

# **MEMORANDUM OF UNDERSTANDING**

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**CITY OF TUSTIN**

**and**

**TUSTIN MUNICIPAL EMPLOYEES ASSOCIATION**

**TERM:**

**July 1, 2011 to June 30, 2012**



## TABLE OF CONTENTS

CHAPTER 1 – GENERAL PROVISIONS .....	3
Article 1. Recognition .....	3
Article 2. Represented Classes .....	3
Article 3. Ratification .....	5
Article 4. Entire Agreement .....	5
Article 5. Reopener .....	5
Article 6. Severability .....	5
Article 7. Binding on Successors .....	5
Article 8. Amendments .....	6
Article 9. Contract Bar .....	6
Article 10. Notices .....	6
Article 11. Association Dues .....	6
Article 12. Payroll Deductions .....	6
CHAPTER 2 – COMPENSATION .....	7
Article 13. Salary .....	7
Article 14. Overtime Compensation .....	7
Article 15. Paid Overtime Meal .....	7
Article 16. Bilingual Compensation .....	7
Article 17. Certification Pay .....	7
Article 18. Standby Duty .....	9
Article 19. Shift Differential Pay .....	9
Article 20. Call Back Duty .....	9
Article 21. Acting Pay .....	9
Article 22. Educational Incentive Pay .....	10
CHAPTER 3 – BENEFITS .....	10
Article 23. Flexible Benefits Plan .....	10
Article 24. Retirement .....	11
Article 25. Employee Life Insurance .....	12
Article 26. Short-Term / Long-Term Disability Insurance .....	12
Article 27. Tuition Reimbursement .....	13

Article 28. Retiree Medical Insurance .....14

CHAPTER 4 – LEAVES OF ABSENCE .....15

Article 29. General Leave .....15

Article 30. Compensatory Time Off.....15

Article 31. Holidays.....16

Article 32. Family Leave.....16

Article 33. Bereavement Leave .....16

CHAPTER 5 – WORKING CONDITIONS.....17

Article 34. Workweek & Work Schedules .....17

Article 35. Rest Periods .....17

Article 36. One-Half Hour Lunch: Field Services & Water Services Employees .....17

Article 37. Uniforms .....17

Article 38. Commercial Driver's License .....18

Article 39. Temporary Employment .....18

CHAPTER 6 – EMPLOYER / EMPLOYEE RELATIONS .....19

Article 40. Appeals Procedure .....19

Article 41. Grievance Procedure .....22

Article 42. Performance Evaluations.....24

Article 43. Meetings .....25

Article 44. No Strike/Job Action .....25

Article 45. Agency Shop.....25

Article 46. Management Rights.....27

Article 47. Layoffs.....28

APPENDIX A – MONTHLY SALARY RANGES .....33

**MEMORANDUM OF UNDERSTANDING**

**CITY OF TUSTIN  
AND  
TUSTIN MUNICIPAL EMPLOYEES ASSOCIATION**

WHEREAS, in accordance with the provisions of California Government Code Sections 3500 et seq. and Section 17 (Employer-Employee Organization Relations) of the Personnel Rules of the City of Tustin, the City's employee representatives have met and conferred in good faith with the representatives of the Tustin Municipal Employees Association (hereinafter sometimes referred to as TMEA) pertaining to the subject of wages, benefits and conditions of employment; and

WHEREAS, the meetings between the Tustin Municipal Employees Association and the City representatives have resulted in an agreement and understanding to recommend that the employees represented by the Tustin Municipal Employees Association accept all of the terms and conditions as set forth herein and that the City representatives recommend to the City Council that it adopt by resolution or resolutions the changes and additions to the wages, hours, and conditions of employment for the represented classes.

**WITNESSETH**

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Tustin authorizes staff to implement the provisions of this Memorandum of Understanding (MOU) and modify the City's Classification and Compensation Plans to reflect the changes approved in this MOU, and that the wages, hours and conditions of employment be adopted and set forth as follows:

**CHAPTER 1 – GENERAL PROVISIONS**

**Article 1. Recognition**

The Tustin Municipal Employees Association is the majority representative of employees in the hereinafter listed classes for the purpose of representation on issues of wages, hours, and other terms and conditions of employment and as such majority representative, the Tustin Municipal Employees Association is empowered to act on behalf of employees in the General Employees Representation Unit, whether or not they are individually members of the Tustin Municipal Employees Association.

**Article 2. Represented Classes**

- A. The Tustin Municipal Employees Association represents the following full-time classifications which are covered by this agreement:

Accounting Specialist  
Accountant  
Administrative Secretary  
Assistant Engineer  
Assistant Planner  
Associate Engineer

Associate Planner  
Building Inspector  
Building Permit Technician  
Business License Technician  
City Clerk Services Specialist  
Code Enforcement Officer  
Custodian  
Engineering Aide  
Environmental Compliance Specialist  
Equipment Mechanic  
Equipment Operator  
Information Technology Specialist  
Mail and Duplication Specialist  
Maintenance Leadworker  
Maintenance Worker  
Management Analyst  
Office Support Specialist  
Parking Control Specialist  
Plan Checker  
Public Works Inspector  
Recreation Facilities Assistant  
Recreation Facilities Leadworker  
Recreation Program Specialist  
Redevelopment Project Manager  
Senior Accounting Specialist  
Senior Building Inspector  
Senior Maintenance Worker  
Water Distribution Leadworker  
Water Distribution Operator I/II  
Water Equipment Operator  
Water Meter Reader  
Water Treatment Operator I/II

- B. TMEA represents the following part-time regular classifications which are designated pursuant to the annual budget and covered by this agreement:

Accounting Specialist  
Information Technology Specialist  
Senior Accounting Specialist  
Transportation Coordinator

Part-time regular classifications, designated pursuant to the City budget, are those classifications/positions that are anticipated to have work scheduled on a regular year-round basis, for an average of twenty or more hours per week, and the position is anticipated to continue for a period in excess of twelve months. Such classifications shall be designated as half-time (20–29 hours per week) or three-quarter time (30-39 hours per week).

The City shall budget annually for all positions on a half (½) time, three quarter (¾) time or full time basis. Only those classifications designated as a regular allocated position shall be included for representation in this unit.

**Article 3. Ratification**

This Memorandum contains all the terms and conditions agreed to between the parties. The Memorandum shall be of no force or effect unless and until duly approved, adopted, ratified, and agreed to by the City Council, or in alternative, that all of the substantive provisions contained herein are adopted by Resolution of the City Council.

**Article 4. Entire Agreement**

This Agreement, upon ratification, supersedes all prior agreements, whether written or oral, unless expressly stated to the contrary herein, and constitutes the complete and entire agreement between the parties, and concludes collective bargaining for its term unless otherwise expressly provided herein.

The City and the Association, for the duration of this Agreement, each voluntarily and unqualifiedly waives the right, and each agrees that the other shall not be obligated, to bargain collectively with respect to any subject or matter covered in this Agreement, including the impact of the City's exercise of its rights as set forth herein on wages, hours or terms and conditions of employment. This paragraph does not waive the right to bargain over any subject or matter not covered in this Agreement which is a mandatory subject of bargaining and concerning which the City is considering changing during the term of this Agreement.

**Article 5. Reopener**

Either side may request to meet and confer over changes to this MOU which may occur prior to January 1, 2012 or later, for the purpose of effecting changes to this MOU to go into effect on January 1, 2012 or later.

**Article 6. Severability**

If any part of this Memorandum is rendered or declared invalid by reason of any existing or subsequently-enacted legislation, governmental regulation or order or decree of court, the invalidation of such part of this Memorandum shall not render invalid the remaining parts hereof.

**Article 7. Binding on Successors**

This Memorandum shall be binding on the successors and assigns of the parties hereto and no provisions, terms or obligations herein contained shall be affected or changed in any way whatsoever by the consolidation, merger, transfer or assignment of either party hereto.

**Article 8. Amendments**

This Memorandum can be altered or amended only by written agreement between the parties hereto.

**Article 9. Contract Bar**

The recognition rights of the Tustin Municipal Employees Association shall not be subject to challenge for a period of not less than twelve (12) months following the date of recognition or until the expiration of this Memorandum of Understanding, whichever is later; provided that recognition rights may be challenged between one hundred and twenty (120) and one hundred and fifty (150) days prior to the expiration of the Memorandum of Understanding and that no Memorandum of Understanding shall be construed to be a bar for a period of more than three (3) years. Existing Memoranda of Understanding shall remain in effect even when the recognition rights of employee organizations are changed in accordance with the provisions of this section.

**Article 10. Notices**

Notices hereunder shall be in writing, and if to the Tustin Municipal Employees Association, shall be mailed to Tustin Municipal Employees Association, c/o President, 300 Centennial Way, Tustin, CA 92780; and, if to the City, shall be mailed to City Manager, City of Tustin, 300 Centennial Way, Tustin, CA 92780.

**Article 11. Association Dues**

Consistent with current practice, the City shall continue to deduct Association dues from member paychecks and forward the dues to the Association.

**Article 12. Payroll Deductions**

Deductions of authorized amounts may be made from an employee's pay for the following purposes:

1. Withholding tax.
2. Contributions to retirement benefits.
3. Contribution to survivor benefits.
4. Payment of life insurance and accidental death and dismemberment insurance premiums.
5. Payment of non-industrial disability insurance premium.
6. Payment of hospitalization and major medical insurance premium.
7. Payment to a City dependent care or medical care reimbursement account pursuant to IRC Section 125.
8. Payment of supplemental insurance premium.
9. Payment to or savings in a credit union or bank.
10. Contributions to United Way, Community Health Charities or other designated charity organizations.
11. Payment of membership dues to TMEA.
12. Payment for non-return of uniforms and/or equipment issued.
13. Other purposes as may be authorized by the City and the employee.

**CHAPTER 2 – COMPENSATION****Article 13. Salary**

- A. Salary ranges for represented classifications are listed in Appendix A.
- B. Upon promotion the employee shall receive a salary adjustment of at least 5%, provided that in no event shall the promoted employee's salary exceed the maximum of the range.

**Article 14. Overtime Compensation**

All unit employees shall receive overtime compensation at a rate of time and one-half for all approved overtime hours worked in excess of forty (40) hours worked in a seven (7) day work period. Holiday, Jury Duty and Bereavement Leave hours shall be counted as hours worked for purposes of determining overtime eligibility.

**Article 15. Paid Overtime Meal**

The City will provide a meal, or provide reimbursement for a meal, in an amount not to exceed \$12 for unit employees who are required to work unscheduled overtime provided the work situation requiring the overtime is such that the employee is held over, called in early, or called in on his/her day off, without prior notice, so that the combined regular shift and overtime assignment totals a minimum of four hours over the employee's regular work shift.

**Article 16. Bilingual Compensation**

The City shall pay one hundred dollars (\$100) per month (\$46.15 paid biweekly) to employees in City-designated positions who demonstrate skill in Spanish at the conversational level, or in another language which the City Manager has approved as being needed for City business. Should a conflict arise regarding designation of an employee for compensation, proficiency and need shall determine who is eligible. Management will determine where and when the need is greatest, and management will devise and administer a testing vehicle to determine degrees of proficiency.

**Article 17. Certification Pay**

The City believes it is beneficial for the City and its employees when an employee enhances his/her skill set in a manner that adds useful education and/or additional skills to the City service beyond the minimum requirements of an employee's classification.

**A. One-Time Incentive Cash Payment**

Eligible certifications must be obtained by testing (certifications issued by virtue of grandfathering do not apply). It is the expectation that the employee participates in the training and/or classroom instruction necessary to achieve certification on the employee's own time and at the employee's own expense (classes may be eligible for reimbursement through the tuition reimbursement program).

Eligible certifications must be obtained after employment (or after promotion), and be directly job-related and specifically applicable to an employee's job assignment. Certification Pay may be granted in an amount not to exceed a one-time incentive cash payment of up to \$500 per certification for non-probationary unit employees. Employees receiving Water Division Certification Pay as described below are not eligible for the One-Time Incentive Cash Payment.

Administration, granting and amounts of Certification Pay are at the sole discretion of City management.

The cash incentive payment, less applicable taxes, will be made payable to the employee the first pay period after approval and submission of documentation suitable to the Director of Human Resources. The amount of the award and tax deducted will be included on the W-2 form issued to the employee.

Required certifications currently are as follows:

Associate Engineer	CA Professional Engineer Registration
Building Inspector	ICC*/ICBO** – Building Inspection Certification
Plan Checker	ICC*/ICBO** – Licensed Plans Examiner
Senior Building Inspector	ICC*/ICBO** – Building Inspection Certification
Water Distribution Leadworker	CA DHS*** – Grade D2
Water Distribution Operator I	CA DHS*** – Grade D1
Water Distribution Operator II	CA DHS*** – Grade D2
Water Equipment Operator	CA DHS*** – Grade D2
Water Treatment Operator I	CA DHS*** – Grade D1 & T1
Water Treatment Operator II	CA DHS*** – Grade D2 & T2

*\*ICC – International Code Council*

*\*\*ICBO – International Conference of Building Officials*

*\*\*\*CA DHS – California Department of Health Services*

#### B. Water Division Certification Pay

The following classifications will be eligible to receive one level of certification pay which will be paid monthly for possessing certification above the level required for their position. Advancement to the next level can only be reached progressively as follows:

	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4
	D2	D3	D4	T1 & above
Water Distribution Leadworker	n/a	\$50	\$75	\$100
Water Distribution Operator I	\$50	n/a	n/a	n/a
Water Distribution Operator II	n/a	\$50	\$75	\$100
Water Equipment Operator	n/a	\$50	\$75	\$100

	LEVEL 1	LEVEL 2	LEVEL 3	LEVEL 4	LEVEL 5
	T2	D2	T3	D3	D4
Water Treatment Operator I	\$50	\$75	n/a	n/a	n/a
Water Treatment Operator II	n/a	n/a	\$50	\$75	\$100

### C. Backflow Certification Pay

Individuals in the classifications of Water Distribution Leadworker, Water Distribution Operator I/II, Water Equipment Operator, or Water Treatment Operator I/II who possess a Backflow certification are also eligible to receive Backflow Certification Pay of \$50 per month. This certification pay shall be in addition to the Water Division Certification Pay listed above.

### Article 18. Standby Duty

Employees assigned to Standby Duty shall be compensated at the rate of one (1) hour of straight-time compensation for each eight (8) hours of such duty. Such compensation on Holidays shall be at the rate of two (2) hours of straight-time compensation for each eight (8) hours of Standby Duty. Additionally, an employee who is standing by and is required to log on to the SCADA System shall be credited with a minimum of one-half (1/2) hour of work time or the actual time spent in system operation, whichever is greater. Said minimum will apply to each log-in provided that only one minimum will be credited during any thirty minute period.

### Article 19. Shift Differential Pay

Any unit employee assigned on a regular basis (ten or more continuous working days) to a shift that includes at least eight hours between 2:30 p.m. and 3:00 a.m. shall receive Shift Differential Pay of twenty-five dollars (\$25) per pay period. The right to assign and/or reassign an individual to a particular shift is the sole prerogative of the City. Any such assignment and/or reassignment shall not be subject to the grievance and/or discipline appeals process.

### Article 20. Call Back Duty

Employees shall receive a minimum of two (2) hours of overtime compensation (time and one-half) for any call which requires them to return to duty.

### Article 21. Acting Pay

A. An employee assigned to temporarily work in a higher classification will receive Acting Pay of 5% of base pay. This rate will be paid after the employee has been in the assignment for nine (9) consecutive calendar days. Acting Pay shall only be provided if the employee is performing the full scope and functions of the higher-level classification. An employee's base salary combined with Acting Pay can never exceed the salary range of the acting classification.

- B. The City will provide Acting Pay for one (1) Maintenance Worker or Senior Maintenance Worker performing street sweeper operations in a "fill-in" capacity for no more than twenty-six (26) occurrences in a calendar year. The hourly rate of pay shall be Step E of Equipment Operator.

**Article 22. Educational Incentive Pay**

Only employees receiving Educational Incentive Pay as of July 1, 1989, shall be eligible for Educational Incentive Pay as set forth in Article 17 of the March 31, 1987 MOU. The continuing education requirement remains the same; however, no employee shall be able to increase his/her amount of educational incentive pay after July 1, 1989, nor shall any additional employees after July 1, 1989 be eligible for Educational Incentive Pay. Any employee who becomes ineligible for Educational Incentive Pay shall not be able to re-qualify.

**CHAPTER 3 – BENEFITS**

**Article 23. Flexible Benefits Plan**

- A. The City contracts with the California Public Employees' Retirement System (CalPERS) for the provision of medical insurance. All employees in the bargaining unit shall receive the minimum amount required under the Public Employees' Medical and Hospital Care Act (PEMHCA) (\$108 for calendar year 2011 and \$112 for calendar year 2012) as well as an additional amount which is provided under a Section 125 Flexible Benefits program. The amounts below include the minimum amount under PEMHCA.
- B. The Flexible Benefits contribution per month per eligible employee is as follows:

Employee Only	Employee + 1 Dependent	Employee + 2 or More Dependents
\$500	\$750	\$950

Designated part-time regular employees shall be eligible for the Flexible Benefits contribution on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% contribution; a ¾ time employee shall receive a 75% contribution).

- C. Effective January 1, 2012 the Flexible Benefit contribution per month per eligible employee is as follows:

Employee Only	Employee +1 Dependent	Employee +2 or More Dependents
\$550	\$800	\$1000

- D. Employees who do not take medical insurance through the program offered by the City shall receive \$350 per month as the Flexible Benefits Opt-Out contribution. As a condition of receiving such amount, the employee must provide evidence, satisfactory to the City, that he/she has medical insurance coverage comparable to coverage available through the City program. If the employee also opts out of the City's dental insurance, the employee must also provide evidence, satisfactory to the City, that he/she has dental insurance coverage comparable to coverage available through

the City program. Designated part-time regular employees shall be eligible for the Flexible Benefits Opt-Out contribution on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% contribution; a ¾ time employee shall receive a 75% contribution).

- E. The Flexible Benefits contribution consists of mandatory and discretionary allocations which may be applied to City-sponsored programs, including required payment towards employee medical insurance under the Public Employees' Medical and Hospital Care Act (PEMHCA). Employees may allocate the remaining amount among the following City-sponsored programs:
1. Medical insurance
  2. Dental insurance
  3. Additional life insurance
  4. Vision insurance
  5. Deferred compensation
  6. Section 125 Flexible Spending Account programs (medical and/or dependent care reimbursement programs)
  7. Eligible catastrophic care programs
  8. Cash

Discretionary allocations are to be made in accordance with program/City requirements, including restrictions as to the time when changes may be made in allocations to the respective programs.

- F. The Section 125 Flexible Benefits program will be continued in full force and effect for the duration of this Agreement unless changed by mutual agreement of the City and Association. The City retains the right to change administrators.

Participation in the Section 125 medical and/or dependent care reimbursement programs is voluntary and employee-funded.

#### **Article 24. Retirement**

- A. Employees covered under this agreement shall be members of the California Public Employees' Retirement System (CalPERS) and are subject to all applicable provisions of the City's contract with CalPERS.
- B. Miscellaneous members employed by the City by December 31, 2011 shall be enrolled in the CalPERS 2% @ 55 plan in accordance with Government Code Section 21354 for Local Miscellaneous members. The plan includes both an employer and employee contribution. The employee is responsible for paying the employee contribution of the employee's wages through a payroll deduction as follows:

July 1, 2011	3.5%
July 1, 2012	3.5%
July 1, 2013	4.5%
July 1, 2014	5.75%
July 1, 2015	7%

The City will contribute the remainder of the employee contribution as Employer Paid Member Contributions. The plan has been amended to include Section 21573 (Third Level of 1959 Survivor Benefits), Section 20042 (One-Year Final Compensation), and Section 21024 (Military Service Credit as Public Service). The employee is responsible for paying the employee portion of the 1959 Survivor benefit premium.

- C. Miscellaneous members employed by the City on or after January 1, 2012 shall be enrolled in the CalPERS 2% @ 60 plan for Local Miscellaneous members. The plan includes both an employer and employee contribution. The employee is responsible for paying the employee contribution of 7% of the employee's wages through a payroll deduction. This plan provides retirement benefits based on the highest annual average compensation earnable during the three consecutive years of employment immediately preceding the effective date of his or her retirement or as designated by the employee in accordance with Government Code Section 20037. The plan provides for 3<sup>rd</sup> level of 1959 Survivor benefits with the employee paying the employee portion of the premium.
- D. Designated part-time regular employees shall be eligible for participation in CalPERS in the same manner as regular full-time employees.

#### **Article 25. Employee Life Insurance**

The City will provide life insurance for each regular unit employee and pay the required premiums. The death benefit of said policy for full-time employees shall be the greater of \$100,000 or one hundred percent (100%) of the employee's base annual salary to the nearest multiple of \$1,000, up to a maximum of \$200,000. For three quarter (¾) time employees the death benefit shall be the greater of \$75,000 or 100% of the employee's base annual salary to the nearest multiple of \$1,000, up to a maximum of \$200,000 and for half-time (1/2) employees it shall be the greater of \$50,000 or 100% of the employee's base annual salary to the next highest multiple of \$1,000, up to a maximum of \$200,000. The City will also provide \$1,000 per dependent of dependent life insurance.

#### **Article 26. Short-Term / Long-Term Disability Insurance**

- A. The City shall maintain a short-term / long-term disability (STD/LTD) insurance program for non-industrial illnesses or injuries. Eligibility for benefits is subject to the requirements and approval of the STD/LTD insurance carrier.
- B. An employee who is receiving STD benefits under the City's program will be granted a leave of absence for the duration of his/her non-industrial disability subject to a maximum period of six (6) months. Such leave of absence may be extended for an additional six (6) months under LTD, upon approval of the City Manager.
- C. All unit employees are required to participate in the program. Premiums are deducted from the employee's pay on an after-tax basis.
- D. In the event a non-industrial illness or injury is anticipated to exceed 30 days, the employee is first required to use 80 consecutive hours of his/her accrued leave during the 30 day period beginning with the first day of the leave. In the event no leave time is available, the employee shall be on leave without pay for 80 consecutive hours.

- E. After the first 80 hours of leave, and for the remainder of the 30 day elimination period, the employee shall be compensated by the City at the rate of 60% of the employee's pre-disability base salary. This City payment is taxable income. The employee may supplement this City payment with accrued leave to enable him/her to receive an amount equivalent to no more than 100% of his/her pre-disability earnings.
- F. In the event the employee is eligible for FMLA/CFRA leave, STD/LTD leave shall run concurrently with FMLA/CFRA leave.
- G. For a new employee who has worked for the City for less than 12 consecutive months, and is therefore not eligible for FMLA/CFRA leave, the City will nevertheless provide the employee with the same Flexible Benefits contribution as was provided at the time of the non-industrial injury, for a period not to exceed 90 days. Should an employee receive 90 days of City-paid Flexible Benefits within the 12 month period prior to being eligible for this benefit pursuant to the FMLA/CFRA, and is subsequently eligible to receive this benefit pursuant to the FMLA/CFRA, the employee shall reimburse the City for his/her previous contribution.
- H. Once the employee is on leave without pay, or the first 80 hours of leave has passed (whichever occurs first), no paid leave shall accrue to the employee.
- I. After the 30 day elimination period, the STD/LTD carrier will provide the employee with a benefit of 60% of pre-disability base salary. The employee may supplement the STD/LTD carrier's payment with accrued paid leave to enable him/her to receive an amount equivalent to no more than 100% of his/her pre-disability earnings.
- J. The employee is responsible for all benefit elections and payments during his/her leave unless he/she is eligible to opt out of such elections and chooses to do so. In the event the employee chooses to continue his/her benefit elections, the employee is required to make timely payment to the City for such elections (including the cost of the STD/LTD program). In the event timely payment is not made, the City is authorized to reduce the employee's accrued paid leave accounts, in an amount equivalent to the premiums owed by the employee. In the event no paid leave is available, the City is authorized to cancel the employee's coverage.
- K. An employee is only eligible for the City's 60% STD/LTD salary continuation benefit once in any rolling 12-month period.

#### **Article 27. Tuition Reimbursement**

Employees shall be encouraged to further their academic education and training in those areas of benefit both to the employee and to the City. Full-time and designated part-time regular employees shall be eligible for tuition reimbursement on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% allocation; a ¾ time employee shall receive a 75% allocation). Employees will be eligible for reimbursement of eligible expenses by the City for professional and technical courses subject to the following conditions:

1. Department head and Director of Human Resources approval must be obtained before enrollment in the course.
2. Reimbursement shall be for tuition fees, textbooks, lab fees, or required supplies upon completion of the course with a satisfactory grade and after completion of the initial probationary period.
3. Tuition reimbursement shall not be made if the employee is drawing veteran's education benefits or any other reimbursement for the same courses.
4. Reimbursement for up to one thousand dollars (\$1,000) each calendar year if the employee is attending a community college, one thousand five hundred dollars (\$1,500) if the employee is attending a job related program through California State or University of California extended education programs, or two thousand dollars (\$2,000) each calendar year if the employee is attending a four year college or university in pursuit of a bachelor's or master's degree, will be paid upon receipt by the Human Resources Department of proof of successful completion of the course and proof that payment of fees has been made. If an employee attends both a community college and four year college or university in a calendar year the maximum reimbursement shall be one thousand five hundred dollars (\$1,500).

#### **Article 28. Retiree Medical Insurance**

- A. The City will reimburse eligible unit employees up to a maximum of \$250 per month for the payment of CalPERS retiree medical insurance premiums. This amount includes the minimum contribution towards retiree medical insurance required under the PEMHCA program (\$108 for calendar year 2011 and \$112 for calendar year 2012).
- B. A unit employee hired by the City prior to July 1, 2011 is eligible for this benefit provided that he/she has been continuously employed by the City for five (5) full years, retires from the City and CalPERS, and enrolls in a CalPERS medical insurance plan immediately after retirement. Eligible employees, who suffer a disability, are unable to return to work, and take a disability retirement from CalPERS may satisfy the five (5) year continuous service requirement using a combination of service with the City and service with any public agency with a reciprocal retirement system.
- C. A unit employee hired by the City on or after July 1, 2011 is eligible for this benefit provided that he/she has been continuously employed by the City for ten (10) full years, retires from the City and CalPERS, and enrolls in a CalPERS medical insurance plan immediately after retirement. Eligible employees, who suffer a disability, are unable to return to work, and take a disability retirement from CalPERS may satisfy the ten (10) year continuous service requirement using a combination of service with the City and service with any public agency with a reciprocal retirement system.
- D. Reimbursement shall not be made until an employee appears on the City's CalPERS insurance billing. In order to maintain the retiree medical insurance stipend throughout retirement, an employee must maintain coverage in a CalPERS medical insurance plan; once coverage is dropped, reimbursement will cease and will not be reinstated.

**CHAPTER 4 – LEAVES OF ABSENCE****Article 29. General Leave**

- A. Paid General Leave shall be granted to each full-time employee at the rates listed below per year, prorated on a biweekly basis for each biweekly pay period in which the employee is in paid status for at least 40 hours of the pay period. If the employee is in paid status between 40-80 hours of a pay period, his/her General Leave will be earned on a prorated basis for the pay period.

Periods of Service	General Leave Hours Per Year	Maximum Accrual
0-5 years	160 hours	400 hours
6-10 years	208 hours	520 hours
Over 10 years	248 hours	620 hours

- B. Designated part-time regular employees shall be eligible for General Leave on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% allocation; a ¾ time employee shall receive a 75% allocation).
- C. At any time, employees may accumulate General Leave to a maximum of two and one-half (2 ½) times the employee's annual entitlement. Upon reaching the maximum, accrual will cease until leave is used to reduce the accrual below the maximum. Upon separation from City service the employee will be paid for unused Leave, not to exceed the maximum of two and one-half (2 ½) years entitlement, at the employee's then current base salary rate.
- D. Regular and promotional probationary employees may request to be paid for a maximum of twenty (20) hours of accrued General Leave. Employee requests will be granted provided the employee has at least one-half of their annual accrual of General Leave in their leave accrual bank. General Leave Cash Out will be granted once per fiscal year per employee.

**Article 30. Compensatory Time Off**

- A. Employees working overtime will be eligible to accrue Compensatory Time Off in lieu of receiving overtime compensation at the rate of one and one-half (1 ½) hours for each hour of overtime worked. Employees may accrue up to ninety (90) hours of Compensatory Time Off. Employees will be paid for all Compensatory Time Off in January of each year provided that an employee may retain a maximum of forty (40) hours in his/her account if notice of such desired retention is submitted to the City.
- B. An employee wishing to use his/her accrued Compensatory Time Off shall provide the City with reasonable notice of such request. "Reasonable notice" is defined as at least two weeks' notice. If reasonable notice is provided, the employee's request will not be denied unless it would be unduly disruptive to the department to grant the request. A request to use Compensatory Time Off with less than two weeks' notice may still be granted within the discretion of the supervisor or manager responsible for considering the request.

**Article 31. Holidays**

The following days shall be holidays for which all employees will receive compensation either in pay or paid time off:

January 1	New Year's Day
Third Monday in February	Presidents' Day
Last Monday in May	Memorial Day
July 4	Independence Day
First Monday in September	Labor Day
November 11	Veterans Day
Thanksgiving Day	Thanksgiving Day
Day following Thanksgiving Day	Day after Thanksgiving Day
December 24	Christmas Eve
December 25	Christmas Day
December 31	New Year's Eve

When a holiday occurs on a Sunday, the following Monday will be observed instead. When a holiday occurs on a Saturday, the preceding Friday will be observed instead. If a holiday falls on a day that is also a bargaining unit member's regular day off, the employee will accrue nine (9) hours to his/her General Leave bank for the holiday. If a holiday falls on an employee's regularly scheduled working Friday, the employee will receive eight (8) hours of holiday pay and accrue one (1) hour to his/her General Leave bank.

Designated part-time regular employees shall be eligible for holidays on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% allocation; a ¾ time employee shall receive a 75% allocation).

**Article 32. Family Leave**

Consistent with requirements of the Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA), employees shall have the right to up to twelve (12) weeks of unpaid leave for the purposes provided by law – to care for the employee or family member (defined as child, parent, spouse or registered domestic partner) with a serious health condition or to care for a newborn or child placed in the employee's home for adoption or foster care. During the leave employees will continue to receive City Flexible Benefits contributions. For all other purposes, FMLA/CFRA leave shall be treated the same as other unpaid leaves of absence.

**Article 33. Bereavement Leave**

The City will allow up to five (5) days of paid leave for the purpose of Bereavement Leave in the event of a death in the immediate family. For purposes of this section, "immediate family" shall be defined as including spouse, registered domestic partner, mother, stepmother, father, stepfather, brother, sister, child, stepchild, grandparent, and grandchild of the employee or the employee's spouse/registered domestic partner. Designated part-time regular employees shall be eligible for Bereavement Leave on a pro-rata share based upon position allocation (i.e. a ½ time employee shall receive a 50% allocation; a ¾ time employee shall receive a 75% allocation).

**CHAPTER 5 – WORKING CONDITIONS****Article 34. Workweek & Work Schedules**

- A. The workweek for all members of the unit shall be 168 regularly recurring hours. For employees working a schedule other than the 9/80 work schedule, the workweek shall begin on Sunday at 12:00 a.m. and end at 11:59 p.m. the following Saturday. For employees working the 9/80 work schedule, each employee's designated FLSA workweek (168 hours in length) shall begin exactly four (4) hours after the start time of his/her eight (8) hour shift on the day of the week that corresponds with the employee's alternating regular day off.
- B. Any employee's work schedule may be temporarily changed to accommodate training assignments which are eight (8) or more hours in duration.
- C. The City will provide a seven (7) day notice to affected employees prior to modifications to an employee's regular work schedule.
- D. Individuals wishing to flex hours or modify their work schedule from one day to another (for example, work 8 hours on Tuesday and 10 hours on Thursday) must receive advance authorization from their supervisor. An employee's request to modify a work schedule or flex his/her schedule is not intended, nor shall it be allowed, to enable an overtime liability to the City pursuant to the MOU or the FLSA.

**Article 35. Rest Periods**

- A. During each work shift of at least eight (8) hours, two (2) fifteen (15) minute rest periods will be scheduled. The scheduling of rest periods shall be at the discretion of the employee's supervisor and no compensation will be provided for rest periods not taken.
- B. Unit employees (other than Field Services and Water Services employees) are scheduled to take a one (1) hour lunch period. Individuals wishing to flex a portion of their lunch hour (for example – reduce lunch to ½ hour and leave ½ hour early for the day) must receive advance authorization from their supervisor.

**Article 36. One-Half Hour Lunch: Field Services & Water Services Employees**

The City has agreed to Field Services and Water Services employees taking a one-half hour lunch in the field. This is in recognition of the fact that the City anticipates increased efficiency, because, as a general rule, employees will not return to the Corporation Yard for the lunch break.

**Article 37. Uniforms**

- A. The City will make raingear and overalls available for use by Building Inspectors, Senior Building Inspectors and Public Works Inspectors.
- B. The City will provide eleven (11) sets of pants/shorts and shirts for each maintenance employee required to wear a uniform and the City will pay the cost of renting and cleaning the standard-issue

maintenance employee uniforms. Each employee may designate a combination of pants and shorts for the term of the contract with the uniform vendor. This combination may not be changed during the term of the contract with the uniform vendor. Unit employees may substitute one pants/shirt set with a pair of coveralls. Each employee must have long pants immediately available for wear on a daily basis. Additional uniforms, laundering, or special services shall be at the employee's expense.

- C. Unit employees who separate from City service shall be responsible for the return of all uniforms and equipment issued and/or purchased on behalf of the employee. Failure to return uniforms and/or equipment issued will result in a reduction equivalent to the dollar value of the cost of those items not returned from the employee's final paycheck.
- D. Unit employees who separate from City service with less than six (6) months of service shall return safety shoes or the City shall deduct a pro-rata share of the purchase price of the shoes from the employees' final paycheck.
- E. The City shall use appropriate documents for employees to sign to enable the City to take any necessary payroll deductions should the employee not return his/her uniforms.

#### **Article 38. Commercial Driver's License**

- A. Employees who have a Commercial Driver's License (whether voluntarily or due to job requirements) will be reimbursed for the difference between the cost of the license and a regular non-commercial driver's license. Additionally, the City will provide training and pay for physical examinations necessary to obtain and maintain the Commercial Driver's License for incumbent non-probationary employees.
- B. The classifications required to maintain a California Class A or Class B license include (but are not limited to) Equipment Mechanic, Equipment Operator, Maintenance Leadworker, Senior Maintenance Worker, Transportation Coordinator, Water Distribution Leadworker, Water Distribution Operator I/II, Water Equipment Operator, and Water Treatment Operator I/II.
- C. Pursuant to State and/or Federal law, in the event an employee is unable to obtain and/or maintain the license required of his or her classification, the City will attempt to make appropriate accommodations as required under the law if possible.

#### **Article 39. Temporary Employment**

- A. Employees appointed to a temporary position shall sign a Personnel Action Form (PAF), which shall state the duration of the limited term appointment. The duration shall be either:
  - 1. A period of time not to exceed twelve (12) months, which period may be renewed once only, at the discretion of the City Manager;
  - 2. The length of time required to complete a specific project, which project shall be identified on the PAF; or

3. In the case of temporary positions that are funded by grants or other outside funding sources, a period that ends with the expiration of that funding.
- B. In the event a temporary employee works for a period exceeding the duration set forth above, his/her position shall be deemed to be a Permanent position and the employee shall begin a one-year probationary period as of the first day after the period(s) set forth in parts 1, 2, and 3.

## **CHAPTER 6 – EMPLOYER / EMPLOYEE RELATIONS**

### **Article 40. Appeals Procedure**

#### **A. Pre-Disciplinary Meeting and Disciplinary Appeals**

##### **1. Pre-Disciplinary Meeting**

An employee who has attained a regular appointment shall have the right to a pre-disciplinary meeting before his/her department head or designee whenever the employee may be subject to a demotion, non-emergency suspension, or non-emergency dismissal. In the event of an emergency suspension or dismissal a meeting will be conducted by the department head or designee as soon as practicable after the action has been taken.

##### **2. Procedure for Pre-Disciplinary Meetings**

Notice of a proposed disciplinary action shall be provided to the employee including a statement of the proposed action, the reasons therefore, and a copy of the charges and materials upon which the action is based. The employee shall have ten (10) days to respond orally, in writing, or both to the charges. Within ten (10) days of the employee's response, he/she will be advised in writing of the City's decision. If the disciplinary action is upheld, the employee will receive a Notice of Disciplinary Action stating the action taken, the reasons therefore, and the employee's right to appeal.

##### **3. Post-Discipline Appeal**

Within ten (10) days after receiving the Notice of Disciplinary Action the employee may appeal the action in writing to the Director of Human Resources.

##### **4. Effective Date of Disciplinary Action**

The availability of appeal rights or the filing of an appeal shall not be interpreted as staying the effective date of a disciplinary action stated in the Notice of Disciplinary Action. In the event of a termination, the employee shall cease to be an employee of the City on the effective date of the termination.

##### **5. Calendar Days**

Unless otherwise indicated, "day" or "days" when used in this section shall be calendar day(s).

**B. Appeals Procedure**

1. If a timely appeal is filed as provided in the Grievance Procedure (Article 41) or the Pre-Disciplinary Hearings and Disciplinary Appeals section (Article 40, Section A) the City Manager may hear the appeal or appoint any City management/supervisory employee or arbiter who has not been personally involved in the actions giving rise to the discipline to hear the appeal.
2. An "arbiter" is a person with experience acting as a hearing officer on public employment issues. Any hearing conducted by an arbiter shall not be considered an "arbitration" as defined in Civil Code Section 1281.6.
3. In the event that the employee requests that an arbiter hear the appeal, such a request will be honored provided the request is made within twenty (20) days of the receipt of the department head's decision. The arbiter shall be chosen from a panel of seven (7) arbiters from a list provided either by the American Arbitration Association or the State Mediation and Conciliation Service. The parties shall alternately strike names until one arbiter remains.
4. If the appeal is heard by anyone other than the City Manager, the hearing officer shall submit a written report outlining his/her findings, conclusions, and recommendations to the City Manager.
5. Within twenty (20) days of the receipt of the hearing officer's report, or the conclusion of the hearing if it was conducted by the City Manager or his/her City appointee, the City Manager shall provide his/her written decision to the employee.

**C. Hearings**

1. Where practicable, the date of the hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the City Manager provided that the parties may agree to a longer or shorter period of time.
2. All hearings involving disciplinary action against an employee shall be closed to the public unless the affected employee requests that the hearing be open to the public.
3. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule, which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission and exclusion of evidence.

4. Each party shall have these rights: to be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the respondent does not testify on her/his own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing. The cost of the reporter will be split between the City and TMEA.
5. The hearing shall proceed in the following order, unless the hearing officer, for special reasons, otherwise directs:
  - a. Opening statements shall be permitted with the City proceeding first.
  - b. The City shall proceed first in the hearing. If witnesses are called, the opposing party shall have the right to cross-examine the witnesses on any matter relevant to the issues, even though that matter was not covered on direct examination.
  - c. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason permits them to offer evidence upon their original case.
  - d. Closing arguments and written briefs shall be permitted.
  - e. The hearing officer shall determine the relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision.
  - f. The hearing officer shall have no authority to amend, alter, or modify a Memorandum of Understanding or any sections of the City's Personnel Rules and shall limit his/her recommendations to the interpretation and application of the Memorandum of Understanding(s), agreement at issue and/or the City's Personnel Rules.
  - g. The hearing officer may recommend sustaining or rejecting or modifying the disciplinary action.
6. The hearing officer's findings, conclusion and recommendations shall be filed with the Director of Human Resources, who will forward them to the City Manager. The City Manager, in his/her sole discretion, may hear limited oral arguments and/or request written statements from either party on the hearing officer's findings, conclusions, and recommendations. The City Manager shall inform the appellant of his/her decision regarding the appeal within ten (10) days of the conclusion of the hearing or if the appeal is heard by a hearing officer other than the City Manager, within ten (10) days of the receipt of the hearing officer's report. However, the City Manager may extend the time to issue his/her decision beyond the ten day period if he/she

believes it is necessary. The decision of the City Manager regarding the appeal shall be the final step in the administrative appeal process. However, any disciplinary action is deemed final as of the effective date. Copies of the City Manager's decision, including the hearing officer's report shall be filed where appropriate, including the employee's personnel file. The City Manager's decision is subject to review by a superior court pursuant to Code of Civil Procedure Section 1094.6.

7. If the City Manager chooses to have the appeal heard by an arbiter, the City shall bear the cost of the hearing up to a maximum of \$1,000; any excess cost will be shared equally by the City and TMEA. If the employee organization requested that an arbiter be appointed to hear the appeal the organization shall pay the cost of the hearing up to a maximum of \$1,000; any excess cost will be shared equally by the City and TMEA. If either party orders a transcript for their review, the requesting party shall bear the cost of the transcript. If either party unilaterally cancels or postpones a scheduled hearing thereby resulting in a fee charged by the arbiter or court reporter, the party responsible for the cancellation or postponement shall be solely responsible for payment of the fee. The arbiter shall submit his/her bills for services to the party which is obligated to pay them pursuant to this section.
8. Subpoenas and subpoenas duces tecum pertaining to the hearing shall be issued at the request of either party, not less than ten (10) days prior to the commencement of the hearing; after commencement, subpoenas shall be issued only at the discretion of the hearing officer.
9. The time limits specified at any step in this procedure may be extended or reduced by written agreement of the grievant and an authorized management representative.

#### **Article 41. Grievance Procedure**

These procedures are established to provide for the resolution of grievances of unit employees.

##### **A. Limitations**

The procedures set forth in this section shall apply to all grievances involving unit employees. Excluded from this procedure are grievances related to:

1. The amendment or change of City Council resolutions, ordinances or minute orders, which do not involve provisions of a Memorandum of Understanding (MOU), the Personnel Rules, or other agreements between the City and the employee organization.
2. Position classification.

##### **B. Definitions**

1. **Grievance:** An expressed claim that there has been a violation, misinterpretation, or misapplication of a provision of the Personnel Rules or Memorandum of Understanding, or a violation or potential violation of state or federal law.

2. **Grievant:** An employee who is alleging a violation, misinterpretation or misapplication of a provision of the Personnel Rules, an agreement between the City and the employee organization, the Memorandum of Understanding or violation or potential violation of state or federal law.
3. **Grievance Procedure:** The process by which the validity of a grievance is determined and resolution effected.
4. **Day:** Unless otherwise indicated, "day" or "days" when used in this section shall be calendar day(s).

#### C. Procedure

##### 1. Step 1

The grievant shall file his/her grievance within ten (10) days after the grievant knew, or in the exercise of reasonable diligence should have known, of the events giving rise to the grievance. The grievant shall state the facts necessary to an understanding of the issues involved; refrain from including any unrelated charges; cite the sections of the City resolutions, agreement, memorandum of understanding or rules alleged to have been violated and the remedy sought.

The grievant shall submit the grievance form to his/her immediate supervisor, provided that if the employee suspects or has proof that a federal or state law is being violated or is about to be violated he may file the grievance at Step 2 of this procedure. Within ten (10) days of receipt of the form, the supervisor shall inform the grievant of his/her decision. Grievances submitted by employee organization representatives that involve issues potentially impacting the organization's rights or membership as a whole shall be filed at Step 3.

##### 2. Step 2

If the grievance is not satisfactorily resolved in Step 1, the grievant may, within ten (10) calendar days after receipt of the supervisor's response, submit the grievance to his/her department head. After receipt of the grievance, the department head will meet with the grievant and make such investigation as is required. Within ten (10) days of his/her meeting with the grievant, the department head shall inform the grievant of his/her decision.

##### 3. Step 3

If the grievance is not satisfactorily resolved in Step 2, or in the case of employee organization grievances, the grievant may submit the grievance to the City Manager. Employee grievances are to be submitted within ten (10) days of receipt of the department head's decision. Such submittal shall include the original of the grievance form and a written statement of any issues that are in dispute. The City Manager has the sole discretion to hear the grievance him/herself or appoint any City management/supervisory employee (except the employee's department head), or an arbiter, to hear the grievance and submit a recommendation as to resolution of the grievance. At the hearing, the grievant has the burden of proof and will present his/her case first.

#### D. General Provisions

1. Prior to filing a grievance, the potential grievant shall discuss the issues of concern with the person or organization representative suspected as having violated provisions of the Personnel Rules or Memorandum of Understanding. Upon a showing of good cause to the Director of Human Resources, such discussion may be waived between an employee and his/her immediate supervisor. Cause shall include, but not be limited to, situations wherein alleged inappropriate actions of the supervisor form the basis for the grievance and the employee has reasonable cause to believe that the supervisor would not be objective.
2. An employee may obtain a grievance form from his/her supervisor or the Human Resources department. All documents, communications, and records dealing with the processing of grievances shall be filed separately from personnel files.
3. No retribution or prejudice shall be suffered by employees making use of the grievance procedure by reason of such use.
4. Failure by management at any step of this procedure to communicate their decision on the grievance within the specified time limits shall permit the grievant to proceed to the next step.
5. A grievant shall be entitled to be present at all steps of the procedure.
6. Failure by the grievant to appeal a decision on a grievance within the specified time limits shall be deemed acceptance of the decision rendered.
7. The time limits specified at any step in this procedure may be extended or reduced by written agreement of the grievant and an authorized management representative.

#### E. Employee Representation

1. An employee may represent him/herself or be represented by a representative of the employee organization.
2. If an employee chooses not to be represented by the employee organization and the subject of the grievance involves MOU or other provisions which have been negotiated between the City and the employee organization, the organization may have staff representatives present beginning with Step 3, and shall have the right to present the organization's interpretation of the provisions at issue. Such presentation shall not include comments regarding the merits of the grievance.

#### Article 42. Performance Evaluations

An employee may not appeal or grieve a performance evaluation unless said evaluation results in the denial of a merit increase. Nothing herein shall restrict an employee from having a written rebuttal attached to a performance evaluation with which the employee disagrees.

An employee may appeal his/her performance evaluation to his/her department head (or another department head if the employee's department head prepared the evaluation).

**Article 43. Meetings**

- A. TMEA shall be entitled to two (2) City-wide membership meetings each calendar year. These meetings are in addition to the Memorandum of Understanding ratification meeting allowed TMEA. TMEA shall provide a minimum of two (2) weeks' advance notice to the City of such meetings. Employees will be allowed up to one (1) hour of release time to attend each such meeting.
- B. Employees who are invited by the City to attend meetings during working hours that are designed to promote effective communication and cooperation between the City and TMEA shall receive paid release time for their attendance.
- C. In addition to release time for negotiations, team members shall be permitted thirty (30) minutes before and thirty (30) minutes after negotiations for preparation and consultation.

**Article 44. No Strike/Job Action**

- A. The Association, its officers, agents, representatives, and/or members agree on behalf of themselves and the employees in the bargaining unit that they will not cause or condone any strike, walkout, work stoppage, job action, slowdown, sick out, or refusal to faithfully perform assigned duties and responsibilities, withholding of services or other interference with City operations, including compliance with the request of other employees and/or labor organizations to engage in any or all of the preceding activities (including sympathy slowdowns and/or sympathy strikes).
- B. Any employee who participates in any of the conduct prohibited above shall be subject to discipline up to and including termination.
- C. In the event of such activities, the Association shall immediately instruct any person engaging in such conduct that they are violating the Agreement and that they are engaging in unauthorized conduct and should resume full and faithful performance of their job duties.

**Article 45. Agency Shop**

**A. Legislative Authority**

The parties mutually understand and agree that as a result of State of California adoption of SB 739, all full-time and part-time regular employees represented by the Tustin Municipal Employees Association have the right to join or not join the Association. However, the enactment of a local "agency shop" requires that as a condition of continuing employment, employees in the respective bargaining unit must either join the Association or pay to the Association a service fee in lieu thereof. Such service fee shall be established by the Association, and shall not exceed the standard initiation fee, periodic dues and general assessments of the Association.

**B. Association Dues/Service Fees**

1. The Human Resources Department shall provide current full-time and part-time regular employees, and any full-time and part-time regular employees hired thereafter, in the General Employees Representation Unit with an authorization notice advising them that Agency Shop for the Association has been enacted pursuant to state law and an agreement exists with the Association, and that all employees subject to the Agreement must either join the Association, pay a service fee to the Association, or execute a written declaration claiming a religious exemption from this requirement. Such notice shall include a form for the employee's signature authorizing a payroll deduction of Association dues, a service fee or a charitable contribution equal to the service fee if they qualify as defined below. Said employees shall have 14 calendar days from the date they receive the form to fully execute it and return it to the Human Resources Department.
2. If the form is not completed properly or returned within 14 calendar days, the City shall commence and continue a payroll deduction of service fees from the regular biweekly paychecks of such employee. The effective date of Association dues, service fee, or charitable contribution shall begin no later than the beginning of the first pay period commencing 14 calendar days after receipt of the authorization form by the employee.
3. The employee's earnings must be sufficient after the other legal and required deductions are made to cover the amount of the dues or fees authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made. In the case of an employee in a non-pay status during part of the pay period, whose salary is not sufficient to cover the full withholding, no deduction shall be made. In the case of an employee who is receiving catastrophic leave benefits during a pay period, no deduction shall be made. In this connection, all other legal and required deductions (including health care and insurance deductions) have priority over Association dues and service fees.

**C. Religious Exemption**

1. Any employee who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall upon presentation of active membership in such religion, body, or sect, not be required to join or financially support any public employee organization as a condition of employment. The employee shall be required, in lieu of periodic dues, initiation fees or Agency Shop fees, to pay sums equal to the dues, initiation fees or Agency Shop fees to a nonreligious, non-labor charitable fund exempt from taxation under Section 501(c)(3) of the Internal Revenue Code, chosen by the employee from the following charities: United Way, Tustin Community Foundation, or Community Health Charities. Proof of the payments shall be made on an annual basis to the City as a condition of continued exemption from the requirement of financial support to the Association.
2. Declarations of or applications for religious exemption and any other supporting documentation shall be forwarded to the Association within 14 calendar days of receipt by the City. The Association shall have 14 calendar days after receipt of a request for religious exemption to challenge any exemption granted by the City. If challenged, the deduction to the charity of the

employee's choice shall commence but shall be held in escrow pending resolution of the challenge. Charitable contributions shall be made by regular payroll deductions only.

#### D. Rescission

The Agency Shop provision in this Memorandum of Understanding may be rescinded by a majority vote of all the employees in the unit covered by the Agreement, provided that:

1. A request for such a vote is supported by a petition containing the signatures at least 30 percent of the employees in the unit.
2. The vote is by secret ballot.
3. The vote may be taken at any time during the term of the represented unit's memorandum of understanding, but in no event shall there be more than one rescission vote taken during that term. Notwithstanding the above, the City and the Association may negotiate, and by mutual agreement provide for, an alternative procedure or procedures regarding a vote on an agency shop agreement.
4. If a "rescission vote" is approved by unit members during the term of a current memorandum of understanding, the Association agrees not to petition for or seek agency shop status for the duration of the current of the memorandum of understanding.

#### E. Records

The Association shall keep an adequate itemized record of its financial transactions and shall make available annually, to the City, and to the employees who are members of the organization, within 60 days after the end of its fiscal year, a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a Certified Public Accountant.

#### F. Indemnification

The Association shall indemnify, defend, and hold the City harmless against any liability arising from any claims, demands, or other action relating to the City's compliance with the agency fee obligation including claims relating to the Association's use of monies collected under these provisions. The City reserves the right to select and direct legal counsel in the case of any challenge to the City's compliance with the agency fee obligation, and the Association agrees to pay any attorney, arbitrator or court fees related thereto.

### **Article 46. Management Rights**

The City has the exclusive right to establish Personnel Rules and department regulations, including subsequent amendments and revisions. In addition, except as otherwise specified in this MOU, the City has the exclusive right to:

1. Contract or subcontract construction, services, maintenance, distribution or any other work with outside public or private entities;
2. Suspend provisions of this Agreement in the event of, and for the duration of, an emergency as determined by the City Council, and/or by County, State or Federal action upon notification to the Association regarding the nature and expected duration of the emergency;
3. Determine staffing and direct the work force, including the right to hire, promote, demote, evaluate, transfer, lay off or discharge any employee;
4. Take such further action as may be necessary to organize and operate the City in the most efficient and economical manner to serve the public interest;
5. Modify the performance evaluation form; and
6. Modify and update class specifications.

#### **Article 47. Layoffs**

##### **A. Authority to Lay Off**

The City Manager may lay off employees at any time for lack of work, budgetary reasons, technological changes or other City actions that necessitate a reduction in the work force.

##### **B. Definitions**

1. Original probationary period – an employee’s first probation period during continuous City employment.
2. Promotional probationary period – the probationary period served upon promotion from one City position to another.
3. Seniority – length of continuous paid service with the City from date of hire into any bargaining unit position. For purposes of this section, time served on a military leave of absence and a leave of absence due to a workers’ compensation injury shall be considered City service. An employee shall continue to accrue seniority during any unpaid leave of absence of 30 days or less taken for any purpose; however, seniority will cease to accrue after 30 days of unpaid leave.

##### **C. Designation of Positions for Layoff**

When it becomes necessary to reduce the work force, the City Manager shall designate the position(s) or classification(s), and division(s), department(s), or other organizational unit(s) in which positions are to be eliminated. Contract, provisional, and temporary employees in the same classification as the positions proposed for elimination within the affected organizational unit shall be laid off first. Probationary promotional employees who are laid off shall be returned to the position held prior to their promotion.

**D. Order of Layoff**

1. The names of all original probationary employees occupying positions in the affected class shall be listed in alphabetical order. The City Manager or his/her designee shall select from this list one employee, regardless of his/her place on the list, to be laid off for each position to be abolished.
2. If the positions to be abolished exceed the number of employees available for layoff after layoff of original probationary employees as described above, a "Subject to Layoff List" shall be prepared. The list shall be composed of all regular and promotional probationary employees in the class from which a position is to be abolished. Names of the employees shall be listed in reverse order of their lengths of City service; i.e., those having the least seniority will be listed first.
3. In selecting employees to be laid off, those employees at the top of the list shall be laid off first. When employees have equal seniority, the City Manager will select the employee to be laid off with consideration given to the employee's past performance and in consultation with the concerned department head.
4. The names of laid off employees shall be listed on a re-employment list in the reverse order of their dates of layoff.

**E. Bumping Rights**

Any employee subject to layoff who has held regular status in a position in a lower classification in the class series from which he/she is to be laid off may request placement in the lower classification.

The City has identified the following class series for unit classifications (listed from lower level to higher level):

1. Accounting Specialist, Senior Accounting Specialist
2. Assistant Engineer, Associate Engineer
3. Assistant Planner, Associate Planner
4. Building Inspector, Senior Building Inspector
5. Maintenance Worker, Senior Maintenance Worker, Equipment Operator, Maintenance Leadworker
6. Office Support Specialist, Administrative Secretary
7. Recreation Facilities Assistant, Recreation Facilities Leadworker
8. Water Distribution Operator I, Water Distribution Operator II, Water Equipment Operator, Water Distribution Leadworker
9. Water Treatment Operator I, Water Treatment Operator II

An employee who has been involuntarily transferred to a class from which a layoff is to be made shall have automatic bumping rights to his/her previous classification for up to one (1) year from the effective date of the transfer.

**F. Severance Assistance****1. Severance Pay**

Severance pay of one (1) week per year of service, up to a maximum of four (4) weeks of pay, will be provided to an employee who is laid off and not offered employment through an agreement between a contractor and the City. This provision only applies to employees who actually lose employment with the City, not employees who are placed in another position as a result of bumping rights.

**2. Flexible Benefits Contributions**

An employee who is laid off shall have his/her Flexible Benefits contribution continued for an additional two (2) months following the month in which the employee was laid off if he/she is not covered by another medical plan at the time.

**3. Letters of Recommendation**

Letters of recommendation will be provided for an employee whose performance was satisfactory as of the date of his/her layoff.

**4. Employment Assistance**

Reasonable assistance in locating alternative employment will be provided for an employee who is laid off.

**G. Re-Employment List**

The name of every regular employee who is laid off or demoted in lieu of layoff shall be placed on a re-employment list in reverse order of their dates of layoff.

Names may be removed from a re-employment list for any of the following reasons:

1. The expiration of eighteen (18) months from the date of placement on the list.
2. Re-employment in any permanent full-time position, regardless of department or classification level.
3. Failure to respond within twenty-one (21) calendar days of mailing of a letter sent via Certified Mail regarding availability of employment.
4. Failure to report to work within fourteen (14) calendar days of mailing of a registered letter containing a notice of re-employment, absent mitigating circumstances.
5. An individual requests in writing that his/her name be removed from the list.

## H. Re-Employment

Vacancies to be filled within a department shall be offered first to individuals on the re-employment list who held a position in the same classification as the vacancy to be filled.

A regular employee who has been laid off and is re-employed in a permanent position within eighteen (18) months from the effective date of his/her layoff shall be entitled to:

1. Buy back and restoration of all General Leave credited to the employee's account on the effective date of layoff at the same rate as it was paid off. This restoration must be requested in writing within 30 days of returning to work and must be fully paid back within six (6) months of the return to work.
2. Restoration of seniority accrued prior to layoff and during layoff.
3. The same General Leave accrual rate that was in effect prior to layoff.
4. Placement in the salary range at the same step held prior to layoff if the employee is reinstated to the same job classification from which he/she was laid off.

If the person who is re-employed had not satisfactorily completed the required probationary period in the department of appointment prior to layoff, he/she shall serve a probationary period upon re-employment.

## I. Notices

At least two (2) weeks' notice (14 calendar days) shall be given to any employee who is to be laid off. All notices and requested actions referenced in this section shall be in writing and sent by Certified Mail or delivered personally to the addressee. All notices to the City shall be addressed to the City Manager. The employee shall be responsible for notifying the City of any address change and any such notice shall be served in accordance with this paragraph.

## J. Displacement of Part-Time Employee

In the event a reduction in force is necessary, a part-time employee may not displace a full-time employee. However, a full-time employee may displace a less senior part-time employee provided he/she is otherwise eligible to displace the less senior employee.

## K. No Appeal

Employees do not have any right to appeal their layoff from employment.

IN WITNESS WHEREOF, the parties hereto have executed this document this 6<sup>th</sup> day of September 2011.

**FOR THE CITY OF TUSTIN**

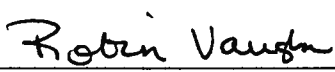
  
\_\_\_\_\_  
William A. Huston, Interim City Manager

  
\_\_\_\_\_  
Kristi Recchia, Director of Human Resources

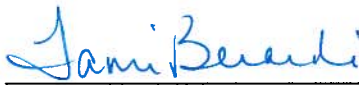
  
\_\_\_\_\_  
Peter Brown, Liebert Cassidy Whitmore

**FOR THE TUSTIN MUNICIPAL EMPLOYEES ASSOCIATION**

  
\_\_\_\_\_  
Frank Apuron, President

  
\_\_\_\_\_  
Robin Vaughn, Vice President

  
\_\_\_\_\_  
Eric Loke, Secretary

  
\_\_\_\_\_  
Tami Berardi, Treasurer

  
\_\_\_\_\_  
Katy Lee, Board Member

  
\_\_\_\_\_  
Mario Medina, Board Member

  
\_\_\_\_\_  
Kunal Mittal, Board Member

  
\_\_\_\_\_  
Leo Stiles, Board Member

**APPENDIX A – MONTHLY SALARY RANGES**  
**Effective July 1, 2011**

<b>Classification</b>	<b>A</b>	<b>B</b>	<b>C</b>	<b>D</b>	<b>E</b>
Accounting Specialist	3304.93	3474.16	3652.05	3839.06	4035.65
Accountant	4676.19	4915.63	5167.34	5431.39	5710.08
Administrative Secretary	3858.28	4055.85	4263.53	4481.85	4711.35
Assistant Engineer	5625.17	5913.21	6216.00	6534.29	6868.89
Assistant Planner	4676.19	4915.63	5167.34	5431.93	5710.08
Associate Engineer	6389.09	6716.25	7060.16	7421.68	7801.71
Associate Planner	5180.26	5445.51	5724.36	6017.47	6325.60
Building Inspector	4782.46	5027.35	5284.77	5555.38	5839.85
Building Permit Technician	3562.00	3744.39	3936.13	4137.68	4349.56
Business License Technician	3735.05	3926.31	4127.36	4338.71	4560.87
City Clerk Services Specialist	4179.21	4393.21	4618.17	4854.64	5103.23
Code Enforcement Officer	4595.17	4830.46	5077.81	5337.82	5611.15
Custodian	3313.19	3482.85	3661.18	3848.66	4045.74
Engineering Aide	4382.26	4606.65	4842.54	5090.50	5351.16
Environmental Compliance Specialist	5625.17	5913.21	6216.00	6534.29	6868.89
Equipment Mechanic	4106.80	4317.10	4538.15	4770.53	5014.81
Equipment Operator	3936.13	4137.68	4349.56	4572.28	4806.40
Information Technology Specialist	4903.37	5154.45	5418.39	5695.84	5987.50
Mail and Duplication Specialist	3439.64	3615.76	3800.91	3995.54	4200.14
Maintenance Leadworker	4295.59	4515.55	4746.77	4989.83	5245.34
Maintenance Worker	3371.61	3544.25	3725.74	3916.52	4117.07
Management Analyst	4676.19	4915.63	5167.34	5431.93	5710.08
Office Support Specialist	3661.18	3848.66	4045.74	4252.90	4470.67
Parking Control Specialist	2809.81	2953.69	3104.94	3263.92	3431.06
Plan Checker	5625.17	5913.21	6216.00	6534.29	6868.89
Public Works Inspector	4806.40	5052.51	5311.23	5583.19	5869.09
Recreation Facilities Assistant	2607.03	2740.52	2880.85	3028.37	3183.44
Recreation Facilities Leadworker	3482.85	3661.18	3848.66	4045.74	4252.90
Recreation Program Specialist	3296.69	3465.50	3642.95	3829.49	4025.58
Redevelopment Project Manager	6666.13	7007.48	7366.30	7743.49	8140.00
Senior Accounting Specialist	4025.58	4231.72	4448.40	4676.19	4915.63
Senior Building Inspector	5625.17	5913.21	6216.00	6534.29	6868.89
Senior Maintenance Worker	3707.18	3897.01	4096.56	4306.33	4526.84
Transportation Coordinator	2809.81	2953.69	3104.94	3263.92	3431.06
Water Distribution Leadworker	4676.19	4915.63	5167.34	5431.93	5710.08
Water Distribution Operator I	3491.55	3670.34	3858.28	4055.85	4263.53
Water Distribution Operator II	3897.01	4096.56	4306.33	4526.84	4758.63
Water Equipment Operator	4221.16	4437.31	4664.52	4903.37	5154.45
Water Meter Reader	3897.01	4096.56	4306.33	4526.84	4758.63
Water Treatment Operator I	4426.25	4652.89	4891.14	5141.60	5404.87
Water Treatment Operator II	4758.63	5002.30	5258.45	5527.71	5810.76