



MEMORANDUM OF UNDERSTANDING

between

THE CITY AND COUNTY OF SAN FRANCISCO

and

MUNICIPAL ATTORNEYS ASSOCIATION

FOR THE PERIOD

JULY 1, 2010 to JUNE 30, 2012

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PREAMBLE

- 1. This Memorandum of Understanding (hereinafter “MOU”) is entered into by and between the City and County of San Francisco (hereinafter “City”) acting through its designated representatives and the Municipal Attorneys Association (hereinafter “MAA”). It is agreed that the delivery of municipal services in the most efficient, effective, ethical, professional and courteous manner is of paramount importance to the City and the represented attorneys. Such purpose is recognized to be a mutual obligation of the parties to this agreement within their respective roles and responsibilities. Nothing in this agreement shall be construed to require any represented attorney to violate the California Rules of Professional Conduct.

ARTICLE I. REPRESENTATION

I.A. RECOGNITION

- 2. The City acknowledges the MAA as the exclusive bargaining representative for all represented attorneys in the following job codes:

8177	Attorney	8-W
8181	Assistant Chief Attorney I	11-L
8182	Head Attorney, Civil and Criminal	11-L
8183	Assistant Chief Attorney II	11-L
8190	Attorney, Tax Collector	8-W
8193	Chief Attorney I (Civil and Criminal)	11-L

- 3. Recognition shall only be extended to individual classes accreted to existing bargaining units covered by this MOU. Application of this provision shall not extend to bargaining units acquired through affiliations or service agreements.
- 4. During the term of the MOU, the MOU shall become applicable to any job code accreted to any existing bargaining unit for which MAA has been appropriately recognized as the exclusive representative.

I.B. INTENT

- 5. It is the intent of the parties signatory hereto that the provisions of this agreement shall become binding upon adoption or acceptance by the City and ratification by the Board of Supervisors and the general membership of MAA or upon a final decision rendered by an arbitration panel pursuant to the interest arbitration procedure under Charter Section A8.409.
- 6. The provisions of this MOU shall supersede and control over contrary or contradictory Charter provisions, ordinances, resolutions, rules or regulations of the City to the extent permissible by Charter Section A8.409.

I.C. MANAGEMENT RIGHTS

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7. Unless specifically in conflict with the MOU, all management rights shall remain vested exclusively with the City. City management rights include but are not limited to:
8. a. The right to determine the mission of its agencies, departments, institutions, boards and commissions;
9. b. The right of full and exclusive control of the management of the City; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;
10. c. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any position(s) within the City;
11. d. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, email, computer storage drives, voicemail systems and filing cabinets and systems;
12. e. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any City work, and to contract out for work consistent with the civil service rules and/or the Charter;
13. f. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;
14. g. The right to establish and enforce employee performance standards;
15. h. The right to schedule and assign work, make reassignments and assign overtime work.
16. i. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;
17. j. The right to establish and modify bargaining units subject to applicable law;
18. k. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require represented attorneys to appear, respond truthfully and cooperate in good faith regarding any City investigation; and
19. l. The right to maintain order, effective and efficient operations.

ARTICLE I - REPRESENTATION

I.D. UNION SECURITY

20. Dues Deductions. MAA shall provide the Human Resources Director or his/her designee and the City with a current statement of membership fees. Such statement of membership fees shall be amended as necessary. The Controller may take up to thirty (30) days to implement such changes.
21. Authorization for Deduction. The City shall deduct Union dues, initiations fees, premiums for insurance programs and political action fund contributions from a represented attorney's pay upon receipt by the Controller of a form authorizing such deductions by the represented attorney. The City shall pay over to the designated payee all sums so deducted. Upon request of MAA, the Controller agrees to meet with MAA to discuss and attempt to resolve issues pertaining to delivery of services relating to such deductions.
22. Dues Deductions. Dues deductions, once initiated, shall continue until the authorization is revoked, in writing, by the represented attorney. For the administrative convenience of the City and MAA, a represented attorney may only revoke a dues authorization by delivering the notice of revocation to the Controller during the two-week period prior to the expiration of this agreement. The revocation notice shall be delivered to the Controller either in person at the Controller's office or by depositing it in the U.S. Mail addressed to the Payroll/Personnel Services Division, Office of the Controller, 875 Stevenson St., San Francisco CA 94103; Attention: Dues Deduction. The City shall deliver a copy of the notices of revocation of dues deductions authorizations to MAA within two (2) weeks of receipt.

I.E. AGENCY SHOP

23. Application. Except as provided otherwise herein, the provisions of this section shall apply to all represented attorneys of the City in all job codes represented by MAA in represented units when on paid status. These provisions shall not apply to individual represented attorneys of the City in represented units who have been properly and finally determined to be management, confidential or supervisory employees pursuant to Section 16.208 of the Employee Relations Ordinance. Except when an individual represented attorney has filed a challenge to a management, confidential or supervisory designation, the Human Resources Director or his/her designee and MAA shall meet as necessary for the purpose of attempting to make such determinations by mutual agreement. The Human Resources Director or his/her designee shall give MAA no less than ten (10) working days prior notice of any such proposed designation. Disputes regarding such designations shall be promptly resolved pursuant to Section 16.208(B) of the Employee Relations Ordinance.
24. Service Fee. Represented attorneys of the City in the job codes listed in Section I.A. (and any individual classes accreted to the existing bargaining unit pursuant to this MOU), except as set forth below, shall, as a condition of continued employment, become and remain a member of MAA, or in lieu thereof, shall pay a service fee to MAA. The fair share service fee payment shall be established annually by MAA, provided that such fair share agency shop service fee will be used by MAA only for the purposes permitted by law. Each pay period, service fees from non-members shall be collected by payroll deduction pursuant to

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Administrative Code §16.90. Failure to comply with this section shall be grounds for termination. MAA, at its option, may elect to waive its rights to demand termination and instead utilize judicial process to compel payment.

25. Financial Reporting. The MAA will provide an annual explanation of the fee and sufficient financial information to enable the fair share service fee payer to gauge the appropriateness of the fee. MAA will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker, not chosen by MAA, and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending. MAA will provide to the City a copy of the notices required under this section (with postage paid) by October 15th of each year, and the City shall forward these notices to all fair share service fee payers within thirty (30) days of the City's receipt of the notices. As a condition of the City continuing to deduct the above-referenced service fee, MAA shall certify annually in writing to the City that MAA has complied with the requirements set forth in this section.
26. Religious Exemption. Any represented attorney of the City in a job code covered by this agreement, who is a member of a bona fide religion, body or sect which has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to Union membership shall, upon presentation of membership and historical objection, be relieved of any obligation to pay the required service fee. MAA shall be informed, in writing, of any such requests.
27. Payment of Sums Withheld. Nine (9) working days following payday the City will promptly pay over to MAA sums withheld for membership or service fees.
28. Employee Lists. The City shall also provide with each payment a list of represented attorneys paying the membership fees and a list of represented attorneys paying service fees. All such lists shall contain the represented attorney's name, employee number, job code, department number and amount deducted. A list of all represented attorneys in represented job codes shall be provided to MAA monthly.
29. Indemnification. MAA agrees to indemnify and hold the City harmless for any loss or damage arising from the MAA's actions or inactions under this section.

I.F. OFFICIAL REPRESENTATIVES

30. MAA may select official representatives for purposes of meeting and conferring, and consulting with the City on matters within the scope of representation. Such representatives shall have the privileges and duties set forth in the Employee Relations Ordinance (Administrative Code - §16.219). For purposes of this section, the number of represented attorneys permitted paid work release under §16.219 shall be at least one person from each of the three major departments covered by this MOU (Offices of the District Attorney, Public Defender and City Attorney) and two other bargaining unit employees.

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31. Official representatives shall have reasonable access to all work locations to verify that the terms and conditions of this agreement are being carried out and for the purpose of conferring with represented attorneys provided that such access shall be subject to such rules and regulations as may be agreed upon by the department and MAA.
32. In scheduling meetings, due consideration shall be given to the operating needs and work schedules of the department, division, or section in which the represented attorneys are employed and to the work schedule, including scheduled court appearances, of such represented attorneys.

I.G. USE OF CITY EMAIL

33. The City departments covered by this agreement agree to post through their e-mail systems Association notices of Association meetings and professional activities. The Association shall submit its proposed notice to the designated department representatives by e-mail twenty-four (24) hours in advance or by other written means forty-eight (48) hours in advance. Any such notice through the e-mail system shall be accompanied by a statement that the information conveyed thereby is being provided by the Association and that only the transmission is authorized by the department. Except as set forth above, City email shall not be used to conduct Association business.

I.H. GRIEVANCE PROCEDURE

34. The following procedures are adopted by the parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive internal procedures for resolving grievances as defined herein.
35. A grievance shall be defined as any dispute which involves the interpretation or application of this agreement or relating to working conditions arising out of this agreement. A grievance may be filed by a represented attorney, a group of represented attorneys, or MAA.
36. Time Limits. The time limits set forth herein may be extended by agreement of the parties. Any such extension must be confirmed in writing. For purposes of calculation of time a "day" is defined as a "calendar day," including weekends and holidays. Failure by the represented attorney or MAA to follow the time limits, unless mutually extended, shall cause the grievance to be withdrawn. Failure of the City to follow the time limits, unless mutually extended, shall serve to move the grievance to the next step. Any time limit set forth in this section that expires on a weekend or a holiday shall expire instead on the following business day.

Steps of the Procedure

37. 1. Except as set forth below, all grievances must be initiated at Step 1 of the grievance procedure.
38. A grievance affecting more than one represented attorney shall be filed with the Appointing Officer. Grievances affecting more than one department shall be filed

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with the Employee Relations Division. MAA may request the Appointing Officer to file other grievances initially at Step 2 (with the Appointing Officer or his/her designee), and such requests shall not be unreasonably denied.

39. In the event the City disagrees with the level at which the grievance is filed, it may submit the matter to the step it believes is appropriate for consideration of the dispute.
40. 2. A represented attorney having a grievance may first discuss it with the represented attorney's immediate supervisor and try to work out a satisfactory solution in an informal manner with the supervisor. The represented attorney may have a representative at this discussion.
41. 3. Step 1. If a solution to the grievance, satisfactory to the represented attorney and the immediate supervisor is not accomplished by informal discussion, the grievant may pursue the grievance further.
42. The represented attorney and/or his/her representative shall submit a written statement of the grievance to the immediate supervisor within thirty (30) days of the facts or event giving rise to the grievance or the date the represented attorney or MAA should have known of the occurrence thereof except for cases alleging sexual harassment, in which case the time limit herein shall be four (4) months.
43. The immediate supervisor will make every effort to arrive at a prompt resolution by investigating the issue. He/She shall respond within seven (7) days.
44. 4. Step 2. If the grievance is not satisfactorily resolved at Step 1, the grievance shall be submitted in writing, containing a specific description of the basis for the claim and the resolution desired, and submitted to the department head or his/her designee within fourteen (14) days. The parties may meet. In any event, the department head/designee shall, within fourteen (14) days of receipt of the written grievance, respond, in writing, to the grievant and MAA, specifying his/her reason(s) for concurring with or denying the grievance.
45. 5. Step 3. If the decision of the department head/designee is unsatisfactory, the grievant and/or MAA representative may, within fourteen (14) days after receipt of such decision, submit the grievance to the Employee Relations Director.
46. The Director shall have fourteen (14) days after receipt of the written grievance in which to review and seek resolution of the grievance and respond in writing.
47. 6. Step 4. Should there be no satisfactory resolution at Step 3, MAA has the right to submit the grievance to final and binding arbitration, by notifying the Director of Employee Relations, in writing, within twenty (20) days of receipt of the Step 3 response.

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Selection of the Arbitrator

48. When a matter is appealed to arbitration, the parties shall first attempt to mutually agree upon an Arbitrator to hear the matter. In the event no agreement is reached within ten (10) working days, or any extension of time mutually agreed upon the parties shall request that the State Mediation and Conciliation Service (“SMCS”) or the American Arbitration Association (“AAA”) provide the parties with a list of seven (7) potential arbitrators. The parties, by lot, shall alternately strike names from the list, and the name that remains shall be the arbitrator designated to hear the particular matter.
49. The parties may, by mutual agreement, agree to an alternate method of arbitrator selection and appointment, including, the expedited appointment of an arbitrator from a list provided by the SMCS or AAA.
50. Authority and Duty of the Arbitrator. The arbitrator shall have no authority to add to, subtract from, or modify the terms of this agreement. The decision of the arbitrator shall be final and binding on all parties.
51. Fees and Expenses of the Arbitrator. The fees and expenses of the arbitrator and court reporter, if any, shall be shared equally by the parties. Each party shall bear its own expenses in connection with the arbitration.
52. Hearing Dates and Date of Award. Hearings shall be scheduled within forty-five (45) days of selection of an arbitrator. Awards shall be due within forty-five (45) days following the receipt of closing arguments or briefs. As a condition of appointment to the Standing Arbitration Panel, arbitrators shall be advised of this requirement and shall certify their willingness to abide by these limits.
53. Any award for monetary relief as a result of an arbitrator’s decision shall not extend more than forty (40) days prior to the filing of a grievance, unless conditions of equity or bad faith justify a greater entitlement.
54. Individuals who may have direct knowledge of the circumstances relating to the grievance may be called to testify at the request of either party at the hearing. In the case of employees of the City, they shall be compensated at an appropriate rate of pay.

ARTICLE II - EMPLOYMENT CONDITIONS

II.A. NON-DISCRIMINATION

55. The City and MAA agree that this agreement shall be administered in a non-discriminatory manner and that no person covered by this agreement shall in any way be discriminated against because of race, color, creed, religion, sex, sexual orientation, national origin, physical or mental disability, age, political affiliation or opinion, membership or activity, or non-membership, nor shall a person be subject to sexual harassment. Neither the City nor MAA shall interfere with, intimidate, retaliate, restrain, coerce or discriminate against any represented attorney because of the exercise of his/her rights granted pursuant to this agreement, the Employee Relations Ordinance (San Francisco Administrative Code Section 16.200) and the Meyers-Milias-Brown Act. The City shall process complaints of sexual harassment pursuant to civil service rules, the administrative code and federal and state laws.

II.B. PERSONNEL FILES

56. A represented attorney shall have the opportunity to review, sign and date any and all material to be included in the represented attorney's personnel file except routine matters chronicling job and pay changes.

57. A represented attorney may also attach a response to such materials within thirty (30) days of receipt. Any report or other document in a represented attorney's personnel file shall be signed and dated by the author. A represented attorney shall be provided a copy of any such report or other document at the time it is placed in his/her personnel file. The City may transmit documents to the represented attorney at the represented attorney's last known address by means of U.S. Mail or hand delivery, except disciplinary notification, which must be sent by certified mail when the represented attorney is on leave.

58. With the approval of his/her Appointing Officer or designees, the represented attorney may include material relevant to his/her performance of assigned duties in the file.

59. There shall be one (1) official personnel file. Supervisors' informal notes and records relating to their supervisory responsibilities shall not be maintained any longer than necessary for supervision and evaluation purposes. After such time, such notes and records shall either (1) be made a part of the official personnel file and subject to the above procedures, or (2) destroyed, subject to applicable law.

II.C. NO LOCKOUT-NO STRIKE

60. During the term of this agreement, the City will not lock out represented attorneys who are covered by this MOU. Members of the bargaining unit shall not engage in any strike, work stoppage, slowdown or sympathy strike during the term of this MOU, nor shall MAA encourage or condone any such activity by members of the bargaining unit.

II.D. FINGERPRINTING

61. The City shall bear the full cost of fingerprinting whenever such is required of the represented attorney.

II.E. AMERICANS WITH DISABILITIES ACT

62. The parties agree that they are required to provide reasonable accommodations for persons with disabilities in order to comply with the provisions of federal, state and local disability anti-discrimination statutes and the Fair Employment and Housing Act. The parties further agree that this agreement shall be interpreted, administered and applied so as to respect the legal rights of the parties. The City reserves the right to take any action necessary to comply therewith.

II.F. RIGHT TO PRIVACY

63. The unique role and obligations of attorneys covered by this agreement includes the maintenance of appropriate confidential relationships and communications. Recognizing these elements, the City shall not access the private work areas of attorneys absent (a) reasonable cause, as defined by relevant case law, suggesting misconduct or unlawful activity, or (b) a legitimate business need. No other provision of this agreement shall modify or supersede this paragraph.

II.G. REIMBURSEMENT OF MILEAGE AND OTHER EXPENSES

64. Represented attorneys using their own vehicles for City business shall be reimbursed for mileage as fixed by the Controller in accordance with IRS rules and for all necessary parking and toll expenses within sixty (60) days from submission of expense receipts to the Controller.

65. A represented attorney who travels on a public carrier (including without limitation MUNI or BART) on City business shall be reimbursed for such travel within sixty (60) days from submission of expense receipts to the Controller.

66. Represented attorneys required by their respective department heads to attend any meeting (related to City business) at which a meal is served shall be reimbursed for the cost of the meal within sixty (60) days from submission of expense receipts to the Controller.

67. Represented attorneys required by their respective department heads to travel overnight on City business shall be reimbursed for reasonable and actual expenses incurred within sixty (60) days upon submission of expense receipts to the Controller.

68. Advances or partial advances for travel expenses may be provided to represented attorneys with the approval of a department head and the Controller. In order to receive advance approval of travel expenses, employees must submit estimates of travel expenses in advance of such travel. Employees who submit expense estimates in advance of such travel shall receive advance notification of whether the estimated expenses are approved.

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69. Professional expenses covered by Section III.U. of this MOU are not covered by this Section (II.G.).

II.H. INDEMNIFICATION AND DEFENSE OF CITY EMPLOYEES

70. The City shall defend and indemnify a represented attorney against any claim or action against the represented attorney on account of an act or omission in the scope of the represented attorney's employment with the City, in accord with, and subject to, the provisions of California Government Code Sections 825 et seq. and 995 et seq. The City shall also indemnify a represented attorney for any monetary sanction imposed by any state or federal court in the course of employment, except as otherwise specifically ordered by the court, or due to the attorney's negligence, malfeasance or unprofessional conduct.

II.I. SEVERANCE PAY

71. The City agrees that when removing or releasing a represented attorney from employment, the Appointing Officer will endeavor to inform the attorney at least thirty (30) business days before his/her final day of work. Where the Appointing Officer fails or declines to inform the attorney a full thirty (30) business days in advance, the attorney shall receive pay in lieu of the number of days less than thirty (30) upon which he/she was informed.

72. Due to the unique job responsibilities of the attorneys and the attorneys' status in the City as exempt from civil service selection, appointment and removal procedures (as provided by the Charter), the City and MAA agree to the following: In addition to the notice or pay in lieu thereof provided above, a represented attorney in an attorney job code who is removed or released from City service by his or her Appointing Officer shall receive the following severance benefit in exchange for a release signed by the represented attorney and MAA of any and all contractual claims that the attorney or MAA may have against the City, including any officer or employee thereof:

- 1 year completed: 1 week's pay severance
- 2 years completed: 2 weeks' pay severance
- 3 years completed: 3 weeks' pay severance
- 4 years completed: 4 weeks' pay severance
- 5 years completed: 5 weeks' pay severance
- 6 years completed: 6 weeks' pay severance
- 7 years completed: 7 weeks' pay severance
- 8 years completed: 8 weeks' pay severance
- 9 years completed: 9 weeks' pay severance
- 10 years completed: 10 weeks' pay severance
- 11 years completed: 11 weeks' pay severance
- 12 years completed: 12 weeks' pay severance
- 13 years completed: 13 weeks' pay severance
- 14 years completed: 14 weeks' pay severance
- 15 years completed: 15 weeks' pay severance
- 16 years completed: 16 weeks' pay severance
- 17 years completed: 17 weeks' pay severance

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18 years completed: 18 weeks' pay severance

19 years completed: 19 weeks' pay severance

73. For attorneys with twenty or more years of City service, the severance benefit shall increase to two weeks' pay for each year of City service over ten years.

Example of calculation:

A represented attorney has 24 years of service at the time of separation.

1 to 10 years=10 weeks

10 to 24 years= 28 weeks

Total Severance= 38 weeks

74. For the purposes of this provision, service means paid service with a break of no more than three years in employment.

Example: An attorney has 16 years of service and leaves City employment for 4 years. When she returns she begins to accrue severance at year one level.

If a represented employee is separated and receives a severance payment and subsequently returns to service, his or her service prior to the first separation shall not be used to calculate any subsequent severance payments.

75. Severance payments shall be made within thirty (30) days of the City receiving a fully executed release pursuant to this MOU.

76. Assistant Chief Attorney I [8181]; Assistant Chief Attorney II [8183]; Chief Attorney I [8193]. Represented attorneys in job codes 8181, 8183, or 8193 may be reappointed to job code 8182. If the Appointing Officer proposes to reappoint an attorney in job code 8181, 8183, or 8193 to a job code below 8182, the attorney may either accept the reappointment or treat the proposal as a release from service and receive severance pay.

77. Head Attorney [8182]. Any represented attorney in job code 8182 for two or more years in that job code who is reappointed by the Appointing Officer to a lower job code shall retain his or her 8182 salary. If the attorney does not accept the new job code, the attorney may treat the proposal as a release from service and receive severance pay.

78. If a represented attorney began employment in job code 8182 and was subsequently promoted to job code 8181, 8183 or 8193, any time served in codes 8181, 8183 or 8193 shall be included in calculating the two years required in job code 8182 as referenced in paragraph 77 above.

79. Represented attorneys in job code 8182 may be reappointed to job code 8177. In such event, salary step placement shall be to the step in class 8177 closest to but not higher than the prior salary step placement in job code 8182. If the Appointing Officer reappoints an attorney currently in job code 8182 who has less than two years in that job code to the job code 8177, the attorney may either accept the reappointment or treat the proposal as a release from service and receive severance pay.

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80. The City is not required to pay severance if it terminates the represented attorney under the following procedure:
81. The represented attorney may be removed or discharged at a hearing by the appointing officer for gross misconduct on a finding of just cause on that allegation after being provided with written notice of the charges, copies of all documentation upon which the charges are based and after an opportunity to respond to the charges before the appointing officer or his or her designee.
82. Pending investigation of gross misconduct, the appointing officer may place the accused person on paid administrative leave. If, after 60 days of paid administrative leave, the investigation is found to have been delayed by an act of the accused (as determined by the arbitrator), the accused may be placed on unpaid administrative leave until the conclusion of the hearing before the appointing officer otherwise the accused shall be continued on paid administrative leave until the conclusion of the hearing.
83. When the appointing officer imposes discharge or removal he or she shall, in writing, notify the person removed or discharged of the right to appeal the discharge or removal by mailing such statement to his or her last known address.
84. The employee shall have thirty days from the date of the mailing of the notice to file an appeal of the matter in writing with the appointing officer. Upon receipt of a timely appeal, the appeal shall be referred to a standing panel of arbitrators who will agree to hear and resolve such disputes within 60 days after submitting the matter to arbitration. If the parties cannot agree upon a standing panel, either side may request a list of 31 qualified arbitrators who are members of the National Academy of Arbitrators and who agree to the 60 day time limitation from the California State Mediation and Conciliation Service. If the parties are unable to agree mutually on the panel members, the parties shall alternately strike names until seven panel members remain on the list. The parties shall establish the order of first strike by lot.
85. If the employee is exonerated, the hearing officer shall order payment of salary to the employee for the period of discharge, removal or unpaid administrative leave, reinstate the employee's rights under the severance provisions of the MOU, and the report of such period of discharge, removal or unpaid administrative leave shall thereupon be expunged from the record of service of such employee.

ARTICLE III - PAY, HOURS AND BENEFITS

III.A. WAGES

86. Effective July 1, 2006, represented employees shall receive a base wage increase of seven percent (7%) in exchange for their agreement to pay the seven and a half percent (7.5%) of the required employee retirement contribution amount to SFERS.
87. Employees shall contribute the value of twelve (12) unpaid furlough days during each fiscal year of this Agreement as follows:
88. For Fiscal Year 2010-11 and 2010-2012 “new plan” employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall be required to contribute the value of twelve (12) unpaid furlough days (i.e., value of 4.62%), the implementation of which will occur through uniform payroll smoothing over the fiscal year. The provisions of this paragraph shall sunset at close of business on June 22, 2012.
89. However, in the event the City’s Fiscal Year 2011-12 Joint Report, issued on or about March 30, 2011, projects the General Fund deficit in Fiscal Year 2011-12 to be less than \$261 million, employee contributions for Fiscal Year 2011-12 shall be reduced according to the following schedule:
- (1) Deficit of \$150-\$261 million: employees shall contribute the value of five (5) unpaid furlough days.
 - (2) Deficit from \$100 up to \$150 million: employees shall contribute the value of three (3) unpaid furlough days.
 - (3) Deficit less than \$100 million: employees shall not contribute any unpaid furlough days.
90. All base wage calculations shall be rounded to the nearest salary schedule. All wages shall be restored to their original levels, (i.e., as if the concessions as provided herein had not been made), on June 22, 2012.
91. 8177 and 8182. Due to the high level of responsibility required of senior attorneys at the Trial Attorney (8177) and Head Attorney (8182) levels, attorneys who have five consecutive years of service at the sixteenth step of the 8177 job code or five consecutive years of service at the fifth step of the 8182 job code shall receive a two percent (2%) wage increase. For the purposes of this section only, a represented attorney will be deemed to have five consecutive years of service at the sixteenth step of the 8177 or the 8182 job code even if the represented attorney's service at the sixteenth or fifth step of such job code has been broken by a period of less than one year due to the represented attorney's service in another attorney job code in the City.
92. (1) Time served in another attorney job code resulting from the attorney’s promotion shall not be counted towards the five years of service required at either step sixteen or step five in either the 8177 or 8182 job code.

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93. (2) Time served in another attorney job code resulting from the attorney's demotion shall be counted towards the five years service required at step five in either the 8177 or 8182 job code; however, the wage increase referenced in this section shall not take effect unless and until the attorney is returned within the one year period to his or her former 8177 or 8182 job code at step sixteen (8177) or step 5 (8182).
94. All compensation adjustments in this MOU shall be rounded to the nearest salary grade and shall commence at the start of the payroll period closest to the specified date. Represented attorney base wage rates are attached hereto.
95. Effective June 30, 2009 through the end of Fiscal Year 2009-2010, "new plan" employees (i.e., employees who become members in SFERS on or after November 2, 1976 shall be required to contribute the value of five (5) unpaid furlough days each fiscal year, the implementation of which will occur through uniform payroll smoothing over the fiscal year. The furlough program described herein shall sunset at the close of business June 30, 2010.

III.B. SALARY STEP PLAN AND SALARY ADJUSTMENTS

96. Appointments to positions in the City and County service shall be at the entrance rate established for the position except as otherwise provided herein.

Promotive Appointment in a Higher Class

97. A represented attorney following completion of six (6) months of continuous service, and who is appointed a position in a higher job code, deemed to be promotive shall have his/her salary adjusted to that step in the promotive job code as follows:
98. 1. If the represented attorney is receiving a salary in his/her present job code equal to or above the entrance step of the promotive job code, the represented attorney's salary in the promotive job code shall be adjusted two steps in the compensation schedule over the salary received in the lower job code but not above the maximum of the salary range of the promotive job code.
99. 2. If the represented attorney is receiving a salary in his/her present job code which is less than the entrance step of the salary range of the promotive job code, the represented attorney shall receive a salary step in the promotive job code which is closest to an adjustment of 7.5 % above the salary received in the job code from which promoted. The proper step shall be determined in the biweekly compensation schedule and shall not be above the maximum of the salary range of the promotive job code.
100. For the purpose of this section, appointment of a represented attorney as defined herein to a position in any job code the salary grade for which is higher than the salary grade of the represented attorney's permanent job code shall be deemed promotive.

Non-Promotive Appointment

101. When a represented attorney accepts a non-promotive appointment in a job code having the same salary grade, or a lower salary grade, the represented attorney shall enter the new position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that

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received in the prior appointment, provided that such salary shall not exceed the maximum of the salary grade.

Appointment Above Entrance Rate

102. Appointments may be made by an Appointing Officer at any step in the compensation schedule under the following conditions:
103. 1. A former City employee, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former job code.
104. 2. Loss of compensation would result if appointee accepts position at the normal step.
105. 3. A severe, easily demonstrated and documented recruiting and retention problem exists, such that all City appointments in the particular job code should be above the normal step.

III.C. SENIORITY INCREMENTS

106. Entry at the First Step. Represented attorneys shall advance to the second step of a five-step advancement within job code no later than upon completion of one thousand forty (1,040) hours awarded to each successive step no later than upon completion of the one (1) year required service within the job code. Further increments shall accrue no later than following completion of the required service at this step and at each successive step.
107. Entry at Other than the First Step. Represented attorneys who enter a job code at a rate of pay at other than the first step shall advance one step no later than upon completion of two thousand eighty hours (2,080) paid service. Further increments shall accrue no later than following completion of the required service at this step and at each successive step.
108. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as specified above.
109. Reduction of Salary Steps Within a Job Code. A represented attorney's placement on a salary grade within a job code may not be reduced.

III.D. DEEP CLASS – TRIAL ATTORNEY

110. Upon adoption of new job code 8177, Trial Attorney, existing job codes 8174 through 8180 will be consolidated into one single deep class consisting of sixteen (16) salary steps. The Trial Attorney deep class shall be fully implemented on July 1, 2004.
111. Any salary advancement shall only occur upon completion of 2,080 hours of paid service.
112. Beginning January 1, 2005. Represented attorneys in deep class Trial Attorney shall advance one salary step on their anniversary date, and cannot advance higher than step 16.
113. Step increments shall accrue and become due and payable at the beginning of the pay period following completion of required paid service in the job code.
114. The implementation of this provision is subject to the approval of the Civil Service Commission, and all necessary Departments. The reclassification of employees into the

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Deep Class is a Civil Service Commission “carve-out” and may not be grieved or submitted to arbitration.

III.E. WORK SCHEDULES

115. Benefit Accrual. For purposes of accrual of benefits, a regular biweekly pay period consists of eighty (80) hours.
116. Alternative Work Schedule. By mutual agreement, the City and MAA may enter into cost-equivalent alternate work schedules for some or all represented attorneys. Such alternate work schedules may include, but are not limited to, core hours, flex-time, full-time workweek of less than five (5) days, or a combination of features mutually agreeable to the parties. Such changes in work schedule shall not alter the basis for, nor entitlement to, receiving the same rights and privileges as those provided to represented attorneys on a five (5) day, forty (40) hour week schedule.
117. Voluntary Reduced Workweek. Subject to the approval of the Appointing Officer, represented attorneys may voluntarily elect to work a reduced workweek for a specified period of time. Such reduced workweek shall not be less than twenty (20) hours per week. Pay, vacation, holidays and sick pay shall be reduced in accordance with such reduced workweek. Subject to the approval of the Appointing Officer, represented attorneys working a reduced workweek may also elect to job share. Appointing Officers may grant (at their discretion) requests for reduced workweeks due to parenting or other childcare reasons. At the request of MAA, an Appointing Officer shall meet to discuss the role of reduced work schedules in his or her department.
118. Mandatory Time Off. There shall be no mandatory unpaid administrative leave (furlough) of any duration for represented attorneys.

III.F. HOLIDAYS

118. The following days listed herein are declared to be holidays for bargaining unit members:

New Year’s Day (January 1st)
Martin Luther King, Jr.’s Birthday (3rd Monday in January)
President’s Day (3rd Monday in February)
Memorial Day (last Monday in May)
Independence Day (July 4th)
Labor Day (1st Monday in September)
Columbus Day (2nd Monday in October)
Veteran’s Day (November 11th)
Thanksgiving Day
Day after Thanksgiving
Christmas Day (December 25th)

119. Provided further, if January 1, July 4, November 11 or December 25 fall on a Sunday, the Monday following is a holiday.

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120. The City shall accommodate religious belief or observance by allowing use of either a floating holiday, in-lieu holiday, vacation or personal leave.
121. Five (5) additional floating days off to be taken on days selected by the represented attorney subject to prior scheduling approval of the Appointing Officer. Represented attorneys (both full-time and part-time) must complete six (6) months continuous service to establish initial eligibility for the floating days off. Represented attorneys hired on an as-needed part-time of less than twenty (20) hours, intermittent or seasonal basis shall not receive the additional floating days off. Floating days off may not be carried forward from one fiscal year to the next, except as provided in paragraph 124 below. No compensation of any kind shall be earned or granted for floating days off not taken.
122. Effective July 1, 2010 for Fiscal Year 2010-11, in recognition of the value of wage concessions during the year, “new plan” employees(i.e., employees who became members in SFERS on or after November 2, 1976) shall receive a one-time addition of twelve (12) floating holidays for one year, which shall be administered in the same manner as the floating holidays in paragraph 121 above. However, these floating holidays will be awarded on a quarterly basis (i.e. three floating holidays will be allotted in first full pay period beginning on July 1st, October 2nd, January 8th, and April 16th of the fiscal year). The parties agree that employees may be required to take no more than five of the floating holidays for the four working days between December 25, 2010 and January 1, 2011, and one day for the day prior to Thanksgiving 2010, if and when the departments have implemented Minimum Staffing Days.
123. Effective July 1, 2011 for Fiscal Year 2011-12, in recognition of the value of wage concessions during that year, “new plan” employees (i.e., employees who became members in SFERS on or after November 2, 1976) shall receive a one-time addition of twelve (12) floating holidays for one year, which shall be administered in the same manner as the floating holidays in paragraph 121 above. These floating holidays will be on a quarterly basis (i.e. three floating holidays will accrue in first full pay period on July 1st, October 1st, January 7th, and April 14th of the fiscal year). If the number of unpaid furlough days (or equivalent) for the year is reduced by operation of the provisions of Section 89 above, the number of additional floating holidays will be reduced in a corresponding manner. The parties agree that employees may be required to take no more than five of the floating holidays for the four days working days between December 25, 2011 and January 1, 2012, and one day for the day prior to Thanksgiving 2011, if and when the departments have implemented Minimum Staffing Days.
124. Notwithstanding the paragraphs above, any unused floating holidays accrued from July 1, 2010 through June 30, 2012 may be carried over to be used in Fiscal Years 2012-13, 2013-14 and 2014-15.
125. During Fiscal Years 2010-11, 2011-12, 2012-13, 2013-14 and 2014-15, floating holidays must be used before vacation days or hours are taken; provided however that this limitation (i.e., use of floating holidays before vacation) will not apply in cases in which use of the floating holiday will cause a loss of vacation due to the accrual maximums. Except for days taken during Minimum Staffing Days, floating holidays are to be scheduled per mutual agreement, based on operational needs of the department.

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126. The City will evaluate City departments or divisions for which Minimum Staffing Days are appropriate. Minimum Staffing Days may take the form of complete closures or minimum staffing. On or before August 1, 2010 and August 1, 2011, the City will notify MAA which divisions have been slated for Minimum Staffing Days and/or reduced staffing. If MAA has any concerns regarding the list, it must make its concerns known to DHR within fourteen (14) calendar days. DHR agrees to discuss any concerns raised by MAA via this process. The Minimum Staffing Days currently identified and agreed to by the City and MAA are the non-holiday work days between Christmas and New Years and the Wednesday prior to the Thanksgiving weekend – five (5) days.
127. Represented attorneys who have established initial eligibility for floating days off and subsequently separate from City employment may, at the sole discretion of the appointing authority, be granted those floating day(s) off to which the separating represented attorney was eligible and had not yet taken off.
128. In addition, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States shall be a holiday.
129. For those represented attorneys assigned to a workweek of Monday through Friday, and in the event a legal holiday falls on a Saturday, the preceding Friday shall be observed as a holiday; provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each department head shall make provision for the staffing of public offices under his/her jurisdiction on the preceding Friday so that said public offices may serve the public as provided in Section 16.4 of the Administrative Code. Those represented attorneys who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be allowed a day off in lieu thereof as scheduled by mutual agreement with the Appointing Officer in the current fiscal year. The City shall provide one week's advance notice to represented attorneys scheduled to work on the observed holiday, except in cases of unforeseen operational needs.

Part-time Represented Attorneys Eligible for Holidays

130. Part-time represented attorneys who regularly work a minimum of twenty (20) hours in a biweekly pay period shall be entitled to holiday pay on a proportionate basis.
131. Regular full-time represented attorneys are entitled to eight-eighths (8/80) or one-tenth (1/10) time off when a holiday falls in a biweekly pay period. Therefore, part-time represented attorneys, as defined in the immediately preceding paragraph, shall receive a holiday based upon the ration of one-tenth (1/10) of the total hours regular worked in a biweekly pay period. Holiday time off shall be determined by calculating one-tenth (1/10) of the hours worked by the part-time represented attorney in the biweekly pay period immediately preceding the pay period in which the holiday falls. The computation of holiday time off shall be rounded to the nearest hour.
132. The proportionate amount of holiday time shall be taken in the same fiscal year in which the holiday falls. Holiday time off shall be taken at a time mutually agreeable to the represented attorney and the appropriate employer representative.

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Holidays for Represented Attorneys on Work Schedules Other Than Monday Through Friday

133. Represented attorneys assigned to seven (7) day operation departments or represented attorneys working a five (5) day workweek other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regular scheduled days off.
134. Represented attorneys required to work on a holiday which falls on a Saturday or Sunday shall receive holiday compensation for work that day. Holiday compensation shall not then be additionally paid for work on the Friday preceding a Saturday holiday, nor on the Monday following a Sunday holiday. This section shall apply to eligible part-time represented attorneys on a pro-rata basis.
135. If the provisions of this section deprive a represented attorney of the same number of holidays that a represented attorney receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the represented attorney and the appropriate employer representative. Such days off must be taken within the fiscal year. In no event shall the provisions of this section result in such represented attorney receiving more or less holidays than a represented attorney on a Monday through Friday work schedule.

In-Lieu Holidays

136. Requests for in-lieu holidays shall be made to the appropriate management representative within thirty (30) days after the holiday is earned and must be taken within the fiscal year.
137. In-lieu days will be assigned by the Appointing Officer or designee if not scheduled in accordance with the procedures described herein.
138. An in-lieu holiday can be carried over into the next fiscal year only with the written approval of the Appointing Officer.

III.G. SICK LEAVE

139. Sick leave shall be administered in accordance with Civil Service Commission Rule 120, except as amended in this agreement. The definitional portions of CSC Rule 120 within the exclusive jurisdiction of the Civil Service Commission are not subject to grievance or arbitration under this MOU.
140. Verification of sick leave may be required on an individual basis only upon evaluation of the individual attendance record of the represented attorney. No verification shall be required unless the Appointing Officer has previously notified the represented attorney that verification would be required.
141. During the first six months of employment, all new full-time represented attorneys shall be advanced forty (40) hours of paid sick leave. Any paid sick leave used by such a represented attorney during that period shall be deducted from sick leave accrued by that represented attorney. If the represented attorney's employment with the City is terminated during his or her first six months of employment prior to the represented attorney's accrual of sick leave sufficient to replace the sick leave used by that represented attorney from his or her bank, the

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difference in sick leave hours used but not yet accrued shall be deducted from the represented attorney's final compensation check.

142. Payment of Vested Sick Leave Accrual. For a represented attorney who is otherwise entitled to vested sick leave, payment of such a represented attorney's vested but unused sick leave shall be provided to the represented attorney at the same time as the represented attorney's final pay check. This section shall not create a right to accrue or receive vested sick leave where a represented attorney is not otherwise entitled to payment of vested sick leave under applicable rules and laws.

III.H. AUTHORIZATION OF TRANSFER OF SICK LEAVE AND/OR VACATION CREDITS

143. Represented attorneys of the City and County of San Francisco may individually transfer their vested vacation allowance credits and sick leave credits to other represented attorneys of the City and County of San Francisco who have been determined to be catastrophically ill by their Department Head, in accord with the definition of catastrophic illness to be provided by the Health Commission, and who have exhausted their vacation allowance, sick leave and compensatory time off, provided that such transfer may be made only in compliance with the terms and conditions adopted by ordinance of the Board of Supervisors.

III.I. ADMINISTRATIVE LEAVE

144. Attorneys are generally required to work in excess of eighty (80) hours per pay period because of the nature of attorneys' work, including litigation deadlines, client needs and ethical and professional obligations. In light of this work requirement, each full-time bargaining unit member shall receive five (5) days administrative leave on an annual basis. The Appointing Officer may deny such leave in cases of a represented attorney who is not generally working in excess of eighty (80) hours during a pay period. Except where administrative leave has been denied, up to five (5) days of administrative leave may be carried over to the succeeding year by a represented attorney.

III.J. FORMS OF LEAVE OTHER THAN SICK LEAVE

145. Leaves of absence other than for sick leave will be administered in accordance with Civil Service Rule 120. The definitional portions of CSC Rule 120 within the exclusive jurisdiction of the Civil Service Commission are not subject to grievance or arbitration under this MOU.
146. In recognition of the stressful nature of the work of the members of this unit, a sabbatical program shall be established for the purpose of maintaining the physical and mental health of those individuals who have done this work for a substantial period of time. Bargaining unit employees may request unpaid sabbatical leave after seven years of employment and every three years thereafter. Approval of a request for sabbatical leave shall be in the discretion of the Appointing Officer. Such leave shall be designated as personal leave.

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III.K. VACATION

147. Definitions. "Continuous service" for vacation purposes means paid service pursuant to a regular work schedule which is not interrupted by a breach in paid service.
148. Award and Accrual of Vacation. A represented attorney does not accrue vacation allowance in the first year of continuous service, however, at the end of one (1) year of continuous service, a represented attorney shall be awarded a vacation allowance computed at the rate of .0385 of an hour for each hour of paid service in the preceding year.
149. A represented attorney accrues a vacation allowance during the second through fifth year of continuous service at the rate of .0385 of an hour for each hour of paid service, however, at the end of five (5) years of continuous service, a represented attorney shall be awarded a one-time vacation allowance computed at the rate of .01924 of an hour for each hour of paid service in the preceding year.
150. A represented attorney accrues a vacation allowance during the sixth through fifteenth years of continuous service at the rate of .05774 of an hour for each hour of paid service, however, at the end of fifteen (15) years of continuous service, a represented attorney shall be awarded a one-time vacation allowance computed at the rate of .01924 of an hour for each hour of paid service in the preceding year.
151. A represented attorney with fifteen years or more of continuous service accrues a vacation allowance at the rate of .07698 of an hour for each hour of paid service.
152. The maximum number of vacation hours a represented attorney may accrue is as follows:

<u>Years of Continuous Service</u>	<u>Maximum Accrual</u>
1 through 5 years	320 hours
more than 5 through 15 years	360 hours
more than 15 years	400 hours

153. Holidays During Vacation. If a holiday occurs during a represented attorney's vacation and the represented attorney would have been entitled to said day as a regular day off, such holiday shall not be considered a day of vacation chargeable to the represented attorney's vacation allowance.
154. Payment of Vacation Accrual. Payment of a represented attorney's accrued but unused vacation hours to a represented attorney separating from City service shall be provided to the represented attorney at the same time as the represented attorney's final pay check.

III.L. HEALTH CARE BENEFITS

155. The level of the City's contribution to health benefits will be set annually in accordance with the requirements of Charter Sections A8.423 and A8.428.
156. Dental. The City shall continue to provide the current level of dental coverage for each member and family dependents through the term of this agreement.

ARTICLE III – PAY, HOURS AND BENEFITS

157. Dependent Health Benefits. The City shall contribute up to 75% of the dependent rate charged by the City to employees for Kaiser coverage at the dependent plus two or more level. For the term of the agreement, the cost of this coverage will be paid for by covered employees waiving Professional Services Reimbursement allowance as described in paragraph 186, as well as an additional contribution for Fiscal Years 2010-2011 and 2011-2012 by all “new plan” employees as described in paragraph 89 of fourteen hundredths of a percent (0.14%) through uniform payroll smoothing.

Fiscal Year 2010-11

158. For “medically single”/Employee Only employees (i.e., benefited employees not receiving the contribution paid by the City for dependent health care benefits), the City shall contribute all of the premium for the employee’s own health care benefit coverage.

Fiscal Year 2011-12

159. The City and the Public Employees Committee of the San Francisco Labor Council (PEC) will establish a labor-management committee to begin meeting no later than October 1, 2010, concluding before December 31, 2010, to identify changes to MOU-negotiated premium payments that would be anticipated to yield approximately \$3 million in savings annually in the City’s employee health care cost, beginning Fiscal Year 2011-12. Should a mutual agreement be reached through the labor-management committee, MAA shall adopt such agreement. If a mutual agreement is not reached, MAA agrees to adopt the provisions described in paragraph 160 below.
160. Should the committee not reach mutual agreement on another option, the following goes into effect: for Fiscal Year 2011-12 and thereafter, for all employees enrolled in the City Plan in the medically single/Employee-Only category, the City’s contribution will be capped at an amount equivalent to the cost of the second-highest cost plan for medically single/Employee-Only enrollees. Employees who elect to enroll in the City Plan in this category must pay the difference between the capped amount of the City Plan described above and the cost of City Plan coverage in the medically single/Employee-Only category.
161. The City will cease payment of any and all contributions for represented attorneys health and dental benefits for those represented attorneys who remain on unpaid status in excess of twelve (12) continuous weeks, with the exception of approved sick leave (paid or unpaid), workers’ compensation, family care leave, Family Medical Leave Act leave, and/or California Family Rights Act leave.

III.M. RETIREMENT RESTORATION

162. For employees who retire prior to July 1, 2013 and whose final compensation for retirement purposes is impacted by the wage reductions described in Section III.A., the City will make available restoration pay in a lump sum equivalent to the pensionable value of the wage reduction described in Section III.A. of this Agreement for the period used by the applicable

ARTICLE III – PAY, HOURS AND BENEFITS

retirement system to determine the employee's final compensation for retirement purposes (Final Compensation Period). For employees who retire prior to July 1, 2012, post-retirement payouts of vacation and vested sick leave will be made at the employee's normal (pre-reduction) hourly rate, although nothing herein requires the San Francisco Employees Retirement System, or any applicable retirement system, to include payouts of vacation or vested sick leave in retirement calculations.

163. Should employees who retire prior to July 1, 2013 wish to receive retirement restoration, they must, at least thirty (30) days prior to the last date of employment, agree to re-designate any floating holidays they have taken during the Final Compensation Period in excess of five floating holidays to vacation days upon retirement. This re-designation shall not apply to floating holidays carried over from a prior fiscal year. Once they have taken five floating holidays during the Final Compensation Period, such employees will not be eligible to take any floating holidays during the last 30 days of their employment except for floating holidays accrued before July 1st of the fiscal year in question.

III.N. RETIREMENT BOARD

164. 1. The Retirement Board shall process and pay retirement claims, except in cases beyond the Board's control, in the following manner:
165. 2. Initial Month Retirement. Initial payment shall begin allowance within sixty (60) days after the first of the month following the date of requirement provided that the appropriate forms of the Retirement System have been submitted.
166. 3. Withdrawal of Contributions. A refund of contributions will be paid within six (6) weeks following submission of the appropriate forms of the Retirement System.
167. 4. Death Benefit. A death benefit will be paid within thirty (30) days from the filing of the appropriate forms of the Retirement System.

III.O. RETIREMENT PICK-UP

168. Effective July 1, 2006, represented employees agree to pay their own retirement contribution in an amount equal to seven and one-half percent (7.5%) of covered gross salary. For employees who became members of SFERS prior to November 2, 1976 (Charter Section A8.509 Miscellaneous Plan), the City shall pick up the remaining one-half percent (0.5%) of the total eight percent (8%) employee retirement contribution to SFERS.
169. A represented attorney's wage rate shall not be reduced by the aforesaid contributions when computing vacation, holiday, retirement and any other benefit which is a function, or percentage, of salary.
170. Any City pick-up of an employee's retirement contribution shall not be considered as part of a represented attorney's compensation for the purpose of computing straight time earnings, compensation for overtime worked, premium pay, or retirement benefits, nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.

III.P. RETIREMENT RE-OPENER

171. The City or the MAA may cause a reopener on contract negotiations regarding retirement benefits as concerned with the issues of AB 2023 (2002).
172. In the event one party requests a reopener on retirement benefits, the other party may cause a reopener on other economic items, and issues reasonably related to implementing retirement benefits under AB 2023.
173. The reopener discussions shall be subject to meet and confer requirements under the Meyers-Milias-Brown Act (MMBA), California Government Code section 3500, et seq., and shall not be subject to impasse resolution procedures under Charter section A8.409, et seq.

III.Q. STATE DISABILITY INSURANCE (SDI)

174. Upon certification by MAA to the Employee Relations Division that one or more representation units covered by this agreement desires to be enrolled in the State Disability Insurance Program, the Human Resources Director shall take any and all necessary action to enroll such representation units and all represented attorneys therein. Job codes accreted to existing bargaining units represented by MAA will not be enrolled in SDI unless MAA notifies ERD in writing. The cost of SDI will be paid by the represented attorney through payroll deduction at a rate established by the State of California Employment Development Department.
175. At the represented attorney's option, the represented attorney's accrued vacation and holiday will be integrated with SDI payments in the same manner as sick leave.

III.R. LONG TERM DISABILITY INSURANCE

176. The City, at its own cost, shall provide to represented attorneys a Long Term Disability (LTD) benefit that provides, after a ninety (90) day elimination period, sixty-six and two thirds percent salary (66 2/3%) (subject to integration) up to age sixty-five (65). The parties acknowledge that the City's ordinances – which establish and administer the City's Catastrophic Illness Program ("CIP") – specify and control the criteria under which persons can participate in the CIP.

III.S. LIFE INSURANCE

177. The City shall either provide life insurance in the amount of \$150,000 to each member or shall make purchase of such life insurance available to each member through the City's 125 Cafeteria Plan.

III.T. DEPENDENT CARE FLEXIBLE SPENDING PROGRAM (DCAP)

178. The City shall provide a DCAP program to MAA members. MAA and the City shall negotiate any beneficial changes to the program or any changes that may be necessary due to tax rule changes.

III.U. PROFESSIONAL SERVICES REIMBURSEMENT

179. In light of the unique nature of work performed by the professionals represented by the MAA, each attorney in paid status shall receive quarterly payments as allowance for professional services expenses, in the amount of \$312.50 per quarter, less all applicable federal, state and local withholding. These payments will be made at the end of each quarter.
180. In order to be eligible for the full amount, the represented attorney must be on the payroll during the quarter in which the payment is made.
181. This allowance is intended to cover all professional, job-related, expenditures, including but not limited to:
 - a. State bar dues, including any professional section thereof;
 - b. Professional coursework where MCLE credits are obtained;
 - c. Professional codes, legal compilations and treatises;
 - d. Cellular phone use, but only for actual usage in the course of work;
 - e. Calendars and other professional items used in the course of work.
182. This provision satisfies all obligations relating to represented attorneys' professional business expenses, including without limitation, State Bar Dues, course tuition, etc. Departments may reimburse attorneys for additional professional expenses at the sole discretion of the appointing authority.
183. The City may require attorneys to show proof of State Bar licensing and MCLE requirements.
184. Attorneys who work a part time schedule shall only be entitled to funds on a pro-rated basis. For example, a represented attorney working a half time schedule shall only be entitled to \$156.25 per quarter under this provision.
185. This allowance is considered covered gross pay and accordingly is an element of "compensation" counted toward an attorney's retirement under SFERS.
186. For the duration of this Agreement, with the exception of the minimum State bar dues, all funds to Professional Services Reimbursement allowances will be dedicated to fund the change in health coverage described in the Health Section in paragraph 157 of this Agreement. The City will continue to pay represented attorneys' Bar dues on an expense reimbursement basis. This provision will expire close of business June 30, 2012.

ARTICLE IV - WORKING CONDITIONS

IV.A. HEALTH AND SAFETY

187. The City shall provide, at its cost, Hepatitis B vaccine immunization and tuberculosis screening for represented attorneys whose health plans do not provide the benefit.

IV.B. RETURN TO WORK

188. The City will make a good faith effort to return represented attorneys who have sustained an injury or illness to temporary modified duty within the represented attorney's medical restrictions. Duties of the modified assignment may differ from the represented attorney's regular job duties and/or job duties regularly assigned to represented attorneys in the injured represented attorney's job code. Decisions regarding temporary modified duty shall be subject to approval of the Appointing Officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. A represented attorney assigned to modified duty assignment shall receive his or her regular rate of pay. The parties acknowledge that Section II.E. shall govern requests under this MOU for reasonable accommodation under the Americans with Disabilities Act.

IV.C. WORKERS' COMPENSATION

189. A represented attorney who is absent because of disability and who is receiving Temporary Disability, Vocational Rehabilitation Maintenance Allowance, or State Disability Insurance, may request that the amount of disability indemnity payment be supplemented with salary to be charged against the represented attorney's accumulated unused sick leave with pay credit balance at the time of disability, administrative time off, or vacation, so as to equal the normal salary the represented attorney would have earned for the regular work schedule. Such use of administrative time requires the represented attorney's Appointing Officer's approval.
190. A represented attorney who wishes to supplement with administrative time, vacation or sick pay credits must submit a written request to the Appointing Officer or designee within fourteen (14) calendar days following the election of disability.
191. Represented attorney supplementation of workers' compensation payment to equal the full salary the represented attorney would have earned for the regular work schedule in effect at the commencement of the workers' compensation leave shall be drawn only from the represented attorney's paid leave credits including vacation, sick leave balance, or other paid leave as available. A represented attorney returning from disability leave will accrue sick leave at the regular rate and not an accelerated rate.
192. Salary may be paid on regular time-rolls and charged against the represented attorney's sick leave with pay during any period prior to the determination of eligibility for disability indemnity payment without requiring a signed option by the represented attorney.
193. Sick leave with pay, vacation, or administrative time credits shall be used to supplement disability indemnity pay at the minimum rate of one (1) hour units.

ARTICLE IV – WORKING CONDITIONS

194. The parties agree, therefore, that this provision clarifies and supersedes conflicting provisions of the Civil Service Commission Rules which are bargainable and arbitrable pursuant to Charter §A8.409 et seq.

ARTICLE V - SCOPE

V.A. MEET AND CONFER RESPONSIBILITY DURING THE TERM OF THE MOU; FINALITY OF AGREEMENT

195. A. Except in cases of emergency as defined by Meyers-Milias-Brown Act or as otherwise provided in this MOU, the City shall give reasonable written notice to MAA of proposed changes directly relating to matters within the scope of representation as specified in Government Code Section 3504.5. MAA shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
196. In cases of emergency as defined by MMBA, when the City determines that a proposed change as described herein must be adopted immediately without prior notice or meeting with MAA, the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
197. Said notice shall state the proposed change, the date, if known, of the intended implementation of such proposed change, an explanation of the reason(s) for said change, as well as the anticipated effect on represented attorneys that would result.
198. B. If MAA does not respond within ten (10) working days from the date of receipt if hand-delivered or faxed, or in the event of mailing within fifteen (15) working days from the date of the mailing or written notification of a proposed change as described in paragraph A hereof, MAA shall be deemed to have waived its opportunity to meet and confer on the proposed change(s).
199. C. If MAA timely requests the opportunity to meet and confer as provided herein, the City agrees to meet and confer with MAA over such proposed change(s) within ten (10) days of receipt of such time request, unless a longer period of time is mutually agreed upon, in order to freely exchange information, opinions and proposals and to endeavor to reach agreement on the proposed change(s).
200. D. This memorandum sets forth the full and entire understanding of the parties regarding the matters set forth herein. This memorandum may be modified, but only in writing, upon the mutual consent of the parties and ratification by the Board of Supervisors.
201. E. In the event the parties do not reach agreement upon any proposed change(s) as directed in paragraph A of this provision, MAA may grieve to the extent allowed by the Charter and/or the grievance procedure. The parties may agree to expedited arbitration. Disputes about whether a change made by the City violates the contract are grievable.
202. F. The Employee Relations Ordinance, Section 16.200 of the Administrative Code, shall not apply to the application of this Section.
203. G. Failure by either party to engage in meeting and conferring in accordance with this provision will result in forfeiture of such party's rights under this section.
204. H. At least six months prior to the expiration of this MOU, the parties agree to meet and accomplish the following:

ARTICLE V – SCOPE

- (1) Establish ground rules for negotiations; and
- (2) Establish a reasonable schedule to permit good faith bargaining in advance of the Charter deadlines.

V.B. SAVINGS CLAUSE

205. Should any part hereof or any provisions herein be declared invalid by a court of competent jurisdiction, such invalidation of such part or portion of this agreement shall not invalidate the remaining portions hereof and the remaining portions hereof shall remain in full force and effect for the duration of the agreement.

V.C. DURATION OF AGREEMENT

206. This Agreement shall be in effect from July 1, 2010 and shall remain in full force and effect through June 30, 2012.

IN WITNESS WHEREOF, the parties have executed this Agreement this ____ day of _____, 2010.

FOR THE CITY AND COUNTY:

FOR THE UNION:

Micki Callahan
Human Resources Director

Sean Connolly
Municipal Attorneys Association

Martin Gran
Director, Employee Relations Division

APPROVED AS TO FORM:
DENNIS J. HERRERA, CITY ATTORNEY

By: Marisa Moret
Managing Attorney