime to accommodate the employee desiring to express breast milk for her infant child. Any time required to express breast milk beyond the employee's normal breaktime is unpaid. The City will also make reasonable efforts to provide the employee with the use of a room or other location, other than a toilet stall, in close proximity to the employee's work area, for the employee to express milk in private (also see *Section 14.04. Pregnancy Leave*).

ARTICLE 43: ORGANIZATIONAL FRAMEWORK

Section 43.01. Personnel System

The City Council has, by Ordinance No. 114, delegated responsibility to the City Manager for the administration of the personnel system of the City. In accordance with this responsibility, the City Manager is responsible for the implementation and maintenance of the City's policies. The City Manager may, however, delegate responsibility for the day-to-day administration of the personnel system to the Deputy City Manager/Director of Administrative Services and/or department heads.

Section 43.02. Personnel Committee

The Personnel Committee shall include two members of the City Council and the City Manager. By City Council policy, this Committee shall review actions of the City Manager and department heads in administering the City's personnel system—such as hiring, promotions, merit increases, layoffs, etc. In the day-to-day management of the personnel system, however, the decision of the City Manager is final until such decision has been approved by the Personnel Committee or successfully appealed through the City's grievance procedure.

Section 43.03. Employer-Employee Relations

Employer-employee relations in the City shall be governed by Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Myers, Milias, Brown Act), as enacted by Resolution No. 761 and the Rules and Regulations to implement Employer-Employee Relations Resolution No. 761, adopted by the City Council of the City on November 3, 1969. Under the terms of this resolution, employees shall have the right to form, join, and participate in the activities of employee organizations, with the right of representation on all matters of employer-employee relations—including, but not limited to, wages, hours, and other terms and conditions of employment. Employees shall also have the right to refuse to join or participate in the activities of employee organizations.

The City Manager or designated representative(s) shall represent the City and meet and confer, in good faith, with recognized employee organizations regarding matters within the scope of representation. These and all other matters of employer-employee relations that fall within the scope of Resolution No. 761 and employee representation shall be governed by the procedures set forth in this resolution.

Section 43.04. Individual Representation

In accordance with Montclair Resolution No. 761, any employee who wishes may be represented individually for purposes of discussing wages, hours, and other terms and conditions of employment. So that this might be done in an orderly and logical manner, the procedure set forth below is that which should be followed by those persons who wish to represent themselves.

A. Any employee wishing to be represented individually (as opposed to being represented by an employee organization), must indicate a desire to do so in writing and forward the notice to the City Manager or designated representative.

B. Any employee who indicates a desire to be represented individually in connection with any matter relating to wages, hours, or other terms and conditions of employment must submit the items for discussion in writing to the department head through the appropriate channels within the employee's department.

C. The department head or designated representative will review the requests and discuss them with the employee.

D. If the employee and department head are in agreement, the department head may then represent the employee's interest in discussing the proposals and requests with the City Manager or designated representative. If, however, the employee and the department head do not agree or the employee wishes to pursue the matter further, the individual shall have the option of taking the request(s) up with the City Manager or designated representative.

E. The City Manager or designated representative, within a reasonable amount of time, will make a determination regarding the employee's request.

F. All proposals and/or requests from employees who wish to meet and confer individually must be received by the City Manager or designated representative prior to April 15 of each year, to be considered for implementation in the next fiscal year.

The purpose of the procedure outlined above is to reflect the fact that employees who represent themselves individually are basically then represented by the management of their respective departments. It is also intended to provide a system of appeal to the City Manager or designated representative, should the matter not be resolved within the originating department.

Section 43.05. Affirmative Action/Equal Opportunity Policy

A. City Council Policy Statement

The Montclair City Council is committed to the concept of equal opportunity employment as a necessary element of the City's merit system principle. This commitment will be supported by positive efforts to ensure equal employment opportunity for protected classes, in both recurring City employment and in promotional opportunities at all job levels. These objectives are realized by the implementation of an affirmative action/equal opportunity program.

B. **Implementation of Plan**

The plan is implemented as follows:

In accordance with the City's personnel policy, the City Manager has delegated the responsibility for the day-to-day administration of the personnel system to the Deputy City Manager/Director of Administrative Services. Therefore, implementation responsibility of the City's affirmative action/equal opportunity program is hereby assigned to Deputy City Manager/Director of Administrative Services. It shall be the responsibility of the Deputy City Manager/Director of Administrative Services to assume the duties of Affirmative Action Officer for the City.

The Affirmative Action Officer shall provide for effective communication and implementation of the requirements of this plan with department heads. The plan will be implemented consistent with federal requirements and guidelines. It shall be the Affirmative Action Officer's responsibility to monitor the implementation and progress of this plan and report compliance, success, or deficiencies to the City Manager on an annual basis.

The affirmative action/equal opportunity program does not mean the City will accept employees who do not perform satisfactorily. It will be expected that any new employees hired will progress to full qualifications within the probationary period. If this is not the case, the employees will be subject to discipline.

Selection, employment, and promotion in the City will continue to be based upon such factors as individual performance, ability, aptitude for the position applied for, experience, training, education, character, personality, and physical fitness. The affirmative action/equal opportunity program clearly manifests the intent of this City as an employer to obey all federal employment laws, and guarantee an equal opportunity for employment to all people.

The entire Affirmative Action Policy, adopted by the City Council on June 2, 1975, is on file in the City Manager Department.

Section 43.06. Disabled/Handicapped Nondiscrimination Policy

A. It is the policy of the City that no qualified handicapped/disabled individual shall, solely by reason for his/her handicap/disability, be excluded from participating in, be denied the benefits of, or otherwise be subjected to discrimination in any program, activity, or employment opportunity offered by the City.

A "qualified handicapped individual" is defined as a handicapped/disabled person who, with or without reasonable accommodation, can perform the essential functions of the job in question.

An individual with a disability is any person who has a physical or mental impairment that substantially limits the ability to perform a major life activity; for example, to care for oneself, perform manual tasks, walk, see, hear, speak, breathe, learn, or work; has a record of such an impairment; or is regarded as having such an impairment.

The judgment of whether any given person is "substantially limited" depends upon the nature and severity of that person's disabling condition. Temporary disabilities (e.g., a broken limb or temporary illness) are not "substantially limiting" within the concept of a disabling condition.

Physical or mental impairments that fall within discrimination prohibitions include:

1. Any physiological disorder or condition; cosmetic disfigurement or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic, and lymphatic; skin; and endocrine; or

2. Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities; or

3. Such diseases and conditions as orthopedic, visual, speech, hearing, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, emotional illness, drug addiction, and alcoholism.

B. The City shall make all decisions concerning employment in a manner which ensures that discrimination on the basis of handicap/disability status does not occur or limit, segregate, and classify applicants or employees in any way that adversely affects their opportunities or status because of handicap/disability. Specifically, the City does not discriminate against qualified handicapped/disabled individuals in the following activities:

1. Recruiting, advertising, and the processing of applications for employment.

2. Hiring, upgrading, promoting, award of tenure, demoting, transfer, layoff, terminating, right of return from layoff, and rehiring.

3. Setting rates of pay or any other forms of compensation, and changes in compensation.

4. Job assignments, job classifications, organizational structures, position descriptions, lines of progression, and seniority lists.

5. Granting leaves of absence, sick leave, or any other leave.

6. Providing fringe benefits available by virtue of employment.

7. Selection and financial support for training, meetings, conferences, and other related activities.

8. Employer-sponsored activities.

9. Any other term or condition of employment.

C. The City shall make reasonable accommodation to the known physical or mental limitations of a qualified handicapped applicant or employee, unless the accommodation would impose an undue financial hardship, or would impose severe restrictions on affected programs, activities, or operations. Reasonable accommodations may include, but are not limited to the following:

1. Making facilities used by employees readily accessible to and usable by handicapped/disabled persons; and

2. Job restructuring, part-time or modified-work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices (e.g., telecommunication devices), or the provision of readers or qualified sign language interpreters. Accommodations shall be made in consultation with the handicapped/disabled individual.

The determination of whether an accommodation would impose an undue hardship on the operation of City programs or activities shall be made on a case-by-case basis, upon consideration of the following factors:

1. The overall size of the City government with respect to number of employees, number and type of facilities, and size of budget;

2. The type, composition, and structure of the specific program or activity and the structure of the work force; and

3. The nature and cost of the accommodation needed.

D. The City does not use any employment test, selection criterion, or policy that screens out, or tends to screen out from consideration for employment, a handicapped/disabled individual, unless:

1. The test, selection criterion, or policy is shown to be directly related to the essential functions of the position in question; or

2. Alternative job-related tests, criteria, or policies that do not screen out, or tend to screen out, handicapped/disabled individuals are shown not to be available.

The City shall select and administer tests using procedures that accommodate the special problems of disabled individuals (e.g., auxiliary aids such as readers or qualified sign language interpreters). The test results shall not reflect the applicant's or employee's impaired sensory, manual, or speaking skills, except where such skills are essential requirements of the job.

E. The City shall not conduct a preemployment medical examination or make a preemployment inquiry of an applicant as to whether the applicant is a handicapped/disabled individual or as to the nature or the severity of the handicap/disability. The City may, however, make a preemployment inquiry into an applicant's ability to perform the essential functions of the job.

The City may condition an offer of employment on the results of a medical examination conducted prior to the prospective employee's entrance on duty, provided that:

1. All entering employees are subjected to such an examination; and

2. The results of the examination are not used as a means of discrimination against a qualified individual with a handicap/disability.

In addition to the above policy, the City will comply with the Americans with Disabilities Act (ADA) and all other federal and state requirements.

Section 43.07. Communicable Disease Policy

A. The City does not discriminate in its employment policies on the basis of exposure to contagious disease or infection, or the physical conditions produced by such disease or infection. Montclair is committed to a course of action which will prevent the spread of infectious diseases, including the Acquired Immune Deficiency Syndrome (AIDS virus), and reduce fears and dispel myths about the disease of AIDS. The following guidelines are intended by the City to balance the interests of persons suffering from such diseases with the interests of the City in protecting its employees from any dangers associated with those diseases.

B. Employees are encouraged to inform the City of any contagious disease or infection which he/she considers to be a handicap or is legally a handicap as soon as an individual learns of his/her condition. No employee who is otherwise qualified to work may be discriminated against because of a physical handicap. Legal protections established for handicapped persons shall extend to employees

significantly impaired by contagious diseases or infections. Employees shall not be required to undergo testing for AIDS, ARC, or the HTLV-III antibody.

C. An employee who has a contagious disease or infection shall be provided with continued employment in his/her present capacity unless the following factors demonstrate that, because of such disease or infection, the employee would cause a direct threat to the health or safety of other individuals or is unable to perform the duties of the job:

1. The nature of the risk; e.g., how the disease is transmitted.

2. The duration of the risk; e.g., how long the carrier is infectious.

3. The severity of the risk; e.g., the potential degree of harm to third parties.

4. The probability the disease will be transmitted.

5. The physical condition of the employee; e.g., diagnosis, treatment, and prognosis of the condition.

6. The job requirements and the expected type of interaction with others in the work environment.

D. The condition and job assignment of an employee who has a contagious disease or infection shall be reevaluated on a regular basis. The City Manager, or designee, shall monitor changes in the state of medical knowledge about the contagious disease or infection, or changes in the employee's medical treatment or health status which might affect his/her assignment.

E. The City shall provide reasonable accommodation to employees impaired by a contagious disease or infection, in a manner consistent with that provided for other medical problems. Employees may be reassigned or granted disability leave if they are unable to perform job responsibilities because of a contagious disease or infection, or if a contagious disease or infection endangers an employee's health or the health of others.

F. If an employee has concerns about the presence of a person with the AIDS virus, or any other infectious disease, that individual should be directed to a knowledgeable counselor or medical health practitioner in the City's Employee Assistance Program (EAP) to help allay fears.

G. **Confidentiality**

Although medical personnel are required to report known AIDS cases to the local county health department within 24 hours, confidentiality of all medical conditions shall be maintained. There is no medical necessity to advise co-workers of the immediate presence of persons who have AIDS, AIDS Related Complex, or a positive HTLV-III antibody test. Disclosure of the result of a blood test to detect AIDS, without written authorization from the employee tested, can result in substantial monetary penalties under state law.

The City Manager shall ensure that all employees' rights to confidentiality are strictly observed. Medical records/information shall be disclosed only to the extent required or permitted by law. Only those persons with a clear need to know shall be informed of an employee's health condition.

Section 43.08. Bloodborne Pathogens Policy

A. **Purpose**

It is the intent and purpose of this policy to minimize or eliminate employee exposure to, and/or spreading of, communicable diseases.

B. **Policy**

1. The City shall accept the responsibility for the establishment of measures to protect "at risk" personnel (employees) from exposure to blood and other potentially infectious body fluids.

2 To assist personnel in making decisions concerning the use of protective equipment.

3. To protect the privacy rights of all personnel who in the line of duty may be exposed to or contract a communicable disease.

4. Each Department within the City with "at risk" personnel (employees) shall establish and implement procedures that are ". . . at least as effective" as the Department of Labor's Occupational Exposure to Bloodborne Pathogens. ("29 CRF Part 1910.1030" Occupational Safety and Health Administration.)

Section 43.09. Drug/Alcohol Abuse Policy

A. **Purpose**

It is the intent and purpose of this policy to eliminate substance abuse and its effects in the workplace; to protect the safety of employees, citizens, and property; to

promote efficiency and productivity among City employees; and to prevent loss of public confidence and damage to the City's reputation.

The City's primary concern is to ensure employees are in a condition to perform their duties safely and efficiently. Montclair has no intention of unnecessarily intruding into the private lives of its employees, unless involvement with drugs and alcohol off the job affects job performance and employee safety. The presence and influence of drugs and alcohol on employees during working hours will not be tolerated.

Employees who think they may have an alcohol or drug usage problem are encouraged to voluntarily seek confidential assistance from the City's Employee Assistance Program (EAP) or other available sources. While Montclair will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those who continue to be substance abusers and do not seek help.

B. **Policy**

1. It is Montclair's policy that employees shall not report to work intoxicated or under the influence of alcohol or narcotics, prescribed or over-the-counter medications in excess of prescribed dosage, or other nonprescribed hallucinogenic substances, or become so intoxicated or influenced while on duty. In addition, employees shall not sell or provide any drugs (except over-the-counter and/or nonprescription drugs/medications) or alcohol, while on duty or on City property, unless directly related to a legitimate criminal investigation or authorized City function.

   While use of prescribed medications and drugs is not per se a violation of this policy, failure by the employee to notify his/her supervisor, before beginning work, when taking medications or drugs which could foreseeably interfere with the safe and effective performance of duties or operation of City equipment may result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

2. Montclair reserves the right, when there is reasonable suspicion, to search, without employee consent, all areas and property in which the City maintains control or joint control with the employee. In areas not jointly or fully controlled by the City, we may notify the appropriate law enforcement agency consistent with Government Code Section 3309. All searches shall be conducted in the presence of at least two representatives of the City.

3. The City is committed to providing reasonable accommodation to employees whose drug or alcohol problem classifies them as handicapped under federal or state law.

4. An EAP has been established to assist those employees who voluntarily seek help for alcohol or drug problems. Employees should contact their supervisors, or an EAP counselor directly, for additional information.

5. Employees violating this policy shall be subject to disciplinary action, up to and including termination.

6. For purposes of this policy, "subject to duty" means "specifically assigned to an on-call status (e.g., standby, etc.)" for a specific period of time.

C. **Application**

This policy applies to all employees of the City. It applies at all times when employees are on City property, and when employees are off City premises but on duty and engaged in any activity where the employee is representing the City. Alcohol and all substances, drugs, or medications (legal or illegal) that could impair an employee's ability to effectively and safely perform the functions of the job, or increase the potential for accidents, absenteeism, substandard performance, and poor employee morale, are covered by this policy. In addition, certain employees are covered by the Department of Transportation Drug Testing Rules. These rules and the specification of employees covered by these rules are set forth in a separate City policy entitled "Drug and Alcohol Policy Pursuant to the Department of Transportation Regulations."

D. **Employee Responsibilities**

An employee shall:

1. Not report to work or be subject to duty while his/her ability to perform job duties is impaired due to on- or off-duty alcohol or drug use;

2. Not possess or use alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) during working hours or while on City property, unless authorized by the City Council, City Manager, department head, or possessed/consumed as part of an official City function;

3. Not directly, or through a third party, sell or provide drugs or alcohol to any person or to any other employee while on duty;

4. Submit immediately to an alcohol/drug test if requested by his/her supervisor and at least one additional supervisor, when there is reasonable suspicion that he/she is under the influence of drugs or alcohol. Failure to submit to an alcohol/drug test, when so ordered

by a manager and a supervisor, will be considered insubordination and grounds for termination;

5. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or nonprescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and

6. Provide, within 24 hours of request, evidence of a current valid prescription for any drug or medication identified when a drug/alcohol test is positive. The prescription must be in the employee's name.

Nothing herein shall be construed to waive any rights provided by law.

E. **Management Responsibilities and Guidelines**

1. Managers and supervisors are responsible for reasonable and consistent enforcement of this policy.

2. Managers and supervisors shall receive training as to how to effectively implement the provisions of this policy.

3. Managers and supervisors have the authority to order an employee to submit to a drug/alcohol test when there is a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called. If reasonable suspicion exists, the manager or supervisor shall have the authority to order an employee, accompanied by a supervisor, to report immediately to a City-designated medical facility qualified in drug-testing procedures, to be examined by a physician and to take an appropriate test for drug and/or alcohol use. The examination shall be conducted while the employee is "on the clock." The City shall bear the expense of the examination, and shall provide transportation to and from the medical facility and the employee's work station.

   "Reasonable suspicion" is a belief, based on objective facts, sufficient to lead a reasonable prudent supervisor to suspect that an employee is under the influence of drugs or alcohol and the employee's ability to perform the functions of the job safely is impaired or reduced. Examples of factors which may constitute reasonable suspicion include, but are not limited to:

   a. Slurred speech;
   b. Alcohol odor on breath;

   c. Unsteady walking and movement;

d. An accident on or involving City property, when it appears the employee is at fault;

e. A physical or a verbal altercation initiated by the employee;

f. Unusual behavior for a particular employee;

g. Possession of alcohol or drugs; and/or

h. Information obtained from a reliable person with personal knowledge.

4. Any manager or supervisor requesting an employee to submit to a drug/alcohol test shall document, in writing, the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence of drugs.

5. Any manager or supervisor who encounters an employee who refuses an order to submit to a drug/alcohol test upon request shall remind the employee of the requirements and disciplinary consequences of this policy. If the employee continues to refuse an order to submit to a drug/alcohol test, the manager or supervisor shall prevent the employee from engaging in further work until he/she can be safely transported from the work site.

6. Managers and supervisors shall not physically search employees and/or personal possessions without an employee's consent. All searches shall be conducted in the presence of the employee and at least two representatives for the City.

7. Managers and supervisors shall notify the department head, or designee, when they have a reasonable suspicion that an employee may have alcohol or illegal drugs in his/her possession, or in an area not jointly or fully controlled by the City, when an employee refuses to consent to a search. If the department head, or designee, concurs that there is reasonable suspicion of illegal drug possession, the department head shall notify the appropriate law enforcement agency.

F. **Physical Examination and Procedure**

The drug and/or alcohol analysis may test for any substance which could impair an employee's ability to effectively and safely perform the functions of his/her job, including, but not limited to, prescription medications, heroin, cocaine, morphine and its derivatives, PCP, methadone, barbiturates, amphetamines, and marijuana or other cannabinoids.

G. **Results of Drug and/or Alcohol Test**

1. If the drug/alcohol test is positive, the employee must provide, within 24 hours of receiving the test results, a valid current prescription for the identified drug(s). Prescriptions must be in the employee's name. If the employee does not have a valid prescription, or if the prescription is not in the employee's name, and if the employee has not previously notified his/her supervisor that he/she was/is using the prescription drug, a positive result from a drug and/or alcohol test may result in disciplinary action, up to and including discharge from City employment. The cut-off levels for initial screening tests and confirmation tests shall conform with standards established by Department of Transportation (DOT) drug and alcohol testing regulations, *Subpart F-Fees*, and other applicable sections and parts. By their reference, such standards shall be incorporated herein.

2. If any alcohol or drug test is positive, the City shall conduct an investigation to gather all facts. The decision to discipline or discharge an employee will be carried out in conformance with the City's discipline procedures.

3. If the drug/alcohol test is positive, an employee may request an additional alcohol or drug test, through another source, at his/her own expense.

H. **Confidentiality**

Laboratory reports and test results shall be included in a separate confidential medical folder contained within the employee's personnel file. The reports and/or test results may be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without employee consent, may also occur when:

1. The information is compelled by law or by judicial or administrative process;

2. The information has been placed at issue in a formal dispute between the City and the employee;

3. The information is to be used in administering an employee benefit plan; or

4. The information is needed by medical personnel for the diagnosis or treatment of an employee who is unable to authorize disclosure.

Section 43.10. Civil Litigation Notification

If the City is notified by an employee that he/she has been named as a defendant in a civil action for conduct occurring within the course and scope of employment, the City shall, in turn, notify the employee of any rights he/she may have regarding representation

and/or indemnification by the City. The notification shall include the mechanism by which an employee may request representation/indemnification and the time limits, if any, for such request.

ARTICLE 44: EFFECT OF AGREEMENT

A. **Amendments**

The provisions of this MOU can be amended, supplemented, rescinded, or otherwise altered only by mutual agreement in writing, hereafter signed by the designated representative of the City and the Association.

B. It is understood and agreed that the specific provisions contained in this MOU shall prevail over employer practices and procedures, prior written agreements, and over state laws to the extent permitted by state law, and that in the absence of specific provisions in this MOU such practices and procedures are discretionary.

C. During the term of this MOU, the parties expressly waive and relinquish the right to meet and confer and agree the parties shall not be obligated to meet and negotiate with respect to any subject matter, whether referred to or covered in this MOU or not, even though each subject or matter may not have been within the knowledge or contemplation of either or both the City or the Association at the time they met and negotiated on and executed this MOU, and even though such subjects or matters were proposed and later withdrawn.

D. This MOU constitutes the total and entire agreement between the parties and no verbal statements shall supersede any of its provisions.

ARTICLE 45: TERM

Except as otherwise indicated herein, the changes to this MOU shall be effective upon date of ratification by the City Council for the period July 1, 2019, through June 30, 2020. After June 30, 2020, the existing terms, conditions, and provisions shall remain in effect, and City and employees agree to abide by those terms, conditions, and provisions unless otherwise altered by the meet and confer process, unless otherwise indicated in this MOU.

IN WITNESS THEREOF, this MOU is entered into this day, pursuant to the provisions of Government Code Section 3500, et seq. for presentation to the City Council of the City of Montclair.

Dated: 1-7-2020

MONTCLAIR FIRE FIGHTERS ASSOCIATION

By _____
ULISES BAEZA

By _____
LORETTA VIDAL

Dated: 1.21.2020

CITY OF MONTCLAIR

By _____
Mayor John Dutrey

By _____

By _____
City Manager Edward C. Starr