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**Memorandum of Understanding**

**between**

**Port San Luis  
Harbor Patrol Officers Association**

**and**

**Port San Luis Harbor District**

**July 1, 2018 to June 30, 2021**

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**AUGUST 28, 2018**

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## **MEMORANDUM OF UNDERSTANDING**

### **1.0 PARTIES TO AGREEMENT**

This Agreement is made and entered into this August 28, 2018 by and between the PORT SAN LUIS HARBOR DISTRICT BOARD OF COMMISSIONERS, hereinafter referred to as "District" and the Port San Luis Harbor Patrol Officers Association to be referred to as the "Association," hereinafter. The Association includes all full-time employees of the Harbor Patrol Department, excluding the Chief Harbor Patrol Officer. The Port San Luis Harbor Patrol Officers Association is affiliated with California Organization of Police and Sheriff ("COPS"). The Association members pay dues to COPS.

This Memorandum of Understanding incorporates those provisions of the Personnel Guidelines Manual currently in effect, to the extent not inconsistent herewith. The District reserves the right to add benefits and other items to the Personnel Guidelines Manual so long as they improve or increase benefits, protections, and clarifications which do not detract from or decrease the statements of this Memorandum of Understanding. As deemed necessary by the Board of Harbor Commissioners, the Personnel Guidelines Manual may be revised by insertions of dated revision pages. Revisions to the Personnel Guidelines Manual which affect the terms or conditions of this Agreement will be accomplished by the District and Association approving an addendum to the Memorandum of Understanding.

### **2.0 EMPLOYEE RIGHTS**

Employees of the District 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 including but not limited to, wages, hours and other terms and conditions of employment. Employees of the District also shall have the right to refuse to join or participate in the activities of employee organizations and shall have the right to represent themselves individually in their employment relations with the District. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights.

### **3.0 REQUIREMENTS OF ASSOCIATION**

A. The District and the Association agree that not more than one COPS staff representative shall be given reasonable access to working locations during normal hours of work to conduct grievance investigations and observe working conditions. A COPS staff representative is defined as a paid full-time or part-time employee of COPS.

B. The Association shall advise the Harbor Manager at least twenty-four (24) hours in advance of any meetings the Association wishes to hold with the District or on District property and shall notify the Harbor Manager of the presence of a COPS staff representative on District property at the time the representative first enters District property. COPS representatives will not enter any restricted or hazardous work area of the District without the Harbor Manager's prior approval and the COPS representatives will observe and obey all safety measures or other restrictions which apply on District property. COPS representatives will provide their own hard hats or other safety equipment, which meets District's standards, at COPS' expense. The Association shall not interfere with or disrupt any operations of the District, District Employees or Commissioners, advisors to the

District, District contractors, lessees, guests, and/or any other persons or equipment involved with District operations, programs or plans.

#### **4.0 EXEMPT EMPLOYEES**

Exempt employees will not be represented by the Association in any matter covered by this Agreement. Only the Board of Harbor Commissioners has the right to determine what positions are exempt from this contract and the following are declared to be exempt: Harbor Manager, Business Manager, Facilities Manager, Chief Harbor Patrol Officer, all members of SEIU (or other bargaining units) including but not limited to, Facilities Department staff, contract, seasonal (i.e. lifeguards), reserve and part-time Harbor Patrol Officers employees and interns.

#### **5.0 ASSOCIATION STEWARDS AND REPRESENTATIVES**

##### **5.1 Association Stewards**

A. The Association may designate a steward or stewards to represent employees in actual processing of grievances as stated in the section of this Agreement entitled Grievance Procedures.

B. One Authorized COPS representative, as defined in this Agreement, shall be given access to work locations during working hours to conduct grievance investigations and observe working conditions. COPS shall request approval of the Harbor Manager twenty-four (24) hours prior to the intended visit and a management representative may accompany the COPS staff member on the visit. A COPS staff representative is defined as a paid full-time employee of COPS.

C. The Association shall furnish the District's Management with a written list identifying by name and position of all regular and alternate stewards. The Association shall be responsible for keeping the District furnished with the current list.

D. The Association may designate one of the stewards provided in "A" above as the Chief Steward.

The Chief Steward shall have the same authority provided by this article to stewards.

The Chief Steward shall be entitled, in addition to the regular steward or alternate, to participate in the investigation and processing of a grievance without loss of compensation or benefits. The Association agrees that the Chief Steward will perform these duties as expeditiously as possible. When addressing District management, only one Association representative shall be a spokesperson.

##### **5.2 Association Officers and Representatives**

The Association shall provide the District's Management with a list of Association officers and representatives who are authorized to meet and confer with the District and to keep the list up to date.

#### **6.0 ASSOCIATION RIGHTS**

A. Notification to the Association: Except in cases of emergencies, the District shall notify the Association prior to making substantial changes that cover matters within the scope of representation.

B. The Association's Chief steward, or in his/her absence the department's alternate steward, shall be authorized to participate in the investigation and processing of a

grievance without loss of compensation or benefits. The Association agrees the Chief steward and/or alternate stewards shall perform their duties as expeditiously as possible.

The District and the Association agree that no more than two (2) bargaining unit representatives shall be allowed to meet with the District management on District time during normal working hours for the purposes of meeting and conferring the negotiation or re-negotiations of this agreement without loss of compensation or benefits.

D. The exercise of such rights does not preclude employees or their Association representatives, as defined in the section of this agreement entitled ASSOCIATION STEWARDS AND REPRESENTATIVES, from conferring or raising objections about the practical consequences that decisions on these matters may have on wages, hours and other terms and conditions of employment as elsewhere provided in this Agreement.

## **7.0 MANAGEMENT'S AUTHORITY**

District retains, solely and exclusively, all rights, powers and authority exercised or held prior to the execution of this Agreement, except as expressly limited by a specific provision of this Agreement. Without limiting the generality of the foregoing, the rights, powers and authority retained solely and exclusively by the District and not abridged herein, include, but are not limited to the following:

To manage and direct its business and personnel; to manage, control, and determine the mission of its departments, building facilities, and operations; to assign, repair, inspect, and retrieve District property and space; to create, change, combine or abolish jobs, policies, departments and facilities in whole or in part; to subcontract or discontinue work for economic or operational reasons; to direct the work force; to increase or decrease the work force and determine the number of employees needed; upon reasonable suspicion of impaired ability on the job, to require employee physical examinations and tests endorsed by a physician and paid for by the District; to hire, transfer, promote, and maintain the discipline and efficiency of its employees; to establish work standards, schedules of operation and reasonable work load; to specify or assign work requirements and require overtime; to schedule working hours and shifts; to adopt rules of conduct (including acceptable dress standards) and penalties for violation thereof; to determine the type and scope of work to be performed by employees and the services to be provided; to take action deemed necessary to provide for the safety of employees and clients; to classify positions; to establish initial salaries of new classifications after notification of the Union; to determine the methods, processes, means, and places of providing services and to take whatever action necessary to prepare for and operate in an emergency. The Association shall extend this same cooperation to ensure the economy of operation, quality of output, cleanliness of the District; and protection of persons, equipment, and property. It is furthermore agreed that it is the duty of the District and the employees to cooperate for the advancement of said conditions.

Management shall have the right, under its sole discretion, to require any covered employee to seek medical, psychological or physiological assistance or review for determining the fitness of the employee for duty. Any such required examination or treatment shall be at the District's expense and shall take place at a medical facility of the District's choice.

## **8.0 NON-DISCRIMINATION**

The District and the Association agree that the provisions of this Agreement shall apply equally to all Association employees without discrimination because of race, creed, age, sex, national origin, marital status, disability, sexual preference, sexual orientation and gender identity/expression, political or religious affiliations. However, the Association agrees that it shall not support or direct any campaign on District property during work hours for or against any of the above, except as provided by law and the terms of this Agreement.

## **9.0 DUES DEDUCTION**

Upon signed and dated written request of the Employee, the District shall deduct Association dues from the Employee's paycheck. The District shall remit said dues to the Association or designated entity on a monthly basis for the duration of this Agreement, which dues shall not include assessments. Monthly Association dues deductions, additions and/or deletions shall be recorded by the District Business Department and a notification of all Association dues transactions shall be sent monthly to the Association. The Association shall hold the District harmless from all claims and will indemnify it against any unusual costs in implementing these provisions. The Association shall refund to the District within thirty (30) days of notification, any amount paid to it in error upon presentation of supporting evidence.

An Association member may exercise their right to resign from Association membership by transmitting a written notice of resignation to the Association and to the District's Business Department.

The District shall cancel dues deductions for employees upon notice from the Association that the resignation meets the conditions of this Agreement.

## **10.0 JURY DUTY**

Specific provisions regarding Jury Duty are stated in the Personnel Guidelines Manual and as provided in the subsection of this Agreement under LEAVES of ABSENCE.

## **11.0 SALARY ADJUSTMENT**

The base rates of pay for all members of the Harbor Patrol Department shall be adjusted as follows:

Effective the first full pay period of each fiscal year as follows:

July 2018     Increase by 3.25%

July 2019     Increase by 3.25%

July 2020     Increase by 3.25%

### **11.1 Cost of Living Adjustment**

Effective the first full pay period of each year of each of the years of the contract, the base salaries of all the Association members shall be increased by an amount equivalent to the Consumer Price Index (CPI) for all urban consumers for Los Angeles, Orange County, and Riverside (1982-84 = 100) for the calendar year ending the previous December, using the annualized figures or three percent (3%) whichever is less. In the event the calculated CPI is less than two percent (2%) in 2017 for the 2018 increase and each year thereafter, then the increase shall be 2%. If the Harbor District's consolidated budgeted (excluding the Capital Budget) expenditures exceed projected revenues by more than 2%, then this Cost



of Living adjustment may not go into effect. However, the parties agree to meet and confer regarding the budget deficit as it relates to this section.

## **11.2 Retroactive Base Salary Increase**

Effective retroactive to the pay period including July 1, 2018 for those employees still employed by the District upon Harbor Commission adoption of this MOU, the District shall provide a Salary Adjustment increase to base salaries for all HPOA classifications by 3.25%. The 3.25% shall apply at the same time as the 2.79% COLA, not compounded, so as to realize a 6.04% total base salary increase.

## **12.0 PENSION CONTRIBUTION**

Pension plans are administered by the California Public Employees Retirement System (CalPERS). There are three pension tiers: Safety 3% @ 50 for Tier 1 Members; Safety 2% @ 50 for Tier 2 Members; or 2.7% @ 57 for PEPRA New Members. The tier an employee is placed in is dependent upon hire date and CalPERS membership date.

**12.1** The District agrees to contribute employer's amount as annually calculated by the Pension Plan Administrator (California Public Employees' Retirement System –CalPERS – Safety 3% @ 50 Tier 1 Members; Safety 2% @ 50 Tier 2 Members; or PEPRA New Members 2.7% @ 57) of the annual salary of each regular Harbor Patrol employee.

**12.2** CalPERS determines reportable earnings and non-reportable earnings. Non-reportable earnings include but are not limited to overtime and stand-by pay. Employees agree to contribute a percentage of the employee's reportable earnings. The employee percentage maybe adjusted annually by CalPERS.

**12.3** For fiscal year beginning July 1, 2018 the Employer and Employee required contributions are as follows:

Plan	Employer Rate	Employee Rate	Additional Employer Contribution
Safety 3%@50	19.416%	9.000%	\$41,381
Safety 2%@50	15.719%	9.000%	\$899
Safety 2.7%@57	12.141%	12%	\$482

**12.4** Every employee covered under this MOU shall be required to participate in CalPERS retirement. Participation shall follow the provisions as stated in the Public Employees Retirement Law, Government Code Title 2, Division 5, Parts 3 through 8, Sections 20000 through 22970.89, and Code of Regulations Title 2, Division 1, Chapter 2, Sections 550 through 599.515.

## **13.0 WORK SCHEDULE**

The Harbor Patrol Department shall generally work a ten hour shift, unless employee is in training in which case employee shall work an eight hour shift. If circumstances change that require different schedules, the Association and District Management shall meet and confer on this specific issue. If the change in circumstances ceases to exist then the Department shall return to the ten hour day schedule.

### **13.1 Overtime Pay**

The District may assign employees work in excess of the normal, regularly scheduled forty (40) hour work week, which shall be compensated as overtime pay. In place of overtime

pay, an employee may request compensatory time off (CTO), which may be approved if the District so deems that CTO will not have any adverse affect on operations, scheduling, or expectations of the public and others served by the District. Compensation will be at a rate of one and one half times (1-1/2) the employee's regular hourly rate of pay, for any hours of time worked in excess of forty (40) hours in any one work week or ten (10) hours in any one day (or regular scheduled shift), as overtime pay or at the rate of one and one half (1-1/2) times the hours worked if compensatory time off is allowed.

**13.2** All overtime work shall be authorized in advance by the employee's immediate supervisor or higher authority, such as the Department Head or Harbor Manager; failure to obtain permission is grounds for discipline. All time which an employee actually works (including CTO, holiday, vacation, sick, jury duty) shall be considered in establishing the employee's usual forty-hour (40-hour) work week. Employees receiving time and one-half (1-1/2) for holidays shall not be entitled to additional overtime in addition to the time and one half (1-1/2) for hours worked in excess of overtime limits. Holiday pay and overtime pay will be the same for an employee whose normal schedule includes the holiday, and an employee that works on a holiday that is not part of the employee's regular schedule.

**13.3** Compensation, as provided herein, shall not be granted to any employee for services for which the employee has been otherwise compensated. For purposes of this section, compensation for paid time off shall be considered as compensation for services rendered.

**13.4** A nonexempt Association member may accrue a maximum of sixty (60) hours of compensatory time off. Members may not carry more than forty-five (45) hours of compensatory time on the first pay period in October. Any amount over 45 hours shall be paid on the last payroll check in September. The employee shall be permitted to schedule the use of CTO, at the discretion of the District as stated above, provided the employee requests the time off at least seven (7) work days in advance. If the requested time off is not granted, the immediate supervisor and the employee shall meet to select an alternative date. If no alternative date is available, the employee shall be paid in cash in lieu of receiving time off. Compensated overtime shall be paid to the nearest fifteen (15) minutes worked.

**13.5** Requests for CTO use with less than seven (7) days' notice are at the discretion of the supervisor and shall not be approved if they will cause the District to incur overtime charges to compensate for CTO use as a result.

**13.6** The immediate supervisor may approve payment in cash in lieu of receiving time-off if granting time-off creates an undue hardship on the Department. Requests for payments and supervisor approval shall be presented to the Payroll Department at the regularly scheduled time card due date and shall be included in employee's normal pay check or direct deposit.

#### **14.0 CALL BACK PAY**

Employees who are called back to work without any advance notice when off duty and required to report back for duty, shall receive a minimum of two (2) hours pay at the regular hourly rate. Call Back pay is not applicable to overtime worked as extensions of a normal shift or scheduled overtime assignment.

#### **15.0 STANDBY PAY**

**15.1** Certain employees will be required to be on standby for rapid response to District operational problems or emergencies after hours, week-ends or holidays. Standby pay

shall be \$3.00 per hour for each hour of standby duty. Standby hours shall not include any hours for which the employee receives regular or overtime pay. Upon call out (when the employee leaves their house or location in which the call out was received) the employee shall then be "on the clock" for the purposes of regular or overtime pay. The employee shall be "off the clock" upon leaving the Harbor District or other duty location. The time of these occurrences shall be recorded on the employee's time card in order for the proper payment to be issued. This Standby Pay is in addition to the employee's pay for regular duty work schedule and is also in addition to any overtime actually worked. Thus, if an employee on standby must respond to a problem which results in time actually worked in excess of a 40-hour week, the standby employee will be paid for the time actually worked at time-and-one-half overtime rate or double time if worked over twelve hours in a day. An employee on Standby status will not be covered by the 2 hours minimum provisions of Section 14.0, Call Back Pay, herein.

**15.2** An employee on standby duty will be required to carry a cell phone and remain in the local area. The standby employee may pursue any personal activity, which leaves him/her available to promptly respond to calls for response to operational problems or emergencies. The standby employee shall refrain from activities which might impair his/her assigned duties upon call.

## **16.0 MEAL PERIOD**

All full-time harbor patrol officers will be available and on radio standby during their entire workday. A meal break may be taken if four (4) or more hours are worked per day and the Harbor Patrol Officer is available to respond for duty.

## **17.0 TRAVEL ALLOWANCES**

Employees required by the District to attend educational programs, training sessions and/or meeting functions, as representatives of the District shall be compensated as provided in the District's 'Travel Expense Reimbursement' Policy.

## **18.0 TYPES OF EMPLOYMENT**

The District has one (1) category of employment covered by this Agreement, which are regular employees.

### **18.1 Regular**

Regular employees are those employees who are hired on a full-time basis to work forty (40) hours per week. All regular employees, upon initial hiring or upon promotion, must serve a probationary period. Regular employees are subject to all applicable terms and conditions of this Agreement.

#### **18.1.1 Probationary Period**

A. The newly appointed and existing regular employee's probationary period is basically an on-the-job test with pay - "an extension of the examination process." It is a period during which the employee has an opportunity to prove himself/herself in the actual work situation. It is also a training period, and supervisors shall work conscientiously with the new or promoted employee to improve his/her work and to help him/her learn the job. It is also a period when the Harbor Manager and supervisors have the opportunity to observe and appraise the conduct, performance, attitude, adaptability and job knowledge of the employee, and to determine whether he/she is fully qualified for regular status. The probationary period will be twelve (12) months from the initial date of employment. A

probationary employee whose work is deemed unsatisfactory can be terminated at any time during the twelve-month (12-month) probationary period without right of appeal.

B. The length of the probationary period of a promoted employee shall normally be ninety (90) days unless otherwise specified by the District. Any employee not continued beyond the probationary period following a promotion appointment shall be reinstated to the position from which he/she was promoted if this occurs within ninety (90) days from the promotional appointment date. Then the employee shall be reinstated to the position from which he/she was promoted, provided that a vacancy exists at the same or lower level in the classification series to which he/she would revert. If this does not occur the District will attempt to find another suitable position at or below the level of range and step the employee held before the promotional appointment, but the District does not guarantee this will occur, except by virtue of a reclassification, within the District service. The probationary period may be extended by mutual consent as a result of an employee's poor performance evaluation. If no vacancy exists, the promoted employee shall be placed on pre-employment hire list for the period of one (1) year.

C. The District shall provide a newly appointed probationary employee a review of his/her performance at approximately the end of each of the first twelve (12) months from the date of hire. During the twelve (12) month period, the employment relationship may be terminated voluntarily or involuntarily without the right of appeal.

#### **18.1.2 Harbor Patrol Officer I**

The normal entry level in the Harbor Patrol Officer (HPO) series is HPO-I. Officers at this level are considered to be in a training status and are expected to satisfactorily complete a qualification program not later than eighteen (18) months from the initial date of employment.

#### **18.1.3 Harbor Patrol Officer II [ELIMINATED APRIL 2007]**

#### **18.1.4 Harbor Patrol Officer III**

Within twelve (12) months of employment and upon completion of the qualification training program, the officer may be promoted to HPO-III. The qualification program, administered by the CHPO is designed to insure that the trainee is fully qualified in the operation of all vessels, vehicles and equipment and in the enforcement of all rules and procedures governing the operation of the District. Failure to satisfactorily complete all elements of the qualification program within a twelve-month (12-month) training period (from the date of hire) may result in involuntary termination under the provisions of Section 42.0 at the sole discretion of the Harbor District.

### **19.0 CLASSIFICATION CHANGE**

The parties agree to consult and discuss over any proposed changes in classifications (i.e., job status change). Classifications as determined in this section are considered a position such as a harbor patrol officer. Classification Changes: Notification of change. During the course of this agreement, if the District desires to change the current content of classifications in effect at the beginning of this agreement, the District shall consult and discuss with the Association over this matter. If the District and the Association cannot reach agreement on the appropriateness of the change and/or an appropriate pay level as a result of proposed changes, the District shall implement the proposed classification change but shall enter into re-negotiation regarding the change when the parties negotiate a new Memorandum of Understanding.

NOTE: CLASSIFICATION PROGRAM: Classifications (positions) are established by the Commission and are subject to annual funding, without cause or requirement to meet and confer with the Association.

### **19.1 Position Vacancies**

Selection for Vacancies: It is the District's policy to give qualified employees preference over others when filling vacancies within the organization. However, because of legal requirements and the levels of education and other qualifications required for many positions, promotions from within are not always possible or appropriate. In addition, the District reserves the right to fill vacancies, laterally or otherwise, from qualified, exempt management employees, who apply or are granted such rights. An employee's past performance, qualifications, potential, abilities, and job experience are important factors that are considered in the selection of employees for promotion. Therefore, the positions may be open only to current employees or others, as the Harbor Manager considers necessary. Promotion probation as per Section 18.1.1 B shall apply.

### **19.2 Posting of Position Vacancies**

Notice of all openings in current or new classifications shall be posted on bulletin boards. The notice shall contain the following:

- A. Recruitment criteria
- B. Position title
- C. Examples of duties
- D. Required qualifications
- E. Salary Range or rate

### **20.0 THE SALARY STEP PLAN**

The salary step plan shall provide a salary range for each employee job classification. Such salary range will be divided into six (6) salary level steps, which shall be interpreted and applied as follows:

1. "A" STEP: The "A" or first step salary level will be the minimum rate and normally shall be the starting or hiring rate and shall include the twelve (12) months probationary period. In special cases when it is merited by experience, education, training or other qualification, the Harbor Manager may approve the hiring of a candidate for employment at a higher level.
2. "B" STEP: The "B" or second step salary level may be granted to an employee after satisfactory completion of twelve (12) calendar months of continuous service at the "A" Step in one or more classifications. The adjustment shall be made only if granted by the District on a basis of a satisfactory performance evaluation.
3. "C" STEP: The "C" or third step salary level may be granted to an employee who has proven to be fully satisfactory in a given (i.e., the same) classification for twelve (12) calendar months of continuous service from the granting of the previous salary step increase only if granted by the District on the basis of a satisfactory performance evaluation. The third step is an incentive advancement and is the rate at which fully qualified, experienced and ordinarily conscientious employees may be expected to be paid.
4. "D" STEP: The "D" or fourth step salary level may be granted to an employee who has proven to be fully satisfactory in a given (i.e., the same) classification for twelve (12) calendar months of continuous service from the granting of the previous salary step increase only if granted by the District on the basis of a satisfactory performance

evaluation. The fourth step represents the middle value of the salary range and is reserved to reward employees whose work is above average for their class.

5. "E" STEP: The "E" or fifth step salary level may be granted to an employee who has proven to be fully satisfactory in a given (i.e., the same) classification for twelve (12) calendar months of continuous service from the granting of the previous salary step increase and only if granted by the District on the basis of a satisfactory performance evaluation. The fifth step is reserved as a reward for outstanding service.

6. "F" or sixth step salary level may be granted to an employee who has proven to be fully satisfactory in a given (i.e., the same) classification for eighteen (18) calendar months of continuous service from the granting of the previous salary step increase only if granted by the District on the basis of a satisfactory performance evaluation. The sixth step is reserved for job performance, which exceeds established standards. It may be presented to an employee who has demonstrated a sense of public service, contribution to advancement of the District's objectives and goals. Additionally, to be awarded this step, employees must have a good record of reporting to work regularly (limited sick days off) and being on time.

### **20.1 Advancement Base Date**

The basis for the advancement date for all step advancements shall be the employee's date of hire or appointment, except as follows:

1. If the employee receives a promotion to a position resulting in the employee receiving compensation at a higher range, a new advancement date shall be based on the date of the promotion having become effective.
2. If the employee terminates employment or is terminated from the District and is re-employed or is re-appointed at a later date, that employee shall be given a new initial anniversary date which shall be the last date of employment or reappointment.

#### **Step Increase on Promotions**

When an employee receives advancement to a higher range, the employee's new compensation shall be determined by locating the dollar amount of the range and step from which promoted, in the new range. If the dollar amount falls between steps of the new range, the next higher step shall apply so that the employee receives a minimum of five percent (5%) increase for the promotion.

### **20.2 Special Merit Advancement**

The Harbor Manager may, upon the recommendation of the Chief Harbor Patrol Officer, authorize advancement of an employee to any of the last five steps, (Steps "B" through "F"), earlier than the employee normally would be eligible by virtue of length of service. Such action is reserved for very exceptional cases, and shall be approved only after being carefully analyzed. A special merit advancement need not affect or change the date of a subsequent regular merit increase.

### **20.3 Demotion**

Reduction in salary may occur in the event of demotion due to disciplinary actions.

### **20.4 Pay Dates**

As previously and currently defined the work week shall be defined as 0001 hours on a Sunday to 0000 hours on the following Sunday.

The pay period shall be defined as 0001 hours on a Sunday to 0000 hours two weeks later. Payday shall be the Friday following the end of the pay period. There shall normally be 26 pay periods in a calendar year.

## **21.0 HEALTH & WELFARE BENEFITS**

**21.1** Total contributions (flexible dollars plus non-elective contributions) for full-time, permanent employees shall equal the lowest cost HMO health care plan less the following amounts on a monthly basis:

Employee only:	\$0
Employee plus one dependent:	\$61 per month
Employee plus 2 or more dependents:	\$100 per month

The District Section 125 Plan Document will be updated to coincide with the above employee pre-tax contribution amounts.

**21.2** The District shall provide flexible dollars for the purchase of dental and vision insurance including insurance for employee's spouse and eligible dependents.

**21.3** The District's non-elective contribution to the Section 125 Cafeteria Plan for health insurance coverage shall be as directed by CalPERS: (Currently, \$122 per month).

**21.4** Flexible dollars are provided to current employees who participate in a CalPERS health plan offered only through their employment. Such flexible dollars are based on the annually identified CalPERS lowest cost HMO premiums and the election by the employee of employee only, employee plus one, or employee plus two coverage as presented above.

**21.5** The effective date of coverage and terms of coverage shall be governed by the plan in effect at the time of the signing of this agreement. Eligible employees whose health insurance needs are adequately provided through another source, e.g., a spouse's plan or one which carries over from a previous employment, may elect not to participate in the District's Section 125 Premium Only Plan. Those employees who have provided evidence of acceptable (to District) medical insurance coverage shall receive, in lieu of flexible contributions and non-elective contributions, payment of \$200 per month in addition to their regular pay.

**21.6** The Harbor Patrol Department may participate in Health and Dependent Care flexible spending account programs in effect and generally available to other Employees of the District and as allowed under the District's Section 125 Cafeteria Plan.

## **22.0 DEFERRED COMPENSATION PLAN**

The District may provide to all employees a Deferred Compensation Plan during the term of this Agreement. Participating employees shall be responsible for annual fees and any other administrative fees charged by the District's appointed Plan Administrator.

## **23.0 HOLIDAYS**

**23.1** The District and the Association agree that the following days shall be observed as legal paid holidays:

1. January 1 - New Year's Day
2. Martin Luther King's Birthday
3. President's Day
4. Last Monday in May - Memorial Day
5. July 4 - Independence Day

6. First Monday in September - Labor Day
7. Veterans Day (As observed by the state government)
8. Fourth Thursday in November - Thanksgiving Day
9. Friday after Thanksgiving
10. One day before Christmas (Christmas Eve)
11. December 25 - Christmas

**23.2** For employees working a regularly scheduled ten (10) hour day (a '4 10s' schedule), a work day shall be defined as ten (10) hours; half a day shall be defined as five (5) hours.

**23.3** For employees working a regularly scheduled eight (8) hour day (a '5 8s' schedule) a work day shall be defines as eight (8) hours; half a day shall be defined as four (4) hours.

When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. When a holiday falls on a Sunday, the following Monday shall be observed as the holiday. A holiday shall be defined as a full day of paid time off for regular full-time employees.

**23.4** Employees who work on a recognized holiday shall be paid at his/her regular rate of pay, and shall be credited one and half (1 ½) hours in compensatory time off (CTO) for each hour of time worked on a holiday as determined by the District.

All paid holiday hours shall be considered as time worked for the purpose of calculating overtime obligations under this MOU. Employees may elect to be paid for such time rather than putting it into their CTO bank.

**23.5** Employees will not receive holiday pay unless they have either worked or been in a pay status on the regularly scheduled working day before and after the holiday.

## **24.0 VACATION LEAVE**

**24.1** All regular employees shall accrue vacation leave per the following schedule:

MONTHS OF SERVICE:	HOURS PER MONTH:	HOURS PER YEAR:
1 - 60	8	96
61 - 120	10	120
121 - 180	12	144
181 plus	13.33	160

Note: Years of service begins when an employee becomes a full-time regular employee.

**24.2** An employee is not eligible to use accrued vacation leave until it has been accrued and approved as provided below.

**24.2.1** A regular employee covered by this Agreement who leaves the District service shall receive payment for accrued unused vacation leave at the rate of pay the employee is receiving at the time of his/her separation.

**24.2.2** It is the employee's responsibility to request and use vacation leave in a manner that neither jeopardizes his/her vacation leave balance nor the efficiency of the work unit. Employees shall abide by the Personnel Guidelines manual which requires a thirty (30) day advance request for vacation time be submitted to the employee's supervisor before any vacation time can be used. Vacation leave schedules must be reviewed by management prior to the scheduled vacation. Vacation schedules will be based upon the needs of the District and then, insofar as possible, upon the wishes of the employee. Management may not deny an employee's vacation request if such denial will result in the loss of accrued vacation by the employee. The Harbor Manager or his designee may approve a two-month extension of maximum vacation accrual. In no event shall more than one such extension be



granted in any calendar year. Any accrued vacation leave which the employee would otherwise lose, because it is not practical for the District to have the employee on vacation, shall be paid at the then hourly rate earned by the employee on the basis of straight time wages.

## **25.0 VACATION LEAVE USE**

**25.1** Vacation leave shall only be granted in even, whole hour increments.

**25.2** Vacation leave shall not be granted to any employee after separation from District service, or during a District authorized leave of absence without pay or any other absence from duty not authorized by the District.

**25.3** Vacation leave shall not be granted to any employee during the first six (6) full calendar months of the employee's original probationary period. However, on the successful completion of the first six months, the employee shall be credited with vacation leave that would otherwise have been credited.

## **26.0 VACATION ACCRUAL RATES**

**26.1** All regular and part-time employees shall accrue vacation leave on the basis of the number of regular hours worked in the District service and all hours spent in a paid leave status from regular duties, excluding any time worked as overtime or special time. Such accrual shall take place on a pay period basis.

**26.2** All eligible employees shall take annual vacation leave away from their job duties. No employee shall carry over accrued vacation leave from one (1) calendar year to another exceeding two hundred forty (240) hours.

**26.3** Vacation leave granted by the District and used by an employee shall be deducted from the employee's accrued vacation leave.

**26.4** Employees granted a leave of absence with pay or other approved leave with pay shall accrue vacation leave as otherwise regularly provided by this Agreement.

**26.5** Vacation leave shall not be accrued by any employee absent from duty after separation from District service, or during a District authorized leave of absence without pay or any other absence from duty not authorized by the District.

## **27.0 COMPENSATION FOR ACCRUED VACATION LEAVE**

**27.1** In the event that an employee's accrued vacation time exceeds two hundred forty (240) hours, then the employee shall be compensated for all such hours at the current salary level; or shall be required to immediately schedule and take vacation leave.

Employees with more than 240 hours shall not accrue any more vacation time until the hours drop below the 240 hour mark.

**27.2** Upon separation, an employee shall receive compensation for accrued vacation leave. Such compensation shall be at the employee's salary rate at the time of separation.

**27.3** If a holiday recognized in this manual occurs during an employee's scheduled vacation leave, then such holiday shall not be considered as vacation leave used by the employee.

**27.4** The first full pay period following the approval of this MOU, a employee has an option to request payment of up to 80 hours of vacation time. In subsequent calendar years and in the event that the department is understaffed, the Harbor Manager has the

discretion to approve payment of up to 80 hours of vacation time in lieu of vacation time taken.

## **28.0 SICK LEAVE**

**28.1** Sick leave is leave from duty which may be granted by the District to an employee because of illness, injury, exposure to contagious disease, necessary consultation with or treatment by a doctor or dentist, necessary attendance to an illness or injury of a member of the employee's immediate family, or other such reasons as provided by law or as approved by the Harbor Manager. Immediate family shall be defined as the employee's parent, child, spouse, registered domestic partner, parent-in-law, sibling, grandchild or grandparent.

**28.2** Nothing contained herein shall affect employees with sick leave balances frozen on the first day of the first full pay period in July of 2012 ( Pre-July 2012 sick leave balance). Upon separation from employment, employees with a Pre-July 2012 cash value sick leave balance are entitled to 100% payout of this sick leave balance. The use of the 100% cash value sick leave may be granted by the District as provided in Section 28.1.

**28.3** All regular employees shall earn sick leave at the rate of eight (8) hours per month to a maximum of nine hundred sixty (960) hours. This sick leave balance will be referred to as 25% cash value sick leave. After reaching nine hundred sixty (960) hours of accrued sick leave, employees shall continue to accrue sick leave but any hours above 960 shall not be eligible for cash payout upon leaving District service. The employee may use the additional sick leave as credit for any program that CalPERS might offer.

## **29.0 SICK LEAVE USE**

A. An employee may be granted sick leave only in case of actual sickness as defined in Section 28.0 above, or as otherwise provided by law. If an employee recovers from any such sickness after being granted sick leave, and during the regularly scheduled hours of work, then such employee shall notify the appropriate immediate supervisor and be available to return to duty.

B. In order to receive compensation while absent on sick leave, the employee shall notify the appropriate immediate supervisor as soon as practicable prior to the time set for beginning his/her daily duties for emergency illness and give reasonable advance notification for routine appointments.

C. Sick leave shall not be granted to any employee absent from duty as a result of any sickness, injury or disability purposely self-inflicted or caused by willful misconduct.

D. Sick leave shall only be granted in one (1) hour or greater increments.

E. Sick leave shall not be granted to any employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District.

F. Sick leave shall not be granted to any employee to permit an extension of the employee's vacation.

G. Full time employees shall accrue sick leave from date of hire, subject to Sections 28.2 and 28.3. Employees may begin using sick leave on the 90<sup>th</sup> calendar day of employment [Also, may allow, but need not, advance mandatory sick leave to an employee before leave has accrued].

H. Except for the period consisting of the hourly equivalent of the first three (3) days taken for sick leave in any given year of employment, during which physician certification shall not be required, if an employee has applied for or taken sick leave after such 3-day equivalent, in a given year of employment, the District may require a physician's certification as to the diagnosis of the illness or injury, the treatment recommended for it, and an approval of the employee's intended return to work. If employees have demonstrated a habitual or excessive use of sick leave, subject to compliance with any legally required accommodation review, the District may impose disciplinary procedures, including termination.

### **30.0 SICK LEAVE ACCRUAL**

**30.1** As allowed by the CalPERS retirement contract in effect at the time of retirement, a full-time employee may convert any or all accrued sick leave, without limit, to CalPERS service credit at the rate of 0.004 years of service per one day of accrued sick leave (i.e. 250 days of sick leave = one year of service credit) .

**30.2** During each calendar year, up to 25 hours of accrued sick leave may be used as personal leave by a full time employee, with advance approval of supervisor/manager. Prior to the use of 25 hours of accrued sick leave for personal leave, employee must use at least 40 hours of accrued vacation leave per calendar year.

**30.3** A full-time employee who has accrued a minimum balance of an amount equal to one hundred ninety two hours of sick leave shall be allowed to convert at the end of the calendar year 25% of the unused sick leave balance of the ninety six (96) hours earned for that year. In compliance with IRS regulations, employee's must elect to be paid straight time, or transfer a percentage to vacation, or leave hours in sick leave balance for future use by the end of the previous calendar year. If an employee elected to leave the hours in sick leave, these hours will be transferred to the sick leave that maintains cash value.

**30.4** Each full time employee with accrued sick leave in excess of 192 hours (including hours of sick leave with 100% cash value and sick leave with 25% cash value) shall be entitled to convert sick leave accrued during the previous 12 months (December 1 through November 30) to additional compensation, paid during December, paid in to the District's deferred compensation plan, or added to vacation leave, according to the formula as follows:

Sick leave utilization	Max. conversion to compensation
0 hours	40 hours
Up to 10 hours	30 hours
10 to 20 hours	25 hours
21 hours to 30 hours	20 hours
Over 30 hours	0 hours

Note: Such conversions may be taxable, whether taken or not, and if taxable, taxes and assessments, as required by Internal Revenue Code, are the responsibility of the employee. Any funds placed into the District's deferred compensation plan, up to the maximum allowed, are income tax deferred.

**30.5** Sick leave accrual shall take place on a pay period basis. Hours spent in a pay status shall include all regular hours worked in the District service and all hours spent in a paid leave status from regular duties, and shall exclude any hours worked as overtime or special time.

**30.6** Sick leave granted by the District and used by an employee shall be deducted from the employee's accrued sick leave balance.

**30.7** Sick leave shall not be accrued by any employee absent from duty after separation from District service, or during a District authorized leave of absence without pay, or any other absence from duty not authorized by the District, except that, if an employee is rehired within one year, previously accrued and unused paid sick leave shall be reinstated.

**30.8** For the purposes of 100% cash value, sick leave balances shall be determined to be those balances in effect on June 30, 2012. This balance shall be available for use, or, on separation from the District for any reason other than termination with cause, for conversion to cash payout or payment into the District's deferred compensation plan, based on the employee's hourly rate at the time of separation. Additionally, any such balance can be used for service credit as allowed by the CalPERS contract in effect at the time.

**30.9** After December 31, 2012, annual sick leave balances accrued may only be used for sick leave, for 25 hours of personal time, as described above, or for limited annual payout, as described above. On separation from the District, accrued sick leave may be converted to service credit per the CalPERS contract in place at the time, or converted to cash value computed at 25% of the cash value of the hours accrued at the hourly rate in effect at the time of separation from the District.

### **31.0 LEAVE OF ABSENCE**

Employees shall be entitled to employment protection and may be entitled to wage and/or employee benefit continuance as required by law. Following is a listing of Leave of Absence laws and regulations known to be in effect in 2015. The District will follow all applicable laws and regulations regarding Leave of Absences whether or not such law or regulation is listed below.

#### **31.1 Leave of Absence—In General**

Every employee covered under this MOU shall be entitled to leaves of absence(s) and other benefits without discrimination as provided by California Fair Employment and Housing Act, section 12940 of the California Government Code as defined in the California Code of Regulations Title 2 Section 7291.2, and the Federal Family and Medical Leave Act (Title 29 U.S.C Section 825.702).

#### **31.2 Leave Of Absence—Military Personnel & Military Spouse Leave**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including Uniformed Services Employment and Reemployment Rights Act ((USERRA) Title 38 United States Code Section 4302 (a)), and California Military and Veterans Code sections 394, 394.5, and 395.10.

#### **31.3 Leave Of Absence—Family Care & Medical Leave**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including the Federal Family and Medical Leave Act (Title 29 U.S.C. Section 2601, et seq., Title 29 C.F.R. Section 825.100, et seq.), the California Family Rights Act (California Government Code Section 12945.2), California Labor Code sections 233 and 1030-1033, California Unemployment Insurance Code Section 2601, and California Code of Regulations Title 2 Section 7297 et seq.

#### **31.4 Leave Of Absence—Workers' Compensation Leave**

Every employee covered under this MOU shall be entitled to workers' compensation leaves of absence and other benefits as are provided by Longshore and Harbor Workers' Compensation Act (Title 33 U.S.C. Chapter 18), and California Labor Code Division 4 Section 3200 et seq.

### **31.5 Leave Of Absence—Alcohol & Drug Rehabilitation**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code section 1025.

### **31.6 Leave Of Absence—School Visitation & Suspension Of Child**

Every employee who is a parent, grandparent or guardian of a child in school, and who is covered under this MOU, shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code 230.7, California Labor Code 230.8, and California Education Code section 48900.1.

### **31.7 Leave Of Absence—Literacy Assistance**

Every employee receiving literacy assistance, and who is covered under this MOU, shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code 1041.

### **31.8 Leave Of Absence—Jury Duty, Compliance With Subpoena, Crime Victim Witness, Crime Victims, Family Members Of Crime Victims**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code sections 230, 230.1, and 230.2.

### **31.9 Leave Of Absence—Emergency Duty**

Every employee performing emergency duty as a volunteer firefighter, reserve police officer, or emergency rescue person, and who is covered under this MOU, shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code 230.3.

### **31.10 Leave Of Absence—Voting**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Elections Code 14000.

### **31.11 Leave Of Absence—Organ & Marrow Donation**

Every employee covered under this MOU shall be entitled to such leaves of absence and other benefits as are provided by federal and state law including California Labor Code 1510.

**31.12** Regular employees of the District may be granted leave of absence without pay, at the discretion of the Department Head and with the approval of the Harbor Manager, for a period not to exceed six (6) months. A request for leave of absence without pay must be submitted in writing by the employee or personal representative if the employee is incapacitated. The written request must state the reasons for the request, giving specific dates to begin and end the leave without pay, the specific purpose of the leave without pay and how the employee may be contacted during the leave without pay. Leave of absence may be granted for the following reasons:

- A. To enable an employee to continue education or otherwise obtain training designed to improve the quality of his/her service to the District.
- B. For any other reasons which the Harbor Manager approves as being in the public interest.
- C. Extended vacation leave if such leave does not burden District functions.

**31.13** Approval of leave of absence without pay will be granted only for reasons clearly permitted, as stated above, and which are compelling in nature. All requests for leave of absence without pay will be handled in a timely manner.

**31.14** Any employee having been granted a leave of absence without pay and not reporting for work promptly upon its expiration shall be considered to have automatically resigned from District service. No leave of absence without pay shall be utilized to permit an employee to seek other employment or to permit an employee to engage in non-District employment. Use of leave of absence without pay for a purpose other than that requested shall be considered as an employee's automatic resignation from District service.

**31.15** Leaves of Absence will run concurrently as allowed by Federal and State Laws and Regulations.

**31.16** Employees who take authorized leaves of absence or other time off will not be discriminated against or in any way retaliated against for applying for or taking leave, as permitted by policy or by law.

## **32.0 BEREAVEMENT LEAVE**

**32.1** Bereavement leave shall be provided to each employee following death of a member of the employee's immediate family. Immediate family is as a spouse or domestic partner, (step) parent ,or child (biological, adopted or foster child, a stepchild, a legal ward, or a child of a person standing in loco parentis) of the employee. Such leave shall not exceed up to three (3) days unless the employee must travel out of state, in which case the employee shall receive five (5) days. This is paid leave in its own right. The employee may be required to submit proof of immediate family member's death for grant of such bereavement pay. Provision of false information concerning the death or relationship shall be a cause for discharge and/or disciplinary action. Miscarriage of a child qualifies for this leave for three (3) days per occurrence if the employee has served written notice of pregnancy prior to occurrence.

## **33.0 TUITION REFUND PLAN**

**33.1** The Tuition Refund Plan is provided as shown in the Personnel Guidelines Manual.

## **34.0 EDUCATIONAL INCENTIVE PLAN**

The District shall pay the costs associated with management approved education and training which will enhance productivity of District employees in their current job with the District. The District shall also pay costs associated with management approved education and training which will enhance the preparation of District employees for a District position in their probable career path. To be eligible for this plan, an employee shall first submit an education plan for review and consideration by the District prior to enrollment into any education incentive program. The submittal shall outline the classes, institute and duration. It will also estimate the total cost of the education and what portion will be requested for reimbursement.

### **35.0 UNIFORMS AND PROTECTIVE CLOTHING**

A. The District shall provide employee uniforms; protective clothing (such as clothing overalls, safety boots, and foul weather gear); and equipment (such as safety goggles, hard hats, gloves, hearing protection, and float coats) required by the individual employees job task. Such equipment shall include Harbor Patrol Officers who are required to wear safety boots (reimbursement up to \$200 every fiscal year or as determined by the Harbor Manager or his/her designee). Only full-time Harbor Patrol Officers may purchase prescription safety glasses (reimbursement up to \$150 every fiscal year) as approved by the Chief Harbor Patrol Officer. The District shall retain the right to determine the minimum specifications of the safety equipment, procurement procedures, and limitations and exclusions.

B. Employees shall be required by the District to sign for all items issued at District expense and employees shall be responsible for their proper use and care. Loss or improper care of issued items may result in employees being charged by the District for lost or damaged items with appropriate salary deductions for reimbursement to the District. Excessive or unusual loss or occurrences of loss may result in disciplinary action.

C. The District shall report certain uniform costs to CalPERS based on the California Public Employee's Retirement Laws in affect. Certain retirement plans require employees pay CalPERS employee contribution on the value of the uniform costs, as defined in Section 12, above.

### **36.0 HEALTH AND SAFETY**

A. The District shall provide a place of employment which is as safe as the nature of the employment reasonably permits.

B. In case of an accident on the job, the employee shall immediately report the accident to his/her supervisor or designee, who will complete the required accident report. The Department supervisor shall complete the required notification and all paperwork as required in a timely manner. The department supervisor shall also follow through with the administration staff and the injured employee to insure proper reporting and employee care has occurred.

C. Employees are responsible for utilizing safe working procedures. Violations of District directives regarding safety, including those that result in worker injury, are grounds for disciplinary action.

D. Employees are to promptly report safety hazards and unsafe conditions to their immediate supervisors. If the condition is not remedied within a reasonable time, the employee shall report the situation to the District Safety Committee. No employee will be subject to reprisal for reporting unsafe or potentially unsafe conditions.

E. An Association steward shall be granted release time to accompany a Cal-OSHA representative and Management representative conducting an on-site walk around safety inspection.

F. The District will continue its present practice of having a safety committee. The safety committee shall make suggestions to the Harbor Manager or designee regarding any safety matters.

G. The District agrees to provide or make available needed safety equipment within the financial limitations of the District.

H. The District agrees to pay any employee required by the District to attend safety classes or first aid classes outside of his/her normal work day.

### **37.0 OUT-OF-CLASS ASSIGNMENT**

**37.1** As used herein, "Out-Of-Class Assignment" means the Authorized full-time performance of all significant duties of an authorized vacant District position by a current District employee. When a current employee, in accordance with the policy set forth below, performs an out-of-class assignment in a position with a higher pay range, he/she shall be compensated at a minimum of five percent (5%) increase in his/her current salary, or compensated at the closest step to a 5 percent (5%) increase of his/her current salary according to the salary range of the position to which he/she has been temporarily assigned during the period of out-of-class assignment.

**37.2** The Harbor Manager may authorize in writing the out-of-class assignment of a current District employee when, because of termination or unavailability of a District employee, an authorized District position becomes vacant and is expected to remain vacant for more than fifteen (15) working days, except for vacancies resulting from vacation in which case there will be no adjustment.

### **38.0 VOLUNTARY TERMINATION**

**38.1** Employees agree to submit his/her written Notice of Resignation from District employ to the Harbor Manager two (2) weeks prior to last working day.

**38.2** An employee who terminates voluntarily shall receive payment for accrued unused sick leave, vacation or compensatory time as stated in the sections of this Agreement related to those items. An employee terminated in this manner shall be entitled to such elections regarding accrued sums in his/her pension or retirement account as is then provided under the pension or retirement system then provided by the District.

### **39.0 INVOLUNTARY TERMINATION**

**39.1** Involuntary terminations include any termination originated by the District. Involuntary termination includes a termination resulting from any employee terminated for failure to appear for work.

**39.2** An employee who is terminated involuntarily shall not receive payment for accrued unused sick leave. The employee shall receive payment for vacation or compensatory time as stated in the sections of this Agreement related to those items. An employee terminated in this manner shall be entitled to such elections regarding accrued sums in his/her pension or retirement account as is then provided under the pension or retirement system then provided by the District.

### **40.0 LAYOFFS**

**40.1** Whenever it becomes necessary, in the judgment of the District Commissioners due to lack of work, lack of funds, contracting out or termination of services or operations, or other legitimate economic reasons, or because the necessity for a position no longer exists, the District may abolish any position or employment except those under existing contracts with individuals or contracting firms and the employee holding such position or employment may be laid off without disciplinary action. This procedure shall not be used for disciplinary reasons.

**40.2** The Department Head (or Harbor Manager if the Department Head is laid off by the Commission) shall determine what individual(s) shall be laid off on the basis that the last



member of the department hired, in the effected classification shall be the first laid off (example: HPO III with seniority could replace a less senior HPO I). However, if the least senior department member(s) is (are) in possession of a higher step rating and equal range compared to the Department member(s) that is (are) next most senior, the Department Head may lay off the next most senior Department member(s).

**40.3** The only exception to the above described order of layoff regarding seniority shall be where an employee within an affected classification has an identified exceptional skill, knowledge, or ability particular to the work being performed, and which more senior employees do not possess. The determination that such employee has such a particular skill, knowledge, or ability may be made only by the Harbor Manager. Any employee who would not have been laid off but for such a determination by the Harbor Manager, may appeal the validity of such determination beginning with Step Three of the established grievance procedure.

**40.4** An employee who is laid off shall have no right of appeal.

**40.5** The District shall give all employees affected by layoff at least twenty-one (21) calendar days written notice of any impending layoff, except in the event of an emergency situation when the District shall give not less than ten (10) calendar days notice. A copy of the notice shall be sent by the District to the Association representative within a reasonable time thereafter and if requested by the Association, District and Association will meet and confer on the effects of the District's decision of layoff regarding those employees affected in the layoff. The notice shall include the following:

- A. The effective date of the layoff.
- B. The reason for the layoff.
- C. The job classification, if any, into which the employee may retreat.
- D. A statement that the employee being laid off shall be placed on a re-employment list for one (1) year as described below.
- E. The availability of Administrative staff to assist the employee in seeking other employment.

**40.6** Prior to implementing any layoff, the District shall make every attempt to transfer an affected employee to an appropriate budgeted vacancy in an equivalent job classification in the same department or other departments provided the affected employee possesses the skills necessary to perform the new job.

**40.7** The individual(s) laid off shall be placed upon re-employment lists for one (1) year for the purpose of refilling the laid-off position. Individuals who are placed on re-employment within the prescribed period, shall be entitled to all benefits immediately upon re-employment. Benefits shall not be retroactive to date of layoff. Upon re-employment, the former employee's salary shall be established at the salary level held at the time of layoff. If the salary level falls between two steps in the wage and salary chart then in use, the former employee's new salary shall be at the immediate higher step. The evaluation date for use in accordance with the salary step plan shall be the date on which re-employment begins.

**40.8** A re-employed employee shall accrue vacation and sick leave at the same rate and maximum limitation at which such accruals were made at the time of the layoff.

**40.9** It is the employee's responsibility to notify the District of any change in address which may affect a recall notice. Employees must return to work within fifteen (15) working days after a recall notice is mailed by the District and must meet all health and knowledge requirements of the position then in effect.

## **41.0 DISCIPLINARY PROCESS**

### **41.1 Standards of Conduct**

**41.1.1** The District expects employees to observe a standard of conduct which will maintain an orderly, positive and productive workplace. Such a standard of conduct will benefit and protect both the District and all employees.

**41.1.2** Behavior that violates this standard of conduct will subject employees to discipline up to and including suspension without pay or termination.

**41.1.3** The disciplinary action used to maintain the standards of conduct will be determined in light of the facts and circumstances of each individual case. Each incident will be considered in light of a variety of factors, including:

- A. The seriousness of the incident and the circumstances.
- B. The employee's past conduct and length of service.
- C. The nature of any previous incidents.
- D. The general practice as it relates to the incident.

**41.1.4** Although not exhaustive, the following list represents kinds of behavior that should be considered improper and unacceptable in the workplace, and may subject the employee to the above-mentioned discipline.

#### **41.1.5 Grounds**

- A. Failure to appear for work.
- B. Failure or refusal to follow the instruction of his/her supervisor.
- C. Failure or refusal to perform his/her job in a satisfactory manner or within a satisfactory time.
- D. Use of, or possession of, intoxicating liquors or substances or other substances, including the use of medications, whether prescribed or not prescribed, which may have a negative effect on the employee's ability to think clearly and work safely while on duty.
- E. Reporting to work under the influence of intoxicating liquors or other substances.
- F. Abuse of leave policies.
- G. Violation of District ordinance(s), rules or regulations.
- H. Falsification of time records or failure to execute on a timely basis.
- I. Theft or embezzlement from the District or from other District employee(s), or District patrons.
- J. Failure or refusal to report to work in neat, clean clothing or uniform.
- K. Negligent or unsafe conduct or operation of equipment or vehicles at, or in the course and scope, of employment.
- L. Use of offensive, harassing, obscene or abusive language or conduct with the public, employees and Commissioners, lessees and contractors and/or other visitors and persons on business with the District.
- M. Loss of employment-required licenses or certificates.
- N. Falsification of employment application or records.
- O. Excessive number of absences or tardiness in reporting for duty and/or unauthorized or excessive absence from assigned duties.
- P. Sexual harassment.

- Q. Intentional or negligent act or omission or failure to observe, safety rules and regulations which adversely affects or threatens or adversely affect, the safety of the employee or others or facilities or equipment.
- R. Unauthorized use of District employees, time, materials or equipment for personal activities.
- S. Leaving work area, job assignment or departing during working hours without proper authorization.
- T. Willful destruction or defacement of District property, or another person's private property while employee is on duty.
- U. Misuse or unauthorized use or alteration without Management approval, of the District's computer system(s), including any programs and/or equipment and/or data.
- V. Accepting favors or gratuities in return for services required to be performed as a part of the employees' official duties or responsibilities.
- W. Use of an employee's official position for personal gain or advantage.
- X. Violation of District Policies, including those involving work place violence.
- Y. While on duty, causing malcontent within the District, it's operations, or general disruption of the normal functions of the Port.
- Z. While on duty, engaging in aggressive or antagonistic behavior against other employees, supervisors, the public, lessees, management or Commissioners.
- AA. Use of any type of behavior or actions including the use of words that can reasonably be interpreted as threats against any other person while on duty, or on District property.
- BB. Failing to notify supervisor and/or obtain consent in advance for overtime, vacation, or other voluntary paid leave.

**41.1.6** All employees shall strictly observe the District's prohibition against bringing onto, possessing, or storing intoxicating liquors, illicit drugs, or other such substances in or about District buildings, work sites, vehicles, vessels, equipment or other facilities, except as otherwise provided by law. Violation of this sub-section may result in immediate disciplinary action, including termination.

**41.1.7** There shall not be any cigarette, pipe or cigar or similar substance smoking in the District's office buildings, maintenance yard, maintenance yard Buildings, vehicles, other equipment or in any work area where smoking could result in hazardous conditions, except in certain designated areas.

## **41.2 Progressive Discipline Procedures**

**41.2.1** In order to provide a fair method of disciplining employees, the following progressive disciplinary procedures shall normally be taken when disciplinary action is necessary, except in the case of immediate disciplinary action, as stated in the section of this Agreement entitled IMMEDIATE DISCIPLINARY ACTION. Progressive discipline must be timely and should follow, as closely as possible, the incident requiring the disciplinary action.

A. Department heads or supervisors shall administer discipline for the employees in his/her department and make all determinations concerning the discipline of said employees.

B. The Harbor Manager shall administer and make determinations concerning the discipline of Department Heads.C. The only disciplinary determinations which are subject to the Grievance Procedures as outlined in this document are final decisions respecting:

1. Suspension without pay,
2. Demotion, and
3. Termination.

### **41.3. Disciplinary Steps:**

1. **ORAL WARNING:** On the first occurrence of acts or omissions giving a ground for discipline, the employee's supervisor will give the employee an oral warning concerning the act or omission.

NOTE: A written warning may be given in this step if so determined by the supervisor and severity of the situation.

2. **WRITTEN WARNING:** On a subsequent occurrence of the same or similar act or omission by the employee, the employee's supervisor will give the employee a written warning that should include the following:

- a. Statement of the problem or concern.
- b. The desired improvement.
- c. Suggestions as to how to improve.
- d. Provisions for assisting the employee when applicable.

Said written warning shall indicate that repetition of the same or similar act or omission can result in further disciplinary action.

3. **DISCIPLINARY ACTIONS:** Upon subsequent occurrence of the same or similar act or omission by the employee, the employee's supervisor may inform the employee in writing of his/her intent to do one of the following:

- a. Suspend the employee without pay for a period of up to thirty (30) calendar days (the employee will not be eligible to use his/her vacation time, sick leave or compensatory time off during any period of suspension under this policy).
- b. Demote the employee to the next lower step.
- c. Terminate the employee.

The written notice to the employee from the supervisor shall include a statement of the reasons for the proposed disciplinary action.

4. **RIGHT OF APPEAL:** Employees shall have the right to appeal proposed discipline in writing and within five (5) working days, to the Harbor Manager. Such appeal shall state the basis for his/her appeal of the supervisor's decision. The Harbor Manager shall hold a hearing on the appeal within (5) working days after receipt of the employee's appeal and shall issue a written decision within seven (7) working days of such hearing. If the Harbor Manager decides to affirm the supervisor's proposed disciplinary action, it shall be imposed effective the working day following the date of the Harbor Manager's decision. If the employee fails to give a notice of appeal to the Harbor Manager within the required five (5) working days, the discipline shall be imposed.

### **41.4 Immediate Disciplinary Action**

The following special situations shall apply in conjunction with Section 46.0 (Disciplinary Process):

A. **Failure to come to work:** An employee who fails to appear for work without reasonable explanation and justification for a continuous period of three (3) working days shall be subject to termination effective on the first working day of said continuous period. Such termination shall be deemed a voluntary termination.

B. Intoxicating liquors, drugs or substances: On the first occasion the employee shall be given an opportunity to seek professional counseling and/or treatment and a written warning will be placed in his/her personnel file. The employee shall not be placed on administrative leave, without pay but may use sick leave, compensatory time off, and annual leave, in that order, while seeking professional counseling and/or treatment. A letter from the provider of the professional counseling and/or treatment must be received by the Harbor Manager prior to the employee returning to work and must state the nature of the treatment or counseling, the extent or degree to which the employee has recovered, the fact that the employee is recovered sufficiently to return to work, any limitations to be imposed on the employee while at work, and any further treatment or counseling required, including timing and extent. The employee may be allowed to return to work providing that the professional counselor or treatment provider's requirements or stipulations can be met by the District without any adverse affect on District operations, objectives, and/or safety. On a second occasion the employee shall immediately be suspended or terminated at the sole discretion of the Harbor Manager. If the employee refuses to seek counseling or treatment on the first or subsequent occurrence, the employee will be immediately terminated and the District shall not be held liable except for unpaid accrued wages or compensatory time or other benefits for which the employee is entitled under this Agreement.

C. Impact on Health, Safety and Welfare: Any discipline which, in the judgment of the Harbor Manager, must be imposed immediately to protect the health, safety or welfare of the community or other District employees, may be immediately imposed without requiring implementation of the pre-disciplinary procedures of this Agreement. Such discipline may be implemented shall be completed, however, within five (5) working days of the employee's actions, if known to the District, otherwise within five (5) working days from the date that the District has knowledge of such action.

#### **41.5 Public Safety Officers' Procedural Bill of Rights**

Nothing contained herein is meant to diminish the rights of employees under the Public Safety Officer's Procedural Bill of Rights as set forth in Government Code Sections 3300-3312.

#### **42.0 PERSONNEL FILES**

A. Inspection of files: Employees shall have the right to examine those materials in their personnel files which may affect the status of their employment. Employees shall be given copies of those records, upon verbal or written request, however, the request shall be kept to a reasonable amount.

B. Comments and review: An employee shall have the right to have his/her own written comments attached to any such item placed in his/her file.

C. Documentation of oral warnings, written warnings and final materials relating to suspension or demotion for whatever cause shall remain as a permanent record in an employee's personnel file.

D. Authorization to examine files: Employees shall have the right to authorize, in writing, a representative to examine those items in their personnel files which may affect the status of their employment.

#### **43.0 GRIEVANCE PROCEDURES**

DEFINITION: A grievance is a claimed violation, misapplication, or misinterpretation of a specific term of this MOU and personnel policies, procedures and guidelines, which adversely affects the grievant. Claimed violations of the Management Rights clause or Anti-Discrimination clause are not grievable.

### **43.1 Representation and Time to File**

The Association may represent the employee at any level of the process. Grievances must be filed within five (5) working days of the incident(s) or occurrence(s) about which the employee claims to have a grievance and shall be processed as outlined in the procedure section of this agreement. In any one or more of the following steps, Association representatives shall honor and observe all warning signs and restricted or limited use areas. Association representatives shall not interfere with operations of the District or its lessees, consultants, contractors, employees or commissioners, or other persons visiting or using District facilities, except as provided in the following steps.

### **43.2 Steps for Grievance Procedures**

#### **Step # 1:**

The Association Steward or employee with or without the Steward shall present the grievance orally to the aggrieved employee's immediate supervisor. The parties shall attempt to resolve the grievance through discussion with their immediate supervisor without undue delay. Every effort shall be made to find an acceptable solution at the lowest possible level of supervision. If, after such discussion, the employee does not believe the grievance has been satisfactorily resolved, the Association shall reduce the grievance to writing, within five (5) working days after the employee or Association had knowledge or should have had knowledge of the occurrence or failure of occurrence of the incident on which the grievance is based, or it shall be waived. The Supervisor shall respond to the grievance in writing within seven (7) days of the Association's submission of the grievance to him/her.

#### **Step # 2:**

If, after receipt of the written decision of the supervisor, the employee is still dissatisfied, he/she may appeal the decision of the supervisor in writing to the Harbor Manager or delegate within seven (7) working days after the receipt of the written decision of the supervisor, or it shall be waived. The Harbor Manager or delegate shall hold a hearing on the grievance within five (5) working days after he/she received it and shall issue a written answer thereto within seven (7) working days after the hearing has been completed.

#### **Step # 3:**

If, after receipt of the written decision of the Harbor Manager, the grievance is still unresolved, the employee may appeal the decision to the Harbor Commission in Closed/Open Session as mutually agreed. The Harbor Commission shall schedule a hearing or appoint a hearing committee or delegate concerning the matter. The hearing shall take place at the next regularly scheduled Board meeting or otherwise within ten (10) working days of receipt of the appeal. After hearing and reviewing the committee or delegates report, the Harbor Commission shall render a decision on the appeal within five (5) working days. The Board of Commissioners may hear the appeal or by Resolution, Board Order, or Ordinance, refer all grievances submitted to them to such other person or body as they deem necessary for hearing. The Board of Commissioners shall further determine whether or not the decision reached by such other person or body shall be final

and binding or advisory in nature. The Board of Commissioners' decision shall be final and binding in all cases.

#### **44.0 MINIMUM WORK WEEK**

Nothing in this Agreement shall be construed to be a guarantee of a minimum work week for any employee.

#### **45.0 TERM OF AGREEMENT**

This Agreement shall become effective on July 1, 2015, and shall remain in effect through June 30, 2018. If either party wants to renegotiate a successor agreement, such party shall serve upon the other by March 1, 2018, its written request to re-open the Agreement as well as its written proposals to amend this Agreement. Upon receipt of such written notice and receipt of the proposals, negotiations shall begin no later than April 1, 2018 or other reasonable mutually agreed upon time. This agreement may be opened at any time the State or County budget has significant impacts to the District's budget.

#### **46.0 NO STRIKE CLAUSE**

A. During the term of this Agreement, there will be no concerted strike, sympathy strike, work stoppage, slow down, obstructive picketing, informational picketing, or concerted refusal or failure to fully and faithfully perform job functions and responsibilities, or other concerted interference with the operations of the District by any employee. The Association shall ensure compliance by its members and itself with this no strike clause.

B. Any employee concertedly violating this article may be subject to disciplinary action up to and including discharge, and/or may be considered to have automatically resigned from the District's employment.

#### **47.0 COST REDUCTION PROGRAMS**

During the term of this Agreement, the Association will support Management in developing cost effective programs. Such programs may include reduced services and/or the leasing or subcontracting of District services to other parties after these concepts are studied by Management, and with such application as may be approved by Management. Any reduction in force resulting from these programs shall follow procedures in the section of this Agreement entitled LAYOFFS.

#### **48.0 U.S. COAST GUARD LICENSE**

Within three years of (full-time) employment as a Harbor Patrol Officer, employee shall obtain, and maintain valid throughout their employment, a US Coast Guard license, which shall include a towing endorsement. Harbor Patrol Officers shall maintain a record of their sea time upon employment. If a Harbor Patrol Officer does not gain enough sea time to qualify for a US Coast Guard license, then the three-year period may be extended. Once an officer has sufficient sea time he/she shall be provided paid time off to attend training classes (as may be approved by the District). Such training class shall be paid for by the District, including travel, meals and lodging. Failure to obtain a license within a reasonable period of time after sufficient sea time is obtained may subject the employee to disciplinary actions, up to and including termination.

**49.0 AUTHORIZED AGENTS**

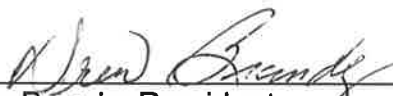
For the purpose of administering the terms and provisions of this Agreement:

- A. Management's principal authorized agent shall be:  
 Harbor Manager  
 Port San Luis Harbor District  
 P.O. Box 249  
 Avila Beach, California 93424  
 Telephone: (805) 595-5400      FAX: (805) 595-5404
- B. The Association's principal authorized agent shall be:  
 Port San Luis Harbor Patrol Officers Association

**50.0 SAVINGS CLAUSE**

If any provision of this Agreement should be held invalid by operation of law or by any court of competent jurisdiction, or if compliance with or enforcement of any provision should be restrained by any tribunal, the remainder of this Agreement shall not be affected thereby, and the parties shall enter into a meet and confer session for the sole purpose of arriving at a mutually satisfactory replacement for such provision within a thirty (30) day work period. If no agreement has been reached, the parties agree to invoke the provision of impasse.

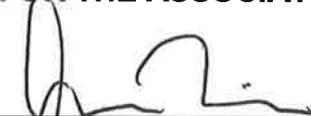
**FOR THE DISTRICT:**

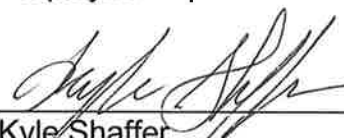
  
 \_\_\_\_\_  
 Drew Brandy, President  
 Board of Harbor Commissioners

  
 \_\_\_\_\_  
 Andrea K. Lueker  
 Harbor Manager

DATED: 12.5.18

**FOR THE ASSOCIATION:**

  
 \_\_\_\_\_  
 Jake Vierra  
 Employee Representative

  
 \_\_\_\_\_  
 Kyle Shaffer  
 Employee Representative

DATED: 10/11/18