

**MEMORANDUM OF
UNDERSTANDING
(MOU)**

**San Fernando
Public Employees Association
(SFPEA)**

**City of San Fernando
(City)**

SFPEA REPRESENTATION

Service Employees International
Union, Local 721

MOU TERM

July 1, 2022 – June 30, 2027

CITY CONTRACT NO.

2145

ADOPTION DATE

April 17, 2023

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ARTICLE 1 — INTRODUCTION

1.01 PREAMBLE

This Memorandum of Understanding by and between the Service Employees International Union (SEIU) Local 721, San Fernando Public Employees Association, (“SFPEA/SEIU Local 721” or “Union”) and the City of San Fernando (“City”) has, as its purpose, the promotion of fair and harmonious relations, cooperation, and understanding between the City and SFPEA/SEIU Local 721 (collectively referred to as “the Parties”) and the employees it represents; the establishment of a fair, orderly, equitable, and peaceful procedure for the resolution of misunderstandings or differences which may arise under this MOU; and the establishment of wages, hours and terms and conditions of employment that significantly and adversely affect the employees covered by this MOU.

1.02 RECOGNITION

Pursuant to the City’s Employer-Employee Relations Resolution and the Meyers-Milias-Brown Act (“MMBA”) (Government Code Section 3500 et. seq.) the City recognizes SFPEA/SEIU Local 721, as the exclusive representative of the full time employees in the Miscellaneous Employee Bargaining Unit (SFPEA).

SEIU restructured its locals in the state of California and effective March 1, 2007, Local 347 became SEIU Local 721. The City now recognizes SEIU Local 721, CTW, CLC.

1.03 IMPLEMENTATION OF THE MEMORANDUM OF UNDERSTANDING (MOU)

This MOU constitutes an agreement and joint recommendation for ratification by the general membership of SFPEA/SEIU Local 721, and approval and adoption in its entirety by the City Council of the City of San Fernando.

Whenever any ordinance, rule, regulation, resolution or other action is required for the implementation of this MOU, the effective date of that ordinance, rule, regulation, etc. will be the same as the effective date provided for in this MOU, unless otherwise specified to become effective at a different date.

Except as specifically provided herein, the Parties do not waive their rights to meet and confer in good faith during the term of this MOU with respect to any other matters within the scope of representation.

1.04 PRE-EMPTIVE LAW AND SEVERABILITY

The Parties agree that this MOU is subject to all current and future applicable federal, state, and local laws. If any provision of this MOU conflicts with or is inconsistent with such laws, or is held invalid by operation of law, or by any tribunal or office of competent jurisdiction, or if compliance

with or enforcement of any provision of this MOU shall be restrained by such tribunal or office, then that conflicting or invalid provision shall be of no force or effect, and the parties shall, upon request, meet and confer over any proposed replacement provision and the remainder of the MOU shall not be affected.

1.05 DURATION OF THE MEMORANDUM OF UNDERSTANDING

This MOU shall be effective 7/1/22 and shall terminate at 12:00 midnight on 6/30/27.

Either party to the MOU wishing to negotiate a successor MOU shall deliver to the other party by April of the final year of the MOU, a formal request to reopen negotiations.

All of the current terms and conditions, including any side letter agreements, in the MOU shall remain in effect until either a successor agreement is reached between the parties, the City implements its last, best and final offer following completion of any applicable impasse resolution procedures, or unless a specific expiration date is otherwise provided for in this MOU.

1.06 FULL UNDERSTANDING

SFPEA/SEIU Local 721 and the City agree that during the negotiations which resulted in this MOU, each party had the unlimited right and opportunity to make proposals with respect to any subject or matter within the scope of bargaining and that this MOU represents the full and complete understanding and agreement of the Parties on terms and conditions of employment specifically addressed herein.

1.07 PREVAILING RIGHTS

To the extent that they are not expressly or by necessary interpretation and application covered by the purpose, intent, and language of this MOU agreement, all rights, privileges, obligations, and working conditions of employment within the scope of representation presently enjoyed by the employees within the unit shall remain in effect and be operative during the term of this agreement, unless eliminated, enlarged or otherwise modified after a meet and confer process, to the extent that such procedures are required by Federal laws and the laws of the State of California.

1.08 MANAGEMENT RIGHTS

The City's rights include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action for cause; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the method, means, and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies;

and exercise complete control and discretion over its organization and technology of performing its work, unless and only to the extent that the provisions of this MOU specifically curtail or limit such rights, powers, and authority.

1.09 NON-DISCRIMINATION

The parties mutually reaffirm California state laws of nondiscrimination in the treatment of any unit member because of race, religious creed, color, sex, age, disability, sexual orientation, national origin or ancestry, medical conditions (for example, cancer and genetic characteristics), marital status, and as defined under the California Fair Employment and Housing Act (FEHA) and all other state and federal anti-discrimination laws.

ARTICLE 2 — INSURANCE BENEFITS

2.01 MEDICAL DENTAL AND VISION INSURANCE FOR ACTIVE EMPLOYEES

The City contracts with the California Public Employees' Retirement System (CalPERS) for medical insurance coverage. Eligible new hires are covered under the program on the first day of the month following enrollment.

For employees hired prior to June 30, 2017, the City's contribution for medical insurance benefits on behalf of each unit employee and eligible dependent(s) shall be as follows:

- A. HMO Plans: Capped at the cost of the highest HMO plan for Los Angeles Area Region only, available at each plan level (i.e., employee, employee+1, employee+2 or more).
- B. PPO plans: For employees hired prior to July 1, 2009 who were enrolled in a PPO plan prior to July 1, 2009 and continue to be enrolled in a PPO plan, the City has established an optional benefit plan. The City's contribution toward that optional benefit plan shall be the amount of money necessary to pay the difference between the highest cost HMO plan in the L.A. Area and the employee's designated PPO plan. Optional benefit plan money is designed to be used only toward the purchase of PPO insurance.

The City shall continue to pay the cost of the full premium for dental and vision plans for both employee and their dependents for the term of this MOU.

- C. Cafeteria Plan: Unit employees hired on or after July 1, 2017 shall receive a monthly flex dollar allowance to apply toward medical, dental and vision benefits offered through the City's insurance plans.
 - 1. Employees hired on or after July 1, 2017 may make an irrevocable decision to enroll in the Cafeteria Plan during the annual open enrollment period.

2. For employees enrolled in the Cafeteria Plan, the monthly flex dollar allowance, inclusive of the statutory PEMHCA minimum, shall be equal to the highest Flex Dollar allowance in effect for non-safety bargaining units at each plan level (i.e., employee, employee+1, employee+2 or more). For 2023, the monthly dollar allowance is as follows:
 - a. Employee: \$1008.88
 - b. Employee +1: \$1,739.30
 - c. Family: \$2,337.42
 3. Beginning January 1 of each year during the term of this MOU, the monthly dollar allowance, inclusive of the statutory PEMHCA minimum, will be adjusted based on the average change from the prior year monthly premium for CalPERS contracting agencies in the Los Angeles Area Region for all plans. The adjustment will not be less than 0.0% and will not exceed 4.0%.
 4. The monthly flex dollar allowance may be used in accordance with the terms of the cafeteria plan to purchase benefits offered under the cafeteria plan, and other supplementary products, after enrolling in a mandatory medical insurance plan. Unit employees have the option to waive the other benefits.
 5. In the event that premiums and/or costs for the selected benefits exceed the monthly flex dollar allowance, the balance will be paid by the employee through automatic pre-tax payroll deduction, as permitted under IRS Code section 125.
 6. In the event the premiums and/or costs for the selected benefit are less than the monthly flex dollar allowance, surplus funds will not be returned to the employee. In lieu of receiving surplus flex dollar funds, all unit employees participating in the cafeteria plan will receive a contribution of fifty dollar (\$50) per month into a Retiree Health Savings Account, effective from the date of hire or enrollment in the Cafeteria Plan. Employees that qualify for benefits under Sections 2.01(6) and 2.02(C)(2) will receive the sum of both monthly contributions.
- D. Opt-Out: As an alternative to City provided health/medical coverage, employees shall be entitled to “opt out” of City provided health/medical benefits. In the event that an employee elects to “opt out” of the City’s health/medical benefit coverage, the City will pay on behalf of the employee an amount equal to the most expensive family level dental and vision premiums (currently \$210/month) which the employee can use toward participation in a dental and/or vision plan or choose to deposit \$210 into a Retiree Health Savings Plan, as designated by the City. . If the employee elects to purchase dental and/or vision insurance, surplus funds, if any, will not be returned to the employee. . The employee must annually provide the City with evidence of other health/medical insurance coverage that meets the minimum essential coverage requirements, as

established by the Affordable Care Act, through another source (other than coverage in the individual market, whether or not obtained through Covered California) in order to “opt out” of health/medical coverage. This “opt out” rate shall not change for employees covered under this MOU during the term of this MOU.

2.02 MEDICAL INSURANCE FOR RETIREES

The City provides retiree medical benefits as follows:

- A. Retiree Medical Tier I: Employees retired on or before June 30, 2015:
 - 1. If retired on or before December 31, 2012, 100% paid medical insurance benefits for employees and eligible dependents.
 - 2. If retired on or after January 1, 2013, 100% paid medical insurance for employee and eligible dependents, excluding PERS Care plan, if the most expensive.
- B. Retiree Medical Tier II: Employees hired on or before June 30, 2015 and retire on or after July 1, 2015: If the employee meets the vesting schedule set forth in California Government Code Section 22893, 100% paid medical insurance benefits for whatever plan the employee selects for himself/herself and eligible dependents, except PERS Care plan, if the most expensive.
- C. Retiree Medical Tier III: Employees hired on or after July 1, 2015 and subsequently retire from the City:
 - 1. If the employee meets the vesting schedule set forth in California Government Code Section 22893, PEMHCA minimum.
 - 2. The City shall contribute one hundred dollars (\$100) per month into a Retiree Health Savings (RHS) Plan, as designated by the City.

2.03 LIFE INSURANCE

Effective July 1, 2009, the City shall provide each unit member with a \$50,000 Basic Life and Accidental Death & Dismemberment insurance policy at no cost to the employee.

2.04 FLEXIBLE SPENDING ACCOUNT

The City will establish a flexible spending account in accordance with the applicable IRS Code to allow employees to pay certain medical expenses pre-tax, as allowed by the IRS as authorized expenses. This account will be funded solely by employee contributions who voluntarily choose to participate.

ARTICLE 3 — RETIREMENT BENEFITS

3.01 RETIREMENT FORMULA

The City shall provide retirement benefits to eligible unit employees under the California Public Employees Retirement System (CalPERS) as set forth below. The definition of “new” member and “classic” member are set forth in the Public Employee Pension Reform Act of 2013 (PEPRA).

- A. First Tier: “Classic” members hired on or before, November 12, 2005 receive the 3% @ 60, of the highest twelve consecutive months compensation retirement calculation, as per Government Code Section 21354.3.
- B. Second Tier: “Classic” members hired after November 12, 2005, receive the 2% @ 55, of the highest twelve consecutive months compensation retirement calculation, as allowed by Government Code section 20475.
- C. Third Tier: “New” members hired on or after January 1, 2013 receive the 2% @ 62, final consecutive 36-month average compensation retirement calculation.

3.02 EMPLOYER PAID MEMBER CONTRIBUTIONS

Effective on the first day of the pay period including July 1, 2016, the City shall pay 8% of the member contribution for First Tier “classic” members, and 7% of the member contribution for Second Tier “classic” members. The City shall report this Employer Paid Member Contribution (“EPMC”) to CalPERS as special compensation

In accordance with PEPRA, “new” members shall pay the full employee contribution of 50% of the total normal cost.

Contributions are pursuant to Government Code Section 20691, and are paid on a Pre-Taxed basis. Mandatory employee participation is required by CalPERS.

3.03 OTHER RETIREMENT BENEFITS

The City shall also provide the following retirement benefits for employees covered by this MOU:

- A. 4th Level of 1959 Survivor Benefits (Government Code §21574).
- B. 5% Annual Cost-of-Living November 12, 2005; and a 3% Cost-of-Living-Allowance for employees who entered CalPERS membership after November 12, 2005, (Government Code §21335).
- C. Credit for Unused Sick Leave for as per stipulated CalPERS guidelines (Government Code §20965).

3.04 MILITARY BUY BACK

The City contracts with CalPERS to implement Government Code Section 21024, Military Service Credit as Public Service, at no cost to the City for eligible employees.

ARTICLE 4 — LEAVE BENEFITS

4.01 VACATION LEAVE

Vacation leave is intended to provide time for an employee to be away from the work environment and to enable such employee to return to work mentally and physically refreshed.

Unit members may, at the employee’s discretion, carryover up to and including two years’ worth of his/her current annual vacation allowance for use in the following year.

An employee who is denied vacation leave due to the Departments staffing issues, and who exceeds his/her maximum vacation accrual cap due to such denial, shall continue to accrue vacation time over and above the cap until such time as the department is able to allow sufficient vacation leave to bring the employee under the cap. This provision shall not apply if an employee first requests vacation leave within 24 hours or less of reaching his/her accrual cap.

The City shall provide for vacation leave accrual on a payroll to payroll basis-as follows:

A.	<u>Years of Service and Annual Accrual</u>	<u>Accrual Cap</u>
1.	10 days (80 hours) for 1 to 4 years of service	160 hours
2.	15 days (120 hours) for 5 to 10 years of service-	240 hours
3.	16 days (128 hours) for 11 years of service	256 hours
4.	17 days (136 hours) for 12 years of service	272 hours
5.	18 days (144 hours) for 13 years of service	288 hours
6.	19 days (152 hours) for 14 years of service	304 hours
7.	20 days (160 hours) for 15 years of service	320 hours

B. Vacation Cash Out: On or before the pay period which includes December 15 of each calendar year, an employee may make an irrevocable election to cash out up to 40 hours of accrued vacation (in whole hour increments) which will be earned in the following calendar year at the employee’s base rate of pay. On the pay day for the pay period which includes Thanksgiving in the following year, the employee will receive cash for the amount of vacation the employee irrevocably elected to cash out in the prior year, provided the employee still has a minimum of eighty (80) hours of accrued vacation remaining after the cash out. If, however, the employee’s vacation leave balance would result in less than eighty (80) hours remaining after the cash out), the employee will receive cash for the amount of leave above eighty (80) hours that the employee has accrued at the time of the cash out.

4.02 HOLIDAY LEAVE

Employees who are required to work on a holiday shall receive holiday compensation at the rate of time and one-half (1 1/2) times their base salary rate of pay in addition to their regular rate of pay for all hours worked.

Each unit employee shall be entitled to the following holidays with pay:

New Year's Day	
Martin Luther King, Jr. Day	
Presidents' Day	
Cesar Chavez Birthday	(When Cesar Chavez birthday falls on any day except Monday, the holiday will be observed on the Friday following the actual holiday).
Memorial Day	
Juneteenth	
Independence Day	
Labor Day	
Float day —	(Each July 1, employees will accrue a Float Holiday, if not used within 12 months of receipt of the holiday, the Float Holiday is lost.)
Veterans Day	
Thanksgiving Day	
Day after Thanksgiving	
Christmas Day	

4.03 SICK LEAVE

Sick leave shall be accrued, allowed, and credited as follows:

- A. Full time employees accrue sick leave at the rate of eight (8) hours per month. Employees are eligible to use sick leave once it has been accrued.
- B. Any employee eligible for sick leave may use such leave for the following reasons:
 1. Medical and dental office appointments during work hours when authorized by the immediate supervisor; and/or
 2. Personal illness or physical incapacity resulting from causes beyond the employee's control, including but not limited to, pregnancy, childbirth, and other medically-related conditions; and/or
 3. For an employee who is a victim of domestic violence, sexual assault, or stalking, for the purposes described in Labor Code sections 230(c) and 230.1(a).

4. Sick leave shall be considered as “actual time worked” for purposes of calculating overtime premium pay.
- C. The City may request a doctor’s note after three (3) consecutive days of illness.
 - D. Employees shall be allowed to accumulate sick leave to a maximum of 800 hours. All time accrued in excess of 800 hours shall be paid at the end of the calendar year, at the rate of 35% of the employee’s regular rate of pay.
 - E. The City shall allow any employee upon retiring by reason of reaching retirement age under CalPERS to be paid at the employee’s then prevailing rate of pay, one half (1/2) of accumulated and unused sick leave time (total of employee’s “sick leave bank” plus the accumulated sick leave for the current year) not to exceed a maximum of the employee’s one (1) month pay.
 - F. In accordance with the California Family Sick Leave and Paid Sick Leave Acts, an employee is allowed up to 48 hours of family leave per calendar year for family-related illness or injury, which shall be charged against the employee’s accumulated sick leave. “Family” as used in this subsection is limited to any relation by blood, marriage, or adoption who is a member of the employee’s household (under the same roof); and any parent, substitute-parent, parent-in-law, spouse, registered domestic partner, child, sibling, grandchild, or grandparent of the employee, regardless of residence.
 1. As used in this subsection, the term “child” includes any biological or adopted child, foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis (regardless of age or dependency status).
 2. As used in this subsection, the term “parent” includes any biological or adoptive parent, foster parent, stepparent, legal guardian of an employee, or a person who stood in loco parentis when the employee was a minor child.

4.04 BEREAVEMENT

The City shall authorize unit members to utilize up to three (3) days paid bereavement leave per incident following the death of a member of their immediate family. Employees shall be entitled to an additional two unpaid (2) bereavement days off. Any additional bereavement days off shall be subject to the Department head’s approval on a case-by-case basis. The unit member may utilize accrued sick or vacation time during bereavement leave for additional time off, if needed.

For the purposes of implementing this benefit, the term “Immediate Family” shall mean grandparent, parent, child, sibling (including step or half), spouse or registered domestic partner as permitted by California law, in-laws, or any person living in the employee’s household. Proof of residence may be required. “Parent” shall mean biological, foster or adoptive parent, stepparent, legal guardian or person who has parental rights to employee. “Child” shall mean a

biological, adopted or foster child, stepchild, legal ward or a child of an employee who has parental rights.

The City shall authorize unit members to utilize one (1) paid day following the death of an extended family member. For the purpose of implementing this benefit, the term “Extended Family” shall mean: Aunts, Uncles, and Cousins, god-parents or god-parent equivalent.

Verification may be requested.

4.05 CATASTROPHIC LEAVE DONATION PROGRAM

The City shall continue the implementation of the Catastrophic Leave Donation Program as set forth in the City’s existing policy (See City Policy Section included here)

- A. Purpose and Scope: This policy establishes guidelines and procedures to be adhered to by all regular full-time City employees when requesting or donating accrued vacation, annual leave, management leave, compensation time, or sick time for use under the Catastrophic Leave Donation Program.

The purpose of the Catastrophic Leave Donation Program is to assist City employees who are otherwise granted leave of absence without pay as a result of catastrophic medical condition or injury to the employee or immediate family member to maintain income and health insurance integrated with accumulated benefits in an amount up to, but not exceeding, the employee’s regular monthly salary

- B. Definitions: For the purposes of implementing this program, “Catastrophic Condition” shall mean any significant personal or family tragedy such as life-threatening illness or severe nonindustrial injury of long duration which requires the employee to need personal time off beyond the amount of leave time he/she has accrued. Maternity leave or elective surgery, unless there are significant unplanned complications preventing the employee’s return to work, is not considered catastrophic.

1. “Personal tragedy” shall mean employees own life-threatening illness or severe non-industrial injury of an extended period of time.
2. “Family tragedy” shall mean life-threatening illness or unplanned medical emergency involving the employee’s immediate family member, i.e., spouse, child, sibling (including step or half), or parent.
3. “Child” shall mean a biological, adopted or foster child, a stepchild, a legal ward or a child of a person standing “in loco parentis” (who has parental rights) who is either under the age of 18 or an adult dependent child.

4. “Parent” shall mean biological, parent, stepparent, legal guardian or person having stood “in loco parentis” (who has parental rights) to employee.
- C. Eligibility: In order to be declared eligible for the catastrophic leave, an employee must meet all of the following conditions:
1. The employee or employee’s immediate family member must have sustained a life-threatening illness or severe non-industrial injury.
 2. Such illness or injury prevents the employee from returning to work for at least 30 days.
 3. The employee has less than 40 total hours left to exhaust all of his/her accrued sick leave, vacation, annual leave, management leave, compensatory time and holidays.
 4. The employee has met the City’s regular full-time employment status and has passed probation.
 5. The employee or his/her designee has provided medical justification as evidenced by a physician’s statement as to the severity and protracted nature of the employee’s condition.
 6. In the case of the employee’s immediate family member, the employee has provided medical justification as evidenced by physician’s statement that the presence of the employee is necessary.
- D. Policy: It is the policy of the City to assist regular full-time employees that are otherwise granted leave of absence without pay due to catastrophic medical condition or non-industrial injury through the implementation of the Catastrophic Leave Donation Program.

Regular full-time employees who are about to exhaust accrued leaves (with less than 40 hours total balance) due to personal and/or family tragedy may be eligible for additional leave time from donations by fellow employees.

Any regular full-time City employee may voluntarily donate to, or make requests for donation of leave. All donations are voluntary and subject to taxation in accordance with applicable state and federal regulations. Donations shall not exceed forty (40) hours per donor. Employees donating accrued leave time must retain a minimum of 160 total leave hours after their donation has been made and must complete a Catastrophic Leave Donation Form to request a transfer of specified accrued leave time.

The donation is on an as-needed basis, and in no event shall the recipient employee receive more than 480 hours in any 12-month period. The purpose in establishing a donation cap is to limit the donations to a reasonable level rather than allow donations to exceed the need. Under no circumstances shall the total sum of compensation including disability payments, accrued leave, catastrophic leave, and so on, exceed the employee's rate of pay prior to their catastrophe. All disability payments shall be reported to Personnel and use of donated time shall be coordinated with other applicable leave benefits. This Program shall be coordinated with the Family Medical Leave Act (FMLA), and is not a replacement of FMLA or CFRA.

The donated leave must come from accrued leave to which the donor has a vested right for payment upon termination e.g., vacation, sick, annual or management leave, compensatory time or holiday. Leave request and donations shall be processed on a first-come, first-served basis, incrementally as the need arises. The Personnel Manager shall advise all regular full-time employees of any need to donate more hours from time to time.

Once the leave has been donated, the donor relinquishes all claims to the donated leave. The donated leave time shall be converted from the dollar value of the donor's leave time to the hourly leave rate of the recipient employee and added to his/her leave bank. Unused leave balance shall be retained by the recipient, and shall not be returned to the donor.

E. Procedures:

1. The eligible employee must request the leave donation by completing and submitting to the Personnel Office, a Catastrophic Leave Request Form (Available via the City website or the Personnel Office).
2. In the event that the employee is incapacitated to the extent that he/she cannot complete the Catastrophic Leave Request Form, his/her immediate Supervisor can complete one on his/her behalf with the consent of the employee or designated adult beneficiary of the employee (if the employee is unconscious).
3. Upon receipt of the request, the Personnel Manager shall solicit donations from regular full-time employees via a memorandum.
4. Interested donors shall complete the Catastrophic Leave Donation Form and submit to the Personnel Office as soon as possible (Forms available via the City website or the Personnel Office).

5. The Personnel Office shall verify and certify that the donor has sufficient accrued leave time to make this donation, and then submit for the City Manager's approval.
 6. The Personnel Office shall then process the approved request for transfer to the recipient employee's leave bank. If the donation is not approved, Personnel shall advise the donor accordingly. (The names of the individuals making donations and the number of hours donated shall be kept confidential).
- F. Denial/Abuse of Leave: Denial of a request for Catastrophic Leave shall not be subject to the grievance or other appeal procedures. The employee shall be provided a written explanation of the denial. The availability of Catastrophic Leave shall not delay or prevent the City from taking action to medically separate or retire an employee for disability reasons where necessary.

Inappropriate use of Catastrophic Leave may subject an employee to disciplinary action, up to and including termination, as per stipulated guidelines in the City Personnel Rules.

- G. Authority: By order of the City Manager or their designee.

Employees shall be eligible for catastrophic leave donation based on the conditions specified in the policy. The City shall also agree to amend this policy to provide for an extension of the leave amount at the discretion of the City Manager or their designee on a case-by-case basis.

4.06 FMLA — CFRA LEAVE

- A. Authority: The City provides unpaid family and medical care leave for eligible employees as required by state and federal law. The following provisions set forth certain rights and obligations with respect to such leave. Rights and obligations which are not specifically set forth below are set forth in the Department of Labor regulations implementing the Federal Family and Medical Leave Act of 1993 ("FMLA"), and the regulations of the California Family Rights Act ("CFRA"). Unless otherwise provided, "leave" under this provision shall mean leave pursuant to both the FMLA and CFRA.
- B. Definitions
1. "12-Month Period" means a rolling 12-month period measured backward from the date leave is taken and continuous with each additional leave day taken.
 2. "Single 12-month period" means a 12-month period which begins on the first day the eligible employee takes FMLA leave to take care of a covered servicemember and ends 12 months after that date.

3. “Child” means a child under the age of 18 years of age, or 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, or a child of a person standing “in loco parentis” (who has parental rights).

A child is “incapable of self-care” if he/she requires active assistance or supervision to provide daily self-care in three 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.

4. “Parent” means the biological, adoptive, step or foster parent of an employee, legal guardian, or an individual who stands or stood in loco parentis (in place of a parent) to an employee when the employee was a child. This term does not include parents-in-law.
5. “Spouse” means a husband or wife as defined or recognized under California State law for purposes of marriage. “Spouse” also includes registered domestic partners and same-sex partners in marriage.
6. “Domestic Partner,” as defined by Family Code §§ 297 and 299.2, shall have the same meaning as “Spouse” for purposes of CFRA Leave.
7. “Serious health condition” means an illness, injury impairment, or physical or mental condition that involves:
 - a. Inpatient Care 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). A person is considered an “inpatient” when a health care facility formally admits him or her to the facility with the expectation that he or she will remain at least overnight, even if it later develops that such person can be discharged or transferred to another facility, and does not actually remain overnight; 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:

- i. A period of incapacity (i.e., inability to work, or perform other regular daily activities) due to serious health condition of more than three full consecutive calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:
 - 1) Treatment two or more times within 30 days of the first day of incapacity, unless extenuating circumstances exist by a health care provider, by a nurse, or by a provider of health care services (e.g., a physical therapist) under orders of, or on referral by a health care provider. The first in-person treatment visit must take place within seven days of the first day of incapacity (FMLA only); or
 - 2) Treatment by a health care provider on at least one occasion (FMLA only – treatment must take place within seven days of the first day of incapacity) and 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.
- ii. Any period of incapacity due to pregnancy or for prenatal care. This entitles the employee to FMLA leave, but not CFRA leave. (Under California law, an employee disabled by pregnancy is entitled to pregnancy disability leave.)
- iii. Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:
 - 1) Requires periodic visits (defined as at least twice a year) for treatment by a health care provider;
 - 2) Continues over an extended period of time (including recurring episodes of a single underlying condition); and
 - 3) May cause episodic rather than a continuing period of incapacity (e.g., asthma, diabetes, epilepsy, etc.). Absences for

such incapacity qualify for leave even if the absence lasts only one day.

- iv. 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.
- v. 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 three consecutive calendar days in the absence of medical intervention or treatment.

8. “Health Care Provider” means:

- 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 a subluxation as demonstrated by X-ray to exist) authorized to practice in California and performing within the scope of their practice as defined under California State law;
- d. Nurse practitioners and nurse-midwives, clinical social workers, and physician assistants who are authorized to practice under California State law and who are performing within the scope of their practice as defined under California State 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.

9. “Covered active duty” under the FMLA means: (a) in the case of a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country, or (b) in the case of a member of a reserve component of the Armed Forces, duty during the deployment of member of the Armed Forces to a foreign country under a call or order to active duty under certain specified provisions.
10. “Covered Servicemember” under the FMLA means (a) a current member of the Armed Forces, including a member of the National Guard or Reserves, who has a serious injury or illness and (i) is undergoing medical treatment, recuperation, or therapy, (ii) is otherwise in outpatient status, or (iii) is otherwise on the temporary disability retired list; or (b) a veteran who is undergoing medical treatment, recuperation, or therapy, for a serious injury or illness and who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy.
11. “Outpatient Status” means, with respect to a covered servicemember under the FMLA, the status of a member of the Armed Forces assigned to either (a) a military medical treatment facility as an outpatient; or (b) a unit established for the purpose of providing command and control of members of the Armed Forces receiving medical care as outpatients.
12. “Next of Kin of a Covered Servicemember” under the FMLA means the nearest blood relative other than the covered servicemember’s spouse, parent, son, or daughter, in the following order of priority: Blood relatives who have been granted legal custody of the covered servicemember by court decree or statutory provisions, brothers and sisters, grandparents, aunts and uncles, and first cousins, unless the covered servicemember has specifically designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave under the FMLA.
13. “Serious Injury or Illness” means: (a) in the case of a member of the Armed Forces, including a member of the National Guard or Reserves, means an injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that may render the member medically unfit to perform the duties of the member’s office, grade, rank, or rating; or (b) in the case of a veteran who was a member of the Armed Forces, including a member of the National Guard or Reserves, at any time during the period of five years preceding the date on which the veteran undergoes that medical treatment, recuperation, or therapy, means a qualifying injury or illness that was incurred by the member in the line of duty

on active duty in the Armed Forces (or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces) and that manifested itself before or after the member became a veteran.

14. "Qualifying Exigency" means: (a) short-notice deployment; (b) military events and related activities; (c) childcare and school activities; (d) financial and legal arrangements; (e) counseling; (f) rest and recuperation; (g) post-deployment activities; (h) parental care; and (i) additional activities that arise out of the military member's active duty or call to active duty status, provided that the City and the employee agree that the leave qualifies as an exigency and agree as to the timing and duration of the leave.

C. Reasons for Leave

1. Leave is only permitted for the following reasons:
 - a. The birth of a child or to care for or to bond with an employee's newborn child;
 - b. The placement of a child with an employee in connection with the adoption or foster care of a child, or for bonding with the child.
 - c. To care for a child, parent, sibling (including step or half), spouse, or domestic partner who has a serious health condition;
 - d. Because of a serious health condition that makes the employee unable to perform the functions of his/her position (i.e., an employee is unable to perform any one or more of the essential functions of his/her position);
2. Leave for a "qualifying exigency" may be taken arising out of the fact that an employee's spouse, son, daughter, or parent is on covered active duty or under a call or order to active duty status (under the FMLA only, not the CFRA); or
3. Leave to care for a spouse, son, daughter, parent, or "next of kin" who is a covered servicemember of the United States Armed Forces who has a serious injury or illness incurred in the line of duty while on active military duty or existed before the beginning of the member's active duty and was aggravated by service in the line of duty on active duty in the Armed Forces (this leave can run up to 26 weeks of unpaid leave during a single 12-month period) (under the FMLA only, not the CFRA).
4. Employees who misuse or abuse FMLA leave may be disciplined up to and including termination. An employee who fraudulently obtains or uses CFRA leave

is not protected by the CFRA's job restoration or maintenance of health benefits provisions.

- D. Eligibility and Duration: Employees Eligible for Leave: An employee is eligible for leave if the employee (1) has been employed for at least 12 months; and (2) has been employed for at least 1,250 hours during the 12-month period immediately preceding the commencement of the leave.

Amount of Leave: Eligible employees are entitled to a total of 12 workweeks (or 26 weeks to care for a covered servicemember under the FMLA) of leave during any 12-month period. Where FMLA leave qualifies as both military caregiver leave and care for a family member with a serious health condition, the leave will be designated as military caregiver leave first.

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 one year of the birth or placement of the child. In addition, the basic minimum duration of such leave is two weeks. However, an employee is entitled to leave for one of these purposes (e.g., bonding with a newborn) for at least one day, but less than two weeks' duration on any two occasions.

If leave is requested to care for a child, parent, spouse or the employee him/herself with a serious health condition, there is no minimum amount of leave that must be taken. However, 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 best be accomplished through an intermittent or reduced leave schedule. The City will deduct from an employee's pay the amount of time off from work. The City reserves the right to temporarily transfer an employee to an alternative position with equivalent pay and benefits, in the event the position better accommodates the employee's intermittent leave and the employee is qualified to perform the job functions.

Parents Both Employed by the City: In any case in which both parents are employed by the City and are entitled to leave, the aggregate number of workweeks of CFRA 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).

Similarly, where parent employees both work for the City, they may be limited to a total of 12 weeks of FMLA leave for bonding leave. In any case in which parent employees both employed by the City are entitled to leave, the aggregate number of workweeks of leave

to which both may be entitled may be limited to 26 workweeks during any 12-month period if leave is taken to care for a covered servicemember under FMLA.

In addition, the City may refuse to grant one employee's request for leave if it would result in both parent employees being on leave at the same time.

Except as noted above, this limitation does not apply to any other type of leave under this policy.

- E. Benefits: Employee Benefits While on Leave: Leave under this provision shall be unpaid. While on leave, employees will continue to be covered by the City's group health, dental, and vision insurance to the same extent that coverage is provided while the employee is on the job for up to 12 weeks each leave year. If the employee is disabled by pregnancy, coverage will continue to be covered for up to 4 months each leave year.

In the event an employee is disabled by pregnancy and also uses leave under the CFRA, the City will maintain the employee's health, dental, and vision benefits while the employee is disabled by pregnancy (up to four months or 17 weeks) and during the employee's CFRA leave (up to 12 weeks).

Depending on the particular plan, the City will inform the employee whether the premiums should be paid to the carrier or to the City. The employee's coverage on a particular plan may be dropped if they are more than 30 days late in making a premium payment. The City will provide the employee with at least 15 days' notice before ceasing coverage. That notice will advise the employee that they will be dropped from coverage if the premium payment is not paid by a certain date. 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 of the employee or his/her family member 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 that would otherwise be paid by the City (e.g. unpaid wages, vacation pay, etc.).

- F. Substitution of Paid Accrued Leaves: While on leave, as set forth herein, the City may require an employee to use paid accrued leaves, such as vacation days and personal days, to which the employee is entitled at the time of the leave request, during the leave. Similarly, the City may require an employee to use family and medical care leave concurrently with a non-FMLA/CFRA leave which is FMLA/CFRA-qualifying. If an employee is receiving a paid benefit (e.g., State Disability Insurance or workers' compensation), the employee is not considered to be on an unpaid leave, and an employee may, at his/her

option, coordinate the use of paid time off, sick leave, or accrued vacation up to his/her regular salary amount.

- G. Employee’s Right to Use Paid Accrued Leaves Concurrently with Family Leave: Where an employee has earned or accrued paid vacation, CTO, that paid leave may be substituted for all or part of any (otherwise) unpaid leave under this provision.

As for sick leave, an employee may elect or the City may require an employee to use accrued sick leave only if (1) the leave is for the employee’s own serious health condition; or (2) the leave is for another reason mutually agreed upon between the City and the employee.

If the City and employee do not “mutually agree” to allow use of accrued sick leave to care for a family member, the City may still be required to allow the employee to use some sick leave for the employee to care for a family member with a serious health condition pursuant to the Protected Sick Leave law under Labor Code section 233 and the California Paid Sick Leave Law.

An employee receiving Paid Family Leave to care for the serious health condition of a family member or to bond with a new child is not on “unpaid leave.” Therefore the City may not require the employee to use the paid time off, sick leave, or accrued vacation.

- H. City’s Right to Require an Employee to Use Paid Leave When Using FMLA/CFRA Leave: Employees who otherwise would be on an unpaid leave of absence must exhaust their accrued leaves concurrently with FMLA/CFRA leave to the same extent that employees have the right to use their accrued leaves concurrently with FMLA/CFRA leave, with two exceptions:

1. Employees are required to use accrued compensatory time earned in lieu of overtime earned pursuant to the Fair Labor Standards Act; and
2. Employees will only be required to use sick leave concurrently with FMLA/CFRA leave if the leave is for the employee’s own serious health condition or another reason mutually agreed upon between the City and the employee.

- I. City’s Right to Require an Employee to Exhaust FMLA/CFRA Leave Concurrently with Other Leaves: If an employee takes a leave of absence for any reason which is FMLA/CFRA-qualifying, the City may designate that non-FMLA/CFRA leave as running concurrently with the employee’s 12-week FMLA/CFRA leave entitlement.

- J. City’s and Employee’s Rights if an Employee Requests Accrued Leave, Other Than Accrued Sick Leave, Without Mentioning Either the FMLA or CFRA: If an employee requests to utilize accrued vacation leave or other accrued paid time off, other than accrued sick leave, 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 City may require the employee to exhaust accrued leave as described above.

K. Medical Certification and Requests for Leave:

1. Requests for 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 requested by the City. Since the certification need not identify the medical diagnosis or serious health condition, the employee should request that the health care provider not include that information on the certification. To the extent that leave is foreseeable at least thirty (30) days' notice must be provided. If the need for leave is based on planned medical treatment of a family member, military caregiver leave, or a qualifying exigency, an employee is required to notify the City as soon as he/she is aware of the need to take leave, and if practical, must try to schedule the leave so as to minimize disruption to City operations.
2. 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 work at all or is unable to perform the essential functions of his/her position. It should include the anticipated date and duration of the leave. The employee shall be responsible for informing the City, as far in advance as possible, of the date upon which the leave is expected to be completed, or any extensions of the anticipated leave completion date. Should the employee fail to return to work upon the expiration of the leave without obtaining an extension, the employee will be considered to have voluntarily terminated his/her employment with the City.
3. Employees who request leave to care for a covered servicemember who is a child, spouse, parent, or "next of kin" of the employee must provide written certification from a health care provider regarding the injured servicemember's serious injury or illness.

- L. Qualifying Exigency: The first time an employee requests leave because of a qualifying exigency, an employer may require the employee to provide a copy of the military member's active duty orders or other documentation issued by the military which indicates that the military member is on covered active duty or call to active duty status in a foreign country, and the dates of the military member's active duty service. A copy of new active duty orders or similar documentation shall be provided to the employer if the

need for leave because of a qualifying exigency arises out of a different active duty or call to active duty status of the same or a different military member.

- M. Time to Provide Certification: When an employee's leave is foreseeable and at least 30 calendar days' notice has been provided, if a medical certification is requested, the employee must provide it before the leave begins. When this is not possible, the employee must provide the requested certification to the City within the time frame requested by the City (at least 15 calendar days), unless it is not practicable under the particular circumstances to do so despite the employee's diligent, good faith efforts.
- N. Consequences for 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.
- O. Second and Third Medical Opinions: If the City has a good faith, objective 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 Leave Rights for California Employees 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 opinions when there is a second or third medical opinion sought.
- P. Notice of Leave: Although the City recognizes that emergencies arise which may require employees to request immediate leave, employees are required to give as much notice as possible of their need for leave. Except for qualifying exigency leave, if leave is foreseeable, at least 30 calendar days' notice is required. In addition, if an employee knows that he/she will need leave in the future, but does not know the exact date(s) (e.g. for the birth of a child or to take care of a newborn), the employee shall inform his/her supervisor as soon as possible that such leave will be needed. If the City determines that an employee's notice is inadequate or the employee knew about the requested leave in advance of the request, the City may delay the granting of the leave until it can, in its discretion, adequately cover the position with a substitute.

For foreseeable leave due to a qualifying exigency, an employee must provide notice of the need for leave as soon as practicable, regardless of how far in advance such leave is foreseeable.

- Q. Return From Leave:
1. Right to Reinstatement: Upon expiration of leave, an employee is entitled to be reinstated to the position of employment 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.

An employee returning from leave shall retain the same seniority that the employee possessed at the time the leave commenced for the purpose of layoff, recall, promotion, job assignment, and seniority related benefits. Seniority shall not continue to accrue during the leave 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 two business days, where feasible, after the employee notifies the employer 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 reinstatement of an employee whose leave was due to the employee's own serious health condition, which made the employee unable to perform the functions of 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.
4. **Reinstatement of "Key Employees":** The City may deny reinstatement to any "key" employee if necessary to prevent substantial and grievous economic injury to the City. A "key" employee refers to any employee who, on the date of the request for leave, is one of the five highest paid employees, or whose gross salary is among the top ten percent of employees. An employee will be notified of his/her status as a key employee if there is any possibility that reinstatement may be denied at the end of the leave period. Should the employee still decide to take leave, the City will continue to pay the employee's health benefits until the expiration of the first 12 weeks of the leave period during any 12-month period.

- R. Required Forms: Employees must fill out the following applicable forms in connection with leave under this provision:
1. “Request for Family or Medical Leave Form” prepared by the City to be eligible for leave. The City will respond to each request. That request will set forth the 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, spouse or domestic partner.
 3. Authorization for payroll deductions for benefit plan coverage continuation.
 4. Fitness-for-duty to return from leave form.
 5. 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.
 6. Fitness-for-Duty Certification: As a condition of reinstatement of an employee whose leave was due to the employee’s own serious health condition, 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.

4.07 TIME OFF FOR PROMOTIONAL TESTS OR INTERVIEWS

Employees shall be allowed to utilize City time of up to two hours for purposes of taking written or performance tests and up to two hours for participating in interviews within the City.

ARTICLE 5 — EMPLOYEE ASSISTANCE PROGRAM

5.01 EMPLOYEE ASSISTANCE PROGRAM

The City shall continue to maintain the privacy provisions of the Employee Assistance Program (EAP), as an insured program; thereby permitting unit employees to visit a City designated EAP Specialist without having to go through Personnel.

ARTICLE 6 — COMPENSATION

6.01 SALARY

Effective, retroactive to the first day of the first full pay period after January 1, 2023, current unit members shall receive a base salary increase of four percent (4%). For purposes of this provision,

“current unit members” means unit members employed with the City on the date Council adopts this MOU.

Effective the first full pay period following July 1, 2023, unit members shall receive a base salary increase of four percent (4%).

Effective the first full pay period following July 1, 2024, unit members shall receive a base salary increase of four percent (4%).

Effective the first full pay period following July 1, 2025, unit members shall receive a base salary increase of three percent (3%)

Effective the first full pay period following July 1, 2026, unit members shall receive a base salary increase of three percent (3%).

6.02 DEFINITIONS

As used in this MOU, “Base salary” means “the salary classification, range, and step to which an employee is assigned.” It excludes any additional allowances, special pay, and noncash benefits. As used in this MOU, “Regular Rate of Pay” shall be as defined in the Fair Labor Standards Act (FLSA).

6.03 CALCULATION OF BENEFITS

In computing benefits that are a percentage of base salary (e.g., Longevity, Special Assignment Pay, etc.), each benefit is calculated independently over base salary of each respective employee.

6.04 LONGEVITY

- A. The City shall pay unit employees that have completed ten (10) years of continuous service with the City, an additional three percent (3%) above their base salary step.
- B. The City shall pay unit employees that have completed twenty (20) years of continuous service with the City, an additional one percent (1%) above the previous first longevity step, for a total of four percent (4%) above their base salary.
- C. The City shall pay unit employees that have completed thirty (30) years of continuous service with the City, an additional one percent (1%) above the previous second longevity step, for a total of five percent (5%) above their base salary.

An employee on a leave of absence without pay, or on any form of leave without pay, with the exception of federal or state family leave and/or military leave under the Uniformed Services Employment and Reemployment Rights Act (USERRA) and/or the California Military and Veterans Code, shall not have such leave time credited as service time for purposes of calculating the years of service.

6.05 BILINGUAL BONUS

A monthly bilingual bonus shall be paid to those unit employees that qualify in accordance with the following conditions:

- A. Field Employees: \$50 per month provided:
 - 1. The employee has demonstrated to the satisfaction of the City his/her fluency in the Spanish language based on a bi-annual oral testing procedure selected by the City;
 - 2. The employee is required in the normal course of his/her duties to communicate in Spanish with members of the public, as determined by the Department Head and approved in writing by the City Manager.

- B. Counter Employees: \$100 per month provided:
 - 1. The employee has demonstrated to the satisfaction of the City his/her fluency in the Spanish language based on a bi-annual oral testing procedure selected by the City.
 - 2. The employee is employed in a job classification whose primary duties require the employee to communicate with members of the public.

- C. Written Translation of City Materials: \$25 per month: Employees who otherwise qualify for a bilingual bonus under subsection A and B above, shall receive an additional \$25 per month bilingual bonus when asked to translate City materials to Spanish for official publication.

- D. Grandfather Provision: Any field employee who has received bilingual pay of \$100 per month on a continuous basis since July 1, 2017 will receive the bilingual bonus in accordance with provisions set forth in subsection B above.

6.06 COURT APPEARANCE PAY

Any bargaining unit employee required to appear in court on behalf of the City during off-duty hours, shall be paid at one and one-half (1½) times his/her regular rate of pay for the duration of the court appearance, with a minimum of two (2) hours.

6.07 DO NO HARM

The City agrees that no member of the bargaining unit shall have his or her wages or salary or any other compensation negatively affected based on the implementation of the results of any classification study.

ARTICLE 7 - UNION DUES

7.01 PAYROLL DEDUCTIONS

It is understood and agreed that SFPEA/SEIU Local 721 has the right to payroll deduction of membership dues or other Union fees including but not limited to initiation fees, and insurance premiums for non-employer offered union benefit upon revocable written authorization by the affected employee in the form presently used. Such deductions shall be made monthly and forwarded to SFPEA/SEIU Local 721 office. SFPEA/SEIU 721 agrees to hold the City harmless against any and all claims, demands, suits, and other forms of liability that may arise out of or by reason of deduction of dues or other union fees or premiums for union-offered benefits.

7.02 MAINTENANCE OF DUES PAYROLL DEDUCTIONS

Any Unit employees who have authorized Union dues deductions on the effective date of this MOU or at any time subsequent to the effective date of this MOU shall continue to have such dues deduction taken by the City during the term of this MOU; provided, however, that any Unit employee may terminate such Union dues each year during the period February 10 through February 28, by notifying the Union of their termination of Union dues deduction. Such notification shall be by certified mail and should be in the form of a letter containing the following information: employee name, employee number, job classification, department name and name of Union from which dues deductions are to be cancelled. The Union will provide the City with the appropriate documentation to process these dues cancellations within ten (10) business days after the close of the withdrawal period.

7.03 VOLUNTARY POLITICAL CONTRIBUTIONS

The City agrees to allow Unit employees to make voluntary political contributions to the Local 721 Political Action Committee through payroll deduction; any unit employee interested in making such contributions shall authorize the City in writing on a form, which clearly indicates that the funds will be used for political activities, and that the contribution is voluntary in nature. The Union shall abide by all Federal and State laws relating to such contributions, and indemnify the City in the event of litigation.

ARTICLE 8 — WORK SCHEDULE

8.01 REGULAR WORK SCHEDULE

City Hall business hours are from 7:30 a.m.-5:30 p.m. (Monday-Thursday) and 8:00 a.m. to 5:00 p.m. (Fridays). Employees assigned to a regular work schedule shall work 8 hours per day, 5 days a week, for a total of 40 hours per week.

8.02 MODIFIED-WORK SCHEDULE

The City shall include both the 3/12 and 9/80 work schedules for the duration of as permanent items in the MOU. However, City Hall business hours shall be as follows: 7:30 A.M.–5:30 P.M. (Monday–Thursday), and 8:00 A.M.–5:00 P.M. (Fridays). Employees under the 9/80 work schedule shall have the option of either Shift A or B *only*, with opposite Fridays off, as consistent with current City policy and with Department Head’s approval.

ARTICLE 9 — WORKERS’ COMPENSATION

9.01 WORKERS’ COMPENSATION

In those instances when an employee experiences an injury which is recognized as job-related by the City or the Workers’ Compensation Appeals Board, and the employee is absent from work because of the injury, the employee shall receive full pay for the first ten (10) working days of disability without charge against accumulated sick leave. Thereafter, the injured employee shall have the following options:

- A. Use accumulated leave time to offset the workers’ compensation check up to the employee’s full salary. Employees may choose to use any accrued leave time under this provision; or
- B. Accept the workers’ compensation check as compensation during the period of temporary total disability with no time charged against accumulated earned leave time.

The City agrees to continue full payment of all insurance premiums for the duration of any job-related injury or illness at the same level as the employee had prior to his/her injury regardless of whether or not the employee is on payroll.

In accordance with CalPERS stipulations, as soon as it is believed that a unit employee is unable to perform his/her job because of an illness or injury which is expected to be permanent or last longer than six months, the employee may request that the City accommodate/transfer him/her to a less demanding vacant position. Should there not be a vacant position available, the City shall have the option to submit an application for disability retirement on the employee’s behalf, provided that the employee has attained five or more years of service. However, nothing in this provision, takes away the employee’s option to waive the right to retire for disability and/or elect to resign and withdraw his/her share of retirement contributions. If the employee has attained normal service retirement eligibility, he/she shall have the right to elect service retirement as provided in Government Code Section 20731. The injury or disease causing the incapacity or disability need not be job-related.

9.02 MODIFIED DUTY WORK

The City shall make every reasonable effort to reasonably accommodate ill or injured workers consistent with all applicable provisions of the law.

ARTICLE 10 — UNIFORM ALLOWANCE/EQUIPMENT

10.01 UNIFORM ALLOWANCE/EQUIPMENT

The City shall provide uniforms and/or equipment, as well as provide allowances as follows:

- A. Public Works field employees shall be provided with the following annually unless otherwise specified:
 - 1. A pair of work boots made by Timberland, Red Wing, Wolverine, Stanley Cat, Bates, Chippewa, Carolyn, Sears or Dye Hard consistent with Cal OSHA's ANSI Z41.1 standard. Local Vender, specifications and brands to be provided by the City based on the job performed;
 - 2. A jacket with bi-yearly replacement, subject to Department Head approval.
 - 3. A uniform voucher not to exceed \$300.00.
 - 4. A pair of work shoes for Meter Technicians. All purchases shall be made in accordance with the City's purchasing policy. It is further agreed that these will be deducted from the final salary payment of any employee failing to satisfactorily complete his probationary period.
 - 5. One (1) polo shirt in July each year for full-time City Hall staff and clerical staff in Public Works operations.
- B. Recreation and Community Services and Community Development Department field workers shall be provided with an initial issue of one appropriate jacket with bi-yearly replacements, if required (subject to Department Head approval), three (3) polo shirts in July each year, and one (1) pair of work shoes, up to \$75, annually.

Where uniform allowances are to be paid under the Sections above, they shall be paid semi-annually in December and in June. Worn uniforms, work shoes, work boots, and equipment shall be replaced by the City subject to the Department Head's approval. All worn uniforms must be turned in upon being replaced.

10.02 RAIN GEAR

The City shall provide rain gear to employees assigned to work in the rain, as needed.

ARTICLE 11 — OVERTIME & OTHER COMPENSATION

11.01 OVERTIME ISSUES AND LANGUAGE

For non-exempt employees who work under the regular 7:30 a.m.-5:30 p.m. or 8:00 a.m.–5:00 p.m., Monday–Friday schedule, overtime must be paid or compensatory time off (CTO) granted at the employee’s request as defined in Section 12.02 of this Article for all hours worked over forty (40) hours in a seven day work period. Non-exempt employees who are under the 9/80 or other flex work schedule shall have a designated fixed workweek, and any hours worked over the specified maximum hours within the designated workweek must be paid as overtime or granted compensatory time off at the employee’s request as defined in Section 12.02 of this Article. The City shall comply with the provisions of the Fair Labor Standard Act (FLSA), and shall define the parameters of a standard workweek.

Overtime shall be paid at the rate of one and one-half (1.5) times the regular rate of pay for the excess time (overtime hours) worked during the workweek. The payment of overtime to non-exempt, employees will be based upon actual hours worked, which shall include vacation, holiday, and sick time.

Overtime will be equitably distributed amongst qualified employees within their department and classification. The City will develop a form which will be provided to the employee who is offered the overtime and which allows the employee to indicate by his/her signature in what manner they want the overtime to be compensated (i.e. monetarily or through CTO).

The rate at which Contract (i.e., MOU) Overtime is calculated shall not include the City’s Cafeteria Plan Allowance, the opt-out allowance, or any cash back an employee may receive from the Cafeteria Plan Allowance as set forth in Section 2.01, by choosing benefits which cost less than the Allowance.

11.02 COMPENSATORY TIME OFF (CTO)

Unit employees may accrue a maximum of 100 CTO hours. CTO hours in excess of 100 hours must be paid at the rate of one and one-half (1.5) times the regular rate of pay.

The scheduling and use of CTO shall be subject to the approval of the employee’s immediate supervisor or their designee. An employee who has requested the use of CTO is permitted to use such time “within a reasonable period” after making the request, unless it is determined that the employee’s request would “unduly disrupt” the Department operations or impose an unreasonable burden on the Department’s ability to provide services of acceptable quality and quantity for the public during the time required without the use of the employee’s services.

11.03 SHIFT DIFFERENTIAL PAY

The City pays, in addition to base salary, an additional ninety dollars (\$90) per month to unit members required to work swing shift, and one hundred and twenty dollars (\$120) per month to unit members required to work graveyard shift.

When an employee is assigned to a specific shift eligible for shift differential pay, the employee will be paid the shift differential rate for that shift. In the event an employee works a different shift to fill in for sick leave, vacation, etc., employee will be paid at the rate for his/her assigned shift.

11.04 STAND-BY PAY

All employees who are assigned to mandatory stand-by on the weekends and holidays shall be paid stand-by pay at the rate of \$1.50 per hour during the period when they are required to stand-by.

Employees assigned to mandatory stand-by must:

- A. Provide a phone number at which they can be contacted if a stand-by phone is not issued.
- B. Report to work within 1 hour of being contacted.
- C. Not be under the influence of alcohol, unlawful substances, or prescribed drugs that may impair their ability to perform duties.

At no point shall more than three (3) employees be on stand-by from all the divisions combined (including Water, Street, and Tree, and Facilities).

11.05 SPECIAL PROJECTS BONUS PAY

Employees in Public Works when assigned to the Special Projects Squad shall receive \$5.00 per hour for each hour over their base salary worked on designated special projects. Special Projects pay will not be paid in addition to Inspector pay. No more than three (3) persons will be authorized to receive Special Projects pay for any project; a fourth employee may be assigned to the Special Projects crew at the discretion of the Public Works Director or their designee.

A “special project” shall be any new project work approved by the Public Works Director which meets the following first criterion and at least one or more of the remaining criteria:

- A. Nature of Work: Special projects shall typically be one time, unique construction projects, and does not include on-going routine maintenance duties or deferred maintenance duties.

- B. Short Deadline: Work which would normally be performed as contractual services, but due to an immediate deadline, cannot reasonably be procured in a timely manner by the informal or formal City procurement process.
- C. Unique Knowledge/Skills: Work which would normally be performed as contractual services, but may be performed more efficiently or effectively Public Works employees due to their unique knowledge of the project and/or work conditions or due to special skills.
- D. Demonstrated Cost Savings: Work which would normally be performed by contractual services, but when assigned to Public Works employees can be performed more efficiently or effectively resulting in demonstrated project cost savings.

11.06 WEEKEND BONUS PAY

The City shall provide weekend bonus pay to any employees assigned to rotating weekend work assignments. Employees who request to work the weekend shall not be eligible for Weekend Bonus Pay.

Any eligible employee that is required and scheduled to perform Weekend Shift duties will be compensated at the rate of an additional \$2.50 per hour over his or her base salary, for those hours spent on weekend assignment. To be eligible for Weekend Bonus Pay, the staff member must be regularly assigned and scheduled to work a weekend. Compensation for weekend shift shall be the employee's base salary plus the weekend bonus pay for hours worked on weekends. Weekend Bonus Pay shall not be included in the determination of Overtime premium rate or comp time. It shall not be combined with other established premium compensation such as stand-by pay, or any other shift pay.

11.07 INSPECTOR DUTY PAY

The City agrees to continue the specialized inspector pay provisions consistent with agreed upon procedures including but not limited to requiring approval by the Department Head and providing for no more than one (1) inspector per project except by official exemption.

Any eligible Public Works field/building maintenance and/or utility employee who is required and scheduled to perform Inspector duties, which are outside of the duties provided in their class specification, will be compensated at the rate of an additional \$6.00 per hour over his or her base salary, for those hours actually spent on inspection.

To be eligible for Inspector Duty Pay, the employee must be certified and be on a Certification List created by the appropriate Department Head. An employee qualifies as "certified" for purposes of Inspector Duty Pay if they have (1) received state or local certification in the inspection subject, or in a related field, and/or (2) received and successfully completed City-sponsored trainings in the inspection subject or in a related field.

11.08 CALL BACK

Any employee called back to work other than as continuation (immediately preceding or following) of his/her regular established work schedule shall be compensated at the rate of pay equal to one and one-half (1.5) times his/her regular hourly pay. The minimum period to be compensated for any such “callback” time shall be two (2) hours.

11.09 WORKING OUT OF CLASS

An employee assigned by his or her Department Head, with City Manager approval, to perform duties outside of his or her job classification on a temporary basis will be paid at the rate of five percent (5%) higher than their current base salary. This five percent working out of class pay shall continue until such time that the Department Head determines that the duties are no longer necessary or the position is reclassified.

11.10 ACTING OUT OF CLASS

An employee assigned by his or her Department Head, with City Manager approval to perform duties of a higher level position or to act in a higher capacity outside of their own classification shall be paid at the rate of five percent (5%) higher than their current BASE salary, retroactive to the first day of the assignment, effective the fifth consecutive business day of working in that higher level assignment. If that assignment lasts longer than ten (10) consecutive work days, then the employee shall be paid at Step A of the higher classification or five percent (5%), whichever is higher, effective after the tenth consecutive business day of working in that higher level assignment.

In the event the employee is promoted to the higher level position, and has completed at least six (6) consecutive months in the higher level position to which they were promoted, and has received a satisfactory evaluation within 30 days prior to their promotion, the probation period shall be waived. All consecutive time worked of more than six consecutive months in that higher level position shall be considered time served in the position for seniority as it relates to bumping rights.

No employee shall be assigned to an acting out of class assignment for more than 960 hours per fiscal year during an active recruitment for the vacant position. An employee that exceeds 960 hours when there is no active recruitment, shall be moved to the next salary step after six (6) consecutive months in the acting position, provided they received a satisfactory evaluation.

The City shall ensure that anyone assigned to act in a higher capacity is adequately trained to fulfill the requirements of that higher class. Assignments to perform higher-level duties must be formal and in writing, and approved by the Department Head.

11.11 EDUCATION INCENTIVE PAY

Employees who possess a Bachelor degree in a related field from an accredited educational institution shall receive two-percent (2%) above their base salary step effective the first day of the full pay period following the date they submit proof of their degree to the Personnel Division. Employees who possess a Master degree in a related field from an accredited educational institution shall receive an additional two-percent (2%) above their base salary step effective the first day of the full pay period following the date they submit proof of their degree to the Personnel Division. The employee is not eligible for Education Incentive Pay that is specified as a minimum qualification for the job classification.

11.12 OTHER COMPENSATION

The City will provide Certification/License Pay as follows:

- A. Commercial Driver's License (CDL): Five percent (5%) of base rate of pay for a Class B, an additional two percent (2%) of base rate of pay for a Class A. Maximum of seven percent (7%) for CDL Certification pay if an employee possesses a Class A.
- B. International Municipal Signal Association (IMSA) 1, 2, & 3: Two and one-half percent (2.5%) of base rate of pay for Grade 1, with an additional one percent (1%) of base rate of pay for each additional grade. The Public Works Superintendent classification is required to hold a Grade 1 Certification, therefore, is only eligible for Grades 2 and 3 Certification pay.
- C. California Water Environment Association (CWEA) Grades 1-4 for sewer collection systems: Two and one-half percent (2.5%) of base rate of pay for Grade 1, with an additional one percent (1%) of base rate of pay for each additional grade. The Public Works Superintendent and Public Works Supervisor classifications are required to hold a Grade 1 certification, therefore, are only eligible for Grades 2, 3, and 4 Certification pay.
- D. Engineer in Training (EIT): Five percent (5%) of base rate of pay.
- E. Qualified Applicator Certification (QAC license) to inspect/monitor contractor compliance: Two and one-half percent (2.5%) of base rate of pay. This pay shall be in-lieu of "Inspector Pay."
- F. ISA Aerial Lift/OSHA Aerial & Scissor Lift Certification and Training: Two and one-half percent (2.5%) of base rate of pay.
- G. International Society of Arboriculture (ISA) Certified Arborist: Five percent (5%) of base rate of pay.

- H. To qualify for any of the Certification/License Pays identified in subsections (A)-(G), the employee must hold a position in Public Works, such as: Public Works Superintendent, Public Works Supervisor, Public Works Senior Maintenance Worker, Public Works Maintenance Worker, Civil Engineering Assistant II, Water Superintendent, Water System Supervisor, Senior Water Worker, Water Worker I/II, Senior Water System Operator or Cross Connection Specialist, or equivalent, and any new non-clerical job classifications added to the Public Works Department. The employee is not eligible for a Certificate/License Pay that is specified as a minimum qualification for the job classification. In the event a unit member is reclassified at a future date to any of these job classifications they shall get the benefit of subsection (A)-(G).
- I. American Water Works Association (AWWA) Backflow Prevention Tester and Cross-Connection Control Program Specialist: Two and one-half percent (2.5%) for each certification. This Certification/License Pay is only applicable to unit members assigned to the Water Worker I/II and Senior Water Worker classifications.
- J. California State Water Resources Control Board, Water Distribution System Operator Grade D-III: Two and one-half percent (2.5%) of base rate of pay. This Certification/License Pay is only applicable to unit members assigned to the Water Worker I/II and Senior Water Worker classifications.
- K. California State Water Resources Control Board, Water Treatment Operator Grade T-II and T-III: Two and one-half percent (2.5%) per certification. This Certification/License Pay is only applicable to unit members assigned to the Water Worker I/II and Senior Water Worker classifications.
- L. CPR/First Aid Trainer: Five percent (5%) of base rate of pay. This Certification/License Pay is only applicable to unit members in classifications assigned to Recreation & Community Services.
- M. Global Identification System (GIS) Certification: Five percent (5%) of base rate of pay. This Certification pay is available to all unit members.
- N. Employees will be ineligible for any of the Certification/License Pays listed in subsections (A)-(G) and (I) to (M) upon expiration/termination of the license or certificate.
- O. Employees receiving any Certification/License Pay set forth in Section 11.12 of this MOU shall not be entitled to Out-of-Class Pay when performing duties authorized by their Certification/License.

ARTICLE 12 — REIMBURSEMENTS

12.01 TUITION REIMBURSEMENT

The City shall reimburse unit members' tuition for job-related approved courses to a maximum of \$3,000 per fiscal year. Department Heads and employees should make every effort to submit accurate requests for tuition reimbursement during the annual budget process.

Tuition reimbursement shall be contingent upon employee satisfactorily completing course(s) with a minimum of a "C" Grade and commit to continued service to the City for the equivalent of the school units, not to exceed two (2) years.

Employees enrolled in an approved tuition reimbursement program may charge mileage beyond ten (10) miles against tuition reimbursement at the current IRS rate.

12.02 MILEAGE REIMBURSEMENT

Employees who are required by the City to use their private vehicles on City business (i.e. training) shall be reimbursed for mileage at the prevailing IRS rate.

ARTICLE 13 — NEPOTISM

13.01 NEPOTISM

The City shall implement and enforce a policy prohibiting nepotism as defined below:

- A. No person shall be appointed, promoted or hired into a position in the same department when that person's relative already holds a position in the same department, and such employment would result in a direct supervisor-subordinate relationship.
- B. A direct supervisor-subordinate relationship is one in which one person is responsible for the day-to-day supervision and control of the other person, or is in their direct chain of command. Collateral assignments and occasional, overtime or temporary assignments are not considered to violate this policy:
- C. For purposes of this section, "relative" means spouse, child, step-child, parent, grandparent, grandchild, brother, sister, half-brother, half-sister, aunt, uncle, niece, nephew, parent-in-law, brother-in-law or sister-in-law.
- D. If a supervisor and subordinate in the same department marry, the department reserves the right to transfer the employee with the least City seniority to another assignment within the department that is consistent with this policy, without loss of pay. If no such assignment exists in the department that will remedy this supervisor-subordinate

relationship, the employee with least seniority may be transferred to another department. If no such transfer is possible, that employee may be separated from service.

ARTICLE 14 — DISCIPLINARY APPEAL PROCEDURES

14.01 RIGHT TO APPEAL

- A. A regular employee who is discharged, involuntarily demoted, suspended, or reduced in pay for disciplinary reasons shall have the right to appeal such disciplinary action within ten (10) working days of receipt of the final notice of discipline.
- B. Whenever an employee or the Union with the employee's consent, as reflected in the written appeal, requests a disciplinary hearing to appeal the imposition of a discharge, involuntary demotion, or suspension, or reduction in pay for disciplinary reasons, the request for the disciplinary appeal hearing shall be in writing, signed by the employee, or his/her representative, and presented to the Personnel Manager. The request shall identify the subject matter of the request, the grounds for the request, and the relief desired by the employee.
- C. If the employee fails to request a disciplinary hearing within the prescribed time, the employee shall have waived the right to a hearing and all rights to further appeal of the disciplinary action.

14.02 HEARING OFFICER

- A. The City and the employee or his/her representative may mutually choose a hearing officer. If they cannot agree, the hearing officer shall be chosen from a panel of seven (7) hearing officers from a list provided by State Mediation and Conciliation Service (SMCS). The parties shall alternately strike names until one name remains, with the employee or his/her representative striking the first name from the list. Names will be struck until the hearing officer is selected.
- B. The hearing officer shall submit a written decision setting forth his/her findings, conclusions, and recommendations, which shall be binding upon the parties subject to review by a superior court pursuant to Code of civil Procedure 1094.5 and 1094.6.

14.03 SCHEDULING OF DISCIPLINARY HEARING:

Within 45 calendar days after the filing of the employee's request, the Personnel Manager will schedule a future date for the disciplinary appeal, considering the availability of the hearing officer, the parties, and the parties' representative. The Personnel Manager shall notify all interested parties in writing of the date, time, and location of the disciplinary hearing.

14.04 IDENTIFICATION OF ISSUES, WITNESSES, AND EVIDENCE

No later than ten (10) working days prior to the disciplinary appeal hearing, each party will provide the other and the Personnel Manager a statement of the issues to be decided, a list of all witnesses to be called (except rebuttal witnesses), and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee shall use alphabet letters.

14.05 SUBPOENAS

Subpoenas and subpoenas duces tecum pertaining to the hearing shall be issued at the request of either party, not less than ten (10) days prior to the commencement of the hearing; after commencement, subpoenas may be issued at the discretion of the hearing officer after considering both parties' positions on the request. The City agrees to take the necessary steps to implement a process for the issuance and enforcement of subpoenas. If the City is unable to implement that process, the City agrees to further meet and confer with SFPEA/SEIU Local 721 on this issue.

14.06 REPRESENTATION AT DISCIPLINARY HEARING

- A. Each party shall have these rights: to be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her.
- B. If the employee appealing the discipline does not testify on her/his own behalf, he/she may be called and examined as if under cross-examination.
- C. Oral evidence shall be taken only on oath or affirmation.
- D. A court reporter will be engaged to record the hearing. The cost of the reporter and the hearing officer will be split between the City and the Union, with each side bearing their own costs for any transcripts.
- E. The hearing shall proceed in the following order, unless the hearing officer otherwise directs:
 - 1. Opening statements shall be permitted with the City proceeding first.
 - 2. The City shall proceed first in the hearing. If witnesses are called, the opposing party shall have the right to cross-examine the witnesses on any matter relevant to the issues, even though if that matter was not covered on direct examination.

3. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason permits them to offer evidence upon their original case.
4. Closing arguments and written briefs shall be permitted.
5. The hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, for good cause, otherwise directs. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision

14.07 BURDEN OF PROOF

The City shall bear the burden of proof at the disciplinary hearing as to the allegations supporting the discipline.

14.08 CONDUCT OF DISCIPLINARY APPEAL HEARING

- A. The conduct and decorum of the disciplinary hearing shall be under the control of the hearing officer with due regard for the rights and privileges of the parties.
- B. All disciplinary hearings shall be closed to the public unless the affected employee requests that the hearing be open to the public.
- C. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions.
- D. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence may be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission and exclusion of evidence.
- E. The time limits specified at any step in this disciplinary appeal procedure may be extended or reduced by written agreement of the employee or his/her representative and the representative for the City.

14.09 HEARING OFFICER'S BINDING DECISION

Within thirty (30) days of the hearing or other mutually agreed upon time frame, the hearing officer shall issue his/her written decision which may sustain, reject or modify the disciplinary action.

14.10 JUDICIAL REVIEW

The Hearing Officer's written decision shall be subject to judicial review under Code of Civil Procedure Sections 1094.5 and 1094.6.

ARTICLE 15 — GRIEVANCE PROCEDURES

15.01 STATEMENT OF INTENT

The City and SFPEA/SEIU Local 721 have a mutual interest in resolving workplace issues appropriately, expeditiously and at the lowest level possible. In recognition of this mutual interest, the Parties acknowledge that the grievance process is not a replacement for daily communication between the employee and the supervisor, nor is it inherently an adversarial process. Rather, it is a process to mutually resolve workplace issues to the maximum extent possible within the organization.

15.02 PURPOSE AND SCOPE OF GRIEVANCE PROCEDURE:

The grievance procedure is promulgated to establish a formal procedure to deal with employee complaints that arise in the course of employment.

15.03 GENERAL PROVISIONS:

- A. "Grievance" means a dispute by an employee concerning the interpretation or application of specific provisions of this MOU, or Personnel Rules and Regulations governing personnel practices or working conditions applicable to employees covered by this MOU, which dispute has not been resolved satisfactorily in an informal manner between an employee and his/her immediate supervisor. The grievance procedure provided herein shall not be used for:
1. An impasse in meeting and conferring upon the terms of a proposed MOU, or impasse over a single issue within the scope of representation.
 2. The resolution of any complaint concerning oral/verbal warnings, and disciplinary action already covered by the Disciplinary Appeal Procedure in Article 14;
 3. Requests for changes in the content of employee evaluations or performance reviews;

4. Challenges to a reclassification or a transfer not otherwise subject to meet and confer, a layoff, or denial of a step or merit increase.

15.04 FORMAL GRIEVANCE PROCEDURE:

- A. Step One - Within ten (10) working days after the employee or Union knew or should have known of the occurrence of the facts upon which the grievance is based, the grievance must be presented in writing to the immediate supervisor upon the Grievance Procedure Form, signed and dated by the employee or the Union. The grievance must state the facts upon which the grievance is based, identifying the specific provisions of the MOU, Personnel Rules, or other rules or regulations which are alleged to have been violated, and the specific remedy requested.
 1. A meeting shall be held between the employee or the Union and the immediate supervisor within ten (10) working days from presentation of the grievance. The purpose of the meeting shall be to secure clarification of the issue, consider the employee's proposed solution, and discuss possible alternative solutions and/or other administrative remedies.
 2. Within ten (10) working days following the meeting, the supervisor shall render his/her decision in writing. The decision shall be personally served upon the employee or mailed to the employee's last known address or as otherwise specified by the employee. A copy will be emailed to the Union's staff representative and the SFPEA President.
 3. If the supervisor fails to respond within ten (10) working days following the meeting, or such other mutually agreed upon date, the employee or the Union shall be entitled to proceed to Step Two of the grievance process.
- B. Step Two - If the grievance is not resolved in Step One, the employee or the Union may, within ten (10) working days after service of the decision in Step One, or such other mutually agreed upon date, present a signed, dated written grievance to the Department Head with a copy to the Personnel Manager. The grievance must state the facts upon which the grievance is based, identify the specific provisions of the MOU, Personnel Rules, or other rules and regulations alleged to have been violated, and specify the requested remedy. The Department Head shall make whatever investigation is deemed necessary to allow fair consideration of the situation and shall meet with the employee within ten (10) working days from receipt of the grievance.
 1. The Department Head shall render his/her decision in writing within ten (10) working days following the meeting. The decision shall be personally served upon the employee or mailed to the employee's last known address or as otherwise specified by the employee. A copy will be emailed to the Union's staff representative and the SFPEA President.

2. If the supervisor fails to respond within ten (10) working days following the meeting, or such other mutually agreed upon date, the employee or the Union shall be entitled to proceed to Step Three of the grievance process.
- C. Step Three - If the grievance is not resolved at Step Two, the employee or the Union may, within ten (10) working days after service of the decision in Step Two, present a written grievance to the City Manager. Within ten (10) working days from receipt of the grievance, the City Manager shall arrange a meeting with the employee and/or the Union to discuss the matter.
1. The City Manager shall render his/her decision in writing within thirty (30) working days following the meeting. The decision shall be personally served on the employee or mailed to the employee's last known address or as otherwise specified by the employee. A copy will be emailed to the Union's staff representative and the SFPEA President.
 2. For grievances arising out of a written reprimand, the City Manager's decision shall be final and shall not be subject to the mediation or arbitration procedures set forth in Sections 16.05 or 16.06 below. The employee will have an opportunity to submit a rebuttal which will be included in the personnel file.
- D. General Conditions -
1. The Personnel Manager shall receive and retain copies of all written materials pertaining to the grievance.
 2. At any step in the informal grievance adjustment or formal grievance procedure, the Department Head, the employee's supervisor, the employee, or the Union may request a representative of the Personnel Department to participate in any discussions which may take place.
 3. Grievances may be initiated by the concerned employee or by the Union.
 4. If an employee or the Union fails to proceed with a grievance within any of the time limits specified in this section, it shall be assumed that the grievance has been settled on the basis of the last decision reached. Any extension of the time limits specified in this Article may be provided when mutually agreed upon by all parties concerned.

15.05 MEDIATION

- A. The Union and the City may agree to mediation of the grievance provided a written request for mediation is filed with the Personnel Manager within ten working days of service of the City's Manager's written Step 3 decision. The parties can mutually choose

a mediator or can request a mediator from the State Mediation and Conciliation Service (under PERB).

- B. The primary effort of the mediator shall be to assist the parties in settling the grievance in a mutually satisfactory fashion. Any costs and expenses of the mediator shall be split equally between the Union and the City. All other individually incurred fees and costs shall be borne solely by the party incurring those fees/costs.
- C. If mediation does not resolve the issue, the grievant or Union has twenty (20) working days to file an appeal to the next level in the procedure.

15.06 ARBITRATION

- A. If the written response at Step 3, or the mutually-agreed upon mediation, does not settle the grievance, or the City Manager fails to provide a written response within thirty (30) working days of the Step 3 meeting, the Union may elect to serve a written request for arbitration with the Personnel Manager. Such written request must be filed with the Personnel Manager within twenty (20) working days following:
 - 1. The date of service of the Step 3 written response of the City Manager or designee;
or
 - 2. The last day of the response period provided in 16.04(C), Step 3.
- B. Failure of the Union to serve a written request for arbitration with the Personnel Manager within said period shall constitute of the waiver of the grievance.
- C. If such written notice is served, the Parties shall request that SMCS provide them with a list of seven (7) arbitrators who have achieved membership in the National Academy of Arbitrators. The Parties shall then jointly select an arbitrator from that list or by mutual agreement of the parties of another selection method, within ten (10) working days following receipt of said list.
- D. Arbitration of a grievance hereunder shall be limited to the formal grievance as originally filed by the employee to the extent that said grievance has not been satisfactorily resolved. The proceedings shall be conducted in accordance with the hearing procedures set forth in Sections 14.05 (Subpoenas) and 14.08 of this MOU (Conduct of Disciplinary Appeal Hearing), except that the grievant shall bear the burden of proof. Alternatively, the parties hereto may agree to other rules or procedures for the conduct of such arbitration. The fees and expenses of the arbitrator shall be split equally between the parties, it being mutually understood that all other expenses including, but not limited to, fees for witnesses, transcripts, and similar costs incurred by the parties during such arbitration, will be the responsibility of the individual party incurring such expenses.

- E. The decision of an arbitrator resulting from any arbitration of a grievance hereunder shall be binding upon the parties concerned. The arbitrator shall serve the decision upon the City, the employee, the SEIU Local 721 representative, and SFPEA President.
- F. The decision of an arbitrator resulting from any arbitration of grievances hereunder shall not add to, subtract from, or otherwise modify the terms and conditions of this MOU.

15.07 GRIEVANCES AFFECTING A GROUP OF EMPLOYEES

- A. The Union may elect to file a grievance on behalf of two or more employees (Group Grievance). The facts and issues of the grievance must be the same.
- B. The Group Grievance must be filed in writing with the City Manager or designee within twenty (20) working days following the day the issue arose. The written grievance shall:
 - 1. State the specific facts and issues on which the grievance is based,
 - 2. Identify the specific provisions of the MOU or Personnel Rules and Regulations governing personnel practices or working conditions alleged to have been violated,
 - 3. Provide the names of the employees impacted by the issue, and the specific remedy being requested.
- C. In addition, all employees participating in the grievance must waive their respective rights to file an individual grievance on the same issue by completing an individual grievance waiver form prior to the meeting with the City Manager.
- D. Except as otherwise noted above, Group Grievances shall proceed in accordance with the grievance procedure starting at Section 15.04(C) Step 3 above and continuing through Section 15.06, Arbitration.

ARTICLE 16 — MISCELLANEOUS

16.01 SENIORITY/LAY-OFFS/TRANSFERS IN LIEU OF LAYOFF

Whenever the City Council determines that employees are to be laid off due to curtailment of work, reorganization, lack of funds, or because the necessity for a position no longer exists, the City shall meet and confer prior to the layoffs with SFPEA/SEIU Local 721 to take appropriate action to mitigate such negative consequences of the City's action to bargaining unit employees. Such mitigation may include, but not be limited to, job placement assistance, and severance compensation subject to the meet and confer process.

The City Council may authorize the City Manager to layoff or transfer or demote in lieu of layoff. The City Manager shall notify those employees to be laid off at least ten (10) working days prior

to the effective date of any such layoff. If less than ten (10) working days' notice is given, the City shall pay commensurate pay up to ten (10) days total.

Layoff shall be by seniority. Seniority for purpose of layoff shall be determined by the date of original appointment to the classification that is identified for layoff. The seniority list shall include all permanent employees. When seniority is equal, the employee with the earliest hire time (original appointment in department for General Employees) shall be determined to have the most seniority.

All temporary and provisional employees in the classification involved shall be separated prior to probationary or permanent employees.

Any employee scheduled for layoff shall have the right to bump to a classification to which the employee meets the minimum qualifications and has more seniority than the person currently in the classification. Seniority in this instance is calculated from original date of hire with the City.

Permanent employees shall be laid off in the reverse order of seniority.

RE-EMPLOYMENT LISTS/CALL BACK

Upon submission of the approved form to the Personnel Manager, employees laid off or demoted in lieu of layoff or transfer in lieu of layoff shall have their names placed on a re-employment list for their former class. The name of any employee on a reemployment list shall be ranked in order of the effective date of the layoff or demotion in lieu of layoff. A laid-off employee reappointed from a re-employment list shall be considered as having been on leave of absence without pay during the period of layoff. The names of employees on the re-employment list shall be retained for the term of the MOU. If a vacancy is filled from a re-employment list, the appointee shall be the individual whose name appears in the first position on such list.

Transfer in Lieu of Layoff: Transfers, including lateral, will be by seniority within a classification. The City shall request volunteers first and if there are no volunteers, the employee with the least seniority will be automatically transferred.

The transfer will be held in abeyance and posted in Personnel and respective department for five (5) work day to allow for volunteers to apply.

Should the position that the employee was transferred from becomes available, the employee who volunteered or was transferred due to his/her seniority shall be offered the available position or shift and will have the right of first refusal.

16.02 PRIVATIZATION /CONTRACTING OUT

The Parties agree that during the term of this MOU, the following terms and conditions shall apply to the contracting of unit work:

No bargaining unit employee shall be laid off, or suffer loss of pay or benefits as a result of the contracting of unit work.

The City agrees to meet and confer on the impact of any decision to privatize bargaining unit work.

16.03 SAFE AND RESPECTFUL WORKPLACE FOR ALL CITY WORKERS

The City shall agree to update applicable policies to ensure a safe and respectful workplace for all workers. The City also affirms its respect for its workers and shall not condone any unfair treatment of any employee. The City shall update all policies once a year and provide the changes to the Union if and when updated.

16.04 BULLETIN BOARDS

The City shall grant the Union reasonable access to work locations to post their bulletins as needed, for the purposes of notifying members of meetings, elections, events, and other relevant activities. Access shall be restricted so as not to interfere with the normal operations of the Departments or with established safety or security requirements.

16.05 SHIFT SELECTION/TIME OFF SELECTION

Bargaining unit employees that work rotating shifts shall bid shifts, time off vacation requests, time off holiday requests and time off compensatory requests by seniority, according to their date of hire into that particular job classification in his/her department.

16.06 USE OF CITY FACILITIES

With the approval of City Manager, the City agrees that SFPEA/SEIU Local 721 may use City facilities to conduct meetings provided that such use does not interfere with the normal business operations of the City.

16.07 SEIU LOCAL 721 ACCESS

Upon notice to the Personnel Division, a SEIU Union Representative shall be permitted to City facilities or work sites during working hours to assist employees in adjusting their grievances, or to investigate complaints concerning working conditions. Such access shall not interfere with the employees work duties.

16.08 UNIT INFORMATION

The City shall provide SFPEA's Secretary and SEIU Local 721 with the following Unit information:

- A. Name
- B. Job title

- C. Department
- D. Work location (where the employee actually works, not just their mailing address)
- E. Work phone number
- F. Home phone number
- G. Personal cell phone number
- H. Personal email address (if on file with the City)
- I. Home address

For new employees (including re-hired employees), the City shall provide this information to SFPEA'S Secretary and to SEIU Local 721 within thirty (30) days of the date of the employee's hire, or by the first pay period of the month following their hire whichever is later. For existing employees, the City shall provide the same information to SFPEA'S Secretary and to SEIU Local 721 at least every one hundred and twenty (120) days.

16.09 MEMBERSHIP MEETINGS

A total of one hour of City time will be provided every month for bargaining unit employees to attend Union membership meetings for the entire meeting time. Bargaining Unit Members who leave the membership meeting early and do not promptly return to work may have their accrued leave accounts charged to make up the difference in time. To ensure that the City can provide sufficient coverage, if needed, SEIU 721 will provide the Personnel Manager or their designee with at least 48 hours' notice of any scheduled membership meeting.

16.10 PERSONNEL FILES

An employee, or their certified representative with the written consent of the employee, may inspect that employee's personnel file. The term "personnel file" shall not include any files or notes maintained by a supervisor or manager for purposes of documenting daily observations or verbal counselings/warnings.

An employee shall be advised of, and entitled to read, any written statement by the employee's supervisor or Departmental Head regarding their work performance or conduct if such statement is to be placed in their official personnel file. The employee shall acknowledge that they have read such material by affixing their signature on the copy to be filed, with the understanding that such signature merely signifies that they have read the material to be filed but does not necessarily indicate agreement with its content. If the employee refuses to sign, the supervisor shall note their refusal on the copy to be filed along with the supervisor's signature and the signature of a witness to the employee's refusal to sign.

An employee may file a written response/rebuttal to any such document placed in their personnel file, and that written response/rebuttal shall be attached to that document in the personnel file.

16.11 UNION STEWARDS

A. SFPEA/SEIU Local 721 shall designate a reasonable number of stewards (not to exceed 10) from the membership. A steward may represent a grievance at all levels of the grievance, and shall provide to the City Manager a written list of employees who have been so designated. Management will accept on a quarterly basis any changes to the list.

B. Stewards Rights

1. PROTECTION AGAINST DISCRIMINATION AND RETALIATION.

Management recognizes SFPEA/SEIU Local 721 Stewards and Alternates as official representatives of the Union, and such representatives are entitled to all rights and protections as defined by law and this MOU.

No Steward or Alternate shall be discriminated against or retaliated against in any manner because of the exercise of rights and duties as protected by law and this MOU.

The employer shall provide equal rights to reasonably accommodate stewards with disabilities, provided the accommodation does not create an undue hardship for the City.

Grievances filed under this section shall be expedited to the Third Step upon being filed.

2. RELEASE TIME

SFPEA/SEIU Local 721 Officers, Stewards and Alternates shall be allowed reasonable time off without loss of pay and benefits to perform the responsibilities of their positions, including but not limited to the investigation and processing of grievances, representation at Skelly hearings, Weingarten meetings, informal meetings with Management or pre-disciplinary interviews, where there is a reasonable expectation that disciplinary action will follow, at all levels of the grievance procedure, at Labor-Management meetings, New Employee Orientations, and negotiations, , and to observe working conditions.

The City agrees to provide each steward with 9 hours of release time each year for purposes of steward training. Time spent for steward training shall not count as actual hours worked for purposes of overtime.

Management is responsible for staffing to accommodate release time upon notice of two (2) weeks for release time.

If a steward must leave his/her work location to represent an employee, he/she

shall first obtain permission from his/her supervisor on a form provided for such purpose. Permission to leave will be granted unless such absence would cause an undue interruption of work. If such permission cannot be granted promptly, the steward will be informed when time can be made available. Such time will not be more than forty-eight (48) hours, excluding scheduled days off and/or legal holidays, after the time of the steward's request unless otherwise mutually agreed to. Denial of permission to leave at the time requested will automatically constitute an extension of time limits provided in the grievance procedure herein, equal to the amount of the delay.

Before leaving his/her work location, the steward shall call the requesting employee's supervisor to determine when the employee can be made available. Upon arrival, the steward will report to the employee's supervisor who will make arrangements for the meeting requested.

Time spent on grievances, or the pre-disciplinary representation activities described above, outside of regular working hours of the employee or his/her steward shall not be counted as work time for any purpose. Whenever these activities occur during the working hours of the employee and/or the steward, only that amount of time necessary to bring about a prompt disposition of the matter will be allowed. City time, as herein provided, is limited to the actual representation of employees and does not include time for investigation, preparation or any other preliminary activity.

- C. Any grievances arising from a violation of Steward Article will be submitted to the third (3rd) step of the grievance process for resolution.

ARTICLE 17 — JOB DESCRIPTIONS & CLASSIFICATIONS

17.01 JOB DESCRIPTIONS & CLASSIFICATIONS

The City shall consult with the Union when it is establishing new, or revising existing job descriptions and classifications within the Unit. It shall provide the Union a draft of the changes under consideration.

The Union shall provide comments and recommendations about the new or revised job description or classification within fifteen (15) calendar days of receipt of the draft. The City shall consider the Union's comments and recommendations as it prepares the final job description /classification for City Council approval.

The City shall meet and confer with the Union if the new or revised job description/classification potentially changes the position's Bargaining Unit.

17.02 JOB DESCRIPTIONS

Each employee will be provided with a copy of his/her job description. The duties and responsibilities of each position shall be consistent with the specifications for the job.

For the purposes of this MOU, “classification” shall mean an individual employee’s job classification, or an individual employee’s job description, or the classifications or job descriptions of a group of employees who share the same classification or job description.

17.03 JOINT LABOR/MANAGEMENT COMMITTEE

The City and the Union agree to establish a Joint Labor-Management committee to consult on issues of mutual concern, including but not limited to safety issues and employee wellness program, training program for stewards and front-line supervisors. The committee shall be limited to a total of six (6) members unless the parties mutually agree otherwise. Three (3) members shall be appointed by the City and three (3) shall be appointed by the Union.

The committee shall have the authority to develop its own internal procedures, including the scheduling of meetings. The Committee will make recommendations to the Council for implementation once the Council concurs, with its recommendation.

17.04 JOINT LABOR MANAGEMENT SUB-COMMITTEE ON CITY PERSONNEL RULES

The City and the Union agree to meet and confer through the Joint Labor Management Committee, which will meet on a monthly basis, or as needed, regarding the City Personnel Rules, Regulations and Policies including Departmental Rules, Regulations and Policies provided such rules, regulations and policies are within the scope of representation.

Scheduling of the Joint Labor Management Committee will be achieved by the parties mutually agreeing to the date, time and location.

The Committee will meet on City work time.

FOR CITY OF SAN FERNANDO:


FOR SFPEA/SEIU LOCAL 721:



Nick Kimball
City Manager

5/4/2023

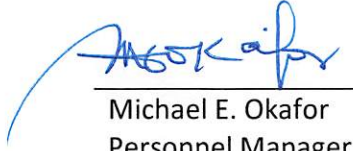
Date



Manuel Fabian
Chapter President, SFPEA/SEIU Local 721

04/20/23

Date



Michael E. Okafor
Personnel Manager

04/25/23

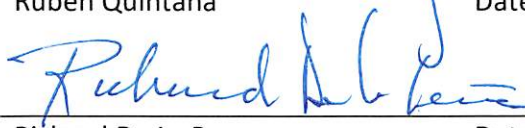
Date



Ruben Quintana
Date

04/20/23

Date




Richard De La Pena
Date



James Dean
Date

4/27/23


Date



Juan Salas
Date

04/25/23

Date



Charles Leone
Negotiator, SEIU Local 721

5/4/23

Date