

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE SANTA MONICA RENT CONTROL BOARD
AND
THE HEARING OFFICER REPRESENTATIONAL ORGANIZATION
January 1, 2022 - December 31, 2024

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ARTICLE I: GENERAL PROVISIONS

1.01 UNION RECOGNITION

The Hearing Officer Representational Organization (HERO) is recognized as the exclusive bargaining representative of the Hearing Officers employed by the Rent Control Board.

It is the mutual understanding of the parties hereto that acknowledgment of HERO as the recognized employee organization:

- A. Does not preclude employees in the above classifications from representing themselves individually in their employment relations with the Agency.
- B. Does not abridge employee's right to refuse to join or participate in the activities of the Union.

1.02 AGENCY RIGHTS

- A. It is understood and agreed that the Agency retains all of its powers and authority to direct, manage and control to the full extent of the law. Included in, but not limited to, those duties and powers are the right to:

Determine its organization; direct the work of its employees; determine the times and hours of operation; determine the kinds and levels of service to be provided, and the methods and means of providing them; establish policies, goals and objectives; determine staffing patterns; determine the number and kinds of personnel required; maintain the efficiency of Agency operations; build, move or modify facilities; establish budget procedures and determine budgetary allocation; determine the methods of raising revenue; take action in the event of an emergency, hire, classify, assign, transfer, evaluate, promote, lay off, terminate and discipline unit members.

- B. The exercise of the foregoing powers, rights, authority, duties and responsibilities by the Agency, the adoption of policies, rules, regulations and practices in furtherance thereof, shall be limited only by the specific and express terms of this agreement and written Board policies, and then only to the extent such specific and express terms and policies are in conformance with the law.
- C. The exercise by management of the rights and discretion as described herein shall not be subject to the grievance/arbitration procedure, except when the exercise of such rights conflicts with the specific terms and conditions of this agreement.
- D. Nothing in this article is intended to limit, undermine or waive the Union's right to meet and negotiate concerning matters within the scope of representation.

1.03 AGENCY SHOP/CHECKOFF

- A. It shall be a condition of employment under this MOU that all employees covered hereunder shall be members of the Union in good standing, except that if a person chooses not to join the Union, s/he shall pay reasonable registration and agency fees to the Union in such amounts as the Union may prescribe except as provided herein.
- B. Upon written authorization from the employee affected, the Agency shall deduct from the wages of each employee covered by this MOU all such agency fees and dues as are prescribed by the Union.
- C. The Agency agrees to provide for a check-off of Union dues and agency fees in its normal payroll format and to remit within five (5) days of the end of each month to the designated Union representative all monies withheld from that month's payroll checks as a result of such check/off. When dues or agency fees authorized to be withheld are not withheld from a particular wage payment, they shall be promptly withheld from a subsequent payment.
- D. All employees shall be notified of this MOU by the Agency at the time they are hired.
- E. An employee may cancel her/his agency fees and dues deduction authorization only by filing during the first ten (10) days of the eleventh calendar month following the anniversary date of the effective date of this or successive MOU's a written request for revocation, a copy of which shall be served upon the Union prior to filing. Such revocation shall be effective in the first complete payroll following the anniversary date of execution of this or successive agreements.
- F. The Agency fee collected from non-union unit members shall not exceed an amount equal to the Union's annual dues for representing such unit members.

In collecting the Agency fee, the Agency shall act as the Union's agent. The Union shall hold harmless and indemnify the Agency against any and all claims, charges or costs arising directly or indirectly from any alleged or actual improper collection of the Agency fee except arising from the negligence or intentional misconduct of the Agency, its representative or any person acting on behalf of the Agency.

- G. Any unit member shall be exempted from the requirements of Paragraph A above, if such employee has been or is a member of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting public employee organizations as a condition of employment.

Such exempt member shall, as an alternative to payment of a representation fee to the Union, pay an amount equivalent to such representation fee to any one of the following organizations: Sojourn, United Way, and The National Health Law Project.

The Union, upon written request, may require such exempt unit member to submit a written affidavit to the Union verifying membership the existence and nature of the allowable objection to payment of representation fee. In addition, the Union may require such exempt unit member to submit proof of payment of an amount equivalent to such representation fee to one of the alternative funds or organizations listed above.

- H. An employee who is on unpaid leave of absence shall not be bound by this article during such period.

1.04 VALIDITY OF MEMORANDUM OF UNDERSTANDING

- A. If any provision of this MOU is determined to be invalid or illegal by a court of competent jurisdiction, then such provision shall be severed from this MOU, but the remainder hereof shall remain in full force and effect. The parties hereto shall immediately commence to negotiate for the purpose of replacing any such invalid or illegal provision.
- B. Should any change be made in any federal or state law or in any rules and regulations implementing such legislation or in any city charter provision which would be applicable and contrary to any provision herein contained, then such provision of this MOU shall be automatically terminated and the remainder of this MOU shall remain in full force and effect. The parties hereto shall immediately commence to negotiate for the purpose of replacing any such invalid or illegal provision.

1.05 OBLIGATION TO MEET AND NEGOTIATE OR CONFER

- A. Except as provided otherwise in this agreement, the Union and the Agency during the term of this agreement expressly waive the right to meet and negotiate with respect to any subject or matter whether referred to or covered in this agreement or not. This provision shall apply even though such subject or matter may not have been within the knowledge or contemplation of either or both the Agency or the Union at the time they met and negotiated on and executed this agreement. This provision shall also apply even though such subjects or matters were proposed and later withdrawn.
- B. Upon the request of either party, the Union and Agency shall meet and negotiate concerning the impact or effect on wages, hours, or working conditions or actions taken or proposed to be taken by the Agency where such actions contravene

past practices except where such actions and the consequences thereof are provided for by this MOU.

- C. No provision or term of this MOU may be amended, waived or altered except by written document executed by the parties hereto. The Union and the Agency may by mutual agreement meet and negotiate concerning any matter within the scope of negotiations.
- D. All matters affecting employee relations, including those that are not subject to negotiations, are subject to consultation between management representatives and the duly authorized representatives of affected employee organizations. Every reasonable effort shall be made to have such consultation prior to effecting basic changes in any rule or procedure affecting employee relations.

1.06 NON-DISCRIMINATION/AFFIRMATIVE ACTION

- A. There shall be no discrimination in hiring, wages, promotion or other terms or conditions of employment or opportunity for employment based upon race, religious creed, color, national origin, ancestry, age, sex, sexual orientation, gender identity, gender expression, marital or parental status, political affiliation or belief, nor on union membership or activity, nor on physical handicap or medical condition, except where the person because of physical handicap or medical condition is unable to perform her/his duties or cannot perform her/his duties in a manner which would not endanger her/his health or safety or the health or safety of others.
- B. The Agency and HERO agree to adhere to the workplace policies set forth in the City of Santa Monica Administrative Instructions regarding anti-discrimination and anti-harassment, as well as applicable federal and state anti-discrimination and equal opportunity laws. Employees shall not be subject to intimidation, retaliation, coercion, or discrimination for exercising their legitimate rights under these policies and laws.
- C. Formal grievance procedures outlined in the MOU are available for resolution of complaints alleging harassment and discrimination if the complaint is not adjusted to the satisfaction of the employee in the pre-grievance process. The time limits for filing a formal grievance will begin as of the date of notification of action taken by the Director of Human Resources.

1.07 OVERPAYMENT REMEDY

An employee shall reimburse the Agency for any overpayment of wages or benefits. Said reimbursement shall not be required until the Agency notifies the employee in writing. Reimbursement may be accomplished by a lump sum deduction from the next payroll warrant issued to the employee following notification or by other reasonable repayment method mutually acceptable to the

employee and the Agency, except that the lump sum deduction may be required if the next payroll warrant issued to the employee is the final or termination warrant.

1.08 DURATION OF MEMORANDUM OF UNDERSTANDING

The Memorandum of Understanding shall expire December 31, 2024. The parties shall agree to meet for the purpose of negotiating a successor Memorandum of Understanding no later than September 15, 2024.

ARTICLE II: COMPENSATION

2.01 STEP INCREASES

- A. Step increases shall be effective on the employee's anniversary date as defined in Article VI, Section 6.04, Seniority, of this MOU; except, however, that if on the anniversary date an employee has been on leave for more than sixty (60) calendar days, then the step increase shall be delayed until the employee returns to work, at which time the employee's step increase shall be effective on the employee's anniversary date plus the total number of calendar days during which the employee was on leave minus sixty (60) days.
- B. An employee who accepts a promotion shall be paid at the minimum rate of the appropriate salary, or one step higher than her/his current pay rate, whichever is higher.
- C. As used in this Article, the term "employee" does not include independent contractors.

2.02 HEARING OFFICER SALARY GRID

- A. Salary Grid Salary Grid Effective January 1, 2022:

	<u>Step 1</u>	<u>Step 2</u>	<u>Step 3</u>	<u>Step 4</u>	<u>Step 5</u>
Level I	9,078	9,526	10,086	10,647	11,207
Level II	12,405	13,018	13,784	14,549	15,315

- B. Effective January 1, 2023, the salaries of all employees covered herein shall be increased by the annual increase in the Consumer Price Index for all urban consumers in the Los Angeles-Long Beach-Anaheim Area for 2022. However, in no event shall the adjustment exceed 2.5%.

- C. Effective January 1, 2024, the salaries of all employees covered herein shall be increased by the annual increase in the Consumer Price Index for all urban consumers in the Los Angeles-Long Beach-Anaheim Area for 2023. However, in no event shall the adjustment exceed 2.5%.
- D. Advancement from Level I to Level II shall be considered a promotion. Said promotion shall be accomplished only upon recommendation of the Hearings Department Manager at his/her sole discretion and which shall not be subject to the grievance and arbitration procedure.

The Hearings Manager shall consider the employee's productivity, quality of work, and the employee's overall ability to handle complex or advanced matters when making a determination as to whether or not an employee merits a promotion. If a Hearing Officer has been at Step 5 of Level I for at least one year and the Hearings Manager does not recommend movement from Level I to Level II, the Hearings Manager will explain in the employee's yearly performance evaluation the skills and expertise the Hearing Officer must develop to be recommended for promotion.

- E. The Administrator retains sole discretion to place Hearing Officers hired after January 1, 1994 on the salary grid pursuant to evaluation of qualifications and not necessarily related to the number of years' experience. The placement of Hearing Officers on the salary grid hired after January 1, 1994 shall not be subject to the grievance and arbitration procedure.
- F. In lieu of an annual step increase under Article II, Section 2.01.A, and on the same date on which they would otherwise be eligible for a step increase on their anniversary date, employees who have been at Level II, Step 5 for one year or longer, and who have received an evaluation of "distinguished," shall receive a cash bonus equal to 5% of the annual salary then in effect for Level II, Step 5. Said 5% bonus shall be prorated for part-time employees as follows: (monthly salary for Level II, Step 5) multiplied by (12) multiplied by (regularly scheduled hours per two week period divided by 80) multiplied by (.05).

2.03 ACCOUNTING FOR TIME WORKED

Employees covered herein are exempt employees under the professional employee exemption of the Fair Labor Standards Act (FLSA) as it may be applicable to public agency employees. Effective April 12, 2010, an employee covered herein will not have to account for their work time on an hourly basis but must account for each half-day or more of absence and must work full-time, with full time being defined as at least 40 (forty) hours per the "full-time work week" designated for affected employees, unless the employee has requested and obtained part-time status.

2.04 PAYMENT OF SUPERVISORY DIFFERENTIAL

In the event that the Hearings Department Manager is on leave for a period of more than five (5) working days, and a Hearing Officer has been designated as Acting Hearings Department Manager during this time, that Hearing Officer shall be paid an additional \$20.00 per day or the equivalent of a one-step differential (five percent), whichever is greater, during that period of time.

In the event the Hearings Department Manager shall be on leave for a period of five (5) working days or less, the Hearing Officer who serves as Acting Hearings Department Manager shall receive no additional compensation.

Designation of Acting Hearings Department Manager in the event of the absence of the Hearings Department Manager shall be at the sole discretion of the Hearings Department Manager or in his/her absence, the Agency's Administrator.

If the Administrator is on leave for a period of more than five (5) working days and a Hearing Officer has been designated as Acting Administrator during that time, that Hearing Officer shall be paid an additional \$20.00 per day or the equivalent of a one-step differential (five percent), whichever is greater, during that time period.

2.05 CONTRACT IN-LIEU PAYMENTS

- A. The Board grants a one-time only payment of \$1,500 to all bargaining unit members. Payment will be paid upon final ratification of the contract. This lump sum will not be reported as compensation in reporting to CalPERS.
- B. The Board grants a one-time only payment of \$1,000 to all bargaining unit members on the payroll and reporting for work during the week of January 2nd – January 6th, 2023. Employees on unpaid and unprotected leave of absence during this period shall not be eligible for the payment. This lump sum will not be reported as compensation in reporting to CalPERS.
- C. The Board grants a one-time only payment of \$1,000 to all bargaining unit members on the payroll and reporting for work during the week of January 1st – January 5th, 2024. Employees on unpaid and unprotected leave of absence during this period shall not be eligible for the payment. This lump sum will not be reported as compensation in reporting to CalPERS.

ARTICLE III: SUPPLEMENTAL BENEFITS

3.01 MEDICAL/DENTAL/VISION INSURANCE

A. Medical Insurance

The Agency shall pay medical insurance premiums for employees covered herein as set forth in the “Umbrella Agreement Setting the Terms and Conditions of Medical Insurance Coverage for All Santa Monica Rent Control Board Employees.” This MOU umbrella agreement is between the EAC, Hearing Examiner Representational Organization, Society for Union Employment, and Individual Unaffiliated Employees and the Santa Monica Rent Control Board.

If negotiations begin for a new umbrella agreement to supersede or succeed the current Medical Insurance Umbrella Agreement between the City and the Coalition of Santa Monica City Employees, the Agency and HERO agree to meet and confer to determine how medical insurance premiums for employees covered herein will be paid. The parties will consider but not be bound by any changes agreed to between the City and the Coalition of Santa Monica City Employees.

In the event that implementation of federal health insurance reform affects how public employer provided health insurance benefits are delivered and/or paid for, the Agency agrees to meet and confer with HERO.

B. Dental Insurance

Dental insurance coverage shall be provided at no cost to employees and their eligible dependents provided that employees covered herein participate in the City-offered dental insurance programs.

C. Vision Insurance

The Agency agrees to provide vision care insurance, at no cost, to employees covered hereunder. The Agency retains the right to select the provider and to set the levels of coverage for said vision care insurance plan. The Agency also retains the right to change the provider of said vision insurance plan and/or the level of benefits provided under that plan without meeting and conferring.

D. Retiree Medical Benefits

Upon retirement after at least five years of service, the Agency will continue to pay the premiums for a retiree’s vision and dental insurance for the 18 months immediately following the date on which the employee retires.

After at least five years of service and immediately following retirement the Agency will reimburse a retiree for the retiree's unreimbursed medical expenses not to exceed \$200 per month for the 24-month period immediately following the date on which the employee retires. Reimbursement requests will be submitted by the retiree on a quarterly basis.

3.02 PUBLIC EMPLOYEES RETIREMENT SYSTEM

The Agency, through the City of Santa Monica, is a contract member of the California Public Employees' Retirement System (CalPERS), and it is understood and agreed that such membership will be maintained and the employee eligibility, classification, contributions, and benefits are as prescribed in the contract between the City and the California Public Employees' Retirement System heretofore approved by the Santa Monica City Council.

The terms and conditions regarding CalPERS retirement and optional benefits for miscellaneous employees are set forth in the Umbrella Agreement between the City and the Coalition of recognized employee organizations that are recognized by the City to represent non-sworn City employees: Administrative Team Associates (ATA), Management Team Associates (MTA), Municipal Employees Association (MEA), Public Attorneys Union (PAU), Public Attorneys' Legal Support Staff Union (PALSSU), Supervisory Team Associates (STA), International Brotherhood of Teamsters, Local 911 (Teamsters), SMART-TD, members of the Executive Pay Plan (EPP), and members of the Confidential Unrepresented Employees Pay Plan (CUE).

Sections A and B below provide a summary of certain provisions of the Umbrella Agreement, but the full provisions of the Agreement apply. Section C provides a summary of certain provisions of the Public Employees' Pension Reform Act of 2013 ("PEPRA").

- A. Tier 1 Employees: Employees hired before July 1, 2012 continue to have the same 2.7% @ 55 full retirement formula and they shall continue to reimburse the City a total of 6.7% of their compensation reportable to CalPERS toward the mandatory employer contribution, unless the December 1, 2011 Umbrella Agreement is amended to stipulate otherwise. These monies will continue to be used to reimburse the City for the additional cost associated with implementing the CalPERS 2.7% @ 55 full retirement formula option for miscellaneous City employees. When calculating retirement benefits for Tier 1 employees the period to determine average monthly pay rate shall continue to be the 12 highest paid consecutive months.

For Tier 1 Employees, the City shall continue to pay and report the value of Employer Paid Member Contributions (EPMC), also referred to as the "PERS on PERS" option, whereby the City of Santa Monica, as allowed by Government Code Section 20636(c)(4), reports to the California Public Employees Retirement System (CalPERS) as compensation earnable the monetary value of normal contributions paid by the Agency (hereinafter referred to as the EPMC) on behalf of the employee covered by this Agreement pursuant to the provisions of Section 20691 of the California Government Code, as described in this Section. In return, there shall be deducted from the income of each employee, on a pre-tax basis, the added cost to the City resulting from paying employer and employee retirement contributions on the EPMC, which is an amount equal to the product obtained by multiplying the value of the EPMC by a percentage equal to 8%, plus the City's prescribed contribution rate to PERS (which is subject to annual adjustment).

- B. Tier 2 Employees: Employees hired on or after July 1, 2012 will receive the optional CalPERS benefit set forth in Section 21354 of the California Government Code, which establishes a 2.0% @ 55 full formula, with Final Compensation based on the 36 highest paid consecutive months set forth in Section 20037 of the California Government Code. Employees will contribute, on a pre-tax basis, the mandatory 7% employee contribution to CalPERS. The City will not implement the option to pay and report the value of Employer Paid Member Contributions (EPMC).
- C. Tier 3 Employees: Any employee hired after January 1, 2013 and who meets the definition of new member as defined in the Public Employees' Pension Reform Act of 2013 ("PEPRA") will fall under the pension provisions of the state mandated provisions of PEPRA. As stated in Section 1.04, Validity of Memorandum of Understanding, of this memorandum of understanding, any provisions of PEPRA which may conflict with any provision contained herein shall supersede this MOU.

HERO agrees that should the City and the Coalition of Santa Monica City Employees enter into an agreement to enhance or modify the PERS retirement formula for non-sworn employees requiring an employee-paid contribution or other financial arrangement affecting employee compensation, HERO will be bound by the terms of that agreement.

3.03 TRAINING AND EDUCATION

The agency shall pay the reasonable cost of professional training programs which are either related to employees' work for the Agency or required by the Minimum Continuing Legal Education (MCLE) program of the State Bar. If, in the judgment of the Agency's Hearings Department Manager, a program is either necessary or sufficiently related to the employee's work for the Agency, and contingent on prior approval of the Hearings Department Manager, time spent attending the program during regular working hours shall be compensated as regular working hours.

3.04 DEFERRED COMPENSATION

Employees may, at their option, participate in the City's 457 deferred compensation plan.

Effective January 1, 2009, the Board's monthly contribution into the 401(a) plan (\$600 total) has been rolled into the salary steps A through E of the Hearing Officer salary grid. With that change, there is a mandatory employee contribution of at least \$276.92 bi-weekly into the 401(a) plan, with the amount of the mandatory employee contribution being the same for each employee.

In addition, effective January 1 and July 1 of any subsequent calendar year in which this Agreement is in effect, HERO may elect to implement a mandatory employee contribution greater than the \$276.92 bi-weekly amount set forth above into the 401(a) plan by providing notice to the Agency of its desire to do so at least three (3) weeks prior to the beginning of the calendar year. Mandatory employee contributions shall meet the requirements of the Internal Revenue Code. Any additional mandatory employee contribution shall not be subject to roll-over into the salary grids.

3.05 CAR EXPENSE

Employees shall be compensated at the mileage rate allowed by the Internal Revenue Service, plus parking and toll charges, if any, for the use of their personal vehicles in the performance of their job duties.

3.06 DISABILITY INSURANCE

Employees shall be covered by a long-term disability plan provided at the Agency's expense, upon the same terms and conditions as the Deputy City Attorneys of the Office of the City Attorney of Santa Monica. Said disability insurance plan shall provide long-term disability insurance benefits equal to either sixty percent (60%) of the employee's monthly salary or eight thousand three hundred and thirty-three dollars (\$8,333) per month,

whichever is less, reduced by the employee's income from other sources. If the long-term disability plan covering Deputy City Attorneys is modified to include partial disabilities, the plan applicable to employees covered herein shall also be so modified.

3.07 PROFESSIONAL AND ASSOCIATIONAL DUES

- A. The Agency shall continue to pay State Bar Dues for all members of the California Bar employed by the Agency.
- B. At each Hearing Officer's option, the Agency shall also pay the dues for one local bar or voluntary organization, not to exceed the amount of annual dues required for membership in the Los Angeles County Bar Association.
- C. The Agency shall pay the administration fee to any court which is necessary to enable an employee to represent the Agency.

3.08 TERM LIFE INSURANCE

The agency agrees to maintain at no cost to the employee a term life insurance plan for permanent employees covered herein, with individual coverage in an amount equal to twice the employee's annual base salary.

ARTICLE IV: LEAVES

4.01 HOLIDAYS

- A. The following days shall be observed as paid holidays:
 - 1. New Year's Day (January 1),
 - 2. Martin Luther King's Birthday (Third Monday of January),
 - 3. Presidents' Day (3rd Monday in February),
 - 4. Cesar Chavez Day (4th Monday in March),
 - 5. Memorial Day (last Monday in May),
 - 6. Juneteenth Day of Observance (June 19),
 - 7. Independence Day (July 4),
 - 8. Labor Day (1st Monday in September),
 - 9. Thanksgiving Day (4th Thursday in November),
 - 10. Friday after Thanksgiving Day, and
 - 11. Christmas Day (December 25)
 - 12. The last four (4) hours of an employee's scheduled work shift on the last working day preceding Christmas Day.
 - 13. The last four (4) hours of an employee's scheduled work shift on the last working day preceding New Year's Day.

14. Any day or portion thereof declared to be a holiday by proclamation of the Mayor, or the concurrence of the City Council by resolution, or by resolution of the Rent Control Board.
15. One floating holiday
16. In lieu of the Lincoln's Birthday holiday a non-cashable floating holiday becomes available as of January 1 of each year. Only those employees who are on the payroll as of January 1 shall be entitled to receive the non-cashable floating holiday. The non-cashable floating holiday must be taken before the end of the fiscal year. If the non-cashable floating holiday is not taken by the end of the fiscal year, the holiday is forfeited.

The Agency reserves the right to alter the above holiday schedule in conformance with any changes to the holiday schedule made by the City.

A paid holiday shall mean nine (9) hours when it falls on a regularly scheduled nine-hour day or eight (8) hours when it falls on a regularly scheduled eight-hour day at the employee's straight time rate of pay.

The floating holiday set forth in 15 above becomes available as of January 1 of each year. It must be taken before the end of the fiscal year. If the floating holiday is not taken by the end of the fiscal year, the holiday is forfeited.

Whenever any day listed herein as a paid holiday falls upon any day other than Saturday or Sunday when a City facility (including department, division or work unit) is already scheduled to be closed to the public because of the adoption of a compressed work schedule, employees who work at said City facility will receive an eight (8)-hour floating holiday in lieu of the day listed as the paid holiday. This floating holiday cannot be accrued and carried over to the next fiscal year, and the floating holiday cannot be cashed out at the end of the fiscal year. This floating holiday must be taken by the end of the fiscal year in which it is granted to the employee or be forfeited.

- B. When any holiday specified above falls on a Sunday, it shall be observed on the following Monday.
- C. When any holiday specified above falls on a Saturday, it shall be observed on the preceding Friday.
- D. Holidays for part-time employees shall be prorated on the basis of the ratio of hours of their two-week work period compared to a full eighty (80) hour 9/80 two-week work-period.

4.02 ANNUAL LEAVE (VACATION)

- A. Annual leave shall be accrued at the rate of one (1) day (eight hours) per month of employment during the first year of employment. No annual leave may be taken during the first six (6) months of employment.
- B. Beginning in the fourth year of employment, annual leave shall be accrued at the rate of one and one-quarter (1-1/4) days per month. Beginning in the sixth year of employment, annual leave shall be accrued at the rate of one and one-half (1-1/2) days per month. Beginning in the sixteenth year of employment, annual leave shall be accrued at the rate of one and three-fourths (1-3/4) days per month, effective January 1, 2000.
- C. Any unused days of annual leave may be carried over from year to year provided that the maximum accrual of vacation time shall not exceed two times the employee's annual accrual.
- D. Upon separation, the employee shall be paid for all accrued unused days of annual leave, subject to Section C above.
- E. If a paid holiday occurs while an employee is on annual leave, that day shall not be deducted from the employee's accrued annual leave.
- F. Annual leave schedule shall be agreed upon by mutual consent of the employee and her/his department head. If the employee and the department head cannot reach agreement on annual leave schedule, the matter shall be decided by the department head. Annual leave may be granted in increments of less than one week provided that notice of such intention is given to her/his department head at least seven (7) days in advance.
- G. An employee who wishes to take five (5) days (40 hours) or more annual leave shall request such leave from her/his department head at least thirty (30) days in advance of the date s/he wishes to start such leave. The request for such leave shall not be unreasonably denied.
- H. Employees shall have preference in scheduling annual leave in accordance with seniority. After an employee's annual leave is scheduled, it can only be changed with the consent of the department head.
- I. Part-time employees shall accrue annual leave prorated on the basis of the ratio of the number of hours s/he works each two-week period compared to a full eighty (80) hour 9/80 two-week work period.
- J. Upon layoff, an employee with one year of continuous service shall be paid for all accumulated annual leave.

4.03 SICK LEAVE

- A. A permanent full-time employee shall accrue sick leave at the rate of one (1) day (eight hours) per month.

A new (probationary) employee may use sick leave, accrued one working day per month, during the first six months of continuous service with the Agency. If the employee separates prior to completing six months of continuous service, he or she shall be required to reimburse the Agency for any sick leave that was paid during the first six-month period.

- B. Sick leave will be granted when an employee is required to be absent from work because of -

1. Illness of the employee.
2. Contact with, or exposure to, a contagious disease rendering the employee's presence hazardous to fellow employees.
3. Necessary medical or dental attention for the employee or close relative whose welfare is the responsibility of the employee that cannot be scheduled during non-working hours.
4. Illness of a minor child in the employee's household.
5. Care for a close relative who has suffered an accident, emergency, or serious illness and whose welfare is the responsibility of the employee.

The term "close relative" as used in (3) and (5) above includes but is not limited to domestic partners, adult children, parents, or siblings. When an employee seeks to use sick leave for this purpose, the employee may be required by her/his supervisor to give details concerning the relationship and the nature of the condition requiring the employee to take the time off.

When providing care for a "close relative" as described in Sections B(3) and (5) above, the employee may be required to provide medical verification to the Agency before an employee shall be allowed to charge the time away to accrued sick leave.

6. Temporary Disability Due to Pregnancy

An employee who is working is entitled to use sick leave for disabilities caused or contributed to by pregnancy, miscarriage, childbirth, and recovery therefrom on the same terms and conditions governing leaves of absence for other illness or medical disability. Such leave shall not be used for childcare, child rearing, or preparation for child bearing, but shall be limited to those disabilities as set forth

above. The length of such leave, including the date on which the leave shall commence and the date on which the leave shall end shall be determined by the employee and the employee's physician.

An employee who has no remaining accumulated sick leave may take annual leave or leave without pay for disabilities caused or contributed to by pregnancy, miscarriage, childbirth and recovery therefrom.

7. An employee shall be entitled to use two sick days in each calendar year for personal matters.

8. Upon layoff, an employee with one year of continuous service shall be paid for all accumulated sick leave since date of hire, but not to exceed sixty days.

C. Sick leave is cumulative.

D. An employee who is unable to work because of illness and has no remaining accumulated sick leave shall be required to use accumulated annual leave (vacation).

If an employee is admitted to a hospital or health care institution either because of a serious illness or an accident and the employee has no remaining accumulated sick leave or annual leave, additional sick leave days may be obtained for the periods that the employee is in the hospital or other institution and for related treatment and recovery as follows:

1. If the employee has been employed for two (2) full years or more, the Agency will lend up to fourteen (14) days (112 hours) of sick leave to the employee upon request.

2. If the employee has been employed for less than two (2) years, or has already been loaned fourteen (14) days (112 hours) pursuant to above, additional sick leave may be loaned at the discretion of the Administrator.

All loans of sick leave shall be repaid by application to the loan of all sick leave and annual leave accumulated by the employee after the loan until the loan is extinguished. All outstanding loans at the time an employee leaves the employment of the Agency shall be recouped from the last payroll check.

E. For employees hired before January 1, 2013, upon resignation or retirement after five (5) years of continuous service, an employee shall be paid for all accumulated sick leave since date of hire, but not to exceed sixty (60) days (480 hours). Upon layoff after one (1) year of continuous service, an employee shall be paid for all accumulated sick leave since date of hire, but not to exceed sixty (60) days (480 hours).

For employees hired on or after January 1, 2013, upon resignation or retirement after five (5) years of continuous service, an employee shall be paid for all accumulated sick leave since date of hire, but not to exceed thirty (30) days.

- F. An employee may have the annual option to be paid for certain unused sick leave on the terms noted below or to “bank” unused sick leave.

Payment at the employee’s base rate for the fiscal year during which the sick leave was earned but not used shall be made only to employees on the payroll as of June 30 of that fiscal year. To qualify for payment an employee must have a sick leave “bank” of six (6) days. For the purposes of this Section, “bank” shall mean sick leave earned in prior years and reported in the “Bank as of Last Fiscal Year End” column of the “Annual Sick Leave Payoff/Accrue Designation by Employee” report issued by the City near the end of the fiscal year during which payable sick leave is earned.

An employee may redeem unused sick leave accrued in the prior fiscal year as follows:

<u>Less Than 10 Years of Service</u>		<u>10 or More Years of Service</u>	
<u>Sick Leave Days Used in Fiscal Year</u>	<u>Days Payable</u>	<u>Sick Leave Days Used in Fiscal Year</u>	<u>Days Payable</u>
0	9	0	12
1	8	1	11
2	7	2	10
3	6	3	9
4	5	4	8
5	4	5	7
6	3	6	6
7	2	7	5
8	1	8	4
9	0	9	3
		10	2
		11	1
		12	0

The number of days (or portion thereof) of sick leave used in the previous fiscal year shall be subtracted from the number of days of sick leave accrued during that same fiscal year and the employee may elect to redeem the remainder in increments of full hours according to the tables above, provided they have a sick leave “bank” as described above.

The Agency will notify each qualified employee of her/his redemption options in May of each year, and the employee shall make the election to redeem or not to redeem by May 31st. Cash-out of accrued sick time shall be at the salary rate in effect for the employee on June 30 of the fiscal year for which cash-out is requested.

- G. Nothing in this MOU shall operate to divest any employee of sick leave accrued prior to the effective date of this MOU.
- H. Part-time employees shall accrue sick leave prorated on the basis of the ratio of the number of hours she/he works each two-week work period compared to a full eighty (80)-hour 9/80 two-week work period.

4.04 PERSONAL LEAVE

- A. Effective July 1, 2013, each permanent full-time employee shall be granted six (6) paid personal leave days (48 hours), and each part-time employee shall be granted paid personal leave days prorated on the basis of the ratio of the number of hours she/he works each two-week work period compared to a full eighty (80) hour 9/80 two-week work period, on July 1, of each year.

The employee shall give her/his department head forty-eight (48) hours notice prior to taking a personal leave day.

- B. Sixteen (16) hours of unused personal leave may be carried over from year to year or cashed out at the end of each fiscal year (June 30), at the option of the employee. The remainder of the personal leave time cannot be carried over to the next fiscal year and cannot be cashed out at any time. Except for the sixteen hours noted above, personal leave time must be taken by the end of the fiscal year in which it is granted to the employee or be forfeited.
- C. Nothing in this MOU shall operate to divest any employee of personal leave days accrued prior to the effective date of this MOU.
- D. Full-time employees commencing employment between July 1 and December 31 shall be granted six (6) personal leave days (48 hours). Full-time employees commencing employment between January 1 and June 30 shall be granted three (3) personal leave days (24 hours).

4.05 LEAVE OF ABSENCE WITHOUT PAY

- A. Discretionary Leave.

No employee may take any time off without pay unless s/he has exhausted all accrued annual leave. Upon written request, the Hearings Department Manager

may grant an employee a leave of absence without pay. The granting and denying of the request shall remain within the sole discretion of the Hearings Department Manager. Such leave may not ordinarily exceed one (1) year's time. Upon expiration of the leave, the employee shall be reinstated to the position held before the leave was granted. If the leave is granted, a date shall be set for the end of the leave and the employee shall have the right to return to employment on that date. The employee may elect to pay health insurance premiums provided under this MOU during the period of absence and all seniority shall be retained.

B. Education Leave for Full-Time Students.

Subject to the staffing needs of the Agency, a permanent employee may be granted leave without pay for up to one year upon presentation of a plan for full-time schooling to improve the employee's value to the Rent Control Board. If the educational leave is for three (3) months or less, the employee shall be returned to her/his job at the end of the leave period. If the education leave is for a period of longer than three (3) months, the employee shall be returned to her/his job at the end of the leave period if there is a vacancy. If there is no vacancy in the job held by the employee before going on leave, the employee may be offered a position in any vacancy for which s/he is qualified on the basis of skills, experience and seniority. If there is no such job opening, the employee shall be placed on a future hiring list and given top priority for the former position or any other position which may be open in the future for which the employee is qualified in terms of skills, experience and seniority. It is the employee's responsibility to keep the Agency informed of her/his correct address and telephone number, and to notify the Agency promptly if at any time s/he decides that s/he does not wish to return to employment at the Agency.

C. Workers Compensation/Disability Leave

Any permanent employee covered herein who was receiving disability payments under the "Workers Compensation Act of California" (for on-the-job injuries sustained while engaged in the performance of the duties of any such position) shall receive from the Agency during the first sixty (60) days of such disability absence payments in an amount equal to the difference between the disability received under the Workers Compensation Act and the employee's full salary. Such payments by the Board shall be made without any deduction from accrued sick leave benefits.

D. If an employee experiences an involuntary absence from her/his work because of illness or disability and thereby exhausts all sick leave, annual leave, and compensatory time accruals, s/he shall be placed on leave without pay for a period of twelve (12) months, if necessary, due to the illness or disability. The employee may elect to pay for continued health insurance coverage provided in the MOU to the extent that the insurance policy allows such during the leave, and

all seniority shall be retained. Where the absence results from work related illness or injury, there shall be no twelve (12) month limitation and the Agency shall pay for continued health insurance coverage during the period of leave to the extent required by applicable state law.

In the event an employee's illness or disability results in use of all accrued sick leave, vacation, personal leave days, compensatory time, and all other accrued time held by the employee, the Agency shall pay up to ninety (90) days (three monthly installments) of the employee's health insurance premiums. This benefit can be used only once during the life of this contract.

4.06 JURY DUTY/COURT APPEARANCES

- A. When summoned to serve on jury duty on workdays, employees shall be granted a leave of absence with pay no more than once every three years provided that the employee does the following:
 - 1. During periods when the employee is excused, the employee shall report for work provided he/she can reasonably return to work for an hour or more.
 - 2. Any compensation received by the employee as a result of jury duty on workdays (excluding transportation and meals) shall be surrendered to the Agency.
- B. In the event that an employee is required to appear in court on a work day in order to be excused from jury service in excess of once every three years, this time will be compensated at the employee's regular rate of pay. The employee will make reasonable good faith efforts to be excused without having to appear.
- C. In the event that either the State or Federal court system changes current policy which excuses from jury service those employees who do not receive full compensation from their employer during the full period of jury service, this once-in-three-years limitation of paid leave for jury duty shall terminate and Section 4.06 as written in the MOU (January 1, 1996 - December 31, 1997) shall be in full force and effect.
- D. Whenever an employee is required to be absent from work by a proper subpoena, issued by a court or commission legally empowered to subpoena witnesses, which compels the employee's presence as a witness, the employee shall be allowed the time necessary to be absent from work at the employee's regular pay to comply with such subpoena, provided the employee deposits any witness fees, except mileage, with the Agency and the employee makes arrangements, where possible, to be on call and report to work as scheduled.

4.07 BEREAVEMENT

- A. An employee who suffers the death of a spouse, person in a live-in spousal relationship, parent, step-parent, sibling, sibling of spouse, spouse of sibling, step-sibling, child, step-child, natural parent of a common child, grandparent, step-grandparent, grandchild, step-grandchild, spouse of child, spouse of step-child, step-parent of spouse, or parent of spouse shall be entitled to five (5) working days leave of absence with pay. This leave will apply equally where the relatives set forth above are the relatives of a person in a live-in spousal relationship. An employee who works less than five (5) days a week or less than forty (40) hours per week shall be entitled to paid leave equivalent to the regular pay the employee would receive within a five (5) day period beginning with the first day of bereavement and excluding Saturdays, Sundays, and holidays.
- B. An employee who suffers the death of an uncle, aunt, niece, nephew or member of the same employee's household, shall be entitled to two (2) working days leave with pay if the death does not require travel outside the metropolitan area, or four (4) working days, if it does require such travel. An employee who works less than five (5) days a week or less than forty (40) hours per week shall be entitled to paid leave equivalent to the regular pay the employee would receive within either a two (2) day or four (4) day period beginning with the first day of bereavement and excluding Saturdays, Sundays and holidays.
- C. An employee may request the use of accrued annual leave at the commencement of the bereavement leave and the request shall not be unreasonably denied.

4.08 CHILDCARE LEAVE

- A. An employee shall be entitled at her/his option to either thirty-five (35) leave days (280 leave hours) at full pay or sixty (60) leave days (480 leave hours) at half pay for the purpose of preparing for and/or caring for a newly born, newly adopted, or newly fostered child less than thirteen (13) years old. During said leave period, employees who normally work part-time shall be compensated at the rate applicable for full-time employees; there shall be no proration of childcare leave for part-time employees.
- B. Following exhaustion of the leave set forth in Paragraph A, an employee shall be entitled to an additional voluntary twelve (12) months of unpaid childcare leave for the purpose of preparing for and/or caring for a newly born, newly adopted, or newly fostered child less than thirteen (13) years old.
- C. During the childcare leave provided for in Paragraph A, the Agency shall continue to pay for health insurance. During the childcare leave provided for in Paragraph B, the employee may at her/his option continue health insurance coverage by paying the appropriate monthly premiums.

- D. During the childcare leave provided for in Paragraph B, the employee shall not continue to accumulate seniority.
- E. If the employee elects to return to work at the conclusion of the leave provided for under Paragraph A, s/he shall return to her/his position held prior to the leave. If the employee elects to return to work at the conclusion of the leave provided under Paragraph B, s/he shall be returned to the position held at the beginning of the leave, or to a comparable position at the wage rate in effect at the time the employee returns from leave. If the return of an employee from childcare leave requires the layoff of an employee, the person to be laid off shall be determined according to the provisions of Article 34, Layoff and Recall.
- F. Employees shall give reasonable advance notice, but not less than thirty (30) days to the Administrator of the date s/he proposes to commence childcare leave. After such thirty days' notice is given, the date of commencement of childcare leave may be adjusted based upon a change in the medical condition of the employee or the child or by mutual agreement of the employee and the administrator.

4.09 FAMILY LEAVE

The Agency shall comply with the provisions of the Family Leave Medical Leave Act (FMLA) and the California Family Rights Act (CFRA). Generally, the FMLA and CFRA provide employees with the ability to take paid and unpaid leaves of absences to take care of a serious health condition for themselves, their spouse, their child, or their own parents, or to bond with a newborn or newly adopted child. Upon notice to the Administrator identifying the employee's need for FMLA/CFRA leave, the employee will be advised to contact the Human Resources Department regarding eligibility for such leave. Employees shall give the Administrator reasonable advance written notice of at least thirty (30) days for a foreseeable event qualifying for such leave or as soon as practicable or possible for unforeseeable events. The Administrator and/or the Human Resources Department may require employees to obtain a medical certification from a health care provider regarding the qualifying condition, consistent with the FMLA and CFRA.

ARTICLE V: WORKING CONDITIONS

5.01 HEALTH AND SAFETY

- A. The Agency agrees to keep all office machinery, furniture, and fixtures in a good state of repair and working condition.

- B. The Agency shall provide a safe and healthful working environment for all employees.
- C. No employee shall be required to work under conditions which s/he has a reasonable good faith belief may pose serious threats to her/his health and or safety.
- D. Management and HERO agree that hearings will not be held on days when the offices are not open for business. However, in the extraordinary event that a hearing is necessary on a day when the offices are not open for business, a staff person shall be provided.

5.02 HOURS OF WORK, WORK WEEK, REST PERIODS

- A. A work period shall consist of 80 hours over a fourteen (14) day period pursuant to the City of Santa Monica's 9/80 work schedule. The 9/80 schedule shall consist of nine (9) hours per day, Monday through Thursday of each week, and, eight (8) hours on the first Friday of each fourteen (14) day period. The second Friday of each fourteen (14) day period will be an "off" day. No employee covered by this MOU shall be required to work split shifts.
- B. There shall be two (2) paid fifteen (15) minute rest periods per day, one in the morning and one in the afternoon for each employee covered by this MOU.
- C. The principle of flex time is recognized by the Agency. At the Agency's discretion, individual employees may work flexible hours to meet their personal convenience. Requests for "flex time" may not be unreasonably denied.

There are several ways in which "flex time" can be implemented, such as:

- a. An employee may start work before 7:30 a.m., work the normal work day of nine (9) hours and leave before 5:30 p.m.;
- b. An employee may start work after 7:30 a.m., work the normal work day of nine (9) hours and leave after 5:30 p.m.;
- D. By agreement with the Agency, individual employees may work on a part-time basis, either on a schedule of less than the 9/80 or less than nine (9) hours per day. All part-time employees will be entitled to one (1) paid fifteen (15) minute rest period during each consecutive four (4) hour work period.

5.03 EFFECT OF JOB PERFORMANCE ON SALARY

- A. There will be no increase in wages of any kind as a result of a "needs improvement" rating on the employee's periodic performance evaluation. There will be no subsequent increases in wages until the "needs improvement" rating

has been improved to at least the solid level. An employee who improves a "needs improvement" to at least "solid" shall have her/his wages increased as of the date on which the "solid" rating was given. There shall be no retroactive wage increases under this provision.

- B. Any overall rating in the "needs improvement" category may delay the next scheduled step increase at the discretion of the appointing authority. Such action shall remain in effect until the rating has been improved to at least a "solid" level.
- C. Any employee who received an overall rating in the "needs improvement" category shall be reevaluated within six (6) months.
- D. If an employee has been on leave for a period in excess of 60 calendar days on his or her anniversary date, then the employee's performance evaluation shall be delayed until the employee returns to work, at which time the employee shall be evaluated on or before his or her anniversary date plus the total number of calendar days during which the employee was on leave minus 60 days.

5.04 WORK-AT-HOME POLICY

The Agency recognizes the special nature of the work performed by Hearing Officers and as Hearing Officers have from time to time in the past worked at home, the Agency agrees to permit Hearing Officers to work at home for up to three (3) days per month with the prior approval of the Hearings Department Manager. Hearing Officers shall be available by phone at all times while engaged in work at home. Hours not used in one month may not be accrued and added to another month's three (3) day allotment.

5.05 CONTRACTING OUT OF AGENCY WORK

- A. No bargaining unit work shall be performed by independent contractors working outside the MOU without the prior consent of the Union.
- B. The Union and the Agency shall meet and confer prior to the award of a major contract in order to discuss whether or not the work to be contracted out is work which could reasonably be performed within the bargaining unit classifications. The Agency reserves the right to make the final determination. The Union does not in any way waive its right to grieve if in its opinion the work is bargaining unit work.

5.06 PARKING

It is hereby agreed that the Agency will make every effort to maintain free parking for employees covered herein. In the event the City implements a charge for parking, the Agency will meet and confer with HERO.

ARTICLE VI: EMPLOYER/EMPLOYEE RELATIONS

6.01 EMPLOYEE EVALUATION

- A. All probationary employees shall be evaluated quarterly for the duration of their probationary period.
- B. All permanent employees shall receive at least an annual evaluation on the form provided by the Personnel Department and in conformity with the City performance evaluation practices.
- C. The employee shall receive oral notification by her/his supervisor at least ten (10) calendar days in advance of the date of the performance evaluation meeting.
- D. Within ten (10) working days prior to the performance evaluation meeting, the employee shall submit a written list of suggested goals or objectives for the employee to achieve in the next evaluation period. At the performance evaluation meeting, the supervisor and the employee shall discuss the goals or objectives suggested by the employee, and any other goals and objectives which the supervisor feels are appropriate. The employee and the supervisor shall seek to reach agreement on the specific goals or objectives on which the employee shall be evaluated in the next evaluation period. If an agreement cannot be reached, the supervisor shall decide the goals or objectives which shall be a basis for that employee's next evaluation.
- E. The employee shall have the opportunity to respond in writing to her/his evaluation and her/his response shall be placed in the employee's personnel file.
- F. Any methods and procedures adopted by the Agency for evaluation of the job performance of employees shall be so constituted as to afford affected employees due notice of the fact that such evaluation will take place, the standards to be applied by the Agency, and what methods or procedures will be employed.

- G. A guiding principle of any evaluation procedure shall be that employees are entitled to be informed of the results of any evaluation, such that they are given a full and fair opportunity to improve their performance in whatever areas of their work may, in the opinion of the agency, be deficient and such that they are made aware of the specific accomplishments of which their supervisors approve.
- H. Factors to be considered in evaluating employees shall be those included in the City's evaluation form and those established through the practice of performance evaluations of Hearing Examiner/Officers over the preceding five years.
- I. If an employee's performance evaluation is rated "needs improvement," s/he may be dismissed, and if two consecutive performance ratings are marked "needs improvement," the employee shall be dismissed by the appointing authority for inefficiency.
- J. If an employee is dissatisfied with her/his rating, s/he may confer successively with her/his immediate supervisor and her/his department head on the matter. If, in an employee's opinion, the prescribed rating procedures have not been followed, the employee may grieve the application of those procedures but not the substance of her/his rating; provided that when an evaluation or rating results in disciplinary action or a delay or denial of a step increase, the employee may present in an arbitration any evidence the arbitrator deems relevant.

6.02 DISCIPLINE

- A. No employee shall be disciplined except for just cause.
- B. The parties to this MOU agree that each employee has a right to know well in advance that a supervisor regards his/her behavior as unsatisfactory. Suspension, demotion, or termination shall take place in accordance with the following procedures:
 - 1. Preliminary Investigation. In the event a supervisor has reason to believe an employee has not met an established work or conduct standard, it is the obligation of the supervisor to fully investigate the circumstances surrounding the alleged infraction.
 - 2. Oral Reminder. The supervisor shall meet with the employee for the purpose of reminding the employee of the Agency's work or conduct standards. The supervisor and the employee shall discuss what changes in behavior need

to take place in order for the employee to meet the established work or conduct standards of the Agency. The employee shall have the right to have a Union steward present at this meeting if s/he desires. Prior to the conclusion of the meeting, the employee shall be informed as to the status of the oral reminder. There shall be no record of an oral reminder in an employee's personnel file.

No use shall be made of an oral reminder issued to an employee who has not received an oral reminder, written reminder, or other discipline for a one (1) year period.

3. Written Reminder. If an employee continues to fail to meet established work or conduct standards or if, in the opinion of her/his supervisor, the failure to meet such standards is of such serious nature as to warrant a written reminder, the supervisor shall meet with the employee and at that time give the employee a written reminder. The employee shall have the right to have a Union steward present at this meeting if s/he desires. The written reminder shall contain the following:

- a. A statement of the essential facts of the problem.
- b. A prescribed probationary period giving the employee a reasonable time by which the deficiencies of work or behavior must be corrected.
- c. Possible penalties for failure to correct the deficiency.

An employee shall have ten (10) working days to respond in writing to a written reminder. Such response shall be attached to the copy of the written reminder placed in the employee's personnel file.

No use shall be made of a written reminder issued to an employee who has not received an oral reminder, written reminder, or other discipline for a two (2) year period.

4. Demotion, Suspension, Termination

a. Grounds for Demotions, Suspensions or Termination

If a permanent employee continues to violate established work and conduct standards, or if the violation is of such a serious nature as to warrant more serious disciplinary action, the employee may be demoted, suspended without pay, or terminated.

b. Preliminary Written Notice and Hearing

A permanent employee shall receive a preliminary written notice of any proposed demotion, suspension without pay or termination. The written notice shall

contain a specific statement of charges or grounds upon which the proposed disciplinary action is based.

Any known written materials, reports or documentation upon which the disciplinary action is based shall be attached to the preliminary written notice.

The employee shall have the right to respond either orally or in writing within a specified reasonable time to the administrator or the administrator's designee. The administrator or administrator's designee shall consider the employee's response and within five (5) days either impose or not impose disciplinary action.

c. Notice of Demotion, Suspension Without Pay or Termination

If following the preliminary notice and hearing, the administrator or administrator's designee determines to impose demotion, suspension without pay or termination, the employee shall be given written notice of that decision. The notice shall contain a statement of the employee's right to appeal the decision.

6.03 GRIEVANCE AND ARBITRATION PROCEDURE

A. A grievance shall be defined as any dispute or controversy related to wages, hours, or working conditions, or the interpretation or application of this MOU, as applied to a member of the bargaining unit or the bargaining unit as a whole (hereinafter "grievant") which arises between the Agency and the Union. The procedures set forth herein shall be the exclusive means of handling and resolving any grievance arising hereunder.

B. First Step.
Any grievance arising under this article shall be discussed in a meeting between the department head or other supervisory staff authorized by the department head, the Union Steward and the grievant within three (3) working days of the request for such a meeting. Such request shall be made within five (5) working days of the occurrence of the incident giving rise to the grievance, or the discovery thereof. In the absence of the department head, the administrator shall designate another management employee, other than the administrator, to attend in the place of the department head. It shall be the policy of the Union and the Agency to resolve all grievances at the first step wherever and whenever possible.

C. Second Step.
1. If the grievance is not resolved at the first step, the grievant may elect to take the matter to the second step of the grievance procedure. In order to take the grievance to the second step, the grievant must set forth in writing a detailed statement of the facts and issues raised in the grievance. The second step request must also contain a statement of the specific acts of management and the specific provisions of the Memorandum of Understanding of which the

grievant contends management is in violation. All second step grievances must be filed with the Administrator within ten (10) working days of the date of the department head's response to the first step grievance, or they shall be determined as untimely.

2. The Administrator, the Union steward, and the grievant shall meet within five (5) working days after the administrator has received the written grievance. The issues discussed at the second step meeting shall be limited to those set forth in the written grievance.

3. If the grievance is not satisfactorily resolved at the meeting, the administrator shall issue a written response within ten (10) working days to the Union setting forth the specific reasons for denial.

D. Third Step.

If a grievance is not satisfactorily resolved in the Second Step, the parties may agree within ten (10) working days to mediate the grievance provided, however, that the Union may require mediation of one (1) grievance each twelve (12) month period beginning July 1, 1986. In such case, the administrator will request the California Conciliation Service to provide a conciliator to assist the Agency and the Union in resolving the grievance.

A full scale evidentiary hearing shall not be conducted by the conciliator. Both parties shall present to the conciliator a concise statement of the facts, a statement of supporting evidence and argument. With the consent of both parties, the conciliator may consider limited evidence. The conciliator shall use good faith efforts to resolve the grievance and shall make a recommendation. The recommendation may be made orally or in writing. Whichever method of notification of the recommendation is utilized, the conciliator will nevertheless give both parties written notice of the date of the recommendation and that date shall be the date utilized for purposes of determining the time to proceed to arbitration. In the event the grievance proceeds to arbitration, the conciliator's recommendation shall not in any way be presented to or considered by the arbitrator.

E. Arbitration.

1. If the foregoing steps fail to resolve the grievance, the Union may elect to take the grievance to arbitration. The Union must present the Administrator with written notice of intention to take the grievance to arbitration within thirty (30) calendar days of the administrator's written response or the recommendation of the conciliator. If the Union fails to notify the administrator within thirty (30) calendar days, the administrator's written response shall be final.

2. Within five (5) working days of the administrator's receipt of the notice of intent to arbitrate, the parties shall meet to select a mutually agreeable arbitrator. In the event the parties are unable to agree upon an arbitrator, the parties shall

request a list of five (5) arbitrators from the State Mediation and Conciliation Service. The parties shall meet to select an arbitrator within five (5) working days of receipt of the list. A coin toss shall determine which party shall strike the first name. The parties shall alternately strike names and the name remaining after each party has struck two (2) names shall be the person designated as the arbitrator.

3. If the parties are able to agree upon an arbitrator, s/he shall be notified of the intent to arbitrate. The hearing date shall be set within thirty (30) calendar days of such notification, unless all parties agreed to an extension of time. If s/he is unable to set a hearing date within this thirty (30) day period, the parties shall request the State Mediation and Conciliation Service to furnish a new list of five (5) arbitrators. A new arbitrator shall be selected in accordance with Section E, Paragraph 2 above.

4. The arbitrator shall consider and decide the grievance. The parties may agree to refer more than one grievance to the same arbitrator to be heard at the same hearing. The power and authority of the arbitrator shall be limited to the question presented to her/him and s/he will have no power to alter, modify, amend, add to or detract from any terms of this agreement. The arbitrator shall have the authority to award back pay for any loss of earnings, to revoke or reduce any form of discipline including discharge. The arbitrator shall only have power to make an award concerning the act or omission giving rise to the grievance if such act or omission occurred during the term of the agreement.

5. All parties, including the grievant, shall have the right to be independently represented at the arbitration proceedings, including the right to be represented by counsel, to call witnesses and to request the production of documents, to cross examine witnesses, to make oral argument, to submit written brief, and to otherwise participate fully in the arbitration proceedings. Each party, including the grievant, shall bear its own costs, not including arbitrator's fees, of such independent representation.

6. The arbitrator shall render her/his decision in writing to the parties within thirty (30) calendar days of the close of the hearing, or, if briefs are filed, within thirty (30) calendar days of the filing of said briefs, unless the parties agree to an extension of time.

7. The decision of the arbitrator shall be final and binding upon the parties.

8. The arbitrator's fee shall be borne equally by the Agency and the Union. If a party requests a court reporter, said party shall bear the cost. If a party requests a copy of the transcript, said party shall provide a copy of the transcript to the arbitrator and the other party. Either party may have the right to tape record the proceedings.

- F. The Agency's failure to respond to the grievant at the first or second step within the prescribed time limits shall result in the grievance being expedited to the next step at the option of the grievant. If the failure to respond is at the Second Step, the grievant may proceed to mediation or arbitration. All time limits may be extended in writing by mutual consent of the parties.
- G. Grievances dropped by either party prior to arbitration shall be considered withdrawn without prejudice to either party's position on a similar matter in the future.

6.04 SENIORITY

- A. For all employees hired within the classification of Hearing Officer, seniority shall be defined as the total length of continuous employment of the Agency as a Hearing Officer, including the employee's probationary period, but excluding temporary and/or as-needed employment. Employees hired on the same day shall draw straws to determine who is the senior employee. Temporary and as-needed employees performing the duties of a Hearing Officer and utilized as a temporary or as-needed employee shall have no seniority rights over probationary or permanent employee members of the Hearing Officer classification.
- B. Seniority shall be lost for the following reasons only:
 - 1. Discharge for just cause;
 - 2. Resignation;
 - 3. Job Abandonment;
 - 4. Layoff, if an employee on layoff fails to report for work when recalled in accordance with Article 39.
- C. On January 1 of each succeeding year, the Agency shall provide the Union with an up-to-date seniority list showing the name, seniority date, and job classification of each employee. The Agency shall also post a seniority list in conspicuous places for examination by employees. The Union may review the accuracy of the list and present to the Agency any errors it may find in said list.

6.05 PROBATIONARY EMPLOYEES

There shall be a one-year probationary period for all employees who have been hired as Hearing Officers. A probationary employee may be dismissed or suspended at any time without cause and shall have no rights regarding such termination unless it is alleged such termination constitutes a violation of Article 19, Non-Discrimination.

6.06 LAYOFF AND RECALL

A. Layoff

1. At least 30 days in advance of the agency sending notice of proposed layoff, management shall meet with representatives of the Union to discuss alternatives to the proposed layoffs. The purpose of the discussion shall be to attempt to come to a consensus regarding the alternative most likely to satisfy the needs of the Agency and the Union membership. While the final decision making power shall remain with management, management and Union representatives shall make a genuine, good faith effort to reach agreement as to that final decision.

The discussion shall include exchange of information relevant to the proposed layoffs and exploration by management and the Union of possible alternatives. Discussion shall include, but not be limited to, the alternatives set out in Subsection 2 below. Opportunity shall be provided for Union representatives to report to the membership and return for further meetings with management toward reaching consensus.

2. The following alternatives shall be considered in making the decisions discussed in Subsection 1 above:

- a. Voluntary job sharing among two or more members of the bargaining unit in lieu of layoff of a member of the bargaining unit;
- b. Voluntary reduction in pay by members of the bargaining unit in lieu of layoff of a member of the bargaining unit;
- c. Voluntary reduction in work hours by members of the bargaining unit in lieu of layoff of a member of the bargaining unit;
- d. The Agency shall pay the following benefits, as provided in Article III, to bargaining unit members whose work hours and/or salaries are reduced in an alternative to layoff: medical, dental, and vision insurance; the employer's and employee's contribution to the Public Employees' Retirement System, as set out in Section 3.02; pro rata deferred compensation; State Bar dues; and professional training courses required by the Minimum Continuing Legal Education of the State Bar;

- e. If none of the alternatives to layoffs is implemented, the order of layoff shall be by reverse seniority, the least senior employees being laid off first.
3. An employee shall receive sixty (60) calendar days' notice of the fact of her/his layoff and/or hour or pay reduction in lieu of layoff. The employee shall be paid accrued annual leave, sick leave, and personal leave at the time of layoff pursuant to Sections 4.02, 4.03 and 4.04 of this MOU.
4. Prior to any layoff of any permanent employee within the classification of Hearing Officer, all temporary and as-needed Hearing Officers must be terminated or laid off. Such termination shall be done in a manner so that the Agency is not prejudiced with respect to any ongoing cases which the contractor has been assigned.
5. If layoffs or alternatives to layoffs are implemented for staff attorneys, hearing officers and senior administrative analysts because of lack of money and not lack of work, managers will consider in good faith reducing their pay and/or benefits to share the impact of the Agency's fiscal problems.
6. The Union and the Agency shall meet and confer prior to the Agency's assigning work to other departments which could be considered bargaining unit work. The meet and confer will be to discuss whether or not the work to be re-assigned is work which may reasonably be considered exclusively bargaining unit work. The agreed-to bargaining unit work shall not be assigned to other departments without the prior consent of the Union. Nothing in this section affects the Agency's right pursuant to Section 1.02 of this contract.
7. Should members of HERO be laid off or suffer cuts in pay or reduction in hours in lieu of layoff, the work of the bargaining unit shall not be contracted out, nor bargaining unit employees hired, without first offering to reinstate reduced hours or offering such work to members who were laid off or suffered reductions in lieu of layoff.
8. Subject to City personnel rules and/or City ordinances, employees who work for the Agency on a part-time basis may engage in outside legal or other work during hours in which they do not work for the Agency. Such outside work shall not conflict with or give the appearance of conflicting with the employee's position as Hearing Officer.
9. Should a Hearing Officer leave his/her job at a time when one of the alternatives to layoff is in effect as to one or more Hearing Officers, the Agency will offer to restore the reduced pay and/or reduced hours of the affected remaining Hearing Officer(s) prior to hiring a replacement Hearing Officer to perform the work of the departed Hearing Officer.

B. Recall

1. An employee shall be recalled to job openings in her/his job classification in order of seniority. An employee who is laid off shall notify the Agency in writing of any change in her/his address. The employee shall have five (5) working days from the receipt of the recall notice to indicate her/his intention to return to the Agency. The employee shall actually return to work within ten (10) working days of indicating her/his intention to return. An employee who fails to indicate her/his intention to return to work or fails to return to work within ten (10) working days shall have no further recall rights.

2. Such time period may be extended by agreement of the employee, the Union and the Agency. An employee who fails to indicate her/his intention to return to work or fails to return to work within the ten (10) working days, or such additional time as may be agreed upon, shall have no further recall rights.

3. Recall rights shall be in full force and effect for a period of twelve (12) months after a layoff pursuant to this Section.

6.07 TEMPORARY WORK

A. It is recognized that it may be necessary for a temporary period for an employee to be appointed by the Agency to a temporary detail assignment. Such an employee shall be compensated at the salary rate of the employee's present position or the new position, whichever is higher. Such temporary service in another classification shall not extend beyond sixty (60) days, unless mutually agreed upon by all parties prior to the expiration of the sixty (60) days.

B. The Agency retains the right to make as-needed and temporary appointments as necessary to accomplish the work of the Agency provided that the purpose of hiring as-needed and temporary employees is not to avoid permanent appointments to vacancies within the bargaining unit.

C. The Agency shall notify the Union at least two working days in advance of any temporary or as-needed assignment.

6.08 UNION ACTIVITY

A. The Agency agrees to hold grievance meetings between management, union stewards, and grievants on work time without loss of pay for participants. The Agency shall make a union representative, the grievant, and witnesses available during such times as such persons are actually required to give testimony or participate in grievance and arbitration meetings with management.

- B. Union members shall be entitled to conduct necessary union business during working hours without any reduction in compensation.

6.09 JOB CLASSIFICATIONS

- A. Pay rates for new classifications shall be the subject of negotiation between the Union and the Agency, taking into consideration existing pay rates for other classifications of comparable duties and responsibilities.
- B. Whenever the Agency intends to create a new classification, the Agency shall discuss the qualifications of the new classification with the Union prior to submitting the job description to the Rent Control Board for approval.
- C. The Agency shall not create any new classification of employees whose job duties consist of work presently performed by Hearing Officers without first consulting with the Union.

6.10 BULLETIN BOARDS

The Agency shall provide bulletin boards at each of the Agency offices upon which the Union may post notices. Location of each bulletin board shall be mutually agreed upon between the Union and the Agency.

6.11 CIVIL SERVICE PROTECTIONS

Nothing in this memorandum is meant to modify any rights presently conferred under the classified civil service.

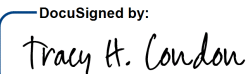
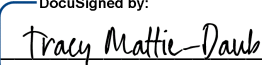
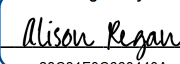
IN WITNESS THEREOF, the parties hereto have caused this Memorandum of Understanding to be executed this 19th day of April, 2022.

HEARING OFFICER
REPRESENTATIONAL
ORGANIZATION

by _____

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SANTA MONICA RENT CONTROL
BOARD

by _____

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