

RESOLUTION NUMBER R- 306740

DATE OF FINAL PASSAGE APR 25 2011

A RESOLUTION OF THE COUNCIL OF THE CITY OF  
SAN DIEGO APPROVING A TENTATIVE AGREEMENT  
BETWEEN THE CITY AND THE DEPUTY CITY  
ATTORNEYS ASSOCIATION, REGARDING TERMS AND  
CONDITIONS OF EMPLOYMENT FOR FISCAL YEAR 2012.

WHEREAS, from February 8, 2011, until April 6, 2011, the Management Team of the City of San Diego met and conferred with the Deputy City Attorneys Association (DCAA) regarding wages, hours, and other terms and conditions of employment for employees represented by DCAA in the Classified Service of the City, and made detailed recommendations to the City Council in relation thereto; and

WHEREAS, the Meyers-Milias-Brown Act (MMBA), at California Government Code sections 3500 through 3511, is the state law that governs labor relations between the City and its represented employees in the City's recognized employee organizations, including DCAA; and

WHEREAS, the MMBA requires the City to engage in collective bargaining with its recognized employee organizations, including DCAA, in an effort to reach agreement on terms and conditions of employment within the scope of representation prior to the adoption of the City's final budget for the ensuing fiscal year; and

WHEREAS, California Government Code section 3505.1 provides if agreement is reached by the designated representatives of the City, also referred to as the City's Management Team, and a recognized employee organization, the City's Management Team and the recognized employee organization shall jointly prepare a written memorandum of understanding (MOU), which shall not be binding, until approved by the City Council, and present it to the City Council, as the governing body, for determination; and

WHEREAS, on April 6, 2011, the City's Management Team and representatives of DCAA reached tentative agreement on terms and conditions of employment for a one-year MOU, for a term to begin July 1, 2011; and

WHEREAS, the tentative agreement is subject to ratification and approval by the members of DCAA; and

WHEREAS, the tentative agreement is also subject to approval by the City Council, as provided by the MMBA, specifically California Government Code section 3505.1, and San Diego City Council Policy 300-06; and

WHEREAS, it is the desire of the City Council that the terms set forth in the tentative agreement, attached as Exhibit A, be documented in an MOU and brought before the City Council at a later date for final determination; and

WHEREAS, the City Council desires to approve the terms set forth in the tentative agreement in Exhibit A, so long as this approval is contingent upon and subject to ratification and approval of the tentative agreement and MOU by a simple majority of DCAA members and

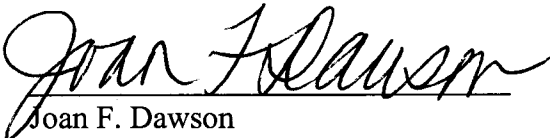
R- 300740

further contingent upon and subject to the City's Management Team and DCAA representatives jointly bringing forward an MOU at a later date for final determination by the City Council;  
NOW, THEREFORE,

BE IT RESOLVED that, pursuant to the authority of the MMBA and City Council Policy 300-06, the Council of the City of San Diego approves the tentative agreement between the City and DCAA, attached as Exhibit A; such approval being contingent upon and subject to ratification and approval of a simple majority of DCAA members.

BE IT FURTHER RESOLVED that the City Council directs the City's Management Team to jointly prepare with representatives of DCAA the written MOU and present it to the City Council at a later date for final determination.

APPROVED: JAN I. GOLDSMITH, City Attorney

By   
Joan F. Dawson  
Deputy City Attorney

JFD:cm  
4/6/2011  
Or.Dept:Human Resources

I hereby certify that the foregoing Resolution was passed by the Council of the City of San Diego, at this meeting of APR 11 2011.

ELIZABETH S. MALAND  
City Clerk

By Mary Zumbado  
Deputy City Clerk

Approved: 4.25.11  
(date)

J.S.  
JERRY SANDERS, Mayor

Vetoed: \_\_\_\_\_  
(date)

\_\_\_\_\_  
JERRY SANDERS, Mayor

CITY OF SAN DIEGO (City)  
 And  
 Deputy City Attorneys Association of San Diego

*The City and Deputy City Attorneys Association of San Diego have negotiated and reached a tentative agreement on the following provisions of the Memorandum of Understanding ("MOU"). In accordance with the understanding between the parties, no tentative agreement shall be a final agreement except as a part of a total package agreement between the parties. Both parties agree that final approval of the tentative agreement is subject to ratification by Deputy City Attorneys Association of San Diego and adoption by the City Council.*

TENTATIVE AGREEMENT

<p>TERM: 1 year</p>	<p>Revise Article 3, <u>Term</u>, to read:</p> <p>The term of this Memorandum of Understanding shall commence at 12:01 a.m. on <del>July 1, 2009</del> July 1, 2011; however, the effective date for the initial payroll changes shall be <del>July 11, 2009</del> July 9, 2011. This MOU shall expire and otherwise be fully terminated at 12:00 midnight on <del>June 30, 2011</del> June 30, 2012.</p>
<p>SALARY: No compensation increases. Maintain 6% compensation reduction and freeze salary schedule for the term.</p>	<p>Revise Article 5, <u>Salary</u>, to read:</p> <ol style="list-style-type: none"> <li>1. <u>General Salary</u> <ol style="list-style-type: none"> <li>A. No general salary increase for FY2012 <del>FY2010 and FY2011</del>. Employees in the DROP program will have a pay reduction of 3.2% of base salary, to correspond to the 3.2% employee contribution to CERS by non-DROP employees.</li> <li>B. Effective July 1, 2009, a new structured salary schedule will be implemented. (See Appendix 1, "DCAA Salary Schedule," which is attached and incorporated into this MOU)</li> </ol> </li> <li>2. <u>Mandatory Furlough</u> <ol style="list-style-type: none"> <li>A. Effective with the pay period beginning on July 9, 2011 <del>July 11, 2009</del>, each full-time employee will be</li> </ol> </li> </ol>

	<p>required to take thirty-two (32) hours of unpaid furlough during FY2012 <del>FY2010 and FY2011</del>, which will be deducted on a pro-rata basis from each of 25 paychecks over the course of the fiscal year on the same terms and conditions as apply to the City's FY09 Voluntary Furlough Program, except that no discretionary days off shall be made available.</p> <p>B. A pro-rata adjustment in the number of Mandatory Furlough hours shall be made for those employees who work less than full time (i.e. half time or three-quarter time).</p> <p>C. A pro-rata adjustment in the number of Mandatory Furlough hours shall be made for any employee who is hired after the beginning of a fiscal year.</p> <p>D. Each employee will schedule his or her Mandatory Furlough hours in the same manner as vacations are presently scheduled. The City agrees that each employee must be allowed the opportunity to take Mandatory Furlough hours off before the end of each fiscal year covered by this MOU. The parties intend that this Mandatory Furlough program will be conducted on terms that are fair and reasonable to each employee while permitting the City to carry on necessary work. In the event of any dispute over a department's or division's handling of employees' requests to schedule their mandatory furlough days, the City's Human Resources Director will have the authority to hear and direct the Department or Division to resolve the dispute in keeping with the letter and spirit of the parties' agreement.</p>
<p>RETIREE MEDICAL BENEFITS:</p>	<p>Revise Article 7, <u>Retirement Benefits</u>, section</p>

	<p>3. B. 4. to add section (e) as follows:</p> <p>(e) The parties agree that the one-year extension of this MOU through June 30, 2012 does not affect the rights and duties of the parties regarding the ongoing Retiree Medical Benefit negotiations pursuant to subsection 3. B. of Article 7, including but not limited to the City's right, as set forth in subsection 3. B. 4. (d), to impose its last, best and final offer changing the Retiree Medical Benefit effective on July 1, 2011, for those active employees covered by this agreement who retire or leave DROP on or after that date. Nor does this one-year MOU term alter or diminish DCAA's right to challenge such imposition in accordance with subsection 3. B. 4. entitled: "<u>Reservation of Rights, Failure to Reach Agreement and Return to the Status Quo Ante</u>".</p>
<p>DROP REOPENER :</p> <p>Existing language under MOU Article 7, 4.A., 4.B. and 4.C. to ensure that it is cost neutral.</p>	<p>Article 7, <u>Retirement Benefits</u>, section 4.</p> <p><u>Re-Opener Related to DROP</u></p> <p>A. If during the term of this MOU, a court of competent jurisdiction or PERB issues a final determination that any aspect of the Deferred Retirement Option Plan (DROP) is an employment benefit subject to mandatory meet and confer, the parties will reopen negotiations on those aspect(s).</p> <p>B. The City has also indicated its intention to conduct a "cost neutrality" study related to DROP and has stated that it will negotiate with DCAA on the impacts, if any that result from the City defining DROP's "cost neutrality." In the event the City proposes to change DROP during the term of this MOU as a result of defining DROP's "cost</p>

	<p>neutrality,” DCAA reserves its right to meet and confer over any proposed change if DCAA determines that the proposal is a mandatory subject of bargaining and/or to challenge any such proposed change as an unlawful impairment of a vested, Constitutionally-protected benefit.</p> <p>C. Interest will be credited to the Member’s DROP accounts at a rate determined by the SDCERS Board.</p>
<p>RETIREMENT BENEFITS</p>	<p>Revise Article 7, <u>Retirement Benefits</u>, to add section 6 at the conclusion of the Article as follows:</p> <p>6. The parties recognize that the effective date applicable to the above-listed benefit changes is currently in litigation and on appeal and will eventually be established by a final order of the court.</p>
<p>DISCRETIONARY MERIT INCREASES: Change the effective dates of discretionary merit increases.</p>	<p>Revise Article 13, <u>Review of Performance and Discretionary Merit Increases</u>, as follows:</p> <p>Effective July 1, 2009, a new structured salary schedule will be implemented. (See Appendix A, “DCAA Salary Schedule,” which is attached and incorporated into this MOU). Management has the affirmative duty to provide the employees with written performance evaluations; however, failure to provide the required written performance evaluation shall not be the basis for the denial of step advancement for employees in DCA I, II, and/or III grade as outlined below. Nothing contained herein shall affect the City Attorney’s authority to hire a Deputy City Attorney at any salary.</p> <p><u>Deputy I and II</u></p> <p>Management of the City Attorney’s Office will review the performance of employees in the</p>



Deputy I and II grade every six months, in approximately June and December. Effective July 1, 2009, employees in the Deputy City Attorney I and II grade who have served at least six months at their current step will receive a step increase at the time of these reviews, unless there is a written prior finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on the first day of the last pay period of the fiscal year that includes July 1 and the first day of the first pay period of the calendar year that includes January 1 of each year.

Deputy III

Management of the City Attorney's Office will review the performance of employees in the Deputy III grade once a year, in approximately June. Effective July 1, 2010, employees in the Deputy City Attorney III grade who have served at least one year at their current step will receive a step increase at the time of these reviews, unless there is a written prior finding in the form of a performance review that the DCA has rendered less than satisfactory performance. All step increases will be effective on the first day of the last pay period of the fiscal year that includes July 1 of each year.

Deputy IV, V and Senior Deputy

Management of the City Attorney's Office will review the performance of employees in the Deputy IV, V and Senior Deputy grades once a year, in approximately the month of that employee's anniversary date of hire by the City Attorney's office. These employees will be eligible to receive an increase at the time of these reviews, provided that such increase shall be in the sole and absolute discretion of the City Attorney, shall be based on merit, and shall be within the budgetary constraints of the City Attorney.

	<p><u>Progression Between Grades</u></p> <p>Placement in, and progression between grades shall be in the sole and absolute discretion of the City Attorney.</p> <p><u>DCAA Performance Evaluation Process</u></p> <p>During the term of this Agreement, the parties will continue to meet and confer and use their best efforts to agree upon performance evaluations for the employees and the performance evaluation process. As such, during the term of this agreement, the City Attorney's Office will conduct performance evaluations consistent with the procedures developed above.</p>
<p>TERMINATION/SUSPENSION/LAYOFF PROVISIONS</p>	<p>Revise Article 15, <u>Employment Termination Meeting</u>, and Rename to <u>Terminations, Suspensions and Lay-Off</u> and delete and add language as follows:</p> <p><u>Employment Termination Meeting</u>  <del>Any employee who has been terminated by the City Attorney's office may, within five (5) business days of his or her termination, request a meeting with the City Attorney or his or her designee, in order to discuss with the City Attorney or his or her designee, the termination decision. The City Attorney or his or her designee will meet with the employee within ten (10) business days of such a request to discuss the decision. Nothing in this Article or this MOU in any way limits the management rights of the City Attorney as expressed in Article 10 of this MOU, nor does it change the fact that all employees are employed on an at will basis, and as such the City Attorney reserves the right, in his or her sole and absolute discretion, to discipline, demote, terminate to alter the employment relationship with any employee at will, either with or without cause or advance notice:</del></p> <p>Article 15 <u>Terminations, Suspensions and</u></p>

Layoffs

A. Covered Deputy City Attorney  
Terminations or Suspensions For Cause

A “covered deputy city attorney” (“Covered DCA”) is a deputy city attorney who has served continuously as a deputy city attorney with the Office of the San Diego City Attorney (“Office”) for two years or more.

For any Covered DCA who is being terminated or suspended by the City Attorney for cause, the following procedural steps will apply:

Prior to issuing written advance notice of termination or suspension, an informal meeting will be held between the Covered DCA and the initial decision-maker regarding the proposed discipline. This meeting will provide an opportunity for an open discussion between both parties about the proposed discipline. The advance notice of the proposed discipline, as outlined below, can be given at any time either during or after that meeting. The Covered DCA may be accompanied by a DCAA representative at this informal meeting.

Fifteen business days prior to the effective date of a termination or suspension for cause, the City Attorney will provide written notice to the Covered DCA, setting forth the grounds for the termination or suspension and the effective date of the action. This “advance notice” will include the specific disciplinary action proposed and disclosure of the evidence supporting the termination or suspension for cause. The advance notice will also notify the Covered DCA subject to the termination or suspension of his or her rights at an Appeal Hearing to present witnesses and

confront adverse witnesses and to be represented. The Covered DCA may be represented by counsel, at the expense of the Covered DCA.

At the discretion of the City Attorney, the Covered DCA subject to termination or suspension for cause may be asked to remain out of the office on paid administrative leave pending final resolution of the discipline, including determination after appeal. If not placed on paid administrative leave, the Covered DCA will remain in the workplace and may be subject to a change in assigned work or unit.

Within five business days of receipt of the advance notice, the Covered DCA may request an Appeal Hearing, by submitting a written request to the City Attorney.

If the Covered DCA requests an Appeal Hearing, it will be held within five business days of request for appeal, unless an extension of time is mutually agreed upon in writing. The Appeal Hearing will be conducted by an unbiased hearing officer, who is either an Assistant City Attorney or, at the sole discretion of the City Attorney, a designee from outside the Office. If the Appeal Hearing Officer is to be an Assistant City Attorney, the Covered DCA may choose from a list of at least two ACA's who have not participated in the disciplinary process. The Assistant City Attorney that serves as the supervisor of the Covered DCA, or his or her designee, will present evidence supporting the termination or suspension. The Covered DCA will be provided with an opportunity to confront adverse witnesses and to present witnesses on behalf of the Covered DCA. The City Attorney

shall contemporaneously make and maintain a record of the Appeal Hearing, which may be an audio recording.

Following any Appeal Hearing, the Appeal Hearing Officer will provide the Covered DCA with an Appeal Decision, setting forth a determination of whether there is sufficient evidence to uphold the charges, the evidence relied upon, and the reasons for the determination made. The Appeal Hearing Officer shall uphold, reverse, or change the proposed discipline.

The Appeal Decision will be provided to the Covered DCA within five business days following the Appeal Hearing. The Appeal Decision will include a notice of final effective date of discipline, if applicable.

If the discipline is upheld, the covered DCA receives the three weeks' pay in lieu of notice from the date of the Advance Notice minus the amount of pay already received, or to be received for the period from the date of the Advance Notice.

Regardless of whether the Covered DCA decides to appeal the termination or suspension, the Covered DCA will receive the equivalent of three weeks' notice or three weeks pay in lieu of notice from the date of the Advance Notice, in conjunction with Article 26 of the MOU

Nothing included herein precludes the City Attorney from being involved in making the original disciplinary decision.

B. Non-Covered Deputy City

	<p><u>Attorney Terminations, Other than Layoffs</u></p> <p>Any deputy city attorney, who is not a Covered DCA within the meaning of Paragraph A above, who has been terminated for any reason, other than a layoff due to lack of work, lack of funds, or reorganization, may, within five business days of his or her termination, request a meeting with the City Attorney or his or her designee, in order to discuss the termination decision. The meeting will occur within ten business days of receipt of such request.</p> <p><u>C. Layoffs</u></p> <p>In the event the City Attorney decides a layoff of deputy city attorneys is necessary, due to lack of work, lack of funds, or reorganization, the City Attorney will comply with the Meyers-Milias-Brown Act (MMBA).</p> <p>The parties will begin negotiations regarding a layoff procedure, as set forth in San Diego Charter sections 30 and 40, no later than December 1, 2011.</p>
<p>TERMINAL LEAVE: Eliminate terminal leave</p>	<p>Add New Article 31, <u>Terminal Leave</u>, to read: Terminal Leave is eliminated effective July 1, 2011.</p>
<p>CLEAN-UP: Change effective dates in Article 4 to coincide with new one year agreement.</p>	<p>ARTICLE 4 Renegotiation</p> <p>Section 1. DCAA shall serve upon the City its full and entire written proposals for a successor agreement by February 3, 2012 <del>February 4, 2011</del>, with the exception of salary or other economic proposals, which shall be presented no later than February 13, 2012 <del>February 14, 2011</del>. Upon receipt of such written proposals,</p>

meet and confer shall begin no later than March 2, 2012 ~~March 3, 2011~~.

Section 2. The City shall serve upon DCAA its full and entire written proposals for a successor agreement by February 24, 2012 ~~February 25, 2011~~, with the exception of salaries or other economic proposals. Meet and confer shall begin no later than March 2, 2012 ~~March 3, 2011~~, at which time the City will present its full economic proposal. Notwithstanding the above, if federal or state governments take action that has a direct effect upon the areas which fall within meet and confer, the City and DCAA may submit proposals concerning these areas at later dates.

Section 3. If neither party has proposed a change to a particular Article in this MOU by March 2, 2012 ~~March 3, 2011~~, that Article shall remain in full force and effect from the date it would have been terminated.




Section 4. Unless otherwise agreed to, the parties agree that final offers by both parties will be made no later than April 6, 2012 ~~April 7, 2011~~. If an impasse hearing with City Council is necessary, it will be scheduled for on or about April 13, 2012 ~~April 15, 2011~~. DCAA agrees to provide to the Management Team a written statement of its positions regarding any issues at impasse on April 6, 2012 ~~April 7, 2011~~.

Section 5. The dates set forth in the Article can be changed by mutual agreement of the parties, if confirmed in writing.

Section 6. Nothing in the Article is intended to waive the rights and obligations of either party under the Meyers-Milias-Brown Act to bargain in good faith.

This Agreement is executed on this 6th day of April, 2011 by the following authorized representatives of each party.

**Deputy City Attorneys Association of San Diego**

 _____ George Schaefer, DCAA	<u>4-7-11</u> Date
 _____ Daniel Rawlins, DCAA	<u>4-7-11</u> Date
 _____ City of San Diego Scott Chadwick, Human Resources Director	<u>7 APR 11</u> Date
 _____ Tim Davis, Lead Negotiator	<u>4-7-11</u> Date
 _____ Karen DeCrescenzo, Labor Relations Officer	<u>4/7/11</u> Date