

RESOLUTION NO. 23-11-21-04

A RESOLUTION OF THE CITY COUNCIL OF THE OF
DANA POINT, CALIFORNIA, ADOPTING THE
MEMORANDUM OF UNDERSTANDING BETWEEN THE
CITY OF DANA POINT AND THE DANA POINT
EMPLOYEES ASSOCIATION

WHEREAS, the current Memorandum of Understanding (MOU) between the City of Dana Point and the Dana Point Employees Association expires on December 31, 2023; and,

WHEREAS, the City of Dana Point and the Dana Point Employees Association (DPEA) have met and conferred in good faith and have reached agreement on terms of a successor MOU; and,

WHEREAS, the City Council wishes to adopt the successor MOU with the Dana Point Employees Association and authorize the City Manager to sign the MOU.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF DANA POINT DOES RESOLVE AS FOLLOWS:

SECTION 1: Approves the Memorandum of Understanding included as [Exhibit A](#) of this Resolution between the City of Dana Point and the Dana Point Employees Association, for the contract period of January 1, 2024 through December 31, 2025, and authorizes the City Manager to sign the MOU.

PASSED, APPROVED, AND ADOPTED this 21st day of November 2023.



MIKE FROST, MAYOR

ATTEST:



SHAYNA SHARKE, CITY CLERK



**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF DANA POINT AND
THE DANA POINT EMPLOYEES' ASSOCIATION**

January 1, 2024 - December 31, 2025

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**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF DANA POINT
AND
THE DANA POINT CITY EMPLOYEES' ASSOCIATION
JANUARY 1, 2024**

SECTION 1. PREAMBLE

This Agreement is entered into by the parties on behalf of the City of Dana Point, hereinafter known as "the City," and the Dana Point Employees Association, hereinafter known as "the Association," in accordance with the provisions of Section 3500-3510 of the California Government Code, otherwise known as the Meyers-Milias-Brown Act, and the Employer-Employee Relations Resolution of the City of Dana Point, for the period of time commencing January 1, 2024, through December 31, 2025. Representatives of the City and Dana Point City Employee Association (DPEA) have met and conferred in good faith regarding wages, hours and other terms and conditions of employment, in order to provide harmonious relations, cooperation and understanding between the City and its employees. All provisions of this agreement are effective upon adoption by the City Council unless otherwise specified.

SECTION 2. RECOGNITION

The City recognizes the Association as the "recognized employee organization" for all employees within the unit of representation, consisting of regular full-time and regular part-time employees in the following classifications:

Account Clerk	Parks Supervisor
Accounting Technician	Permit Supervisor
Administrative Aide	Permit Technician
Administrative Assistant	Public Works Intern
Administrative Intern	Records Assistant
Assistant Administrative Analyst	Recreation Coordinator
Assistant Planner	Recreation Leader I/II/III
Associate Planner	Recreation Specialist
Building Inspector	Recreation Supervisor I/II
Building/Facilities Maintenance Worker I/II/III	Senior Account Clerk
City Clerk Specialist	Senior Administrative Assistant
Code Enforcement Officer	Senior Building Inspector
Code Enforcement Supervisor	Senior Construction Inspector
Code Enforcement Technician	Senior Permit Technician
Construction Inspector	Staff Aide
Engineering Technician I/II/III	
Human Resources Technician	
Parks Coordinator	
Parks Maintenance Worker III	

Part-time employees appointed to assignments which require a minimum of sixteen (16) hours but less than forty (40) hours per work period on a permanent year-round basis shall be called “Regular” part-time employees for the purposes of this agreement.

The following represented positions are designated as Confidential:

- Account Clerk
- Accounting Technician
- Assistant Administrative Analyst
- City Clerk Specialist
- Human Resources Technician
- Records Assistant
- Senior Account Clerk
- Senior Administrative Assistant (all departments)

Confidential employees are not permitted to represent other employees of the agency in labor matters - negotiations or discipline hearings, for example – in order to avoid an obvious conflict of interest, the appearance of bad faith and the willful or inadvertent release of information that could seriously impair the labor-management relationships within the agency. The designation as Confidential does not otherwise limit the right of employees to be members of and hold office in an employee organization.

SECTION 3. PURPOSE

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

SECTION 4. SCOPE

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

SECTION 5. CITY RIGHTS

Nothing herein shall be construed to restrict any legal or inherently exclusive City rights with respect to matters of general legislative or managerial policy, unless otherwise stated in this Agreement, which include among others: the right to determine the mission of its constituent departments, commissions, boards; set standards and levels of service and means for providing them; determine the procedures and standards of selection for employment and promotions; direct its employees and determine staffing patterns; establish and enforce reasonable dress and grooming standards; determine the number and kinds of personnel required; maintain the efficiency of governmental

operations; determine the methods, means and numbers of kinds of personnel by which government operations are to be conducted; determine the content and scope of job classifications; classify and reclassify positions; determine methods of financing; determine style and/or types of City-issued wearing apparel, equipment or technology to be used; determine and/or change the facilities, methods, technology, means, organizational structure and size and composition of the work force and allocate and assign work by which the City operations are to be conducted; determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions including, but not limited to, the right to contract for or subcontract any work or operations of the City; to assign work to and schedule employees in accordance with requirements as determined by the City and to establish and change work schedules, hours and assignments; establish and modify productivity and performance programs and standards; discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline employees; establish employee performance standards including, but not limited to, quality and quantity standards, and to require compliance therewith; take all necessary action to carry out its mission in emergencies; exercise complete control and discretion over its organization, including, but not limited to, personnel, and the technology of performing its work; and contract out work.

SECTION 6. EMPLOYEE RIGHTS

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

SECTION 7. ASSOCIATION RIGHTS

- A. The Association shall notify the City in writing of the names of its Officers, Departmental Representatives, and other representatives each time an election is held or new appointments are made.
- B. The City shall provide the Association on a monthly basis, if changes occur, with the following:
 - 1. A list of employees in the classifications set forth under Section 2. Recognition;
 - 2. The names of new hires, promotions, and terminations in the classifications set forth in Section 2. Recognition;
 - 3. City of Dana Point job postings and copies of current salary schedules;

On a quarterly basis, the City will provide the Association with names and home addresses of all Association represented employees. This information is for the confidential use of the Association, and the City shall not be responsible and will be held harmless by the Association for inappropriate release of this information by the Association. Upon written request, the Association shall receive available information relating to contract administration and fringe benefits including pension and insurance plans.

- C. The City shall make available reasonable bulletin board space in designated employee areas for the use of the Association to post notices relating to matters of interest to the Association and to the employees. Areas will include the employee lunchroom and the bulletin board in the Community Development Department break room. All materials must be dated and identify the Association. No materials may be posted that are critical of the City, City officials or employees, City policies, or other employee organizations.
- D. Designated Association representatives shall be entitled to leave their work during working hours, without loss of pay, for reasonable periods of time with prior approval of their supervisor, for purposes of participation in the meet-and-confer process.
- E. Designated Association representatives shall be entitled to leave their work during working hours, without loss of pay, for reasonable periods of time with prior approval of their supervisor for purposes of reviewing and processing grievances.
- F. Association may have access to Association members for the purpose of discussing Association business, conducting meetings, participating in the grievance process and/or the meet-and-confer process, providing that supervisors are notified prior to a meeting being scheduled and that meetings held do not interfere with work.
- G. The City shall allocate the use of the Council Chamber and/or an available Conference Room during working and non-working hours at no cost to the Association for the sole purpose of conducting meetings or other Association business.
- H. In accordance with AB 119, the City shall notify the Association when a new employee is hired into the bargaining unit and will provide the Association with reasonably advanced notification of when a new employee orientation is scheduled. The Association and/or its representative will be provided with the opportunity to have access to employees in Association represented positions during the new employee orientation.

SECTION 8. PAYROLL DEDUCTIONS

It is mutually understood and agreed that the City will, during the term of this Agreement, deduct bi-weekly membership dues upon the City's receipt of written notification from the Association. The Association will notify the City when a new employee has signed a membership card authorizing bi-weekly membership dues deductions and will notify the City when the deductions shall begin. Deductions shall, however, be effective on the first day of a regularly scheduled City payroll period. Such deductions shall be authorized in writing on a form approved and provided by the Association. Membership cards shall be retained by the Association, and the City shall rely on a certification from the Association for the authorization, modification, or cancellation of any/all dues deductions. The City shall remit such funds to the Association within thirty (30) days following their deduction.

No dues deduction shall be made during any pay period when an employee's earnings are insufficient, after all other deductions are made, to cover the full amount of the dues. When an employee is in a non-pay status for an entire pay period, no dues deduction will be made to cover the pay period from future earnings. In the case of an employee in a non-pay status only during part of a pay period, whose earnings, after deductions, are not sufficient to cover the full amount of the

dues, no dues deductions shall be made in the pay period or from future earnings to cover the pay period.

Unless prohibited by law, any employee in the Association who has authorized Association dues deductions on January 1, 2024, (the effective date of this Agreement) or at any time subsequent to the effective date of this Agreement, shall continue to have such dues deductions made by the City during the term of this Agreement; provided however, that any employee in the Association may terminate such dues during the period of December 1 through December 10 of each year of the Agreement by notifying the Association in writing of his/her election to terminate dues deduction. Such notification shall be delivered in person using the membership termination form containing the following information: employee name, job classification, department name, and name of Association from which dues deductions are to be canceled. The Association will provide the City's Human Resources Office with the appropriate documentation to process dues cancelations within ten (10) business days after the close of the withdrawal period, with an effective date that coincides with the first day of the City's next regularly scheduled pay period.

In accordance with SB 866, the Association shall indemnify, defend, and hold the City, its employees, officials, and agents, harmless against any liability arising from any claims, demands, or other action relating to the City's compliance with the terms of this Section of the Memorandum of Understanding, including claims related to the Association's use of monies collected under this Section.

SECTION 9. QUARTERLY CITY/ASSOCIATION MEETINGS

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

SECTION 10. RULES AND REGULATIONS

It is understood and agreed that there exists within the City certain personnel rules and regulations set forth in the Municipal Code, the Personnel Rules and Regulations of the City, the Administrative Policy Manual, departmental rules and regulations, and other written policies of the City which shall remain in full force and effect during the term of this agreement to the extent that they are not inconsistent with the terms of the MOU.

If a provision set forth in the Municipal Code, the Personnel Rules and Regulations of the City, the Administrative Policy Manual, departmental rules and regulations, and other written policies of the City is in conflict with a provision of the applicable collective bargaining agreement negotiated between the City and the Dana Point Employees Association, to the extent of such conflict, the City will consult with the Association and agree upon which policy shall take precedence.

It is understood that within ten (10) working days of any amendment, revision, or change to said personnel rules and regulations set forth in the Municipal Code, Personnel Rules and Regulations of the City, the Administrative Policy Manual, the Employer-Employee Relations Resolution, and other written policies of the City related to employment matters, that a written update shall be provided to the Association. Any change involving matters within the scope of representation are subject to Section 33. Maintenance of Benefits.

SECTION 11. SALARY

Each approved position in the unit of representation will have an approved salary range assigned to it.

1. The minimum rate of the salary range will represent the normal starting pay rate for an employee who is just beginning to perform the duties of the position.
2. Each employee will be assigned to an approved classification title and a specific pay rate within the approved salary range for the classification.
3. The Association shall be notified of all salary ranges for new or returning employees.

A. Salary Adjustments:

1. Employees shall receive compensation at the bi-weekly or hourly rate for the range or flat rate assigned to the class in which they are employed.
2. Notwithstanding anything in this division to the contrary, when in the judgment of the City it becomes necessary or desirable to utilize the services of employees in capacities other than those for which they are regularly employed, the City may authorize and, if appropriate, fix an additional rate of compensation for such employees, as provided in City of Dana Point Personnel Rules and Regulations, "Move Up" policy. A represented employee who is moved to an out-of-class assignment shall receive the pay of the lowest point of the higher class that assures a 5% pay increase commencing with the 81st hour of a contiguous assignment or the 121st hour of a cumulative assignment.
3. During the term of this Agreement, if a regular, part-time Recreation Leader is assigned to perform work outside of the Recreation Division, that part-time Recreation Leader shall receive an additional \$1.00 per hour to their regular base pay rate for any hours worked outside of the Recreation Division.
4. During the term of this Agreement, in the event that any other group of employees in or outside of this unit of representation receives a general cost of living salary increase, health insurance premium contribution increase, or increase in retirement contributions greater than those received by employees represented by the Association, those portions of this Agreement shall be reopened for meet-and-confer purposes.

5. During the term of this Agreement all salary ranges for represented positions shall be reviewed using public sector data and shall be based upon the California Public Agencies Compensation Survey (CalPACS), data as of August 31 of each calendar year and salary range adjustments for such benchmark classes effective August 31 of each calendar year not reported in the Survey. Cities considered in the review shall be the same agencies that are used in the City's annual City Manager's compensation survey as of July 1, 2013. Beginning with the August 2022 annual salary range survey, new salary range maximums for represented positions shall be set at 7.0% above the median maximum (with the median maximum adjustment no more than 5.0%) of all identified survey cities reporting comparable positions.

The Human Resources Division, upon approval of the City Manager and Assistant City Manager, shall prepare and provide the calculations according to this formula as of August 31 of each calendar year to the Association. The new salary ranges shall be adopted by the City Council with an effective date no later than October 1 of each calendar year.

Salary range minimums shall be set by dividing the surveyed median maximum (not to exceed a 5.0% adjustment) by 132.6%.

6. On the pay periods outlined below, all unit employees will receive the described one-time, lump sum payments. The parties agree that the lump sum payment will be subject to all applicable federal and state tax withholdings. In accordance with the California Public Employees' Retirement System regulations and definition of Special Compensation (2 CCR §571), the lump sum payment will not be considered compensation reportable to CalPERS. In addition, the lump sum payment will not be included in the calculation of regular rate for overtime, benefits, or for any other purpose. Employees hired as new employees between the dates of November 1 and December 31 each year, shall receive a pro-rata portion of the payments.
 - On the pay period that includes January 1, 2024, all full-time unit employees will receive a one-time, lump sum payment in the amount of two thousand five hundred dollars (\$2,500). Represented regular part-time employees shall receive a one-time lump sum payment of five hundred dollars (\$500).
 - On the pay period that includes January 1, 2025, all full-time unit employees will receive a one-time, lump sum payment in the amount of two thousand five hundred dollars (\$2,500). Represented regular part-time employees shall receive a one-time lump sum payment of five hundred dollars (\$500).
7. For each year of the Agreement, the City will establish a 3.0% merit pool through which eligible employees will be awarded a performance-based merit increase as outlined in Section 24 of this Agreement.
8. The City will conduct a Classification and Compensation study in 2024.

B. Salary on Promotion, Salary on Demotion, and Reclassification:

These policies are detailed in the City of Dana Point Personnel Rules and Regulations, "Wage Administration" policy.

SECTION 12. OVERTIME AND WORK SCHEDULE

The City shall establish a normal work schedule for employees in the unit of representation which meets the requirements of the Fair Labor and Standards Act (FLSA). Each non-exempt employee shall be assigned a designated FLSA workweek for the correct calculation of overtime.

A. Overtime Compensation:

1. Except as stated in the Holidays and Holiday Shut-down sections of the Personnel Rules and Regulations, "Work Schedule" policy, non-exempt employees shall receive overtime pay or compensatory time off at time and one-half (1.5) for all hours worked in excess of 40 hours in their respective seven (7) day work period (see Exhibit A) when such work is approved by the department director, or designee. Employees shall also receive overtime compensation as indicated in D. below for calls and contacts after regular workings hours.
2. Overtime may be converted to compensatory time with supervisor's approval.
3. No employee shall be permitted to work more than sixteen (16) consecutive hours except in an emergency situation.
4. As of the effective date of this Agreement, no hourly classifications shall be exempted from the provisions of the Fair Labor Standards Act.

B. Work Schedules:

Employees will have the option of working a 5/40 or alternatively a 9/80 work schedule with supervisor and/or department head approval. Provisions for the 5/40 and 9/80 schedules are outlined in Exhibit A of the MOU. In the event overtime is required, compensation for said overtime shall be provided according to the City of Dana Point Personnel Rules and Regulations, "Overtime – Non-Exempt Employees" policy.

C. Rest Periods:

Rest periods and lunch breaks shall be provided according to City of Dana Point Personnel Rules and Regulations, "Rest Periods/Lunch Breaks-Non-exempt Employees" policy.

D. After Hours Calls and Contacts:

Any employee who is contacted by the City after their normal working hours and asked to return to the City for an Emergency Call-Out to perform work on behalf of the City shall be compensated at a minimum of 1 hour pay at time and one half (1 ½).

SECTION 13. BENEFITS

Effective January 1, 2024, a monthly cafeteria benefit allowance in the amount of one thousand seven hundred eighteen (\$1,718) dollars per month shall be provided to all full-time employees in the unit of representation.

The January 1, 2025, monthly cafeteria benefit allowance will be increased based upon changes in the average monthly cost of all medical insurance plans offered by the City. The monthly cafeteria benefit allowance amounts shall be increased by \$10.00 for each \$10.00 rise in the average monthly medical insurance cost over the average monthly medical insurance cost since the last cafeteria plan adjustment. The following are mandatory and optional choices that may be made by the employee from the cafeteria benefit package:

A. Cafeteria Benefit Package:

1. Medical Benefit:

This benefit is mandatory for all employees, unless proof of alternative group medical insurance is provided. The City shall provide a medical insurance plan to all full-time employees and their dependents. In accordance with the Affordable Care Act (ACA), eligible City part-time employees that are defined as “full-time” for purposes of the ACA shall also be provided a medical insurance plan through the City. Eligible employees may also enroll their eligible dependents in the City’s medical insurance plan. If a full-time employee hired before January 1, 2019, is enrolled in another group medical plan provided by a party other than the City, he/she may not be required to participate in the City's medical plan and may be eligible to receive the equivalent in cafeteria benefits or cash. If a full-time employee hired after December 31, 2018, is enrolled in another group medical plan provided by another party other than the City, he/she may not be required to participate in the City’s medical plan and may be eligible to receive cafeteria benefits, or cash in lieu of benefits in an amount equivalent to 50% of the total cost of the lowest premium employee-only coverage for medical, dental, and vision plans offered by the City during the plan year that medical enrollment is waived.

In order to opt out, the employee must submit written documentation proving participation in another group medical plan and maintain proof of enrollment for the entire period of time they have opted out. Additionally, the employee must complete the necessary documents required by the California Public Employees Retirement System (CalPERS) Medical program to opt out. When the employee opts out, they will not be able to enroll into the City's medical plan until the next regular open enrollment period or based upon HIPAA guidelines which are available for review in the Personnel Office.

2. Dental Benefit:

This benefit is optional for all employees. The City shall provide the opportunity for dental insurance to all full-time employees and their eligible dependents.

3. Vision Benefit:

This benefit is optional for all employees. The City shall provide the opportunity for vision care insurance to all full-time employees and their eligible dependents.

4. Deferred Compensation Plan:

The City shall offer a voluntary Deferred Compensation Plan in accordance with Section 457(b) of the Internal Revenue Code to employees. Employees may contribute to a traditional 457(b) account on a pre-tax basis or make after-tax Roth contributions.

The City will contribute 1.0% of base salary to the 457 deferred compensation accounts of employees participating in the City's 457 deferred compensation plan. City contributions will be made on a bi-weekly basis to the account in the employee's name, subject to the terms and conditions of Mission Square Retirement, the City's deferred compensation provider or to a successor provider, as deferred compensation. For new plan participants, City contributions will begin the first pay period of the month following the employee's completion and submission of the required 457 plan enrollment forms to the City's Human Resources Office.

Effective the pay period that includes January 1, 2025, the City's contribution to the 457(b) deferred compensation accounts of employees participating in the plan shall increase to 2.0% of base salary.

5. Disability Insurance:

The City shall provide short- and long-term disability insurance coverage for all full-time employees at the City's cost.

6. Basic Group Life and AD&D Insurance:

Full-time employees shall be provided a life and accidental death and dismemberment insurance policy in the amount of \$50,000 providing coverage for the eligible employee only at the City's expense.

7. Flexible Spending and Savings Account:

This benefit is optional for all employees. Section 125 of the Internal Revenue Code allows employees to set aside part of their salary, before it is taxed, and use the pre-tax dollars to pay for out-of-pocket health care premiums, eligible health care expenses not reimbursed under the insurance plan and dependent care.

B. PERS Retirement Plan:

The City shall provide eligible employees retirement benefits through the California Public Employees' Retirement System (CalPERS). The benefit for employees identified as "classic" CalPERS members is currently based upon the PERS Miscellaneous 2% at 55 formula

(single highest year). Per the regulations of the Public Employees Pension Reform Act (PEPRA), the retirement benefit for employees identified as “new” CalPERS members is based upon the PERS Miscellaneous 2% at 62% formula (highest three years).

Existing and future employees identified as “new” CalPERS members are required to pay 50% of normal cost to the retirement system, in compliance with PEPRA. Additionally, existing and future “new” CalPERS members pay an additional 0.05% contribution toward the unfunded liability pension costs of New CalPERS members.

At such time as the City’s CalPERS unfunded liability costs for New CalPERS members have been paid off, the additional 0.05% employee contribution paid by New CalPERS members toward that group’s unfunded liability costs will cease.

Existing and future employees identified as “classic” CalPERS members are required to pay the 7.0% of the employee’s share of the retirement system contributions. Additionally, existing and future “classic” CalPERS members pay an additional 2.0% toward the unfunded liability pension costs of Classic CalPERS members for a total contribution of 9.0%. At such time as the City’s CalPERS unfunded liability costs for Classic CalPERS members have been paid off, the up to additional 2.0% employee contribution paid by Classic CalPERS members toward that group’s unfunded liability costs will cease.

The City shall pay the employer's share for all eligible “classic” and “new” regular full-time employees, and all regular part-time employees exceeding 999 hours worked in a fiscal year.

SECTION 14. LEAVES

A. Comprehensive Annual Leave:

The City agrees to grant a Comprehensive Annual Leave (CAL) policy, which serves as vacation and sick leave time, to all regular full-time as follows:

<u>Beginning of Year</u>	<u>Accrual per Pay Period</u>	<u>Approximate Annual Accrual</u>
1	4.615 hours	120 hours
4	6.154 hours	160 hours
7	7.692 hours	200 hours
10	9.230 hours	240 hours

The City will advance full-time employees with forty (40) hours of Comprehensive Annual Leave (CAL) upon commencement of employment. Accumulation of additional CAL credits will not occur until the employee’s ninth pay period. If employment is separated during the first eight pay periods and the employee has not used the advanced CAL credits, he/she will be paid for the CAL hours that would have been earned during the period of employment. If the employee’s CAL usage exceeds the adjusted accumulation amount, the excess CAL hours are subject to re-payment or deduction from the employee’s final payroll check.

Probationary and regular full-time employees who are paid for less than eighty (80) hours in a pay period will earn Comprehensive Annual Leave credits on a pro-rata basis for that pay period.

Comprehensive Annual Leave (CAL) Buy Backs:

- By December 15 each year, employees may make an irrevocable election to buy back up to one hundred sixty (160) hours of accrued CAL for employees hired prior to January 1, 2019; and up to forty (40) hours of accrued CAL for employees hired on or after January 1, 2019, which will be earned in the following calendar year. The employee must have used a minimum of eighty (80) hours of accrued CAL for time off during the calendar year prior to the buy back year. Employees will be paid for the CAL hours they irrevocably elected to buy back on the pay days identified by the employee for the calendar year.
- If an employee has made an irrevocable election to buy back CAL and has not, prior to pay period #25, submitted a CAL buyback form to initiate payment of their irrevocably elected CAL hours, the number of CAL hours irrevocably elected, but not yet paid out, will be paid out to the employee in the final pay period of the calendar year .
- CAL buy backs will not be permitted unless an employee has made an irrevocable election. If, however, an employee has an "unforeseen emergency" (defined as an unanticipated emergency that is caused by an event beyond the control of the employee and that would result in severe financial hardship to the employee if the buy back were not permitted), the employee may submit a request to the City Manager for a CAL buy back. The amount of CAL which may be paid out is limited to the amount necessary to meet the emergency and shall not exceed the amount of CAL buy back permitted in the calendar year and may not result in the employee's combined CAL/comp balance falling below sixty (60) hours.
- The City Manager, at his/her discretion, may waive or amend the prior calendar year CAL usage requirement described above for high-volume customer contact positions, based upon unique circumstances that impacted the employee's ability to take adequate CAL time off.
- An employee's combined CAL and compensatory time off (comp time) leave balance may not fall below sixty (60) hours as a result of the buy back of the hours. All CAL buyback requests must be submitted to Human Resources using the City's CAL Conversion form. Such payment shall be made upon request unless the City determines it is not economically or operationally feasible. In such case, payment shall be made as soon as feasible.

B. Personal and Family Medical Leave:

The City shall provide leave consistent with the Federal Family Medical Leave Act (FMLA) and California Family Rights Act (CFRA). The general provisions include up to 12 weeks

of leave granted for qualifying events, continuance of existing medical benefits for the leave time, and adjustments to seniority calculations for absences exceeding thirty days.

An employee may request leave time beyond the FMLA and CFRA provisions and such requests will consider the needs of the employee and the City.

C. Bereavement Leave:

Upon request, full-time employees shall receive necessary time off with pay, not to exceed five days in any one (1) instance, to arrange for or attend a funeral of a member of their immediate family and twenty-four (24) hours in any one (1) instance for extended family members. For purposes of this Section, immediate family member shall include those listed in California Government Code section 12945.7. For purposes of this Section, extended family shall mean aunt, uncle, brother-in-law, sister-in-law, step-brother-in-law or step-sister-in-law. If either the grandmother and/or grandfather acted as the employee's parents, then the employee shall receive time off equal to that as if they were immediate family.

All other employees are entitled to bereavement leave as set forth in California Government Code section 12945.7. To the extent anything in this section is inconsistent with California Government Code section 12945.7, California Government Code section 12945.7 shall prevail.

D. Jury Duty and Subpoena Leave:

Every employee within the unit of representation who is called or required to serve as a trial juror or who is subpoenaed as a witness for a local, state or federal government shall be entitled to absent herself/himself from her/his duties with the City during the period of such service or while necessarily being present in court as a result of such call or subpoena, and shall receive full compensation for up to ten (10) working days, for those days the employee would normally work, during the term of this agreement. In the event that an employee is ordered to serve on jury duty or as a witness beyond ten days, the City Manager shall have the ability to review the service order and extend full compensation if the employee did not have a choice but to serve. However, if the employee voluntarily chooses to serve beyond the ten days, they may request the use of CAL or leave without pay.

If an employee receives payment for jury duty from the court, the employee must provide a copy of the payment check stub to the City. The jury service fees (not including mileage) will be deducted from the employee's pay in a subsequent pay period.

E. Military Leave:

An employee having a probationary or regular appointment shall be entitled to such benefits as are provided in the California Military and Veterans Code. An employee requesting such military leave shall present a copy of her/his military orders to her/his department director prior to the beginning of the leave.

F. Industrial Accident Leave:

Provided in City of Dana Point Personnel Rules and Regulations, "Industrial Accident Leave."

G. Leave of Absence without Pay:

Leave of absence without pay may be granted in advance by the Personnel Officer upon recommendation of the department director. No such leave shall be granted except upon written request of the employee setting forth the reason for the request. All requests shall be evaluated on the basis of personal need, duration and work requirements.

SECTION 15. HOLIDAYS

During the term of this Agreement, the following holidays will be observed (a list of the exact dates these holidays fall on will be provided to the President of the Association by December 15th of each year):

- *Martin Luther King Jr. Day
- *Friday Before Easter
- * Independence Day
- * Veteran’s Day
- *Day after Thanksgiving Day
- *Holiday Shut-Down – Regular working days: Christmas Eve through New Year’s Day (days vary each year)
- * President’s Day
- * Memorial Day
- * Labor Day
- * Thanksgiving Day

Regular full-time employees shall receive holiday pay for each of the above-listed holidays falling on his/her regular work schedule at the number of hours he/she is regularly scheduled to work. A regular part-time employee shall receive equal hours pay for each of the above listed holidays falling on his/her regular work schedule. An employee must be paid for all of the regularly scheduled work assignments immediately prior to a holiday and the regularly scheduled working assignment immediately after that holiday in order to receive holiday pay.

Observed Holiday Provisions:

A. The following provisions are to be followed for all City observed holidays except the Holiday Shut-Down:

1. Holidays falling on Sunday shall be observed on the following Monday. Holidays falling on Saturday shall be observed on the preceding Friday unless this, too, is a holiday and then one day sooner.

B. The following provisions are to be followed for all observed holidays including the Holiday Shut-Down:

1. For full-time employees working 9/80 work schedules, if an employee’s regularly scheduled day off falls on an observed holiday, the employee will take one additional day off during the same one-week work period with their supervisor and department head approval received at least one week in advance. If the employee

is unable to take an additional day off during the same one-week work period due to the needs of the department, the employee will be credited compensatory time in accordance with the City's Personnel Rules and Regulations. The employee will not be required to use an hour of paid leave if the City-observed holiday (including holiday shut-down days) falls on the employee's 8-hour workday, but the employee's in lieu "additional day off" is the employee's regularly scheduled 9-hour work day.

2. Employees whose regularly scheduled workday falls on an authorized holiday shall receive regular holiday compensation and compensation in the form of premium overtime (one and one-half times the employee's hourly rate) for actual hours worked. At the request of the employee, and within the City's ability to maintain appropriate service levels, such assigned employees may be granted compensatory time off, in lieu of pay, within the pay period in which the holiday falls. If such time is not taken within the pay period, the employee shall automatically receive regular holiday compensation.

If an employee works on the Fourth of July, and it is on a day when an employee is not regularly scheduled to work during a non-holiday work week, the employee will be paid premium overtime (one and one-half times the employee's hourly rate) for all hours worked.

C. The following provisions are to be followed only during the Holiday Shut-Down:

1. During the Holiday Shut-Down, should an employee's hours paid be in excess of forty (40) hours in their scheduled seven (7) day work period, the employee will receive either straight time or overtime compensatory time off for hours in excess of forty (40).

See Exhibit A to this Agreement for further discussion of holiday work schedules.

SECTION 16. COMPLAINT/GRIEVANCE RESOLUTION PROCEDURE

A. Purpose:

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

B. Matters Subject to the Complaint/Grievance Resolution Procedure:

A grievance may be filed by an employee for the alleged violation of this Agreement, any personnel rule, or regulation related to a mandatory subject of bargaining. The grievance procedure shall not be used: (a) to establish new policies or change any existing rules and regulations; (b) in an employee's disagreement with their performance review; (c) in matters resulting from disciplinary action, or the appeal procedures that exist in accordance with the Personnel Rules and Regulations.

- C. Step 1: An employee who believes an alleged violation of matters subject to the grievance process has occurred, shall have fourteen (14) City business days from the date that the employee had notice of the alleged violation which he/she believes constitutes a grievance to inform their department director in writing of the basis of the grievance. In the event that the grievance is regarding an issue not involving the employee's department or supervisor, or if the grievance is with their department director, the grievance is submitted to the Assistant City Manager/Director of Administrative Services. The department director or Assistant City Manager/Director of Administrative Services shall make whatever investigation he/she deems necessary and reply in writing within fourteen (14) City business days.
- D. Step 2: If the employee is not satisfied with the decision reached in Step 1., he/she may bring the matter to the City Manager within fourteen (14) City business days of the department director's or Assistant City Manager/Director of Administrative Services' response. The written appeal statement shall include a copy of the original grievance, the decision rendered, and a clear, concise statement of the reasons for the appeal. The written appeal shall not expand the scope of the original grievance.

The City Manager shall take whatever steps he/she deems necessary to research or investigate the appeal. The City Manager shall respond in writing to the employee within thirty (30) City business days. The City Manager's decision shall be binding.

- E. Other Conditions: Grievances may only be initiated by the concerned employee or group of concerned employees. DPEA may be the grievant on issues related specifically to those articles in the Agreement which relate to Association issues. An employee may represent himself/herself or select whomever he/she desires to represent him/her in the grievance procedure.

If an employee does not appeal the decision to the next step within the specific time limit, the grievance shall be considered resolved. If management fails to respond within any of the time limits specified in Step 1, the employee may proceed to Step 2. Any extension of the time limits specified in this process may be provided when mutually agreed upon by all parties concerned. Reasonable time off without loss of pay shall be given to an employee who has a grievance or is a grievance representative in order to attend a meeting or to obtain facts concerning the action grieved.

SECTION 17. DISCIPLINARY PROCEDURE

- A. Disciplinary Authority:

The City Manager shall have the right, for reasonable cause, to demote, dismiss, reduce in pay or suspend without pay any regular employee for just cause.

- B. Types of Disciplinary Action:

1. Verbal Reminder: The supervisor holds a Verbal Reminder meeting with the employee. The purpose of the meeting is to explain the employee's conduct or acts which are in violation of City Rules, policies or practices and to remind the employee

of the behavior that is expected in the future and the consequences of not meeting the performance expectations of the supervisor.

2. Written Reminder: The supervisor prepares a Written Reminder memo. The written reminder shall constitute notice of the infraction(s) including time and circumstances; a statement of how this conduct has had an adverse impact on the City's or department's operations; a statement of rules, policies or practices, alleged to be violated by the employee; a warning that additional disciplinary action may be taken if the employee's performance or conduct does not improve; and the supervisor's signature. The supervisor will hold a Written Reminder meeting with the employee.
 - a. Employees who have received Written Reminders are entitled to the following due process:
 1. A meeting with the supervisor to discuss the contents of the Written Reminders.
 2. The opportunity to present a written response to the Written Reminder and to have their written response placed in the employee's personnel file.
 3. The employee has ten (10) working days from receipt of the Written Reminder in which to prepare a written response to it and/or to request and informally meet with the person issuing the reminder to discuss its contents.
3. Suspension: An employee may be given a suspension of time off without pay. When placing an employee on a suspension for five (5) working days or less, the supervisor shall provide the employee with a Notice of Discipline prior to the time off that includes the following:
 - a. The suspension to be imposed (number of hours or days);
 - b. The charge(s) on which the proposed suspension is based;
 - c. The proposed date(s) of the suspension; and,
 - d. A statement advising the employee that they may respond to the Notice of Discipline in writing or may request a meeting with the supervisor to respond.

When placing an employee on a suspension exceeding five (5) working days, the supervisor shall follow all of the steps listed under the Notice of Intent (Section C.1) and Pre-disciplinary Hearing (Section C.2) and Right of Appeal (Section D) of this Agreement.

4. Involuntary Demotion: An employee may be demoted to a classification having an overall lower salary range. When demoting an employee, the supervisor shall follow all of the steps listed under Notice of Intent (Section C.1) and Pre-disciplinary Hearing (Section C.2) of this Agreement.

5. Reduction in Pay: An employee may be reduced in maximum salary rate of pay. When reducing the maximum salary of an employee, the supervisor shall follow all of the steps listed under Notice of Intent (Section C.1) and Pre-disciplinary Hearing (Section C.2) of this Agreement.
6. Termination: When it is necessary to terminate an employee, the supervisor shall follow all procedures for Notice of Intent (Section C.1), Pre-disciplinary Hearing (Section C.2) and Right of Appeal (Section D) of this Agreement.

The City shall have the right to place any employee on immediate paid investigatory leave pending investigation and processing of any potential disciplinary action. The provisions of this Section shall not apply to reductions in pay which are part of a general plan to reduce salaries and wages or to eliminate positions.

C. Disciplinary Procedure:

1. Notice of Intent: Upon determination that some form of formal discipline should be imposed upon an employee, the Department Head or designee shall provide the employee with a written Notice of Intent. Formal discipline is defined as Suspensions exceeding five (5) working days, Involuntary Demotion, Reduction in Pay or Termination. The Notice of Intent shall:
 - a. Inform the employee of the disciplinary action intended and the effective date of the action;
 - b. Set forth the nature of the infraction(s) including the time and circumstances of the incident(s); any previous disciplinary actions taken; a statement of how the conduct has had an adverse impact on the City's or department's operation; and, a statement of rules or regulations alleged to be violated;
 - c. Provide a copy of all written materials, reports or documents upon which the intended discipline is based;
 - d. Inform the employee of the right to respond, orally or in writing, to the Department Head, or a designee, and the fact that such response must be received by said person within seven (7) business days of the date of issuance of the notice. Failure of the employee to make a written or oral response or request will constitute a waiver of the right to respond; and,
 - e. Inform the employee of his/her right to representation during the Pre-disciplinary Hearing.
2. Pre-disciplinary Hearing: An employee who receives a Notice of Intent may request a hearing on the Notice of Intent. The request for such a hearing shall be delivered to the Department Head, or a designee, within seven (7) business days of the issuance of the Notice of Intent. Upon the receipt of a request for a hearing, the employee's Department Head, or a designee, shall schedule a hearing with the employee and supervisor to review the proposed action and allegations. This hearing is an opportunity for the employee to respond to the charges. It is not an evidentiary hearing.

3. Final Notice: After the consideration of the employee's response or the expiration of the employee's time to respond to the Notice of Intent, the appropriate authority shall: (1) dismiss the Notice of Intent and take no disciplinary action against the employee; or (2) modify the intended disciplinary action; or (3) prepare and serve upon the employee a final notice of disciplinary action.

The final notice of disciplinary action shall include the following:

- a. The disciplinary action taken;
- b. The effective date of the disciplinary action taken;
- c. Specific charges upon which the action is based;
- d. A summary of the facts upon which the charges are based;
- e. The written materials, reports and documents upon which the disciplinary action is based; and,
- f. An explanation of appeal procedures.

D. Disciplinary Appeals:

1. Right of Appeal:

When formal disciplinary action of termination or suspension without pay for more than five (5) working days has been imposed pursuant to this Section, the employee shall have the right to appeal as provided below. Failure to appeal by the employee or his/her representative will make the disciplinary action final and conclusive.

2. Appeal Procedure:

A member of the competitive service who has been terminated or suspended without pay for more than five (5) working days may appeal to the City Manager within fourteen (14) calendar days after having been furnished with a copy of the Notice of Discipline by filing a written answer to such charges and requesting a hearing thereon.

3. Hearing Procedure:

- a. The City Manager shall appoint a Hearing Officer to conduct hearings on appealable disciplinary action imposed pursuant to this Section. In case of termination, however, the Association may request a Hearing Officer be selected from a list provided by the American Arbitration Association. The parties shall request the American Arbitration Association to supply a panel of seven (7) names of persons experienced in hearing disciplinary cases for cities. Each party shall alternately strike a name until only one name remains. The remaining panel member shall be the Hearing Officer. The order of striking shall be determined by lot. The Hearing Officer will not be an employee of the City of Dana Point. If the Association requests a Hearing Officer from the American Arbitration Association, the costs of the Hearing Officer's services shall be fully paid by the City. The City will pay for the

hearing fees for up to two (2) days unless an extension is mutually agreed upon.

- b. Hearings shall be conducted in the manner most conducive to determination of the truth, and the Hearing Officer shall not be bound by technical rules of evidence.
- c. The Hearing Officer shall determine the relevancy, weight and credibility of testimony and evidence. The Hearing Officer shall base his/her findings on the preponderance of evidence.
- d. Each side will be permitted an opening statement and closing argument. The department director shall first present his/her witnesses and evidence to sustain the charges and the employee will then present his/her witnesses and evidence in defense.
- e. Each side will be allowed to examine and cross-examine witnesses.
- f. Both the department director and the employee or their respective designees may be represented by legal counsel.
- g. The Hearing Officer shall, if requested by either party, subpoena witnesses and/or require production of other relevant records or material evidence.
- h. The Hearing Officer may, prior to or during a hearing, grant a continuance for any reason he/she believes to be important to his/her reaching a fair and proper decision.
- i. The Hearing Officer shall prepare a recommended decision and forward it to the City Manager after the matter of appeal has been taken under submission by the Hearing Officer. The recommended decision shall set forth which charge the Hearing Officer sustains or does not sustain and the reasons, therefore.
- j. After receiving the recommendation of the Hearing Officer, the City Manager may sustain or reject any or all of the charges filed against the employee. He/she may sustain, reject or modify the disciplinary action invoked against the employee.
- k. The employee or his/her representative may obtain a copy of the hearing transcript upon request and agreement to pay for necessary costs.
- l. An employee shall not suffer loss of pay for time spent as a witness at a hearing held pursuant to this procedure. The number of witnesses requested to attend and their scheduling shall be reasonable.

E. Polygraph Examination:

In reference to this provision, no disciplinary action whatsoever shall be taken against an employee refusing to submit to a polygraph examination; nor shall any comment be anywhere recorded indicating that an employee offered to take, took or refused to take a polygraph examination unless otherwise agreed to in writing by the parties; nor shall any testimony or evidence of any kind regarding an employee's offer to take or refusal to take, or

the results of a polygraph examination, be admissible in any proceeding pursuant to this Agreement, unless otherwise agreed to in writing by the parties.

SECTION 18. RECRUITMENT

If any regular full-time or regular part-time positions become vacant and authorized to recruit for a replacement, an E-mail message shall be sent to all network users, advising employees of the vacancy and pending recruitment. Any interested employee must respond within two (2) working days, if interested and meet the minimum qualifications for the position. The City will consider these interested parties and determine the appropriate recruitment for the position. The interested persons will be notified of how they may be considered for the vacant position.

SECTION 19. LAYOFF AND RECALL

Whenever in the judgment of the City Council, it becomes necessary for lack of work or lack of funds, the City Council may abolish any position or employment in the unit of representation. The employee holding such position for employment may be laid off without relation to disciplinary action and without the right of appeal of the decision to eliminate positions.

For purposes of this Section only, in the event of a Layoff or Recall, the employee designations of regular full-time and regular part-time and job-share shall be discarded and only the employee's seniority (using Section 20. Seniority) and performance reviews shall be used to determine the order of Layoff and/or Recall. When a position with a department or division is abolished, the following general procedure shall be observed:

1. The order of layoff shall be established by the Personnel Officer or his/her designee. He/she shall list all employees in the affected classification(s) using the employees' performance reviews and seniority ratings.
2. The order of layoff shall be determined using a point system where employees receive points based on the performance evaluation ratings received each year employed. The points given for each full year of service by category is as follows:

Exceeds Expectations/Excellent/Exceptional Work	10 points
Meets Expectations/Usually Meets Expectations/Good/ Successful	5 points
Does Not Meet Expectations/Poor/Needs Improvement/ Unacceptable	0 points

A pro rata share of the total number of available points will be given for less than full time service such as regular part-time employment, for absences exceeding thirty (30) calendar days, excluding absences for service in the Armed Forces.

3. The order of layoff will begin with the employee(s) with the least total number of points. When the total number of points is the same, the Appointing Authority shall take the needs of the City into consideration.

4. Prior to the establishment of the order of layoff, the Personnel Officer or his/her designee shall furnish all employees proposed to be included on the layoff list with a copy of the "Proposed Order of Layoff" and a copy of any materials not otherwise available to the employee which were relied upon by the Personnel Officer or his/her designee in establishing the employee's position thereon. If the employee wishes to contest the application of the criteria set forth in this policy to his/her position on the list, the employee may request an opportunity to present his/her case to the Personnel Officer or his/her designee within five (5) working days following the establishment and distribution of the "Proposed Order of Layoff" list and supporting materials. After meeting with all employees wishing to be heard with respect to their position on the layoff list, the Personnel Officer or his/her designee shall establish the "Final Order of Layoff." The decision of the Personnel Officer or his/her designee shall be final and not subject to the grievance process. The Association President will be provided copies of Proposed Order of Layoff and Final Order of Layoff lists.
5. No regular or probationary employee shall be laid off from his/her position in any department while an emergency, temporary, provisional, part-time or contract employee is serving in the same classification in the same department. No regular employee shall be laid off in any department while a probationary employee is serving in the same classification in the same department. Employees to be laid off shall be given at least thirty (30) calendar days prior notice or the equivalent in compensation.
6. The names of regular and probationary employees laid off or demoted in lieu of layoff shall be placed upon reemployment lists for one year for those job classes requiring the same qualifications, duties, and responsibilities of the class from which layoff or demotion in lieu of layoff was made.
7. Persons whose names are placed on reemployment lists in accordance with this policy, and who are re-employed within the prescribed period, shall be regarded as having been on "unpaid" leave of absence during this period and will resume accruals of vacation, sick, and other leaves in accordance with adopted City policy.

SECTION 20. SENIORITY

Seniority shall be defined as the total amount of actual continuous service (based on hours worked) as a regular full-time or regular part-time employee, excluding approved leaves of absence without pay in excess of thirty (30) days, including leaves of absence for service in the Armed Forces of the United States. Seniority will be a factor when considering promotions, transfers, recalls and layoffs. Upon written request, the Association shall receive a written seniority list of Association represented employees within fifteen (15) working days of the request.

SECTION 21. SAFETY

The City shall provide and maintain a healthy and safe place of employment. No employee shall be required to work under conditions dangerous to the employee's health or safety. The City shall provide and maintain all safety equipment and comply with all health and safety laws and regulations

necessary for employees to perform their jobs in a safe manner. Employees shall report unsafe practices, equipment, or conditions to their supervisors. The City shall furnish all necessary safety equipment required for employees to perform their job in a safe manner including safety equipment and safety footwear. Whenever practicable, the City shall provide first aid training for employees.

SECTION 22. PERSONNEL FILES

The official personnel file for each City employee shall be maintained by the Personnel Officer. Employees have the right to review their official personnel file in Personnel by scheduling a specific date and time, 24 hours in advance, with Personnel staff. Documents designated by law as confidential shall also be subject to review by the employee.

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

Written reprimands shall be retained for at least one year. If after one year no similar or other unacceptable behavior is reported, the employee may request in writing that the reprimand be purged from his/her file. Upon review and approval of the department director, the written reprimand shall be removed from the employee's file.

SECTION 23. PROBATIONARY PERIOD

Any new or re-employed employee in a regular position shall serve a probationary period of twenty-six (26) weeks of continuous service from the date of appointment or hiring. Any employee who is promoted shall also serve a probationary period commencing on the date of promotion and ending on the first day of the pay period following the completion of twenty-six (26) weeks of continuous service. A promotional probationary employee may be returned to the employee's previous position at any time during the probationary period. Any probationary period for any probationary employee may be extended at the discretion of his/her immediate supervisor. Probationary employees may be terminated with or without cause and such termination is not subject to the disciplinary procedures set forth in Section 17.

SECTION 24. PERFORMANCE REVIEWS

The City shall maintain a formal system of employee performance ratings designed to give a fair evaluation of the quantity and quality of work performed by an employee. Such ratings shall be prepared and recorded in the employee's personnel file for all regular full and part-time employees at least once each year.

During a regular, non-probationary employee's annual performance review period, which is typically September 1 – August 31, the employee shall receive a mid-year performance review, which may be provided in City memorandum format, to provide the employee with feedback of performance to date, and to provide an opportunity for open dialogue between the employee and supervisor regarding performance expectations.

Probationary and promotional probationary employees are eligible for a performance review at or near the completion of twenty-six (26) weeks of continuous service. A probationary or promotional

probationary employee may receive a performance review at any time at the discretion of his/her supervisor.

- A. The employee's immediate supervisor shall discuss with the employee the specific ratings prior to such ratings being made part of the employee's personnel file.
- B. When a performance evaluation is recorded in the personnel file of an employee, a copy of such evaluation, together with any attachment relating thereto, shall be given to the employee. Any written response by the employee to the performance evaluation shall be attached to such evaluation in the office personnel files.
- C. Employees who are not in agreement with the narrative content of an evaluation may request the City Manager to reconsider the content based on additional information presented. Such consideration shall not include the establishment and award of a merit increase. The City Manager's decisions on the evaluation content shall be final. The amount of the proposed merit increase is not a basis for an appeal to the City Manager. However, if the City Manager's review of an evaluation's content and subsequent decision changes the performance review category ranking, (for example, results in changes between "unacceptable", "below expectations", "successful" or "exceptional") the City Manager may adjust the merit increase to reflect the changed category of performance.
- D. Performance reviews shall be used to determine the amount of performance-based merit increases for all eligible regular full and regular part-time employees in the unit of representation based on the following performance review category scale:
 1. Unacceptable:
On an overall basis the employee has, during the review period, performed in a manner significantly below the expected level. It appears reasonably certain that the employee is either unwilling or unable to perform successfully. No merit increase may be granted for this performance review rating.
 2. Below Expectations/Needs Improvement:
On an overall basis the employee has, during the review period, performed some duties successfully and some below expectations. The employee's potential for successful performance, however, appears to be good. No merit increase may be granted for this performance review rating.
 3. Successful:
On an overall basis the employee's performance has, during the review period, been at or above the expected level. A merit increase of 0% to 3% may be granted for this performance review rating with approval of the City Manager.
 4. Exceptional Work:
On an overall basis the employee's overall performance has, during the review period, significantly exceeded expected levels of performance considering the employee's previous experience, tenure in the class, and job duties and responsibilities. A merit increase of up to 5% may be granted for this performance review rating with approval of the City Manager.

A "+" or "-" symbol may be added to the "Successful" performance rating if the supervisor and Department Head feel it helps to more accurately reflect an employee's performance. A Successful "+" performance rating may adjust an employee's performance-based merit increase by up to an additional 1.0% at the City Manager's discretion.

- E. Merit increases for eligible employees included in the annual City-wide performance evaluation and merit review process and detailed in the City's Wage Administration Policy, shall be effective no later than October 1st of each year of the contract, and processed no later than November 30th of each year of the contract.
- F. If an employee's pay rate is at the salary range maximum for his/her position, the employee may be awarded a one-time performance-based bonus, payable from the merit pool. The bonus will be included as taxable income on the employee's payroll check, processed no later than November 30th, and does not qualify as CalPERS pensionable income.

SECTION 25. CLASSIFICATION

The duties of and salary for new classifications within the unit of representation shall be subject to the review of the Association prior to approval of the City Council.

A. Establishment of New Classes:

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

B. Reclassification of a Position:

An employee who believes his/her position is not properly classified may submit a written request to his/her department director that a classification study be conducted. Requests shall state the reasons the employee believes the present class is not appropriate based on the employee's present duties. At the discretion of the department head, such request, and including the department head's recommendation for approval or disapproval shall be submitted to the Personnel Officer. Within three weeks of the department head's receipt of the employee's request for a classification study, the department head shall respond to the employee regarding his/her approval or disapproval of the employee's request.

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

SECTION 26. BILINGUAL PAY

The City shall pay \$46.15 per pay period to employees in City designated positions who can demonstrate the ability to speak, read and write in another language which the City Manager has approved as being needed for City business on a regular and recurring basis. An employee must be assigned to speak or translate a language in addition to English as part of their position responsibilities or based on community needs. 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 the Personnel Officer will devise and administer a testing vehicle to determine degrees of proficiency.

Any employee who has been determined as qualified for bilingual pay and who is on any leave of absence for at least two (2) pay periods will be ineligible for bilingual pay until his/her return to work. Upon his/her return to work, the employee will be reinstated into the bilingual pay program and receive his/her monthly stipend effective the first pay period following his/her return to work.

SECTION 27. EDUCATIONAL REIMBURSEMENT

Regular full-time employees covered by this Agreement shall be eligible for reimbursement for approved education expenses as set forth in the City's Educational Reimbursement policy up to a fiscal year maximum of the cost of full-time, in-state course work at a California State University.

Regular part-time employees covered under this Agreement who have completed six months of continuous employment with the City and are performing their job in a satisfactory manner shall be eligible for reimbursement for approved education expenses as set forth in the City's Education Reimbursement policy, up to a fiscal year maximum of 25% of the cost of full-time, in-state course work at a California State University.

If an employee terminates employment with the City within six months following the date of course completion for which reimbursement was received, the Finance Division shall ensure that all funds reimbursed to the employee are repaid to the City either prior to or concurrent with issuance of the employee's final paycheck.

SECTION 28. MILEAGE REIMBURSEMENT

The City shall utilize the current IRS rate for mileage reimbursement when reimbursing employees who use a private vehicle for authorized City business.

SECTION 29. PART-TIME EMPLOYEES

Regular part-time employees shall be eligible for pro-rated holiday pay for those days when they are regularly scheduled to work falls on a holiday as listed in Section 15 of this agreement. Part-time employees shall also be eligible for paid sick leave as required by California State Law (CA Labor Code 245-249). Regular part-time employees are not eligible for other paid leave benefits, participation in any City insurance plans, and participation in any part of this Agreement, unless otherwise previously agreed upon between the City and the employee or required by law. Regular part-time employees shall include employees appointed to assignments which require a minimum

of sixteen (16) hours but less than forty (40) hours per work period on a permanent year-round basis.

SECTION 30. LABOR/MANAGEMENT COMMITTEES

Labor/Management Committees established during the 2019 calendar year, with representatives from DPEA membership and City management, will continue to meet to discuss the following:

A. Cafeteria Allowance Amounts: goal is to research and discuss potential program design that would differentiate cafeteria allowance amounts based upon coverage levels such as Employee Only, Employee +1, and Employee + 2 or more.

B. Employee Incentive Program: goal is to develop employee incentive programs to identify and implement innovative ideas that improve workflow efficiencies and/or reduce costs, and reinvest a portion of those savings into employee programs.

C. Safe Work Practices Program: goal is to develop programs and practices to advance safe work practices that result in reduced workplace injuries and lower Workers' Compensation insurance premiums, and reinvest a portion of those savings into the City's Employee Wellness Program.

SECTION 31. COMPLETION OF THE MEET AND CONFER PROCESS

Each of the parties hereto agrees that it has had a full and unrestricted right to meet, advance, and discuss all matters properly within the scope of meet and confer, in accordance with State laws and local ordinances and regulations. The express provisions of this Agreement constitute the only limitations upon the City's right to determine, implement, supplement, change, modify or discontinue in whole or in part any term or condition of employment the City deems fit and appropriate; provided, however, that the City shall comply with all Federal and State laws relating to employee rights, opportunities, and benefits.

SECTION 32. NON-DISCRIMINATION

Neither party to this Agreement shall illegally discriminate against any employee on the basis of race, color, creed, age, sex, national origin, political affiliation, marital status, disability, religion or sexual preference. The parties further agree that they shall not interfere with, intimidate, restrain, coerce, or discriminate against any employee in his/her free choice to participate or not participate in the activities of and right to join the Association.

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

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

SECTION 33. MAINTENANCE OF BENEFITS

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

SECTION 34. OPENERS

The City and the DPEA will reopen negotiations in October of each year to discuss the results of City’s annual salary survey.

SECTION 35. SEPARABILITY

The provisions contained in this Agreement have been bargained for and agreed to independently, and no particular clause, condition, or agreement is contingent or dependent upon any other; therefore, if any provision of this Agreement is determined to be invalid or illegal by a court of competent jurisdiction, such provisions will not be deemed valid and shall be severed from this Agreement, except to the extent permitted by law, but the remainder hereof shall remain in full force and effect. Should any change be made in any State or Federal law, or in any rules and regulations implementing such legislation, then such provision shall be automatically terminated but the remainder of this Agreement shall remain in full force and effect. The parties hereto shall meet and confer within a reasonable time for the purpose of replacing any provision of this Agreement determined to be invalid or illegal pursuant to this paragraph.


SECTION 36. CONCERTED ACTIVITIES

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

IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this 27th day of November 2023.

CITY OF DANA POINT

DANA POINT EMPLOYEES ASSOCIATION

DocuSigned by:

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Michael Killebrew
City Manager

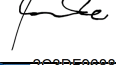
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Juan Ruano
President

EXHIBIT A**5/40 AND 9/80 WORK SCHEDULES**

Effective no later than March 1, 2008, employees will have the option of working a 5/40 or alternatively a 9/80 work schedule with supervisor and department head approval. The City will review the program for one (1) year to determine if there are any issues with maintaining the expected high level of productivity and service to the public.

The alternative 9/80 work schedule is not an entitlement and may be changed or altered at the discretion of the department head and may be adjusted to meet the needs of the department. The alternative work schedule is granted if productivity and service to the public is preferably increased, but in no case be decreased, with no adverse effects to the operation of the department.

A. City Hall Hours of Operation

City Hall regular hours of operation are as follows:

Monday – Thursday: 7:30 am – 5:30 pm

Friday: 7:30 am - 4:30 pm

In order to maintain service to the public, departmental effectiveness, productivity or efficiency, a department head may assign an employee a different work schedule that is in compliance with the FLSA requirements.

B. Work Week

The work period shall consist of 40 hours worked within a seven-day period, beginning at noon on Friday and ending at noon the immediately subsequent Friday.

5/40 Employee Example:

	MON	TUES	WEDS	THURS	FRI
Week 0					4 hours (before noon) applies to week prior to week 1 4 hours (after noon) applies to week 1
Week 1	8 hours	8 hours	8 hours	8 hours	4 hours (before noon) applies to week 1 4 hours (after noon) applies to week 2
Week 2	8 hours	8 hours	8 hours	8 hours	4 hours (before noon) applies to week 2 4 hours (after noon) applies to week 3

9/80 Employee Example:

	MON	TUES	WEDS	THURS	FRI
Week 1	9 hours	9 hours	9 hours	9 hours	4 hours (before noon) applies to week 1 4 hours (after noon) applies to week 2
Week 2	9 hours	9 hours	9 hours	9 hours	8 hour day off

For staff on a 9/80 work schedule that includes working Saturday and/or Sunday, the work period will begin four hours after the start time of the day of the week which constitutes the employee's alternating regular day off. The work week shall end exactly 168 hours later.

5/40 Work Schedule

The 5/40 work schedule shall be defined as working five (5) eight (8) hour days, such as Monday through Friday, each week plus a one (1) hour unpaid lunch during each work shift, totaling a forty (40) work hour work period. The assigned 5/40 work schedule must be in compliance with the requirements of FLSA.

Employees on a 5/40 work schedule are assigned to work 7:30 am – 4:30 pm unless otherwise approved by the department head.

c. 9/80 Work Schedule

The 9/80 work schedule shall be defined for all employees as working nine (9) days for eighty (80) hours in a two (2) week pay period, by working eight (8) days at nine (9) hours per day and working one (1) day (typically a Friday) for eight (8) hours, plus a one (1) hour unpaid lunch during each work shift, totaling forty (40) work hours in each work period. The 9/80 work schedule shall not reduce service to the public, departmental effectiveness, productivity or efficiency as determined by the department head.

A/B Schedules – To continue to provide service to the public every Friday, employees on a 9/80 schedule are to be divided between two schedules, known as the “A” schedule and the “B” schedule, based upon departmental needs. For identification purposes, the “A” schedule shall be known as the schedule with a day off on payday, the “B” schedule shall have the non-payday Friday. An example is listed below:

	WORK WEEK 1								WORK WEEK 2									
	AM Fri	PM Fri	S	S	M	T	W	TH	AM Fri	PM Fri	S	S	M	T	W	TH	AM Fri	PM Fri
A	4	4	--	--	9	9	9	9	Off 4	Off 4	-	-	9	9	9	9	4	4
B	Off 4	Off 4	--	--	9	9	9	9	4	4	-	-	9	9	9	9	Off 4	Off 4

Overtime

Except as stated in the Holidays and Holiday Shut-down sections, non-exempt employees on a 9/80 work schedule shall receive overtime pay or compensatory time off at time and one-half (1.5) for all hours worked in excess of 40 hours in their respective scheduled work period.

Use of Comprehensive Annual Leave (CAL)

When an employee is off on a scheduled workday under the 9/80 work schedule, the employee will be charged the actual number of hours scheduled for that workday (i.e. Leave will be charged nine (9) hours for time taken on a scheduled nine-hour workday. Time off from work on a scheduled eight-hour workday will be charged eight (8) hours.)

Holidays

If an employee’s regularly scheduled day off falls on an observed holiday, the employee will take one additional day off during the same one-week work period with their supervisor and department head approval received at least one week in advance. If the employee is unable to take an additional day off during the same one week work period due to the needs of the department, the employee will be credited compensatory time in accordance with the City’s Personnel Rules and Regulations.

Holiday Shut-Down

During the Holiday Shut-Down, should an employee's hours paid be in excess of forty (40) hours in their scheduled seven (7) day work period, the employee will receive either straight time or overtime compensatory time off for hours in excess of forty (40). If an employee's hours paid is less than forty (40) hours in the scheduled seven (7) day work period, the employee will use CAL, compensatory time, or leave without pay to make up the difference.

Jury Duty - The provisions of the City's Personnel Rules and Regulations shall continue to apply, however, if an employee is called to serve on jury duty during the employee's normal day off, Saturday or Sunday, then the jury duty shall be considered the same as having occurred during the employee's day off from work; therefore, the employee will receive no added compensation.

Schedule Changes – Employees cannot change their assigned schedules, without prior approval of their supervisor and department head. The purpose of this authorization is to review the impact on overtime and to ensure adequate coverage of the employee's responsibilities. Employees may change their schedules at the beginning of any pay period with supervisor and department head approval, and with written notification to the Personnel Office.

Emergencies – All employees on the 9/80 work schedule are subject to be called to work any time to meet any and all emergencies or unusual conditions which, in the opinion of the City Manager, department head or designee may require such service from any of said employees. This includes staff shortages in a department. In the case of staff shortages, management will notify the affected employee at least one (1) week prior to the change of the work schedule.