



**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**ORANGE COUNTY EMPLOYEES ASSOCIATION**

**AND**

**CITY OF LAGUNA NIGUEL**

**October 1, 2021 - June 30, 2023**

**MAINTENANCE, CLERICAL AND TECHNICAL UNIT**

August 3, 2021

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**Article I - Preamble**

This Memorandum of Understanding (MOU) is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500 et seq.) and City Resolution No. 94-272. Representatives of the City and Orange County Employees Association (OCEA) have met and conferred in good faith regarding wages, hours and other terms and conditions of employment. The purpose of this Memorandum of Understanding is to set forth those agreements reached between the parties.

**Article II - Recognition**

OCEA is hereby acknowledged as the Exclusively Recognized Employee Organization representing the employees in the classifications listed in Attachment 1.

**Article III - Purpose**

The parties agree that the purposes of this MOU are: to promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein; to provide an orderly and equitable means of resolving differences which may arise under this MOU; and to set forth the terms of agreement of the parties reached as a result of meeting and conferring regarding matters within the scope of representation for employees represented by the OCEA. Further, the purpose of this Agreement is to guarantee employees represented by OCEA receive all rights and privileges of employment provided in Federal, State and City ordinances.

**Article IV - Scope**

The scope of representation shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order.

**Article V - City Rights**

The City retains, solely and exclusively, all rights, powers and authority it had prior to this MOU except those rights specifically delegated by this MOU. Except as expressly limited by this MOU, the City retains all of its rights, power and authority with respect to general legislative matters and the management of the provision of municipal services and the management of the work force performing those services. These rights, powers and authority include, but are not limited to:

- (a) Determine the mission of the City and all of its departments, commissions, committees and boards;
- (b) Determine the nature, standards, levels and mode of delivery of services to be offered to the public;
- (c) Exercise complete control and discretion over the establishment and modification of the organization of City government, City departments and other work units, and the technology of performing City work;
- (d) Determine whether services required by the City shall be provided by City staff or provided pursuant to contracts between the City and independent contractors, or by subcontractors of such independent contractors;
- (e) Maintain the efficiency of City operations;
- (f) Determine the methods, means, and the number and kinds of personnel by which services are to be provided;
- (g) Adopt a system of job classifications, including assignment of titles, and determination of job descriptions and duties for each job classification, and subsequently adopt additional job classifications, delete job classifications, and modify job classifications;
- (h) Determine the procedures and standards for the selection of employees;
- (i) Direct employees, including scheduling and assigning work, work hours, and overtime;
- (j) Establish performance standards and require compliance therewith;
- (k) Discharge, suspend, demote, reduce in pay, reprimand, withhold salary increases and benefits, or otherwise discipline employees subject to the requirements of applicable law;
- (l) Relieve employees from duty for lack of work or lack of funds or for other legitimate reasons;
- (m) Implement all rules, regulations and directives consistent with law; and
- (n) Take all necessary actions to protect the public and carry out its mission in emergencies.

### **Article VI - Employee Rights**

Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations. Employees shall also have the right to refuse to join or participate in the activities of employee organizations. The City shall not hinder, interfere with, intimidate, restrain, discriminate against, coerce, or discipline an employee for exercising any rights or benefits provided in this MOU or under the law.

## **Article VII - Association Rights**

OCEA shall notify the City in writing of the names of its Officers, Bargaining Committee Members, Departmental Representatives, and other representatives each time an election is held or new appointments are made.

The City shall provide OCEA on a monthly basis, if changes occur, with the following: A list of employees in the classifications set forth in Attachment I; the names of new hires, promotions, and terminations in the classifications set forth in Attachment I; City of Laguna Niguel job postings; and copies of current salary schedules.

The City shall provide OCEA an opportunity to meet with new employees for thirty minutes as part of their new employee orientation process.

On a quarterly basis, the City will provide OCEA with names and home addresses of all OCEA member employees. This information is for the confidential use of OCEA and the City shall not be responsible and will be held harmless by OCEA for inappropriate release of this information by OCEA.

Upon request, the OCEA shall receive available information relating to contract administration and fringe benefits including pension and insurance plans.

The City shall make available reasonable bulletin board space in designated employee areas for the use of OCEA to post notices pertaining to OCEA business. All materials must be dated and identify OCEA. No materials may be posted that are critical of the City, City officials or employees, City policies, or other employee organizations.

A reasonable number of employees shall be entitled to leave their work during working hours without loss of pay for reasonable periods of time, with prior approval of their supervisor, for purposes of participation in the meet-and-confer process. A designated OCEA representative shall be entitled to leave his or her work during working hours without loss of pay for reasonable periods of time, with prior approval of their supervisor for purposes of reviewing and processing grievances.

OCEA staff may have access to OCEA members providing that supervisors are notified prior to a meeting being scheduled and that meetings held will not interfere with work.

### **Article VIII - Payroll Deductions**

Upon written notice, including email, from OCEA that the employee has authorized dues deduction, membership dues will be automatically deducted from an employee's pay and forwarded by the City to OCEA pursuant to the written request for the distribution of deductions. Dues deductions begin the beginning of the pay period following the City's receipt of notice from the OCEA and are deducted on a biweekly basis.

The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues. When an employee is in a non-pay status for an entire pay period, no deduction will be made to cover the pay period. In the case of an employee who is in a non-pay status during part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this circumstance, all other legal and required deductions (including health care deductions) have priority over Association dues.

### **Article IX-Quarterly City-OCEA Meetings**

The City's chief negotiator and designated management staff shall meet with OCEA and the president of the Maintenance, Clerical and Technical Unit on a quarterly basis, if necessary. The basic purpose of these meetings is to discuss issues of common interest and to solve mutual problems in a constructive fashion. The parties shall exchange suggested agenda topics one week before the meeting date. Grievances or disciplinary action in progress may be discussed at these meetings only by mutual consent, and discussion of such topics does not preclude subsequent resolution via the grievance or disciplinary procedure. Meet-and-confer subjects may be discussed by mutual consent, but this does not preclude exercise of further meet-and-confer options by either party. Persons other than those described above may attend these meetings only by prior mutual consent.

### **Article X - Informal Complaint Resolution Procedure**

#### **A. Purpose**

The purpose of this procedure is to enhance communications between employees, supervisors and management by providing employees an informal process for the discussion and review of complaints or concerns not covered by the grievance procedure within a reasonable time period without jeopardizing employees' positions or employment.

#### **B. Complaint Resolution Procedure**

Any complaint or concern not covered by the grievance procedure shall be resolved as follows:

1. The employee shall first discuss the matter with his or her immediate supervisor within seven (7) working days from the date the employee had notice of the action which prompted the concern or complaint.
2. In the event that the immediate supervisor does not resolve the matter to the employee's satisfaction within ten (10) working days of the employee's presentation of the matter, then the employee may bring the matter to the attention of his or her Department Head within ten (10) working days of the receipt of response from the immediate supervisor, or within ten (10) working days from the date, of the date a response from the supervisor was due to the employee, if no response was provided.
3. If the Department Head does not resolve the matter to the employee's satisfaction within ten (10) working days of the employee's presentation of the matter to the Department Head then the employee may bring the matter in writing to the attention of the City Manager, within ten (10) working days of receiving a response, or within ten (10) working days from the date, of the date a response from the supervisor was due to the employee, if no response was provided. The City Manager, or his or her representative, shall consider the matter. The decision of the City Manager, or his or her representative, will be final and binding.

**C. Informal Complaint Resolution Procedures**

In addition to the informal complaint procedures set forth in this Article, Employees shall have the right to discuss individual problems of employment with City. Upon request of the employee, OCEA shall be kept fully informed and have the right to be present at all such meetings between City and the individual.

**Article XI - Grievance Procedure**

**A. Purpose**

The purpose of the grievance procedure is to enhance communications between employees and employer by providing a fair and impartial review and consideration of grievances within a reasonable time period without jeopardizing employees' positions or employment.

**B. Scope of Grievances**

A grievance may be filed concerning the interpretation or application of specific provisions of this Memorandum of Understanding or other written Personnel rules or regulations which adversely affects an employee.

**C. Basic Rules**

1. If an employee does not present a grievance/appeal or does not appeal the decision rendered his or her grievance/appeal within the time limits, the grievance/appeal shall be considered resolved.
2. If a City representative does not render a decision to the employee within the time limits, the employee may within seven (7) calendar days thereafter appeal to the next step in the procedure .
3. If it is the judgment of any management representative that he or she does not have the authority to resolve the grievance/appeal, he or she may refer it to the next step in the procedure. By mutual agreement of the City and OCEA, any step of the procedure may be waived.
4. Upon written consent of the parties (i.e., the representative of the City and the employee or his or her representative), the time limits at any step in the procedure may be extended.
5. Every reasonable effort shall be made by the employee and the City to resolve a grievance/appeal at the lowest possible step in the grievance/appeal procedure.

**D. Submission of Grievance**

1. Any employee or group of employees or OCEA shall have the right to present a grievance. No employee or group of employees shall be hindered from or disciplined for exercising this right.
2. If any two (2) or more employees have essentially the same grievance they may, and if requested by the City must, collectively present and pursue their grievance if they report to the same immediate supervisor.

**E. Employee Representation**

1. An employee may represent himself or herself or may be represented by OCEA in the formal grievance/appeal procedure.
2. Authorized grievance/appeal representatives shall be designated by OCEA to represent employees for the purposes of the grievance/appeal procedure. OCEA shall notify Department Heads of the names and titles of such representatives and send a copy of such notice to the Deputy City Manager quarterly.



**F. Time Off for Processing Grievances/Appeals**

1. Reasonable time off without loss of pay shall be given to:
  - a. an employee who has a grievance/appeal in order to attend a meeting with his or her supervisor or other person with authority under the grievance/appeal procedure to resolve the matter or to meet with his or her grievance/appeal representative;
  - b. an authorized grievance/appeal representative in order to attend a meeting with the represented grievant's/appellant's supervisor or other person with authority under the grievance/appeal procedure or to obtain facts concerning the action grieved/appealed through discussion with the grievant/appellant or other employees or through examination of appropriate records or locations relating to the grievance/appeal.
2. The following restrictions shall apply in all cases to activity authorized in F.1.a. and F.1.b, above:
  - a. Before performing grievance/appeal work, the grievant/appellant or grievance/appeal representative shall obtain permission of his or her supervisor and shall report back to the supervisor when the grievance/appeal work is completed.
  - b. Neither the grievant/appellant nor the grievance/appeal representative shall interrupt or leave his or her job to perform grievance/appeal work if his or her supervisor determines that such interruption or absence will unduly interfere with the work of the unit in which the grievant/appellant or representative is employed. However, an effort will be made to grant such time off as soon as it is feasible to do so.

**G. Form of Grievance**

All grievances must be submitted in writing, on forms provided by the City, and must contain the following:

1. Employee's name, title, department and division.
2. The name of the individual or organization, if any, representing the employee in the grievance procedure.
3. The date the grievance is being submitted.

4. The nature of the grievance, including a statement of the specific provisions of the Memorandum of Understanding, personnel rules or regulations which are alleged to have been violated, the date the alleged violation occurred, and the specific decision or action which constituted the alleged violation.
5. The facts and/or circumstances which gave rise to the grievance.
6. Any available supporting documentation or other material which is to be considered in conjunction with the grievance.
7. A statement of the remedy which the employee is seeking.

**H. Formal Grievance/Appeal Steps**

The grievance/appeal procedure shall consist of the following steps, each of which must be completed prior to any request for further consideration of the matter unless waived by mutual consent or as otherwise provided herein.

Step 1: Immediate Supervisor

An employee shall formally and concurrently submit a grievance to the immediate supervisor and the City Personnel Officer within fourteen (14) calendar days from the occurrence which establishes the basis for the grievance. Within seven (7) calendar days, or a date mutually agreed upon by both parties, after receipt of the written grievance, the immediate supervisor shall meet with the grievant. Within seven (7) calendar days, or a mutually agreed upon date by both parties, thereafter, a written decision shall be given to the grievant.

Step 2: Department Head

If the grievance is not resolved under Step 1, it may be presented to the Department Head. The grievance shall be submitted within seven (7) calendar days after the receipt of the written decision from Step 1. Within seven (7) calendar days, or a date mutually agreed upon by both parties, after the receipt of the written grievance, the Department Head or his or her representative(s) shall meet with the grievant. Within seven (7) calendar days, or a date mutually agreed upon by both parties, thereafter, a written decision shall be given to the grievant.

Step 3: City Manager

If the grievance/appeal is not settled under Step 2 it may be appealed in writing to the City Manager within seven (7) calendar days after receipt of the written decision from Step 2. Within fourteen (14) calendar days after receipt of the written grievance/appeal, the City Manager or his or her representative shall meet with the grievant/appellant. Within fourteen (14) calendar days thereafter, a written decision shall be given to the grievant/appellant. The decision of the City Manager shall be final and binding on all parties.

### **Article XII - Disciplinary Action**

#### **A. Disciplinary Authority**

The City shall have the right to demote, discharge, reduce in pay, or suspend without pay for up to thirty (30) days, any employee for just cause.

During the term of this MOU, the City agrees to create a working group with OCEA to discuss the process and implementation of the appeal process in disciplinary cases, specifically arbitration.

#### **B. Just Cause**

Just cause includes, but is not limited to, the following:

1. Violation of any Federal, State, or local law impacting the employee's employment.
2. Using, possessing, dealing, distributing, or being under the influence of intoxicating beverages/substances, unprescribed narcotics or unlawful drugs while on duty or at work locations, or reporting to work or operating City vehicles or equipment under the influence of alcohol/substance or any unlawful or unprescribed drug.
3. Failure or refusal to comply with a lawful order or to accept a reasonable and proper assignment from an authorized supervisor or City management official.
4. Inefficiency, incompetence, carelessness, or negligence in the performance of duties.

5. Sexual harassment or other unlawful harassment, discrimination or retaliation of another employee.
6. Chronic or excessive absenteeism, or inconsistent attendance.
7. Rude or discourteous treatment of other employees or the public.
8. Inattention to duty, tardiness, carelessness or negligence in the course and scope of employment or in the care and handling of City property.
9. Loss or misuse of City funds, including, but not limited to, theft, embezzlement, misappropriation of City funds, including via a City credit card or use of City funds for personal purposes. Personal purposes are those activities which are for personal enjoyment, private gain or advantage, or an outside endeavor not related to City business.
10. Improper or unauthorized personal use of City vehicles, buildings, facilities, tools, equipment, office machines, stationery, supplies or other City real or personal property.
11. Misuse of sick leave.
12. Furnishing false information to secure appointment, or falsification of timecards or other records and reports.
13. Absence from duty without authorized leave, failure to report after leave of absence has expired or after such leave of absence has been disapproved, revoked, or canceled.
14. Violation of Departmental rules and policies, or any written policies that may be prescribed by the City.
15. Acceptance of any bribe, gratuity, kickback, or other item of value when such is given in the hope or expectation of receiving preferential treatment.
16. Outside work that creates a conflict of interest with City work, or detracts from the efficiency of the employee in the effective performance of City functions.
17. Failure to obtain or maintain necessary qualification, certificate, or license, which is required as a condition of employment.
18. Possession of an unsafe driving record for those employees required to operate City vehicles.

19. An unsatisfactory performance rating in one or more performance competencies.
20. Accepting a gift or gifts with a value in excess of the gift restriction limit set forth in this MOU.
21. Other just cause.

**C. Pre-Disciplinary Procedures for Suspension, Demotion, Reduction or Discharge**

1. Prior to suspending, demoting, reducing or discharging an employee, a written notice of such proposed disciplinary action shall be served on the employee personally, or by certified mail, at least ten (10) calendar days prior to the effective date of the proposed action. Such written notice shall contain:
  - a. a description of the proposed action and its effective date(s);
  - b. a statement of the reasons for such proposed action, including the acts or omissions on which the proposed action is based;
  - c. copies of material on which the proposed action is based;
  - d. a statement of the employee's right to respond, either orally or in writing, prior to the effective date of such proposed action;
  - e. a statement of the employee's right to representation;
  - f. a statement of the employee's right to appeal should such proposed action become final.
2. Prior to the effective date of such suspension, demotion, reduction or discharge, an employee will be given an opportunity to respond either orally or in writing, at the employee's option, to his or her Department Head.
3. An employee shall receive written notice either sustaining, modifying or cancelling the proposed disciplinary action prior to the effective date of such action.
4. Should a proposed suspension, demotion, reduction or discharge become final, an employee shall have the right to appeal such action pursuant to D. of this Article.
5. An employee shall be given reasonable time off without loss of pay to attend a pre-disciplinary meeting with his or her Department Head and any disciplinary appeal hearing pursuant to this Article.

6. An employee may represent himself or herself or may be represented by a representative of his/her choice in a pre-disciplinary meeting with his or her Department Head and any disciplinary appeal hearing pursuant to this Article.
7. The pre-disciplinary procedural requirements set forth above shall not apply to suspensions of three (3) days or less.

**D. Disciplinary Appeals**

1. An appeal of a suspension without pay, demotion, reduction in pay or discharge may be appealed to the City Manager. The appeal shall be presented to the City Manager within ten (10) calendar days following the employee's receipt of the Department Head's written notice of discipline pursuant to C.3 of this Article. All disciplinary appeals shall be in writing, and shall be signed by the employee or by a representative of OCEA.
2. The City Manager may hear the appeal personally, or may refer the appeal to a Hearing Officer for hearing and an advisory recommendation; provided, however, that all discharge appeals shall be referred to a Hearing Officer for an advisory recommendation. In the case of a discharge appeal, the employee may request a Hearing Officer be selected from the State Mediation and Conciliation Service or the American Arbitration Association. If the parties are unable to mutually agree upon a Hearing Officer, they shall request the selected organization to supply a panel of seven (7) names of persons experienced in hearing disciplinary appeals for cities. Each party shall alternately strike a name until only one name remains. The remaining panel member shall be the hearing officer. The order of striking shall be determined by flipping a coin. The hearing will be conducted as soon as practical following the City Manager's receipt of the appeal. The cost of a hearing officer shall be paid by the City.
3. The issue in all disciplinary appeals shall be: Was (employee's name) (suspended without pay, demoted, reduced in pay, discharged) for just cause and was the penalty imposed appropriate?
4. The City Manager may sustain, reduce or rescind an appealed disciplinary action. If an action to suspend, demote or reduce in pay is reduced or rescinded, the appellant shall be entitled to restoration of pay and/or fringe benefits in a manner consistent with the City Manager's decision. If an action to discharge is reduced, the appellant shall be restored to a position in his or her former class subject to forfeiture of pay and fringe benefits for all or a portion of the period of time the appellant was removed from duty as determined by the City Manager. If an action to discharge is rescinded, the appellant shall be reinstated in a position in his or her former class and shall receive

pay and fringe benefits for all of the period of time he or she was removed from duty. The City Manager shall issue a final decision within thirty (30) calendar days after the matter is closed, including the filing of any final briefs.

5. Disciplinary appeal hearings shall be private.
6. The employee (or their representative) may request in writing, at least twenty (20) calendar days prior to the scheduled hearing date, that the City provide copies of all documentary evidence to be used by the City at the hearing. Such evidence shall be provided no later than ten (10) calendar days prior to the scheduled hearing date. Any evidence not so provided may not be admitted or offered as evidence at the subsequent hearing except that any such documentary evidence discovered by a party after such request for copies but not soon enough to comply with the above time limits may be admitted providing it could not have been discovered sooner by reasonable means and provided further that a copy or copies of such evidence be afforded the requesting party as soon as practical after such discovery. Nothing contained herein shall operate to prevent either party from presenting additional documents by way of rebuttal.
7. An employee shall not suffer loss of pay for time spent as a witness at a hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.
8. At the hearing, both the appealing employee and the City shall have the right to be heard and to present evidence. The following rules shall apply:
  - a. Oral evidence shall be taken only on oath or affirmation.
  - b. Each party shall have these rights: to call and examine witnesses, to introduce exhibits, to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination, to impeach any witness regardless of which party first called the witness to testify and to rebut the evidence against the witness.
9. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might have made improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but shall not be sufficient in itself to support a finding unless it would be

admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil actions and irrelevant and unduly repetitious evidence shall be excluded.

10. The decision of the City Manager shall be final and binding on all parties.

### **Article XIII-Maintenance of Benefits**

It is the understanding of the parties that the wages, hours and other terms and conditions of employment contained in this MOU will not be reduced and shall remain in full force and effect during the entire term of this MOU; except as expressly provided herein or except by mutual agreement.

### **Article XIV - Salary**

A. **Salary Ranges (Full-Time)**

The salary ranges for full-time classifications covered by this Agreement shall be established as set forth in Attachment 5.

B. **Salary Rate Adjustments (Full-Time)**

The salary rates for full-time employees in classifications covered by this Agreement shall be adjusted as follows: 2.5% adjustment effective the first pay period including the date of January 1, 2022.

Additionally, effective the first pay period including the date of January 1, 2023, all existing full-time represented employees shall receive a one-time, non-pensionable, lump sum signing bonus equal to 2% of base salary. The bonus shall be based upon the employee base salary as of December 31, 2022.

C. **Pay-for-Performance Program/Long-term Employee Incentive Program**

Effective October 1, 2013, a merit-based Pay for Performance Program was implemented. That Program continues subject to the following. Employees shall receive annual performance reviews on or around their employment anniversary date. For employees with a base rate of pay below the maximum of their salary range, merit increases shall be granted as follows:



Unsatisfactory: No increase  
Needs improvements: No increase  
Meets expectations: 1.5%  
Exceeds Expectations: 2.25%  
Outstanding: 3.0%

Any portion of a salary increase that exceeds the salary maximum shall be paid as a one-time non-pensionable lump sum bonus. A bonus received under the Pay for Performance Incentive Pay program is not considered base salary and is a lump sum payment separate from the base rate of pay.

If an employee receives a performance evaluation of Unsatisfactory or Needs Improvement, the employee will be re-evaluated in six months and again on his/her subsequent anniversary date. If performance has not improved, the City shall take appropriate action as described in Article XII.

**D. Salary Step Adjustments (Part-Time)**

Wages for part-time classifications shall be adjusted as provided for in Section B above and shall be increased as necessary to comply with California Minimum Wage.

**E. Salary Step Adjustment (Part-Time)**

Salary rate adjustments for part-time employees shall be administered in accordance with Attachment 2 to this Agreement. Standard performance shall earn a one (1) step increase. Merit increases for part-time employees may be granted for additional steps within the salary range based upon the employee's exceptional performance upon the recommendation of the Department Head and approval by the City Manager.

Additionally, effective the first pay period including the date of January 1, 2023, all existing represented part-time employees shall receive a one-time, non-pensionable, lump sum signing bonus equal to 2% of base salary. The bonus shall be based upon the employee base salary as of December 31, 2022.

Employees shall receive compensation at the hourly rate of pay for the range and step or salary rate assigned to the class in which they are employed.

Notwithstanding anything in this division to the contrary, when in the judgment of the City it becomes necessary or desirable to utilize the services of employees in capacities other than those for which they are regularly employed, the City may authorize and, if appropriate, identify an alternative rate of compensation for such employees that is the next salary step above, not to exceed five (5) percent.

F. **Pay for New Employees**

1. A new employee shall be appointed at the minimum step or salary rate of the salary range in effect for the particular class of position to which the appointment is made.
2. The City Manager may authorize a particular position be filled at any salary rate or step within the range.

Under no circumstance shall the salary rate for any full-time employee or part-time employee be more than the maximum salary rate, or less than the minimum salary rate, of the salary range established for the employee's job classification.

G. **Salary on Promotion**

A regular or probationary employee who is promoted to a position in a class with a higher salary range shall receive the minimum rate of pay of the salary range for the higher class or such higher amount as would constitute at least a five (5) percent increase over the salary received prior to the promotion not to exceed the maximum salary rate or top step on the new range. A new merit increase eligibility date shall be established which will be the first day of the pay period following completion of the first twenty-six (26) weeks of service in the new class.

H. **Salary on Reduction**

1. When an employee is demoted to a position in a lower class for reasons of unsatisfactory performance, his or her salary shall be reduced to the salary rate or step of the new range that would constitute a 5% decrease from the salary received prior to the reduction, or he or she shall receive the maximum step of the range of the new class, whichever is lower. His or her merit increase eligibility date shall be the first day of the pay period following completion of fifty-two (52) weeks of service in the new class unless he or she thereby occupies the recruiting salary rate or step of the new range, in which case his or her merit increase eligibility date shall be the first day of the pay period following completion of twenty-six (26) weeks of service in the new class.
2. When an employee in good standing is reduced to a position in a lower class for reasons other than unsatisfactory performance, he or she shall receive the highest salary in the new salary range that does not exceed his or her rate of pay immediately prior to reduction and shall retain his or her merit increase eligibility date.

3. When a probationary employee is reduced to a class he or she has not previously occupied, he or she shall be placed at a rate of pay that is 5% below the current rate of pay or the top step of the lower classification (whichever is lower) for the lower class and shall receive a new merit increase eligibility date as determined by the City Manager. A promotional probationary employee reduced to a class he or she formerly occupied in good standing shall have the step status, probationary status and merit increase eligibility date he or she would have achieved if he or she had remained in the lower class throughout the period of his or her service in the higher class.

**I. Acting Status Pay**

When an employee has been temporarily assigned to perform the duties of a higher classification for one-hundred sixty (160) consecutive hours, the employee will be temporarily promoted to the higher classification for the duration of the assignment and the employee's salary will be temporarily adjusted in accordance with Section G ( Salary on Promotion) of this Article.

**Article XV - Workweek, Overtime and Premium Pay**

**A. Workweek**

1. The official workweek for employees shall be forty (40) hours and shall begin on each Friday and end with the following Thursday. Authorized work performed in excess of forty (40) hours in a workweek by non-exempt employees shall be overtime and compensated in accordance with the provisions of this Article.
2. Hours of work are set by the City and may include varying work schedules that support the service needs of the department. Regular schedules are assigned by the Department Head and any changes must be approved by the City Manager in writing. Department Heads shall consider an employee's request on an individual basis. Employees shall be given a fourteen (14) calendar day advance notice of a shift change (hours of work) whenever practical.
3. Full-time employees in good standing (Meets Expectations, Exceeds Expectations, Outstanding, Not on a Performance Improvement Plan) who have the capability and desire to successfully complete assigned duties in a remote working environment may request the option to telecommute 1-day per workweek.
  - Schedule to be recommended by Department Head.
  - May be approved, denied, rescinded by the City Manager.
  - May not be the day before or after a vacation day, floating holiday, approved leave or City observed holiday.

- Day may vary depending on workload and department schedule.
  - Full-time employees who do not have the ability to fully perform their duties in a telecommuting capacity, may request to perform administrative duties related to their position in a telecommuting environment for up-to 8 hours per week, to be scheduled in a time period not to exceed two days per assigned workweek, for more than 4 hours per day.
- 4. No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.
- 5. The City shall meet and confer with OCEA concerning any proposed changes in existing scheduled days of work.

**B. Overtime**

1. Notification of Employees

If work beyond the employees assigned regular hours of work/work schedule of an employee is required, the employee who may be asked to perform such overtime shall be notified of the apparent need for such overtime as soon as practical prior to when the overtime is expected to begin.

2. Distribution of Overtime

- a. Overtime opportunities shall be offered to employees capable of performing the work. The City shall distribute overtime work among those employees that are qualified and available to perform the work, in an equitable manner.
- b. If the responsible supervisor determines that overtime is necessary on work that started on an assigned shift, the assigned employee(s) may continue with that work as an extension of the assigned shift.
- c. The City and OCEA shall upon request of either party meet and confer and, in so doing, shall attempt to reach agreement regarding specific provisions for the distribution of overtime among employees of various individual work units.

3. Payment for Overtime

- a. Authorized work performed in excess of forty (40) hours worked in a work week by non-exempt employees shall be paid as overtime pursuant to the Fair Labor Standards Act (FLSA). Paid leave does not count as hours worked for FLSA overtime eligibility.
- b. Overtime may be converted to compensatory time or paid for at the option of the employee subject to a maximum accrual of forty (40) hours. Employees with existing compensatory time balances of forty (40) hours shall be paid for all overtime work performed in excess of that amount.
- c. Employees requesting to use compensatory time must provide reasonable notice of their request to use accrued comp time. A supervisor may not deny a timely request for compensatory time off unless the time off would be unduly disruptive to the City.
- d. All overtime worked must have the prior authorization of the Department Head prior to the commencement of such overtime work. Exception may be made in instances that are deemed to be an emergency or where communication cannot be established between the employee and supervisor. Failure to comply with the department pre-authorization procedure for overtime may result in disciplinary action.
- e. An employee separating from the City service shall be paid for accumulated compensatory time at the regular rate of pay with their final paycheck.

C. Rest Periods and Cleanup Time

1. Employees shall be allowed paid rest periods of fifteen (15) minutes during each four (4) consecutive hours of work. Such a rest period shall be scheduled in accordance with the requirements of the work unit, but in no case shall rest periods be scheduled within one (1) hour of the beginning or the ending of a work shift or lunch period.
2. Each employee shall, when necessary, be permitted up to fifteen (15) minutes of paid time at the end of each work shift to perform such activities as personal wash-up and changing clothes.
3. The City shall provide a private employee rest area which is appropriately furnished to accommodate employees who need to lie down.

**D. Stand-By-Pay**

When an employee is assigned stand-by duty, the employee shall, whenever practical be informed in writing at least five (5) days in advance of the dates and inclusive hours of such assignment. The employee shall be compensated at one-fourth (.25) (twenty-five percent) of his or her basic hourly rate for the entire period of such assignment. Stand-by duty requires the employee so assigned to:

1. Be ready to respond immediately (within 30 minutes) to calls for his/her service.
2. Be reachable by telephone or cell phone.
3. Remain within a specified distance from his/her workstation that would result in the ability to respond to the location of the work within 30 minutes from receipt of a call; and
4. Refrain from activities which might impair his/her ability to perform his/her assigned duties.

Employees on standby who are called to return to work are paid for actual hours worked beginning at the time they arrive at the work site. Employees on standby are not provided with minimum pay as described in the call-back pay section of this MOU.

**E. Call-Back Pay**

1. When an employee returns to work because of a request made after the employee has completed his or her normal work shift and left the workstation, the employee shall be credited with two (2) hours work plus any hours of work in excess of two (2) hours in which the employee is continuously engaged in work for which he or she was called.
2. There shall not be any duplication or pyramiding of rates paid under this Section. For example, an employee who was on standby is not eligible for call-back pay.

**Article XVI – Benefits**

**A. City Medical Insurance Contribution**

The City shall provide medical insurance to all full-time employees. Such insurance shall be provided as part of an Optional Benefits Plan (Cafeteria Plan) which shall include medical insurance, dental insurance, and vision insurance. Employees will have a choice of medical insurance plans offered through the California Public Employees Retirement System (CalPERS) health program.

Effective January 1, 2022, the City shall contribute the CalPERS minimum employer contribution per month toward the cost of medical insurance for full-time employees.

Effective January 1, 2023, the City shall contribute the CalPERS minimum employer contribution per month toward the cost of medical insurance for full-time employees.

**B. Optional Benefits Plan (Cafeteria Plan)**

In addition to the City's contribution toward medical insurance, the City shall provide an Optional Benefits Plan (Cafeteria Plan) for full-time employees to allocate funds as permitted under the cafeteria plan.

Effective January 1, 2022, the City's monthly contribution to the optional benefits plan shall be as follows:

<u>Coverage</u>	<u>Contribution</u>
Employee	\$639
Employee + 1 dependent	\$1,404
Family	\$1,832
Medical Opt-Out	\$478

Effective the first pay period including the date of January 1, 2022, the City will contribute the premium rate difference for CalPERS basic HMOS rates for the average percent increase between 5.5% - 9.5%.

Effective the first pay period including the date of January 1, 2023, the City will contribute the premium rate difference for CalPERS basic HMOS rates for the average percent increase between 5.5% - 9.5%.

All full-time employees must enroll in one of the PERS health program plans, unless they submit to the City both: (1) proof of other health coverage; and (2) a signed insurance waiver affidavit that complies with the Affordable Care Act's Eligible Opt Out Arrangement. Full time employees who waive health insurance coverage shall receive the Medical Opt-Out allocation toward their optional benefits plan but shall not receive the City medical insurance contribution.

Effective the first pay period including the date of January 1, 2023, the Medical Opt-Out will increase to \$550 per month.

All full-time employees must enroll in a dental plan and a vision plan.

Employees who select insurance plans with a lower cost than the employer contributions received under Paragraph A and Paragraph B will receive the balance in a pro-rated amount

per pay period. Employees who select insurance plans with a higher premium than the contributions received under Paragraph A and Paragraph B shall contribute the difference between those amounts and the selected plans via payroll deduction.

CalPERS requires that all agencies choosing to participate in its health program provide coverage for retirees. The City shall provide retiree coverage pursuant to the CalPERS requirements.

CalPERS also requires that all agencies choosing to participate in its health program provide coverage for PERS-eligible part-time employees. During the term of this MOU, the City shall make the City medical insurance contribution, but part-time employees shall not receive the contribution to the Optional Benefits Plan (Cafeteria Plan). PERS-eligible part-time employees who choose to enroll in a health insurance program shall pay the difference between the City's minimum contribution and the cost of the selected plan.

The City contribution for eligible part-time employees shall only be available to employees for health insurance. Part-time employees who choose not to enroll in one of the PERS health insurance plans shall not receive the Medical Opt-Out allocation and shall obtain no benefit or cash equivalent under this Article.

In accordance with the Affordable Care Act (ACA), the City will provide a medical insurance benefit to those employees who qualify under the ACA. The amount of the stipend will be a minimum of the amount established by CalPERS, up to an amount required to make the premium "affordable" as delineated in the ACA. Qualification and premium contribution for coverage under the ACA is determined annually.

OCEA and City acknowledge that City's willingness to participate in the CalPERS health program has been based, in part, on the: (1) availability of the Unequal Contribution Method for retirees; and (2) the minimum employer contribution for PERS-eligible part-time employees. In the event of a change in State law that increases the minimum employer contribution for retirees or part-time employees, or a change in CalPERS rules, regulations or policies that alters or eliminates the Unequal Contribution Method for retirees, OCEA and City representatives shall promptly meet and consult on the impact of such changes on the City's short-term and long-term cost of health insurance. After such consultation, if City determines that such changes will have a significant impact on short-term or long-term employer costs, the City reserves the right to withdraw from the CalPERS Health Program, and provide alternate health insurance coverage to City employees.

**C. Dental Insurance**



The City shall provide dental insurance to all full-time employees and their dependents. Dental insurance will be provided through the Optional Benefits Plan (Cafeteria Plan) set forth above.

**D. Vision Care Plan**

The City shall provide vision care insurance to all full-time employees and their dependents. Vision insurance will be provided through the Optional Benefits Plan (Cafeteria Plan) set forth in above.

**E. PERS Retirement Plan**

The City shall provide retirement benefits through the Public Employee's Retirement System (PERS). The benefit shall be based upon the following PERS Local Miscellaneous formulas, as follows:

**Tier 1 – PERS 2% @ 55**

Full time employees and PERS eligible part time employees hired on or before March 23, 2012 shall contribute 7% of their salary toward the Employee Contribution Rate. The retirement allowance is based on the highest one-year final compensation.

**Tier 2 – 2% @ 60**

Full time employees and PERS eligible part time employees hired after March 23, 2012 shall contribute 7% of their salary toward the Employee Contribution Rate. The retirement allowance is based on the highest 36-months compensation.

**Tier 3 - 2% @ 62**

New City employees hired after January 1, 2013 who are “new members” under the CalPERS regulations shall contribute one-half the normal cost as determined annually by CalPERS. The retirement allowance is based on the highest 36-months compensation.

The City also offers the following potential benefit provisions:

- |                 |   |
|-----------------|---|
| Section 20930.3 | Military Service Credit as Public Service   |
| Section 21573   | Third Level of 1959 Survivor Benefits   |
| Section 21022.1 | Industrial Disability Retirement for Local Miscellaneous Members<br>(For employees hired prior to March 23, 2012) |

**F. Life Insurance**

Full-time employees shall be provided a life insurance plan benefit in the amount of the employee's annual salary, not to exceed \$50,000, providing coverage for the eligible employee only. The City shall pay the full cost of plan coverage.

**G. Disability Insurance**

The City shall provide long-term disability insurance coverage for all full-time employees. The City shall pay the full cost of plan coverage.

**H. Deferred Compensation Plan**

The City shall provide a deferred compensation plan to provide employees a mechanism by which they may reduce their salary and pay for supplemental retirement benefits with pre-tax dollars. The City will contribute 50 cents for every \$1 (one dollar) of salary contributed to the deferred compensation plan by an employee. The City's contribution shall not exceed 3% of an employee's annual base salary. In no event shall the City's and Employees combined contribution exceed the applicable annual limit set by the Internal Revenue Code. The City's contribution shall be limited to full-time employees and will be contributed on a monthly basis.

**I. Mileage Reimbursement**

The City will provide mileage reimbursement, at the IRS-approved rate, to employees who are required to use their personal vehicle for City business.

**J. Educational Reimbursement**

The City will provide an Educational Reimbursement Program for full-time employees. Eligible employees may request reimbursement, not to exceed \$1,000 per fiscal year, for actual expenses incurred for tuition, books and fees for college-level, job-related courses, certifications, training courses or degree curricula. All requests must be approved in advance by the Department Head and City Manager. Reimbursement for a course will only be made after satisfactory completion of the course with a grade of C or better.

The City will annually budget \$40,000 in the Educational Reimbursement Program account. Educational reimbursement requests will be handled on a first-come, first-serve basis.

**K. Retirement Health Saving Account (RHSA):**

Effective July 1, 2022, Employer (City-paid) contribution of \$100 per month for full-time employees and \$50 per month for CalPERS part-time personnel working in a full-time classification.

**Article XVII - Section 125 Plan Flexible Spending Account**

The City will provide an IRS Code Section 125 Plan to provide employees a mechanism by which they may reduce their salary and pay for eligible medical reimbursement and/or childcare expenses with pre-tax dollars.

The parties acknowledge that the City's willingness to offer a Section 125 Plan is conditioned upon City's ability to maintain a binding and enforceable Reimbursement Agreement that will require an employee to reimburse the City for any health insurance premium, health care or child care expenses advanced or incurred on behalf of the employee and that are not fully reimbursable from the employee's Flexible Spending Account. All employees shall be required to sign the Reimbursement Agreement as a pre-condition to enrolling in the amended Section 125 Plan.

**Article XVIII - Vacation**

- A. An employee may not use or be compensated by vacation accruals for more than eighty (80) regularly scheduled hours of work in any pay period. Accrued vacation hours are provided upon completion of each pay period. No vacation accrual shall be given during any paid period or for any portion of a pay period during which the employee terminates from City service.
  
- B. A new employee in a full time position will receive a lump sum of eighty (80) hours of vacation when he or she has completed two thousand eighty (2080) regularly scheduled paid hours (approximately 1 year) of work. He or she shall then earn .0382 hours vacation for each hour of pay during his or her regularly scheduled work week (up to a maximum of 40 hours in a work week). The maximum allowable vacation accrual at any one time shall be two-hundred (200) hours. Once an employee reaches the maximum accrual, no additional accrual will be provided until such time as the leave bank is reduced below the maximum.
  
- C. After a full-time employee has been paid for six thousand two-hundred forty (6240) regularly scheduled hours (approximately 3 years), he or she shall earn .0577 hours vacation for each hour of pay during his or her regularly scheduled work week (up to a maximum of 40 hours in a work week). The maximum allowable vacation accrual at any one time shall be two hundred eighty (280) hours. Once an employee reaches the maximum accrual, no additional accrual will be provided until such time as the leave bank is reduced below the maximum.
  
- D. After a full-time employee in a regular position has been paid for twenty thousand eight hundred (20,800) regularly scheduled hours (approximately 10 years), he or she shall

earn .077 hours vacation for each hour of pay during his or her regularly scheduled work week (up to a maximum of 40 hours in a work week). The maximum allowable vacation credit at any one time shall be three hundred sixty (360) hours. Once an employee reaches the maximum accrual, no additional accrual will be provided until such time as the leave bank is reduced below the maximum.

- E. The minimum increment of time for use of vacation accruals shall be one-half (1/2) hour; additional actual absence over one-half (1/2) hour shall be charged to the nearest half hour. Additional vacation time earned during any vacation period may be taken during the pay period in which it is earned. No employee shall be permitted to work for compensation for the City in any capacity during any paid vacation except during emergencies as determined by the Department Head.
- F. The Department Head is responsible for scheduling the vacations of employees in such a manner as to achieve the most efficient functioning of the City. An employee separating from the City shall be paid for all accrued vacation in a lump sum payment with the final paycheck.
- G. Employees must submit an irrevocable election form, by no later than December 15<sup>th</sup> of the preceding calendar year, to cash-out vacation. Employees may elect to cash out their annual vacation accrual for the following year, subject to a maximum of sixty five (65) hours of vacation and the requirement that the employee has used at least an equal number of vacation hours as the number of hours requested on the irrevocable election form. The cash-out is for hours to be accrued in the calendar year following submission of the irrevocable election form. For example, to receive a cash payment for vacation in December 2023, irrevocable election forms must be submitted by December 15, 2022.

The payment shall be made via payroll with the last paycheck in the following December after receipt of the irrevocable election form.

Employees who do not submit an irrevocable election form by December 15<sup>th</sup> will be deemed as foregoing participation in the optional annual leave cash-out program for that following calendar year.

In the event an employee has less hours in their vacation bank at the time the cash-out is to be paid than they had previously elected to cash-out, the employee shall only be paid for up to the amount remaining in their vacation bank at the time of the actual cash-out.

An employee who experiences an unforeseeable emergency may be permitted to make a new irrevocable election and/or to increase the amount of a previous election, subject to the same value that was permitted at the time the annual irrevocable election forms were due.

For these purposes, an “unforeseeable emergency” means a financial hardship to the employee resulting from any of the following:

1. Accident, illness, injury or death of the employee or an immediate family member. For this purpose, an “immediate family member” is restricted to a spouse, registered domestic partner, child/legal dependent, or parent; or
2. Loss or extensive damage to the employee’s property due to casualty; or
3. Other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.

Whether an occurrence is an unforeseeable emergency shall be solely determined by the City Manager or designee.

H. Part-time employees do not accrue vacation.

### **Article XIX – Leaves**

#### **A. Accumulation of Sick Leave**

1. Sick leave with pay shall be earned at the rate of eight hours for each calendar month (96 hours per year) of service for full-time employees. Sick leave hours accrue on a per pay period basis.
2. Sick leave may be applied to:
  - a. An absence caused by illness or injury to an employee.
  - b. Medical and dental office appointments for examinations when absence during working hours for this purpose is authorized by the Department Head.
  - c. Absence from duty by an employee because his or her presence is needed to attend to the critical illness of a member of his or her immediate family where death appears imminent, provided that such absence shall be limited to a maximum of forty-eight (48) hours per calendar year. For purposes of this section, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, step-brother, sister, step-sister, spouse, registered domestic partner, child, grandparent, grandchild, legal guardian or other individuals whose relationship to the employee is that of a dependent or near dependent.
  - d. Absence from duty by an employee to attend to the diagnosis, care, or treatment of an existing health condition of, or preventative care for a child, parent, spouse, registered domestic partner, parent-in-law, grandparent, grandchild or sibling; provided, however, that such

absence shall be limited to a maximum of forty-eight (48) hours per Calendar Year.

- e. An absence of an employee who is a victim of domestic violence, sexual assault, or stalking.
3. The minimum increment of time to use sick leave accruals shall be one-half (1/2) hour and additional absences over one-half (1/2) hour shall be charged to the nearest half hour (1/2).
  4. Any employee who is absent from work must report his or her absence to his or her immediate supervisor at or before the scheduled work time each day of absence. In the case of prolonged periods of absence due to serious illness, employees may arrange, at the discretion of their immediate supervisor, to report less frequently.
  5. Upon separation, retirement with benefits from CalPERS, or death, an employee or the employee's estate shall be paid for a portion of the employee's unused sick leave in an amount computed as provided below:

For full-time employees hired before October 1, 1994:

<u>Years of Service</u>	<u>Percent of Unused Sick Leave Paid For</u>
Less than 2	None
2 or more	50%

For full-time employees hired on or after October 1, 1994:

<u>Years of Service</u>	<u>Percent of Unused Sick Leave Paid For</u>
Less than 10	None
10 or more	25%

No unused sick leave benefit shall be paid to any employee who is terminated for just cause.

7. Full-time employees hired before October 1, 2011 shall have the option to convert accrued but unused sick leave, in excess of 176 hours, to additional floating

holidays for the calendar year. The conversion rate shall be twenty-five percent (25%). For example, thirty-two (32) hours of sick leave may be converted to eight (8) hours of floating holiday. No more than ninety-six (96) hours of sick leave may be converted to no more than twenty four (24) hours of floating holiday in any calendar year. Any unused floating holiday hours will be forfeited at the end of a calendar year.

8. New employees hired on or after October 1, 2011 shall not be paid for any portion of unused sick leave upon separation, termination or retirement from the City and shall not have any right to convert accrued unused sick leave to additional floating holidays or any other form of paid leave during their course of employment with the City.

**B. Bereavement Leave**

Full-time employees shall be granted five (5) days leave of absence on account of the death of any member of his or her immediate family. For purposes of this Section, immediate family shall mean father, father-in-law, mother, mother-in-law, step-parent, brother, step-brother, sister, step-sister, spouse, registered domestic partner, child, grandparent, grandchild, legal guardian or other individuals whose relationship to the employee is that of a dependent or near dependent.

**C. Authorized Leave Without Pay**

1. The City Manager may authorize leave of absence without pay for a period not to exceed one (1) year provided that any such leave shall commence after all accumulated compensatory time, vacation, and sick leave (if applicable) accruals have been exhausted.
2. All requests for leaves of absence without pay shall state the reason therefore, the commencement date, and the probable date of return.
3. Each employee granted leave of absence without pay shall give the City Manager two (2) weeks prior notice of his or her intent to return to work.
4. Except for mitigating circumstances approved by the City Manager, the failure of any employee to return to work upon the expiration of his/her leave of absence shall be deemed an abandonment of his/her position.

5. Vacation and sick leave shall cease to accrue during any period of leave without pay. An employee may continue to participate in the City's health and other insurance plans at his or her own expense.

**D. Jury Duty Leave**

An employee who is called for jury duty or for examination for jury duty shall be compensated at the employee's base hourly rate of pay for those hours of absence due to the jury duty which occur during the employee's regularly scheduled working hours provided the employee deposits the employee's fees for such hours of jury duty, exclusive of mileage, with the City. Fees for jury duty performed during hours other than regularly scheduled working hours may be retained by the employee. Any hours worked beyond the regularly scheduled workday shall be subject to the workweek and overtime provisions of Article XV, so long as the employee provides written proof of additional hours from said date and time.

**E. Witness Leave**

An employee who is called to answer a subpoena as a witness during the employee's work hours shall be compensated at his or her base hourly rate of pay for all hours of absence from work due to answering the subpoena provided the employee shows proof of such subpoena and deposits witness fees received for such hours, exclusive of mileage, with the City.

Fees for answering a subpoena as a witness during hours other than regularly scheduled working hours may be retained by the employee.

**F. Family and Medical Leave**

The City will comply with the Family Medical Leave Act (FMLA). For further information please refer to the City Policy pertaining to FMLA.

**G. Maternity Leave**

The City will comply with the California Family Rights Act (CFRA) and Pregnancy Disability Leave Act. For further information please refer to the City Policy pertaining to Maternity Leave.



**H. Industrial Accident Leave**

In the event that it is determined that an employee is absent from work as a result of any injury or disease arising solely out of the employment with the City:

1. Temporary disability benefits shall be coordinated with accrued sick leave, vacation, compensatory time and any other benefits so that the employee shall receive the difference between the Worker's Compensation payments and his or her regular salary. Coordination of benefits shall cease at such time that the employee's condition is deemed permanent and stationary as determined by the City's appointed doctor. This shall be in compliance with workers' compensation laws.
2. An on-the-job injury or accident must be reported to the employee's immediate supervisor within twenty-four (24) hours after said injury or accident. In the event of an on-the-job injury or accident resulting in loss of time beyond that required for immediate medical attention, such employee may be required to be examined by a licensed physician appointed by the City of Laguna Niguel. An employee may be required to perform light-duty or restricted work if medically released to perform such work by the City's physician.
3. The employee shall continue to accrue Sick Leave and Vacation Leave during the term of the Industrial Accident Leave taken.

**I. Military Leave**

An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code and the Uniformed Services Employment and Reemployment Rights Act ("USERRA"). An employee requesting such Military Leave shall present a copy of his or her military orders to his or her Department Head prior to the beginning of the Leave.

Employees are entitled to a temporary Military Leave of Absence not to exceed 180 calendar days per year. Employees having one (1) year or more of continuous service and granted a temporary Military Leave of Absence are entitled to receive the equivalent salary up to the first thirty (30) calendar days of leave. Weekend drills are excluded from meaning of ordered Military Leave which means employees do not receive salary in excess of their regular salary for these drills.

This MOU does not cover all circumstances covered by California law or USERRA. Where there is a conflict, California law and USERRA govern.

**Article XX – Holidays**

**A. Holidays Observed**

1. Employees shall observe the following holidays:

New Year's Day

Martin Luther King, Jr. Day

Presidents' Day

Memorial Day

Independence Day

Labor Day

Veteran's Day

Thanksgiving Day

Day after Thanksgiving

Christmas Eve

Christmas Day

Day after Christmas

New Year's Eve

\*Three (3) Floating Holidays or 24 hours (see below)

\*(Effective the first pay period of January of each year, each full-time employee, will receive three (3) floating holidays (24 hours) for use during the calendar year. For employees hired during the calendar year (after the first pay period in January), the amount of hours shall be pro-rated based on the month of hire (2 hours/month). Floating holidays must be used during the calendar year in which they were granted.)

2. When a holiday falls on a Sunday, the next day shall be observed as the holiday. When a holiday falls on a Saturday, the preceding day shall be observed as the holiday.

**B. Eligibility for Holiday Pay**

1. An employee must be paid for all or a portion of both the regularly scheduled working day immediately prior to a holiday and the regularly scheduled working day immediately after that holiday in order to receive holiday pay. With City approval, compensatory time earned for working on a holiday or for a holiday falling on a regularly scheduled day off may be taken on the first scheduled working day after the holiday.

2. A new employee whose first working day is the day after a holiday shall not be paid for the holiday.
3. An employee who is terminating employment and whose last day as a paid employee is the day before a holiday shall not be paid for that holiday.

**C. Holiday Pay**

1. On each of the holidays designated above, each full-time employee scheduled to work but permitted to take the day off shall be paid for the hours they were regularly scheduled to work.

2. Compensation for Holidays falling on scheduled days off

When a holiday falls on a full-time employee's regularly scheduled day off, the employee shall receive pay or compensatory time at the option of the employee for the number of regularly their scheduled hours on the day of the holiday.

3. Compensation for Work on Holidays

An employee who is required to work on a holiday shall receive pay computed at one and one-half (1-1/2) times the employee's basic hourly rate for the number of hours actually worked.

4. Holidays which fall during an employee's vacation period shall not be charged against the employee's vacation balance.
5. Part-Time employees are not eligible for holiday pay or time off with pay on a designated holiday as provided in this article.

**Article XXI – Part-Time Employee General Leave Program**

1. Part-time employees in classifications represented by this unit are not eligible for leave benefits provided to full-time employees or to those leaves of absence provisions provided for in this MOU.
2. Part-Time employees are eligible for General Leave (which is intended to provide more than the minimum leave required under California's Paid Sick Leave Law) and may be used for time off for any purpose.
3. Part-time employees must request to use general leave using the process required by their department.
4. General Leave for part-time employees accrues as follows:

- a. Part-Time employees receive general leave accrual at the rate of .042 per actual hour worked upon hire through the completion of four years of service (48 months).
  - b. Beginning with the 5<sup>th</sup> year (49<sup>th</sup> month) of employment and through the completion of nine years (108 months) of employment, part-time employees receive general leave accrual at the rate of .084 per actual hour worked.
  - c. Beginning with the 10<sup>th</sup> year (109<sup>th</sup> month) of employment, part-time employees receive general leave accrual at the rate of .168 per actual hour worked.
5. General Leave has a maximum accrual of one hundred hours (100).
  6. General leave has no cash value during employment or upon separation of employment.

## **Article XXII - Layoff and Recall**

### **A. Layoff Authority**

The City agrees to forego the layoff and/or furlough of all represented bargaining unit members during the term of the Agreement (October 1, 2021 – June 30, 2023).

The City may, in its sole discretion, abolish any position or employment due to lack of work, lack of funds, reorganization or other legitimate reason or business purpose. The employee holding such position or employment may be laid off without disciplinary action and without right of appeal.

### **B. Seniority and Employee Performance**

Seniority and employee performance shall govern the layoff of employees. Seniority shall be determined as the total number of years of full-time employment in the classification within the Department where the position is to be eliminated. Employee performance shall be determined on the basis of the most recent annual performance evaluation. A rating of "Outstanding" shall increase the employee's seniority by two (2) years. A rating of "Exceeds Expectations" shall increase the employee's seniority by one (1) year. A rating of "Meets Expectations" shall neither increase nor decrease the employee's seniority. A rating of "Needs Improvement" shall decrease the employee's seniority by one (1) year. A rating of "Unsatisfactory" shall decrease the employee's seniority by two (2) years.

**C. Order of Layoff**

Layoffs shall be made by classification within a Department. The order of layoff shall be established by the City Manager or his/her designee. The order of layoff will begin with

the employee with the least total seniority as determined in accordance with Section B of this Article. If two (2) or more employees have the same seniority, the City Manager, after consideration of Citywide seniority and consultation with the Department Head, shall determine the order of layoff for these employees. No regular full-time employee shall be laid off until all probationary, limited term, and part-time employees holding positions in the same class in the Department are first laid off.

**D. Notice of Layoff**

Employees to be laid off shall be given at least fourteen (14) calendar days notice.

**E. Voluntary Demotion to Previously Held Position**

A regular full-time employee who receives a final layoff notice may, within seven (7) calendar days of receipt of the notice, request voluntary demotion to a previously held position in a lower classification that remains budgeted. In that event, the employee's seniority and position on the layoff list shall be reevaluated in accordance with Section B of this Article; provided, however, that seniority shall include the total number of years of full-time employment in the current classification and previously held position.

**F. Re-employment List and Recall**

The names of regular and probationary full-time employees laid off or demoted in-lieu of layoff shall be placed on re-employment lists for one (1) year. When a vacancy occurs in the subject classification, the appointing authority shall consider the former employees from the re-employment list. It is the responsibility of the employee on a re-employment list to keep the City informed of his/her current address and telephone number, and availability for work.

**Article XXIII - Safety**

**A. General Provisions**

Recognizing that a safe work environment is of substantial benefit to both the City and employees, the City and OCEA mutually agree to the following safety programs:

1. No employee shall be required to work under conditions dangerous to the employee's health or safety. An employee who has a safety concern should report that concern to any available supervisor.
2. The City shall make every reasonable effort to provide and maintain a safe place of employment. OCEA shall urge all employees to perform their work in a safe manner. Employees shall be alert to unsafe practices, equipment and conditions and report any such unsafe practices, equipment or conditions to their immediate supervisors. Employees shall follow safe practices and obey reasonable safety rules during the hours of their employment.
3. The City shall furnish all equipment which is necessary for employees to perform their job in a safe manner .
4. Wherever practical, the City shall provide the necessary first aid kits in each location.
5. Wherever practical, the City shall provide first aid training for one (1) employee at each new work location.

**B. Safety Inspection**

During inspection of City facilities conducted by the State Division of Industrial Safety for the purpose of determining compliance with the California OSHA requirements, an OCEA designated employee shall be allowed to accompany the inspector while the inspector is in the employee's department. The employee so designated shall suffer no loss of pay when this function is performed during the employee's regularly scheduled work hours.

**C. Abatement of Violations**

In any instance in which the City is cited for a violation of California OSHA, the City shall make a good faith effort to abate the cited hazard to health and safety within the abatement period required.

**D. Safety Committee Representatives**

1. Safety Committee Representatives may be selected by OCEA to meet at least once a quarter, upon request, with a City designated representative to discuss matters affecting employee health and safety.

2. A Safety Committee Representative who has received a safety or health complaint shall be given reasonable time off without loss of pay to gather appropriate information on such complaint provided that:
  - a. The Safety Committee reviews the complaint and determines the process to be used to gather information and evaluate the complaint.
  - b. When needed, the Safety Committee Representative may need to obtain permission from his or her supervisor prior to performing such work and reports back to the supervisor and/or the Safety Committee when the work is completed.
  - c. When an authorized Safety Committee Representative must go into another section or unit to gather information regarding a safety or health complaint, the Safety Committee Representative shall be permitted to do so provided that:
    1. The Safety Committee Representative checks in and checks out with the Human Resources representative; and
    2. He or she does not unduly interfere with the work of the unit.

**E. Resolution of Safety or Health Complaints**

If a safety or health complaint is not satisfactorily resolved, a grievance may be filed at Step 3 of the grievance procedure.

**Article XXIV - Uniforms, Safety Gear  
and Inclement Weather Gear**

Employees in designated classes shall be provided and required to wear City uniforms. The City will report the value of the required uniforms for eligible employees up to \$700 on an annual basis to CalPERS. Employees subject to PEPRAs guidelines (new CalPERS members hired after January 1, 2013) are not eligible for uniforms benefit reporting to CalPERS. Steel toed shoes and safety glasses will be provided to employees whose regular duties require their usage and be replaced as needed. Rain gear will be provided to employees whose regular full-time duties require them to work outside on a continuous basis in the adverse elements.

### **Article XXV - Personnel Files**

The official personnel file for each City employee shall be maintained by the Deputy City Manager, or designee. Employees have the right to review their official personnel file by scheduling a specific date and time, twenty-four (24) hours in advance, with the Personnel Officer. Documents designated by law as confidential shall not be subject to review by the employee.

A copy of any commendations, written warnings or reprimands, disciplinary actions, Personnel Action Forms and performance reviews placed in the employee's personnel file will be provided to the employee.

Written reprimands shall be retained at least two (2) years. If after two (2) years no similar or other unacceptable behavior is reported, the employee may request in writing that the reprimand be purged from his or her file. Upon review and approval of the Department Head the written reprimand shall be removed from the employee's file.

### **Article XXVI - Probationary Period**

- A. Any new or re-employed employee in a regular position shall serve a probationary period for a period of twenty-six (26) weeks from the date of appointment or hiring. Management has full discretion to extend the probationary period for up to an additional 26 weeks if an employee needs additional time to be evaluated. Any extension of the probationary period is not contestable by the employee.
- B. Any employee who is promoted shall also serve a probationary period commencing on the date of promotion and ending on the first day of the pay period following the completion of twenty-six (26) weeks. A promotional probationary employee may be returned to their prior position during the probationary period without right of due process, appeal or hearing.
- C. A probationary employee (other than a promotional probationary employee) may be separated from service without cause at any time during any probation period without right of appeal or hearing.

### **Article XXVII - Performance Reviews**

- A. The City shall maintain a system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular full-time and part-time employees at least once each year; and in addition, for employees on probationary status, at least once near the middle of the probation period.



- B. The City shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.
- C. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee. Any written response by the employee to the performance evaluation shall be attached to such evaluation in the personnel files.
- D. Employee performance evaluations shall be provided in a timely manner. If an employee's performance evaluation is not completed when it is due, the employee shall notify his/her Department Head/Supervisor in writing and request completion of the evaluation. If an employee's performance evaluation is not completed within 30 days of when it is scheduled to be due, the employee shall notify the Deputy City Manager in writing to request completion of the evaluation.
- E. The City shall provide OCEA with a list of performance evaluation dates for members of the bargaining unit.
- F. The Performance Evaluation process will be a collaborative process with the supervisor and employee, with the employee having prior notice to any items that need improvement in the evaluation.

### **Article XXVIII - Classification**

A. **The Establishment of New Classes**

The City will provide OCEA an information copy of the new class specification and salary range for any proposed class in the representation unit. Whenever it is proposed to reclassify an incumbent employee to a proposed new class in the representation unit, the City agrees to meet and confer with OCEA in an attempt to reach agreement on the salary range for the proposed new class prior to submitting the proposed new class to the City Council for adoption.

B. **Procedure for Requesting Reclassification of a Position**

Step 1:

An employee who believes his or her position is not properly classified may submit a written request to his or her Department Head and the Deputy City Manager, or designee that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate and which class the employee believes is appropriate

based on the employee's present duties. Such request shall be submitted in January to permit consideration as part of the City's budget review and adoption process.

Step 2:

The Deputy City Manager, or designee shall perform a job analysis of the employee's duties and responsibilities, as well as the duties and responsibilities of incumbent employees within the class to which the employee seeks reclassification. The job analysis may include, but is not limited to: completion of job questionnaires or position description forms, interviews with key employees and supervisors, observation of performed duties, desk audits, etc. The findings and recommendations of the Deputy City Manager (or designee) shall be provided to the employee, the employee's Department Head and the City Manager.

Step 3:

If the Deputy City Manager (or designee) recommends that the employee be reclassified, and the City Manager concurs, the City Manager shall recommend such reclassification in the proposed City Budget for the ensuing fiscal year. If the Deputy City Manager (or designee) recommends that the reclassification request be denied, the employee may file a grievance at Step 3 of the grievance procedure.

**C. Limitations on Classification Studies**

An employee may not request a classification study if the position has been evaluated during the preceding two (2) years.

**Article XXIX - Part-Time Employees**

Part-time employees shall not be eligible for employer paid benefits, including leaves of absence unless explicitly stated in this MOU or otherwise required by law. Part-time employees shall include seasonal, temporary and emergency employees, and regular part-time employees who are normally scheduled to work less than forty (40) hours per week.

Part-time employees are "At-Will" employees, they serve at the pleasure of the City Manager, they have no expectation of continued employment, and they may be terminated or disciplined by the City Manager at any time with or without cause, and with or without receiving prior notice or having the right to pre-or-post disciplinary due process, including a hearing.

The City shall determine the number of hours that a part-time employee is assigned to work each week, and the number of hours may range from 0 to 40 hours per week at the discretion of the City.

Part-time employees shall not be covered under the layoff or recall provisions of this MOU.

The City shall determine the number of hours that a part-time employee is assigned to work each week, and the number of hours may range from 0 to 40 hours per week at the discretion of the City.

Part-time employees shall not be covered under the layoff or recall provisions of this MOU.

**Article XXX - Limited Term Employees**

Limited-term employee shall mean a person employed by the City on a full-time basis in a limited-term position. A limited-term position shall mean a position which the City has determined to be of uncertain long-term need, duration and/or funding. A limited-term employee shall be eligible for the same pay, paid leave and City insurance benefits that are provided to regular full-time employees. Limited-term employees shall be considered at-will employees who may be terminated by the City at any time, with or without cause or notice, and without pre-or-post disciplinary due process or right of appeal. Additionally, limited-term employees shall not be covered under the Layoff and Recall provisions of this MOU. However, after five (5) years of continuous employment, a limited-term full-time employee shall be converted to regular full-time employment status, and shall be entitled to all other rights and benefits conferred upon regular full-time employees by this MOU.

**Article XXXI - Employee Recognition Program**

City shall establish an Employee Recognition Program. OCEA shall establish an Employee Recognition Program Committee to work with the City on the planning and conduct of annual employee recognition events. The annual budget for employee recognition events shall be established by the City Council.

City shall recognize full-time employees for length of service to the City with a Gift card to a local business of the employee's choice. The cash value of the Gift card shall be \$10 for each year of full-time service to the City and shall be awarded at five-year intervals as follows:

5 Years of Service:	\$50
10 Years of Service:	\$100
15 Years of Service:	\$150
20 Years of Service:	\$200
25 Years of Service:	\$250
Etc.	

**Article XXXII - Use of South Coast YMCA Facilities**

The City owns the YMCA building at Crown Valley Community Park. The YMCA operates health and fitness facilities and programs under a long-term lease and operating agreement with the City. Both Full-time and part-time City employees shall have health and fitness facility use privileges at the YMCA building, subject to such terms and conditions that are mutually agreeable to the City and YMCA.

These use privileges are based on: (1) YMCA's consent to permit use of its health and fitness facilities by full-time City employees; and (2) the continuing acceptability of facility use terms and conditions to both City and YMCA. In the event YMCA withdraws its consent to permit use of its health and fitness facilities by City employees, or the facility use terms and conditions are no longer acceptable to the City, OCEA acknowledges that City may terminate this privilege. City agrees to meet and consult with OCEA prior to terminating such use privileges.

**Article XXXIII - Drug-Free Workplace and Harassment Policies**

The Drug-Free Workplace Act of 1988 requires the adoption of a Drug-Free Workplace Policy by employers with any federal grant or federal contract worth more than \$25,000. The City and OCEA agree to the provisions of the City of Laguna Niguel Drug-Free Workplace Policy set forth in Attachment 3.

The City and OCEA further agree to the provisions of the Harassment Policy set forth in Attachment 4.

**Article XXXIV - Gift Restrictions**

No employee shall accept any gift or gifts, totaling \$100 or more in value during any 12-month period, from any person, firm or organization conducting or seeking to conduct business with the City.

**Article XXXV - Pension and Health Care Reform Proposals**

**A. Pension Reform Proposals**

City and OCEA acknowledge that various legislative and initiative proposals are under consideration and/or pending that, if enacted, will modify or reduce pension benefits for future California state and local government employees. City and OCEA agree that if, during the term of this MOU there is a change in State law that mandates a different or reduced pension benefit for newly hired City employees, that City may take such actions that are necessary to comply with State law, including, but not limited to, implementation of new, different or reduced pension benefits for newly hired City employees. City shall have no obligation to meet and confer with OCEA on such matters.

**B. Health Care Reform Proposals**

City and OCEA acknowledge that various legislative proposals are under consideration and/or pending that, if enacted, may change the requirements for California employers to provide health care coverage for employees. City and OCEA agree that if, during the term of this MOU, there is a change in State or Federal law that mandates the City to provide health care coverage for part-time employees and/or increases the City's cost of health insurance, then City and OCEA shall re-open negotiations on the City's health insurance plans and the City's and Employee's respective contributions toward the cost of such plans.

**Article XXXVI - Non-Discrimination**

Neither party to this Agreement shall illegally discriminate against any employee on the basis of any legally protected classification identified by law. The parties further agree that they shall not interfere with, intimidate, restrain, coerce, or discriminate against any employee in his or her free choice to participate or not participate in the activities of and right to join the OCEA.

It is agreed by both parties to this Agreement that they will fully comply with all applicable local, State and Federal laws, rules and regulations governing equal employment opportunity.

In recognition of the Americans with Disabilities Act, the City will, in evaluating each situation on a case-by-case basis, endeavor to carefully consider ways to reasonably accommodate disabled employees.

**Article XXXVII - Severability**

It is understood and mutually agreed that this MOU is subject to all applicable Federal, State and City laws and ordinances.

If any provision of this MOU is determined to be invalid or illegal by a court of competent jurisdiction, such provisions will not be deemed valid and shall be severed from this MOU, except to the extent permitted by law, but the remainder shall remain in full force and effect. Should any change be made in any State or Federal law, or in any rules and regulations implementing such legislation, then such provision shall be automatically terminated but the remainder of this MOU shall remain in full force and effect.

The Parties hereto shall meet and confer within a reasonable time for the purpose of discussing the implications and impacts related to the replacement of any provision of this MOU determined to be invalid or illegal pursuant to this paragraph.

**Article XXXVIII-Concerted Activities**

Apart from and in addition to existing legal restrictions upon and remedies for work stoppage, the OCEA hereby agrees that during the term of this MOU neither it nor its members or agents, representatives or persons acting in concert with any of them, shall incite, engage or participate in any strike, walkout, slowdown, sick-out or other work stoppage of any nature against the City whatsoever, or wheresoever located, including but not limited to disputes which are related to the subject matter contained in this MOU; disputes between the City and other employee organizations, persons or employees; or jurisdictional disputes. In the event of any strike, walkout, slowdown, sick-out or other work stoppage or threat thereof against the City, OCEA and its officers will take steps reasonably within their control to end or avert the same.

Those represented by the OCEA will not authorize, engage in, encourage, sanction, recognize or assist in any strike, slowdown, walkout, sick-out or other work stoppage against the City or picket in furtherance thereof, or participate in unlawful concerted interference in violation of this provision, or refuse to perform duly assigned services in violation of this provision. It is understood that any person represented by OCEA found in violation of this provision will be subject to discipline, including termination, as determined by the City Personnel Officer, according to Personnel Rules and Regulations.

**Article XXXIX - Term**

The terms and conditions of this MOU will be effective the date of City Council adoption of this MOU unless otherwise stated in the MOU. This MOU shall remain in full force and effect from October 1, 2021 through June 30, 2023.

*///*

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding on the dates indicated below.

Saliem Aregaye  
Saliem Aregaye  
Employee Relations Representative

Date: 9/20/2021

Tamara S. Letourneau  
Tamara S. Letourneau  
City Manager

Date: 9/21/2021

Jorge Muratalla  
Jorge Muratalla  
Bargaining Committee Member

Date: 8/10/2021

Kristi Recchia  
Kristi Recchia  
Labor Relations Director

Date: 9/21/2021

Kelli Fitzgerald  
Kelli Fitzgerald  
Bargaining Committee Member

Date: 8/11/2021

Justin J. Martin  
Justin J. Martin  
Deputy City Manager

Date: 8/10/2021

Steven Antisdal  
Steven Antisdal  
Bargaining Committee Member

Date: 8/11/2021

Eric Hendrickson  
Eric Hendrickson  
Finance Director

Date: 8/11/2021

Dorna Farhadi  
Dorna Farhadi  
Senior Management Analyst

Date: 8/11/2021

## ATTACHMENT 1

### **Maintenance, Clerical and Technical Unit Classifications**

#### Full-Time Classifications

Account Clerk  
Administrative Secretary  
Building and Facilities Specialist  
Building Permit Technician  
Clerk Typist  
Code Compliance Inspector  
Contracts Administrator  
Deputy City Clerk  
Engineering Technician  
Landscape Maintenance Inspector  
Maintenance Worker  
Public Works Inspector  
Public Works Permit Tech  
Recreation Clerk  
Recreation Coordinator  
Secretary  
Senior Account Clerk  
Senior Public Works Inspector

#### \* Part-Time Classifications

Account Clerk  
Administrative Intern  
Code Compliance Inspector  
Facility Aide  
Lifeguard  
Lifeguard Instructor  
Maintenance Worker  
Management Assistant  
Police Cadet  
Receptionist  
Recreation Coordinator  
Recreation Leader  
Secretary  
Senior Lifeguard  
Senior Recreation Leader

\* Eligible part-time employees include those employed on a permanent year-round basis for whom work is regularly scheduled at least twenty (20) hours per week.



**ATTACHMENT 2**

Part-Time Employees  
Eligibility for Merit Increases

Part-time employees shall be eligible for a merit increase on the first day of the pay period following completion of twenty-six weeks of service and the minimum hours worked as noted below. Part-time employees shall be eligible for subsequent merit increases on the first day of the pay period following the completion of additional fifty-two-week intervals and the minimum hours of work as noted below.

The following minimum number of hours must have been worked for advancement to subsequent steps on the salary range:

	Minimum Hours of Work (since date of hire)
2	520 hours
3	1520 hours
4	2520 hours
5	3520 hours

If an employee is initially hired at a step higher than Step 1 of the salary range, the minimum hours requirement shall apply in the same increments as if the employee were hired at Step 1.

All merit increases are subject to a satisfactory performance evaluation by the employee's immediate supervisor, and approval by the Department Head.

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## **ATTACHMENT 3**

### CITY OF LAGUNA NIGUEL Drug-Free Workplace Policy

#### Policy Statement

Substance abuse has been found to be a contributing factor to absenteeism, substandard performance, increased potential for accidents, poor morale and impaired public relations. It is the goal of the City, therefore, to eliminate substance abuse in the workplace by clearly stating employee responsibilities and by providing Department Heads with guidelines and procedures for the detection of such abuse and the enforcement of related policies and regulations.

It is the responsibility of City employees to cooperate in efforts to protect the life, personal safety and property of co-workers and fellow citizens. Employees shall, therefore, take all reasonable steps to abide by and cooperate in the implementation and enforcement of these policies and regulations.

The City encourages employees who believe that they may have a drug or alcohol problem to seek counseling, assistance and/or rehabilitation, and will be supportive of those employees who voluntarily seek help. However, the City will be equally firm in identifying and disciplining those employees who continue to be substance abusers and do not seek help.

Alcohol or drug abuse in the workplace will not be tolerated, and disciplinary action, up to and including termination, will be used as necessary to achieve the goal of eliminating substance abuse in the workplace.

#### Drug-Free Workplace Act of 1988

The Drug-Free Workplace Act of 1988 applies to employers with any federal grant or with a federal contract worth more than \$25,000. The law requires that employees convicted of any drug related workplace crime notify their employer within five (5) days of the conviction. The employer must then notify the granting or contracting agency within ten (10) calendar days of receiving a conviction notice from the employee. The employer must then impose sanctions (up to and including termination) against the convicted employee within 30 calendar days and/or require him/her to participate in a drug abuse assistance or rehabilitation program approved by an appropriate law enforcement or health agency.

## **Employee Responsibilities**

An employee must:

1. Not report to work or be subject to duty while "under the influence of drugs or alcohol".  
  
"Under the influence of drugs or alcohol" means the use of any alcoholic beverage or any illegal drug or substance, or the misuse or any prescribed drug, in a manner or degree that impairs the employee's work performance or ability to use City property or equipment safely.
2. Notify his/her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment.
3. Not possess or use alcohol or impairing drugs (illegal drugs and prescription drugs without a prescription) during working hours or while subject to duty, on breaks, during meal periods or anytime while on City property.
4. Not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either employee or both employees are on duty or subject to being called.
5. Immediately complete and sign a consent form (see attached) and submit to an alcohol and drug test when requested to do so by the employee's department head.
6. Provide, within 24 hours of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug test is positive. The prescription must be in the employee's name.
7. Sign, if requested to do so by his/her department head, a "Last Chance Agreement" (see attached) as a condition of continued employment subsequent to entering a drug and/or alcohol treatment or rehabilitation program.
8. Report any conviction under a criminal drug statute to the City Manager within five (5) days of such conviction.

## **II. Management Responsibilities**

1. Department heads are responsible for reasonable enforcement of this policy.
2. Department heads may request that an employee submit to a drug and/or alcohol test in accordance with the guidelines set forth in this policy.

3. If an employee refuses a request by a department head to complete and sign a consent form (see drug testing prerequisites), or refuses a request to submit to a drug or alcohol test, the department head shall remind the employee of the requirements and disciplinary consequences of this policy. Such refusal may be considered as insubordinate conduct and grounds for disciplinary action.
4. When there is "reasonable suspicion", (as defined in Section V, paragraph 3) that the employee is under the influence of drugs or alcohol, the department head shall arrange for the employee to be safely transported home.

### **III. Employer Searches**

1. For the purpose of enforcing this policy and maintaining a drug and alcohol-free workplace, the City, upon reasonable suspicion, may search areas and property in which the City maintains full or joint control with the employees. These areas include, but are not limited to, City vehicles, desks, lockers, file cabinets and bookshelves. The search will be conducted only with the approval of the City Manager or his/her designee. The City will make a reasonable effort to contact the employee to have him/her present while searching the property in question.
2. The City shall not physically search the person of an employee or the personal possessions of an employee without the freely given consent of the employee, and in the presence of the City Manager or his/her designee.
3. Department heads shall notify the City Manager or his/her designee whenever they have reasonable suspicion to believe that an employee may have illegal drugs in his/her possession or in an area not jointly or fully controlled by the City. If the City Manager or his/her designee concurs that there is reasonable suspicion of illegal drug possession, the Sheriff's Department shall be contacted.

### **IV. Rehabilitation**

1. The City encourages those employees who think that they may have a problem with drugs and/or alcohol to seek assistance and rehabilitation.
2. A decision by an employee to voluntarily seek treatment or rehabilitation for the first time will not be used as the basis for disciplinary action. However, the City may in such cases require such employees to comply with the provisions set forth in this policy pertaining to "Last Chance Agreements" and Follow-up Testing.
3. If necessary, the employee will be granted a leave of absence without pay in order to accommodate treatment and rehabilitation.

4. Employees who undergo treatment and/or rehabilitation may be required to sign a "Last Chance Agreement" as a condition of continued employment. In this Agreement (see attached) the employee promises to complete the treatment or rehabilitation program and to comply with other terms stated in the Agreement. If the employee violates the Agreement, he/she shall be subject to disciplinary action up to and including termination.
5. An employee entering a rehabilitation program may be required to submit to random testing for up to one year after completion of the program. If the employee fails to comply or if further substance abuse is detected upon testing, the employee shall be subject to disciplinary action up to and including termination.

**V. Drug/Alcohol Testing**

1. An employee may be requested to submit to a drug and/or alcohol test when his/her department head has reasonable suspicion that an employee is under the influence of drugs or alcohol while on the job or subject to being called.
2. Follow-up drug and/or alcohol testing related to rehabilitation (see Rehabilitation) may also be required.
3. "Reasonable Suspicion" is defined as a belief, based upon objective facts, sufficient to lead a reasonable and prudent department head to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so that the employee's ability to perform his/her job is reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion:
  - Slurred speech
  - Alcohol odor on breath
  - Unsteady walking and movement
  - Accident involving City property
  - Physical altercation
  - Verbal altercation
  - Unusual behavior
  - Possession of alcohol or drugs
  - Information obtained from a reliable person with personal knowledge

Any department head requesting an employee to submit to a drug and/or alcohol test shall document in writing the facts constituting reasonable suspicion that the employee in question is under the influence of drugs or alcohol

4. Prior to the administration of any drug or alcohol test, the department head shall first obtain from the employee a completed and signed consent form (attached). This consent form shall provide for the employee's consent to physical and/or psychological examination and testing.
5. If the drug test is positive, the employee must provide, within 24 hours of request, bona fide verification of a valid current prescription for the drug identified in the drug test. The prescription must be in the employee's name.
6. Laboratory results or test results shall not appear in an employee's general personnel file. Information of this nature shall be contained in a separate confidential medical folder that will be securely kept under the control of the Personnel Officer. The reports or test results may be disclosed to the employee upon request. Disclosures, without employee consent, may also occur when:
  - a. The information is compelled by law or by judicial or administrative process.
  - b. The information has been placed at issue in a formal dispute between the employer and employee.
  - c. The information is to be used in administering an employee benefit plan.
  - d. The information is needed by medical personnel for the diagnosis or treatment of the employee who is unable to authorize disclosure.

## **VI. Disciplinary Action**

1. Disciplinary action, up to and including dismissal, may be taken against an employee for either of the following reasons:
  - a. Failure to comply with any of the Employee Responsibilities set forth in this policy.
  - b. Positive results from a drug and/or alcohol test.

*I*

**CONSENT FOR DRUG AND ALCOHOL TESTING**

I hereby authorize \_\_\_\_\_  
(insert name of laboratory or clinic)

to collect from me the following specimens \_\_\_\_\_  
(blood, urine, other)

and to conduct tests on such samples to determine the presence of alcohol, drugs, their metabolites, or other substances that violate the Drug-Free Workplace Policy. I hereby authorize

\_\_\_\_\_ to conduct a \_\_\_\_\_  
(insert name of physician) (Physical &/or Psychological)

examination on me. Further, I consent to the release of the examination and/or test results to the City of Laguna Niguel for use in disciplinary actions or for other legitimate work-related purposes.

The City of Laguna Niguel may disclose the test results to \_\_\_\_\_ for  
(name of physician)

evaluation or consultation. This consent is effective immediately and shall remain in effect until

\_\_\_\_\_  
(Date)

**CONSENT GIVEN:**

\_\_\_\_\_  
Employee's Name (Print)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name (Print)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

**CONSENT REFUSED:**

\_\_\_\_\_  
Employee's Name (Print)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

Explanation for Refusal:

\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Witness Name (print)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date



### LAST CHANCE AGREEMENT

I have received a copy of the City of Laguna Niguel's Drug-Free Workplace Policy and I fully understand its provisions and acknowledge that compliance with the Policy is a condition of continued employment.

I hereby acknowledge that I have entered or will enter a treatment or rehabilitation program for alcohol or drug abuse satisfactory to the City of Laguna Niguel. I agree to complete such a program, perform the duties of my job in accordance with standards of performance reasonably expected, and comply with the City's rules, including the Drug-Free Workplace Policy.

I agree to consent, for up to one year, to undergo physical or psychological examinations, and/or random testing of my blood, urine, breath, other body fluid specimens for alcohol, drugs, or their metabolites. I understand that a violation of the Policy or breach of this Agreement may result in disciplinary action, up to and including termination.

\_\_\_\_\_  
Employee's Name (Print)

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Witness Name (Print)

\_\_\_\_\_  
Witness Signature

\_\_\_\_\_  
Date

## **ATTACHMENT 4**

### **CITY OF LAGUNA NIGUEL Harassment Policy**

It is the policy of the City of Laguna Niguel that all employees shall enjoy a working environment free from all forms of harassment. The City of Laguna Niguel maintains a strict policy prohibiting harassment in accordance with State and Federal law. This policy applies to all City employees, including non-management personnel, supervisors, managers and executive staff, as well as non-employees, such as contract personnel, who have contact with City employees during working hours.

#### **STATEMENT OF POLICY**

The City has zero tolerance for any conduct that violates this Policy. Conduct need not arise to the level of a violation of law to violate this Policy. Instead a single act can violate this Policy and provide grounds for discipline or other appropriate sanctions.

Harassment or discrimination against an applicant or employee by a supervisor, management employee, co-worker, or contractor on the basis of race, religion, sex (including gender and pregnancy), national origin, ancestry, disability, medical condition, genetic characteristics, marital status, age, sexual orientation (including homosexuality, bisexuality, or heterosexuality), or any other protected classification will not be tolerated.

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

Prompt and appropriate disciplinary action will be taken against any City employee, City-hired consultant, or contract employee who has harassed a City employee. The City of Laguna Niguel views harassment as a very serious offense which is subject to disciplinary action, up to, and including, termination.

The City will not retaliate nor tolerate retaliation taken against any employee for filing a complaint of harassment. Such retaliation or attempted retaliation shall result in disciplinary action, up to, and including, termination.

#### **DEFINITION OF SEXUAL HARASSMENT**

The Fair Employment and Housing Commission defines sexual harassment as unwanted sexual advances, or visual, verbal, or physical conduct of a sexual nature. This definition includes many forms of offensive behavior, and includes gender-based harassment of a person of the same sex as the harasser.

The following is a partial list of conduct that could be considered sexual harassment:

- Unwanted sexual advances
- Offering employment benefits in exchange for sexual favors
- Making or threatening reprisals after a negative response to sexual favors
- Visual conduct, such as leering, making sexual gestures, displaying of sexually suggestive objects or pictures, cartoons, or posters
- Verbal conduct, such as making or using derogatory comments, epithets, slurs, and jokes
- Verbal sexual advances or propositions
- Verbal abuse of a sexual nature, graphic verbal commentaries about an individual's body, sexually degrading words used to describe an individual, suggestive or obscene letters, notes, or invitations
- Physical conduct, such as touching, assault, impeding or blocking movements

## **PROCEDURE**

- A. All employees are encouraged to immediately inform the alleged harasser that the behavior is unwelcome, offensive, or inappropriate. If the employee feels threatened or has difficulty expressing disapproval, assistance should be sought from the department director.

Should the complaint involve the department director, or if an employee is uncomfortable discussing the complaint with the director, the complaint should be reported to Human Resources or the City Manager.

- B. All investigations related to a complaint under this Policy will be conducted with confidentiality and respect for the rights of all individuals involved. Information related to the investigation will be provided on a need to know basis only.
- C. The complainant and the alleged harasser will be informed of the findings and conclusions of the investigation.
- D. Any individual who is found to have engaged in harassment, who is found to have condoned, encouraged, or perpetuated acts of harassment, or who is found to have in some way participated in retaliation or reprisal, shall be subject to disciplinary action, up to, and including, termination.

*II*

**ATTACHMENT 5****SALARY SCHEDULES****ADOPTED AS PART OF CITY COUNCIL RESOLUTION NO. 2021-1365****Maintenance, Clerical and Technical Unit**

	<b>Effective January 1, 2022</b>	
	<b>Min.</b>	<b>Max.</b>
Account Clerk	\$4,151	\$5,188
Administrative Secretary	\$5,169	\$6,463
Building and Facilities Specialist	\$4,751	\$5,938
Clerk Typist	\$3,563	\$4,454
Code Compliance Inspector	\$6,028	\$7,537
Contracts Administrator	\$6,409	\$8,011
Deputy City Clerk	\$5,169	\$6,463
Engineering Technician	\$5,462	\$6,830
Landscape Maintenance Inspector	\$5,723	\$7,151
Maintenance Worker	\$4,426	\$5,531
Public Works Inspector	\$6,294	\$7,867
Public Works Permit Technician	\$4,896	\$6,120
Recreation Clerk	\$4,303	\$5,381
Recreation Coordinator	\$4,636	\$5,795
Secretary	\$4,562	\$5,702
Senior Account Clerk	\$5,201	\$6,504
Senior Public Works Inspector	\$6,992	\$8,739

**Part-Time Employees  
Hourly Rate Effective January 1, 2022**

**Maintenance, Clerical and Technical Unit**

	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
Account Clerk	\$24.63	\$25.87	\$27.15	\$28.52	\$29.93
Administrative Intern	\$16.11	\$16.92	\$17.77	\$18.66	\$19.59
Code Compliance Inspector	\$35.77	\$37.56	\$39.44	\$41.41	\$43.48
Facility Aide	\$15.00	\$15.75	\$16.54	\$17.37	\$18.24
Lifeguard	\$15.41	\$16.18	\$16.99	\$17.84	\$18.73
Lifeguard Instructor	\$15.87	\$16.66	\$17.49	\$18.36	\$19.28
Maintenance Worker	\$26.27	\$27.57	\$28.96	\$30.40	\$31.93
Management Assistant	\$26.82	\$28.17	\$29.57	\$31.05	\$32.60
Police Cadet	\$16.11	\$16.92	\$17.77	\$18.66	\$19.59
Receptionist	\$16.38	\$17.21	\$18.06	\$18.97	\$19.91
Recreation Coordinator	\$26.75	\$28.10	\$29.49	\$30.98	\$32.51
Recreation Leader	\$15.28	\$16.04	\$16.84	\$17.68	\$18.56
Secretary	\$27.06	\$28.42	\$29.84	\$31.33	\$32.89
Senior Lifeguard	\$16.38	\$17.21	\$18.06	\$18.97	\$19.91
Senior Recreation Leader	\$16.38	\$17.21	\$18.06	\$18.97	\$19.91