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**IDnum** 69      **Language** English      **Country** United States      **State** CA

**Union** Municipal Attorneys Association

### Local

Occupations Represented
Lawyers

**Bargaining Agency** City and County of San Francisco

### Agency industrial classification (NAICS):

92 (Public Administration)

**BeginYear** 2001      **EndYear** 2003

**Source** <http://www.ci.sf.ca.us/dhr/mou/L311MAA/maa.PDF>

**Original\_format** PDF (unitary)

### Notes

### Contact

**Full text contract begins on following page.**

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**MEMORANDUM OF UNDERSTANDING**

**between**

**THE CITY AND COUNTY OF SAN FRANCISCO**

**&**

**MUNICIPAL ATTORNEYS ASSOCIATION**

**FOR THE PERIOD**

**JULY 1, 2001 to JUNE 30, 2003**

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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.

## **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:

8174	Attorney, Civil and Criminal	8-W
8176	Trial Attorney, Civil and Criminal	8-W
8178	Senior Attorney, Civil and Criminal	8-W
8180	Principal Attorney, Civil and Criminal	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**

7. Except as otherwise specifically provided in this agreement, in accordance with applicable state law, nothing herein shall be construed to restrict any legal City rights concerning direction of its work force, or consideration of the merits, necessity, or organization of any service or activity provided by the City.
8. The City shall also have the right to determine the mission of its constituent departments, officers, boards and commissions; set standards of services to be offered to the public, and exercise control and discretion over the City's organization and operations. The City may also relieve City employees from duty due to lack of work or funds, and may determine the methods, means and personnel by which the City's operations are to be conducted.

### **I.D. UNION SECURITY**

9. 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.
10. 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.
11. 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**

12. 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.

13. 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 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.
14. 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.
15. 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.
16. 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.
17. 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.
18. 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**

19. 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.
20. 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.
21. 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. GRIEVANCE PROCEDURE**

22. 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.
23. 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.
24. 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.

25.
  1. Except as set forth below, all grievances must be initiated at Step 1 of the grievance procedure.
26. A grievance affecting more than one represented attorney shall be filed with the Appointing Officer. Grievances affecting more than one department shall be filed 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.

27. 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.
28. 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.
29. 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.
30. 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.
31. 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.
32. 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.
33. 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.
34. 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.
35. 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.

36. Selection of the Arbitrator. The City and MAA have established the following Standing Arbitration Panel:
- Charles Askin
  - Norman Brand
  - Alexander Cohn
  - Larry Corbett
  - David Nevins
  - Geraldine Randall
  - Barry Winograd.
37. When a matter is appealed to arbitration, the parties shall first attempt to mutually agree on an arbitrator. In the event no agreement is reached within seven (7) days, the parties shall alternately strike from said list until a single name remains, and said arbitrator shall be designated to hear the matter. Whether MAA or City deletes the first name in the alternating process shall be determined by lot.
38. 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.
39. 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.
40. 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.
41. Any claim for monetary relief 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.
42. 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**

43. 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**

44. 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.
45. 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.
46. 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.
47. 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**

48. 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**

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

## **II.E. AMERICANS WITH DISABILITIES ACT**

50. 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**

51. 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.

## **II.G. REIMBURSEMENT OF MILEAGE AND OTHER EXPENSES**

52. 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.
53. 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.
54. 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.
55. 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.
56. 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.
57. 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**

58. 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**

59. 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) calendar days before his/her final day of work. Where the Appointing Officer fails or declines to inform the attorney a full thirty (30) 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.

60. 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 with more than five years of City service in an attorney job code who is removed or released from City service by his or her Appointing Officer shall receive one week's pay for each complete year of City service in an attorney job code in excess of five such years of service, with a minimum of two weeks' pay, 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. 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. Severance payments shall be made within thirty (30) days of the City receiving a fully executed release pursuant to this MOU.

## ARTICLE III - PAY, HOURS AND BENEFITS

### III.A. WAGES

#### General Wage Increases.

61. Base wages shall be increased as follows:

Effective July 1, 2001  
3%

Effective January 5, 2002  
2%

Effective July 1, 2002  
2.5%

Effective January 4, 2003  
2.5%

62. In addition, effective July 1, 2001, wages of each represented attorney shall be increased an additional 7.5% as an inequity adjustment.

63. Inequity Adjustments.

64. 8176 and 8178. Effective December 26, 1998, a temporary sixth step shall be added to job codes 8176 and 8178, at two percent (2%) above the fifth step of each of those job codes. Effective December 25, 1999, the differential between the fifth and the temporary sixth steps shall be increased an additional one percent (1%) (for a total differential between the fifth and temporary sixth step of three percent (3%)). Effective January 6, 2001, the differential between the fifth and the temporary sixth steps shall be increased an additional two percent (2%) (for a total differential between the fifth and temporary sixth step of five percent (5%)). Effective June 30, 2001, the first step of the 8176 and 8178 job codes shall be eliminated, restoring five steps for each of these job codes.

65. 8180 and 8182. Due to the high level of responsibility required of senior attorneys at the Principal Attorney (8180) and Head Attorney (8182) levels, effective July 1, 1999, attorneys who have five consecutive years of service at the fifth step of the 8180 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 fifth step of the 8180 or the 8182 job code even if the represented attorney's service at the 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.

66. (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 step five in either the 8180 or 8182 job code.

67. (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 8180 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 8180 or 8182 job code at step 5.

68. 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.

### **III.B. SALARY STEP PLAN AND SALARY ADJUSTMENTS**

69. 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

70. 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:

71. 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.

72. 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.

73. 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.

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

#### Appointment Above Entrance Rate.

75. Appointments may be made by an Appointing Officer at any step in the compensation schedule under the following conditions:

76. 1. A former City employee, following resignation with service satisfactory, is being reappointed to a permanent position in his/her former job code.
77. 2. Loss of compensation would result if appointee accepts position at the normal step.
78. 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**

79. 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.
80. 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 the one (1) year required service. Further increments shall accrue no later than following completion of the required service at this step and at each successive step.
81. Date Increment Due. Increments shall accrue and become due and payable on the next day following completion of required service as specified above.
82. 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. WORK SCHEDULES**

83. Benefit Accrual. For purposes of accrual of benefits, a regular biweekly pay period consists of eighty (80) hours.
84. 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.
85. 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.

86. Mandatory Time Off. There shall be no mandatory unpaid administrative leave (furlough) of any duration for represented attorneys.

### **III.E. HOLIDAYS**

87. 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)

88. Provided further, if January 1, July 4, November 11 or December 25 fall on a Sunday, the Monday following is a holiday.
89. The City shall accommodate religious belief or observance by allowing use of either a floating holiday, in-lieu holiday, vacation or personal leave.
90. 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. No compensation of any kind shall be earned or granted for floating days off not taken.
91. 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.
92. 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.

93. 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.

94. 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.
95. Regular full-time represented attorneys are entitled to eight-eighths (8/8) 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.
96. 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.

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

98. 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.
99. 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.
100. 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.

101. In-Lieu Holidays.

102. 1. 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.
103. 2. In-lieu days will be assigned by the Appointing Officer or designee if not scheduled in accordance with the procedures described herein.
104. 3. An in-lieu holiday can be carried over into the next fiscal year only with the written approval of the Appointing Officer.

**III.F. SICK LEAVE**

105. 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.
106. 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.
107. 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 difference in sick leave hours used but not yet accrued shall be deducted from the represented attorney's final compensation check.

Payment of Vested Sick Leave Accrual.

108. 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.G. AUTHORIZATION OF TRANSFER OF SICK LEAVE AND/OR VACATION CREDITS**

109. 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.H. ADMINISTRATIVE LEAVE**

110. 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.I. FORMS OF LEAVE OTHER THAN SICK LEAVE**

111. 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.
112. 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.

### **III.J. VACATION**

113. 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.
114. 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.
115. 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.

- 116. 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.
- 117. 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.
- 118. 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

- 119. 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.
- 120. 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.K. HEALTH CARE BENEFITS**

- 121. 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.
- 122. 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.
- 123. 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.L. FLEXIBLE BENEFIT ALLOWANCE**

- 124. The City shall contribute, at the represented attorney's option, either \$225 per month to each covered represented attorney participating in the City's 125 Cafeteria Plan or \$210 per month to each covered represented attorney as a direct payment for individual benefit options.

125. The parties will meet no later than ninety (90) days after the effective date of this agreement to discuss additional qualifying selection options. The parties' intent is that the Cafeteria Plan should include as many qualifying options as possible without additional cost to the City.

### **III.M. RETIREMENT BOARD**

126. 1. The Retirement Board shall process and pay retirement claims, except in cases beyond the Board's control, in the following manner:
127. 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.
128. 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.
129. 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.N. RETIREMENT CONTRIBUTION**

130. The City shall pick up the represented attorney's contribution to Retirement as follows:
- 7.5 % of pension covered gross salary for new plan SFERS members;
  - 8.0% of pension covered gross salary for old plan SFERS members;
  - 7.5 % of pension covered gross salary for PERS members.
131. 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.
132. The aforesaid contributions 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.O. RETIREMENT RE-OPENER**

133. The City or the MAA may cause a reopener on contract negotiations regarding retirement benefits if, but only if, the moving party can conclusively prove the following:
134. A final judgment in litigation has been entered which specifically permits negotiation on an issue which the City contended was not subject to negotiation or impasse resolution pursuant to section A8.409, et seq.

135. In the event one party requests a reopener on retirement benefits, the other party may cause a reopener on other economic items.
136. The reopener discussions shall be subject to meet and confer requirements under the Meyers-Milias-Brown Act (MMBA), California Code section 3500, et seq., and shall not be subject to impasse resolution under Charter section A8.409, et seq.

### **III.P. STATE DISABILITY INSURANCE (SDI)**

137. 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.
138. 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.Q. LONG TERM DISABILITY INSURANCE**

139. 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.R. LIFE INSURANCE**

140. Effective July 1, 2001, 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.S. DEPENDENT CARE FLEXIBLE SPENDING PROGRAM (DCAP)**

141. 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.T. BAR DUES**

142. In full settlement of any and all claims relating to or arising from the City's obligation to pay State Bar dues pursuant to section III.S of the prior MOU (with effective dates July 1, 1998 to June 30, 2001), the City shall pay each represented attorney the lump sum of \$350.00. In

order to be eligible for payment, the attorney must have been continuously employed by the City since January 1998, and be on the payroll at the time of payment. The payment shall be made no later than August 31, 2001.

### **III.U. PROFESSIONAL SERVICES REIMBURSEMENT**

143. In light of the unique nature of work performed by the professionals represented by the MAA, beginning fiscal year 2001-2002, each attorney shall receive an annual lump sum payment as non-receipted reimbursement for professional services expenses, as follows:
144. Each FTE represented attorney shall receive \$1000 per fiscal year. In order to be eligible for the full amount, the represented attorney must be on the payroll as of June 30 of the previous fiscal year. Such payment shall be made on or before October 1 of each fiscal year.
145. MAA represents and warrants that the payments made hereunder shall be used by each attorney only for reimbursement for the following professional, job-related, expenditures:
- 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.
146. This provision satisfies all obligations relating to represented attorneys' professional business expenses, including without limitation, State Bar Dues, course tuition, etc.
147. The City may, with notice to the MAA, request an audit from any represented attorney to ensure funds have not been used for inappropriate expenses. The City may require attorneys to show proof of State Bar licensing and MCLE requirements. MAA and its members assume full responsibility for any tax consequences.
148. 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 \$500 per fiscal year under this provision. In addition, new hires (i.e., hired after July 1 in any fiscal year) shall be entitled to a \$500 lump sum payment pursuant to this provision, provided that they are on the payroll on or before February 1 in the fiscal year.

### **III.V. PILOT WELLNESS PROGRAM**

149. Pilot "Wellness Incentive Program" ("WIP") to promote workforce attendance shall be established effective July 1, 2002.
150. WIP shall apply to full time employees separating with service or disability retirement. The benefit is triggered upon and after separation.



151. Each represented attorney shall receive an amount of payment equal to 2.5% of accrued sick leave credits at time of separation times the number of whole years of continuous employment times an employee's salary rate, exclusive of premiums or supplements.
152. Vested sick leave credits under Civil Service Rules shall not be included in the computation.
153. Number of hours subject to cash out is 1040 hours maximum, including vested sick leave.

Example of calculation:

Employee A retires with 20 years of service.

Employee A has sick leave balance of 500 hours.

Employee A has a base salary rate of \$25.00 per hour at the time of separation.

Benefit = 2.5% x 20 = 50% x 500 = 250 hours.

250 hours x \$25.00 (base salary at time of separation) = \$6,250.00.

154. The Wellness Incentive Program in the MOU shall not be considered as evidence or as any admission by either contracting party for the purpose of either supporting or defending the lawsuit entitled Municipal Attorney's Association, et al. v. City and County of San Francisco, et al., San Francisco Superior Court No. 302290.

## **ARTICLE IV - WORKING CONDITIONS**

### **IV.A. HEALTH AND SAFETY**

155. 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**

156. 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. WORKER'S COMPENSATION**

157. 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.
158. 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.
159. 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 worker's 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.
160. 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.
161. 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.

162. 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

163. 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.
164. 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.
165. 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.
166. 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).
167. 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).
168. 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.
169. 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.
170. F. The Employee Relations Ordinance, Section 16.200 of the Administrative Code, shall not apply to the application of this section.
171. 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.

**V.B. SAVINGS CLAUSE**

172. 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**

173. This agreement shall be in effect from July 1, 2001 through June 30, 2003.

IN WITNESS WHEREOF, the parties have executed this Agreement this \_\_\_\_ day of \_\_\_\_\_, 2001.

FOR THE CITY:

FOR THE UNION:

\_\_\_\_\_  
Andrea R. Gourdine  
Human Resources Director

\_\_\_\_\_  
Alfred F. Giannini  
President, Municipal Attorneys Association

\_\_\_\_\_  
Geoffrey Rothman  
Director, Employee Relations Division

\_\_\_\_\_  
Alice Villagomez  
Deputy Director, Employee Relations Division

Approved as to Form:  
CITY ATTORNEY

\_\_\_\_\_  
Jesse Smith  
Chief Counsel

**SIDE LETTER TO  
MEMORANDUM OF UNDERSTANDING  
MUNICIPAL ATTORNEYS ASSOCIATION AND THE  
CITY AND COUNTY OF SAN FRANCISCO  
July 1, 2001 - June 30, 2003**

The City and County of San Francisco (the City) and the Municipal Attorneys Association (MAA) agree as follows:

1. The City and the Union agree that if the City adopts a new City-wide holiday that is extended to employees represented by other labor organizations, the City will also extend such holiday to employees represented by this Union; provided, however, that this Union will be subject to any terms or conditions imposed on or agreed to by other unions in connection with extending the new holiday. The City will provide reasonable advance notice to the Union of any new holiday affecting employees represented by the Union.

2. The parties' bargaining history regarding the impact of the case *Ventura County Deputy Sheriffs' Association v. Board of Retirement of Ventura County*, 66 Cal. Rptr. 2d 304 (1997), including the submission and withdrawal of proposals relating to the impact of certain forms of compensation on employees' final compensation for purposes of calculating retirement benefits under the Charter, may not be used in any litigation or arbitration proceeding concerning what forms of compensation must legally be included to calculate final compensation for retirement benefits.