

MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF NEWPORT BEACH
AND
THE NEWPORT BEACH
LIFEGUARD MANAGEMENT ASSOCIATION



July 1, 2014 through December 31, 2017

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**MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF NEWPORT BEACH AND
THE NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION**

This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into with reference to the following:

PREAMBLE

1. Authorized representatives of the CITY OF NEWPORT BEACH (hereinafter referred to as "CITY") and authorized representatives of the NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION (hereinafter referred to as "NBLMA") a recognized employee organization, met and conferred, exchanging various proposals concerning wages, hours, fringe benefits and other terms and conditions of employment of employees represented by NBLMA (hereinafter referred to as "EMPLOYEES") for the period of *July 1, 2014 through December 31, 2017*.
2. NBLMA representatives have reached an agreement as to wages, hours and other terms and conditions of employment to apply to all affected EMPLOYEES for the time period defined above. Said EMPLOYEES desire to reduce their agreement to writing, and to present such agreement, in the form of this MOU, to the City Council of the City of Newport Beach for approval.

NOW, THEREFORE, this MOU is made and entered into by the parties hereto effective July 1, 2014, as follows:

SECTION 1. GENERAL PROVISIONS

A. Duration of Memorandum

The terms of this MOU are to remain in full force and effect beginning *July 1, 2014 through December 31, 2017*.

B. Scope

1. All present written rules and currently established practices and employee rights, privileges and benefits that are within the scope of representation shall remain in full force and effect during the term of this MOU unless specifically amended by the provisions of this MOU, or in the case of the Department Standard Operating Procedures (SOPs) falling within the scope of representation, the City has given notice to the Association and, upon request, met and conferred on any proposed changes which fall within the scope of representation.

When the Department proposes to change any SOP departmental rule or regulation, it will provide a copy of such change to the Association no less

than seven (7) days prior to implementation of the proposed change. If such proposed change materially impacts any matter within the scope of representation, then the parties agree to meet and confer over such impact.

2. Pursuant to this MOU, the City reserves and retains all of its inherent exclusive and non-exclusive managerial rights, powers, functions and authorities ("Management Rights") as set forth in Resolution No. 2001-50.

C. Conclusiveness

Except as provided for in this agreement, this MOU contains all of the covenants, stipulations and provisions agreed upon by the parties. Therefore, for the life of this MOU, neither party shall be compelled and each party expressly waives its rights to request the other to meet and confer concerning any issue relating primarily to matters within the scope of representation except as expressly provided for herein or by mutual agreement of the parties. No representative of either party has the authority to make and none of the parties shall be bound by any statement, representation or agreement, which is not embodied in this MOU.

Any changes to any salaries, benefits or terms and conditions of employment within the scope of representation not embodied in this MOU shall require prior mutual agreement signed by the Mayor and the Newport Beach Lifeguard Management Association President.

D. Savings

Should any part of this MOU or any provision herein contained be rendered or declared invalid, by reason of any existing or subsequently enacted Legislation, or by decree of a Court of competent jurisdiction, such invalidation of such part or portion of this MOU shall not invalidate the remaining portion hereto, and same shall remain in full force and effect; provided, however, that should the provisions of this MOU relating to pay schedule adjustment increases be declared invalid, CITY agrees to provide alternate benefits agreeable to NBLMA, to EMPLOYEES to receive the same amount of money as they would have received had such provision not been declared invalid.

E. Other Terms and Conditions

Except as to those matters expressly covered by this MOU, all terms and conditions of employment may be changed or amended after meeting and conferring, in good faith.

Benefits for part-time members of the unit shall generally be excluded, unless otherwise provided and on a pro-rated basis, based upon hours worked.

F. Unit Classification Titles

Unit classifications are listed in Exhibit A.

For all compensation comparison purposes, actual job duties, and not classification titles, will be utilized.

SECTION 2. COMPENSATION

A. Salary Adjustments

Base salary increases for all NBLMA represented classifications shall be as follows and as specified in Exhibit A:

Effective the pay period including July 1, 2015, base salaries will be increased by 2.6%.

Effective the pay period including July 1, 2016, base salaries will be increased by 2.5%.

Effective the pay period including July 1, 2017, base salaries will be increased by 2.5%.

B. Special Assignment Pay

Boat Pay: Lifeguard Captains certified for and assigned to boat operations shall receive additional compensation of 2.5% of base salary for their job classification. Boat assignment pay will be assigned to a qualified Captain and compensated only when performing boat duties.

Training Pay: Lifeguard Captain assigned as the "Training Captain" will receive an additional 7.5% of base pay while assigned the responsibilities of training.

C. Overtime

Unit employees shall receive overtime compensation for all hours worked in excess of forty (40) in any work week. Paid time off shall be considered time worked for the purposes of calculating overtime.

Unit employees shall have the option of requesting compensatory time off (CTO) for all overtime, including training time, during the term of this agreement. All use of compensatory time off shall be subject to existing City rules. The maximum accrual of CTO shall be eighty (80) hours. Employees shall not utilize CTO at times when backfill would be required.

D. Uniforms

The City shall pay the entire cost of providing full-time and part-time NBLMA members with each component of the required NBLMA uniforms. The required NBLMA uniform includes uniform pants, uniform shirts, safety shoes, badges and insignias, uniform jackets and liners, belts, dive equipment, foul weather gear, personal floatation device and helmet. The City shall not be responsible for providing employees with socks, underwear, cap, workout shoes, or other clothing.

As permissible by law and subject to the provisions and limitations under the Public Employees Retirement Law, including restrictions on reporting uniform allowance as pensionable compensation for "non classic" members hired after January 1, 2013, the City shall report the value of provided uniforms at \$838 in accordance with PERS requirements. The parties agree the reported value of uniforms is intended to reflect clothing such as pants, shirts, jackets, and related attire and excludes health and safety related equipment.

E. Call Out

Call out compensation shall be in accordance with the following provisions:

1. All emergency call out time shall be calculated to the nearest one quarter (1/4) hour of time worked.
2. For forty (40) hour employees, a minimum of two (2) hours (including travel time) of pay at the rate of one and one half (1 1/2) times the employee's regular hourly rate of pay shall be guaranteed for each emergency call out. *Employees will be considered "on duty" at the beginning of each emergency call out for a minimum of 2 hours or until completed. Employees will not be compensated for additional call outs that occur during the initial 2 hour response period, or during normal working hours.*

F. Scholastic Achievement Pay

Employees hired into a NBLMA represented classification prior to January 22, 2013 are entitled to additional compensation contingent upon scholastic achievement ("Scholastic Achievement Pay"). *Full-time and part-time NBLMA members* may apply for increases pursuant to this Section when eligible and scholastic achievement pay shall be included in the member's pay check for the pay period following approval by the Fire Chief. It is the responsibility of the NBLMA member to apply for Scholastic Achievement Pay. Approval of the member's application shall not be unreasonably withheld or delayed, and the member shall not be entitled to receive scholastic achievement pay prior to the date the application is approved even though the member may have been eligible prior to approval. Scholastic achievement pay is contingent upon years

of service as a NBLMA member and number of units and/or degrees received by the employee. Qualifying units and/or degrees must be awarded by accredited community colleges, state colleges or universities. NBLMA members shall receive scholastic achievement pay in accordance with the following:

| <u>Years of Service</u> | <u>Total College Semester Units</u> | <u>% of Actual Step in Job Class Range</u> |
|-------------------------|-------------------------------------|--|
| 2 or more | 30 | 1.5% |
| 2 or more | A.A./A.S. | 3.5% |
| 3 or more | 60 | 2.5% |
| 3 | 90 | 3.5% |
| 4 or more | 90 | 3.5% |
| 4 | 120 | 4.5% |
| 4 | B.A./B.S. | 5.5% |
| 4 | M.A./M.S. | 6.5% |

Unit members hired after January 22, 2013 shall be ineligible for any scholastic pay based upon having obtained units only.

A “degree” shall be awarded by an institution accredited by the State of California, the United States Department of Education, the Council for Higher Education, or the Distance Education Training Council.

G. Night Standby

A *full-time or part-time* employee assigned to standby duty for purposes of being on call to handle emergency situations arising at times other than during normal working hours shall be guaranteed two (2 1/2) and a half hours of pay at the employee’s regular hourly rate of pay for each calendar day of such standby duty. Employees shall have the option of receiving compensatory time off in lieu of pay for night standby.

H. Move-up Pay

Temporary upgrading shall be defined as the temporary assignment of an employee to work in a job classification, which is assigned to a salary schedule higher than his/her regular job classifications.

Employees temporarily upgraded to the following job classifications and equivalent positions shall receive a five percent (5%) pay differential over their regular rate of pay for all time worked in the higher job classification if they are assigned to work in the higher job classification for a period of one (1) working hour or longer.

Lifeguard Captain
Lifeguard Battalion Chief

All holiday, vacation, sick leave and paid leave shall be paid at the employee's regular rate of pay.

Assignments to higher rated classifications shall be made at the sole discretion of the City.

I. Court Standby Pay

All NBLMA members who, pursuant to Subpoena compelling attendance to testify to acts, observations, or omissions occurring in the course and scope of employment or at the direction of their supervisor, are required, while off-duty, to remain within a certain response time from court, shall be considered to be on "court standby time" and shall receive four hours of pay for each eight hours of court standby time. NBLMA members shall, when required to appear in court pursuant to a Subpoena or the direction of their supervisor to testify at matters relating to their employment with the City, be considered to be on duty and shall be paid accordingly. Members shall remit all witness fees received for testifying or appearing on any matter for which the member is eligible to receive court standby time.

SECTION 3. LEAVES

A. Flex Leave

All employees hired after July 1, 1990 will be included in the Flexible Leave Program.

1. Basis for Accrual

Full-Time Members:

Regular full-time employees enrolled in the Flex Leave program will earn leave in accordance with the following schedule:

| <u>Years of continuous Service</u> | <u>Accrual per pay period/hrs</u> | <u>Longevity Pay Increase</u> |
|------------------------------------|-----------------------------------|-------------------------------|
| 1 but less than 5 | 5.54 | 0 |
| 5 but less than 9 | 6.15 | 0 |
| 9 but less than 12 | 6.77 | 0 |
| 12 but less than 16 | 7.69 | 0 |
| 16 but less than 20 | 7.69 | 1.0% |
| 20 but less than 25 | 7.69 | 1.5% |
| 25 and over | 7.69 | 2.5% |

Part-Time Members:

Regular part-time employees shall be enrolled in the Flex Leave program and accrue leave time at the rate of .04 hours for each hour worked.

During the first three months of employment, new employees shall not accrue paid leave. At the completion of three months of employment, three (3) months of accrued flex leave will be placed in the employees account.

2. Limit on Accumulation

Employees may accrue flex leave up to an accumulated total equal to seventy eight (78) times the member's bi-weekly accrual rate. Effective January 22, 2013 members shall be entitled to accrue flex leave up to a maximum of fifty-two (52) times the member's bi-weekly accrual rate. *This limit on accumulation shall apply to both full-time and part-time members.* Earned flex leave in excess of the maximum permitted is currently paid bi-weekly at the member's hourly rate of pay ("spillover pay"). Members shall be eligible for flex leave spillover pay only if they have utilized at least eighty (80) hours of flex leave the previous calendar year. Employees who have not utilized the required amount of leave the prior calendar year shall not be eligible to accrue time above the maximum accrual limit.

3. Method of Use

Flex leave may not be taken in excess of that actually accrued. The Department Director or designee shall approve all requests for flex leave taking into consideration the needs of the Department, and whenever possible the seniority and wishes of the employee. Flex leave may be granted on an hourly basis. Any fraction over an hour shall be charged to the next full hour.

B. Use of Flex

Level A staffing shall run from June 15th through Labor Day. *During this period of time, full-time and part-time NBLMA personnel may be limited to a total of forty (40) hours usage of flex leave.* Additional flex leave during this period may be approved if, in the opinion of management, adequate staffing levels can be maintained.

The City will budget eighty (80) hours of overtime per employee per year for flex leave backfill. Concurrently, the City and NBLMA will jointly review procedures defining minimum staffing and the hours for night call out. Any changes to these areas fall within the scope of representation and will be subject to the meet and confer process.

C. Family Sick Leave

Unit employees shall be entitled to use an amount of time equal to one-half (1/2) of their annual leave accrual for an illness of a dependent which requires the presence of the employee. Such time may be taken from the employee's annual leave accrual or leave bank, at the employee's choice. Leave shall be administered in accordance with the provisions of the Employee Policy Manual (EPM). The provisions of the EPM shall not be construed to affect or reduce the right of any employee to any unpaid family medical leave authorized by State or Federal law.

For purposes of family sick leave, family member shall mean spouse, parent, (parent shall mean biological, foster, or adoptive), child (child shall mean biological, adopted, or foster child; a stepchild; a legal ward; or a child of an employee standing in local parentis), *or as modified by State or Federal law.*

D. Holiday Time

Subject to the provisions herein, the following days shall be observed as paid holidays by all employees in permanent positions and other personnel whose work assignments, in the judgment of the Department Director or designee, require their presence on the job. *For each designated holiday, except the Floating Holidays, personnel shall receive an equivalent number of hours of paid leave or equivalent pay, as specified below and pro-rated for part-time members, whichever in the judgment of the Department Director best serves the interest of the Department.*

| | |
|-------------------------------|--|
| Independence Day | July 4 |
| Labor Day | 1st Monday in September |
| Veteran's Day | November 11 |
| Thanksgiving Day | 4th Thurs. in November |
| Friday following Thanksgiving | |
| Christmas Eve | Last 1/2 of working day |
| Christmas | December 25 |
| New Year's Eve | Last 1/2 of working day |
| New Year's Day | January 1 |
| Martin Luther King Day | 3 rd Monday in January |
| Washington's Birthday | 3rd Monday in February |
| Memorial Day | Last Monday in May |
| Floating Holiday (1) | For employee's birthday or other holiday. Eligibility and use according to Memorandum of Understanding. |

1. *Part-time members will be eligible to receive a pro-rated benefit of $\frac{3}{4}$ (three fourths) the benefit provided to full-time members for holiday pay.*

2. Holiday pay will be paid only to employees who work their scheduled day before the holiday and scheduled day after a holiday or are on authorized leave (e.g., approved vacation or flex leave that has been reviewed and approved by the Department Director).
3. Newly hired employees will be eligible to receive pay for scheduled holidays, without a waiting period.
4. "Floating Holiday" eligibility allows for newly hired employees to earn their first floating holiday credit, eight (8) hours *for full-time members and six (6) hours for part-time members*, at the same time as they receive their regular appointment status, upon the successful completion of their probationary period.
5. In July, 2003 all employees were provided a one-time opportunity to elect to convert all or any portion of their annual holiday benefits to cash on an annual basis. This election shall be uniform from year to year. For example, an employee electing to convert 48 of the 96 hours of the annual benefit to cash must so convert 48 hours of earned holiday benefits each year thereafter. Holiday pay will be paid bi-weekly with the regular check. Holiday leave conversion pay will not count in the total compensation formula used to adjust salaries and benefits.

Employees hired after July 2003 will make this election at the time of hire.

This holiday compensation shall be reported to PERS as special compensation and shall be regarded as compensation earnable as defined in Government Code Sec. 20636 (c) (6) for purposes of computing retirement benefits and contributions.

E. Bereavement Leave

Bereavement Leave shall be defined as the necessary absence from duty by an employee having regular or probationary appointment because of the death or terminal illness in his/her immediate family. NBLMA full-time members shall be entitled to five (5) days bereavement leave per incident (terminal illness followed by death is considered one incident) and three (3) days bereavement leave for part-time members. Leave hours need not be used consecutively, but should occur in proximate time to the occurrence. Immediate family shall mean an employee's father, stepfather, mother, stepmother, brother, sister, spouse/domestic partner, child, stepchild and grandparent, and the employee's spouse/domestic partner's father, mother, brother, sister, child and grandparent. An employee requesting bereavement leave shall notify his/her supervisor as soon as possible of the need to take leave.

Probationary Employees. An employee serving his/her initial probationary period who takes leave under this section who for any reason terminates his/her

employment prior to the completion of such probationary period shall have his/her final pay check reduced by the value of the leave taken.

F. Non-Accruing Leave Bank

Effective July 1, 2015, each NBLMA member on the City payroll will receive a bank of forty (40) hours of non-accruing leave (NAL) time. Effective July 1, 2016 a second deposit of 40 hours will be made for each NBLMA member on the City payroll at that time. The hours have no cash value, cannot be transferred to any other leave bank, cannot be rolled over from year to year, and there is no proration for partial year employment. Usage of these hours is subject to supervisory approval. This benefit shall "sunset" on December 30, 2017 and any unused hours at that time shall expire.

SECTION 4. FRINGE BENEFITS

A. Insurance

1. Benefits Information Committee

City has established a Benefits Information Committee composed of one representative from each employee group and up to three City representatives. The Benefits Information Committee has been established to allow the City to present data regarding carrier and coverage options, the cost of those options, appropriate coverage levels and other health care issues. The purpose of this Committee is to provide each employee group with information about health care issues and to receive timely input from associations regarding preferred coverage options and levels of coverage.

2. City Contribution

The City has implemented an IRS qualified Cafeteria Plan. NBLMA members shall participate in this plan. The City contribution toward the Cafeteria Plan shall be as set forth below. Employees shall have the option of allocating Cafeteria Plan contributions towards the City's existing medical, dental and vision insurance/programs. The City and the Newport Beach Lifeguard Management Association will cooperate in pursuing additional optional benefits to be available through the Cafeteria Plan.

Any unused Cafeteria Plan funds shall be payable to the employee as taxable cash back. Employees shall be allowed to change coverages in accordance with plan rules and during regular open enrollment periods.

a. *Full-Time Members:*

Effective the pay period including July 1, 2015, the City contribution towards the Cafeteria Plan will be \$1,424 (plus the minimum CalPERS participating employer's contribution).

Effective the first pay issue in January 2016, the City's contribution towards the Cafeteria Plan will increase to \$1,524 (plus the minimum CalPERS participating employer's contribution).

Full time NBLMA members who do not want to enroll in any medical plan offered by the City must provide evidence of group medical insurance coverage and execute an opt-out agreement releasing the City from any responsibility or liability to provide medical insurance coverage on an annual basis. The maximum cafeteria allowance provided to current full-time employees who execute an opt-out agreement is \$1,249 per month effective January 2013. Employees hired after January 22, 2013 and who execute an opt-out agreement, will receive a maximum cafeteria allowance of \$600 per month.

Effective the pay issue that includes January 1, 2016, the opt-out amount for full-time employees will be adjusted to \$1,000 per month.

b. *Part-Time Members:*

Effective upon adoption of this 2015-17 MOU, part-time NBLMA members will receive a monthly cafeteria benefit of \$585.00 (equivalent to \$4.50 per hour worked for an average of 30 hours per week). For part-time employees enrolled in medical plans, the cafeteria amount is inclusive of the PERS designated minimum medical insurance contribution. For employees who do not enroll in a medical plan there shall be no opt out cafeteria benefit.

c. *At the request of either party, the parties shall meet and confer in good faith to discuss possible changes to the medical benefit program, contribution levels, or other elements of healthcare services, provided, however, that any changes to the MOU only may occur by mutual agreement of the parties.*

3. Dental Insurance

The existing or comparable dental plans shall be maintained as part of the City's health plan offerings for full-time employees as agreed upon by the Benefits Information Committee.

4. Vision Insurance

The existing or a comparable vision plan shall be maintained as part of the City's health plan offerings *for full-time employees* as agreed upon by the Benefits Information Committee.

B. Additional Health Insurance/Programs

1. IRS Section 125 Flexible Spending Account

Section 125 of the Internal Revenue Code authorizes an employee to reduce taxable income for payment of allowable expenses such as child care and medical expenses. The City shall maintain a "reimbursable account program" in accordance with the provisions of Section 125 of the Internal Revenue Code, pursuant to which a *full-time* Association member may request that medical, child care and other eligible expenses be paid or reimbursed by the City out of the employee's account. The base salary of the employee will be reduced by the amount designated by the employee for reimbursable expenses.

2. Disability Insurance

The City shall provide Short-term (STD) and Long-term (LTD) disability insurance *to regular full-time employees* with the following provisions:

| | |
|-----------------|---|
| Weekly Benefit | 66.67% gross weekly wages |
| Maximum Benefit | \$10,000/month |
| Minimum Benefit | \$15 (STD) and \$100 (LTD) |
| Waiting Period | 30 Calendar Days (STD) 180 Calendar Days (LTD) |

Employees shall not be required to exhaust accrued paid leaves prior to receiving benefits under the disability insurance program. Employees may not supplement the disability benefit with paid leave once the waiting period has been exhausted.

Concurrent with the commencement of this program, employees assumed responsibility for the payment of the disability insurance cost in the amount of one (1.0%) percent of base salary. Simultaneously, the City increased base wages by one (1.0%) percent.

3. Life Insurance

The City shall provide life insurance *for regular full-time employees* in \$1,000 increments equal to one times the employee's annual salary up to a maximum of \$50,000. At age 70 the City-paid life insurance is reduced by 50% of the pre-70 amount. This amount remains in effect until the employee retires from City employment.

C. Employee Assistance Program

City shall provide an Employee Assistance Program (EAP) *for full-time and part-time employees* through a properly licensed provider. Association members and their family members may access the EAP subject to provider guidelines.

D. The Retirement Benefit

1. Retirement Benefit Formula

The City contracts with PERS to provide retirement benefits for its employees. Pursuant to prior agreements and state mandated reform, the City has implemented first, second and third tier retirement benefits:

Tier 1: For employees enrolled as Safety members on or before November 23, 2012, the retirement formula shall be 3%@50 calculated on the basis of the best/single highest year.

Tier 2: For employees enrolled as Safety members between November 24 and December 31, 2012, or hired on or after January 1, 2013 and are current members of the retirement system, as defined in the Public Employees' Pension Reform Act, the retirement formula shall be 2%@50 calculated on the average 36 highest month's salary.

Tier 3: For employees enrolled as Safety members on or after January 1, 2013, and who do not meet Tier 2 criteria, the retirement formula shall be 2.7%@57 calculated on the average 36 highest month's salary.

The City's contract with PERS also provides for:

- b. The military buy-back provisions pursuant to Section 20930.3 of the California Government Code and the highest year benefit pursuant to Section 20042.
- c. The Level 4 1959 Survivors Benefits.
- d. The pre-retirement option settlement 2 death benefit (Section 21548).

2. Employee Contributions

Tier 1 and 2 Employees: All unit members in Tiers 1 and 2 will pay the full 9% “safety member” contribution of PERS reportable earnings. This payment will be made on a pre-tax basis through payroll deduction pursuant to IRS Code Section 414(h)(2). This contribution will not be considered as part of employee’s “compensation earnable” under Government Code section 20636.

Effective the pay period that includes July 1, 2015, all unit members in Tiers 1 and 2 will contribute the full statutory member contribution, equal to 9% of pensionable compensation, plus an additional 1.6% of pensionable compensation toward retirement costs as permitted under Government Code §20516(f), for a total contribution of 10.6%.

Effective the pay period that includes July 1, 2016 all unit members will, in addition to the 9% normal member contribution, contribute 3.1% of pensionable compensation toward retirement costs as permitted under Government Code §20516(f), for a total contribution of 12.1%.

Effective the pay period that includes July 1, 2017 unit members will, in addition to the 9% normal member contribution, contribute 4.6% of pensionable compensation toward retirement costs as permitted under Government Code §20516(f), for a total contribution of 13.6%.

Tier 3 Employees: The minimum statutory employee contribution for employees in Tier 3 is subject to the provisions of the Public Employees’ Pension Reform Act (PEPRA) and equals 50% of the “total normal cost” as determined by PERS. For FY15-16, the employee Safety rate is 11.25% and is subject to change based on annual PERS actuarial valuations.

Effective the pay period that includes July 1, 2015 Tier 3 members will contribute the required 11.25% member contribution.

Effective the pay period that includes July 1, 2016, in addition to the statutorily required 50% contribution of total normal costs, Tier III employees shall contribute .85% of pensionable compensation toward retirement costs pursuant to Government Code § 20516(f), for a total contribution of 12.1%. If the FY16-17 member contribution rate for employees in Tier III shall become greater or less than 11.25%, the additional contribution made by the employee under 20516(f) will be increased or decreased accordingly so that the total employee contribution equals 12.1%.

Effective the pay period that includes July 1, 2016, in addition to the statutorily required 50% contribution of total normal costs, Tier III

employees shall contribute 2.35% of pensionable compensation toward retirement costs pursuant to Government Code § 20516(f), for a total contribution of 13.6%. If the FY17-18 member contribution rate for employees in Tier III shall become greater or less than 11.25%, the additional contribution made by the employee under 20516(f) will be increased or decreased accordingly so that the total employee contribution equals 13.6%.

In the event CalPERS pension provisions for new or existing employees are modified by State or Federal legislation, resulting in changes to previously negotiated terms, the parties agree to meet and confer to discuss appropriate changes to the contract.

E. Retiree Health Benefits Program

1. Background

In 2005, the City and all Employee Associations agreed to replace the previous “defined benefit” retiree medical program with a new “defined contribution” program. The process of fully converting to the new program will be ongoing for an extended period. During the transition, employees and (then) existing retirees have been administratively classified into one of four categories. The benefit is structured differently for each of the categories. The categories are as follows:

- a. Category 1 - Employees newly hired after January 1, 2006.
- b. Category 2 - Active employees hired prior to January 1, 2006, whose age plus years of service as of January 1, 2006 was less than 50 (46 for public safety employees).
- c. Category 3 - Active employees hired prior to January 1, 2006, whose age plus years of service was 50 or greater (46 for public safety employees) as of January 1, 2006.
- d. Category 4 - Employees who had already retired from the City prior to January 1, 2006, and were participating in the previous retiree medical program.

2. Program Structure

This is an Integral Part Trust (IPT) Retiree Health Savings (RHS) Plan (formerly the Medical Expense Reimbursement Program "MERP") *and applies only to regular full-time NBLMA employees.*

- a. For employees in Category 1, the program is structured as follows:

Each employee will have an individual RHS account for bookkeeping purposes, called his or her "Employee Account." This account will accumulate contributions to be used for health care expense after separation. All contributions to the plan are either mandatory employee contributions or City paid employer contributions, so they are not taxable to employees at the time of deposit. Earnings from investment of funds in the account are not taxable when posted to the account. Benefit payments are not taxable when withdrawn, because the plan requires that all distributions be spent for specified health care purposes.

Contributions will be in three parts.

Part A contributions (mandatory employee contributions): 1% of Salary.

Part B contributions (employer contributions): \$1.50 per month for each year of service plus year of age (updated every January 1st based on status as of December 31st of the prior year). Effective January 2008, this contribution will increase to \$2.50 per month.

Part C contributions (leave settlement as determined by Association):

The Association will determine the level of contribution for all employees it represents, subject to the following constraints. All employees within the Association must participate at the same level, except that Safety members and Non-safety members within an Association may have different levels. The participation level should be specified as a percentage of the leave balance on hand in each employee's leave bank at the time of separation from the City.

For example, if the Association wishes to specify 50% of the leave balance as the participation level, then each member leaving the City or cashing out leave at any other time, would have the cash equivalent of 50% of the amount that is cashed out added to the RHS, on a pre-tax basis. The remaining 50% would be paid in cash as taxable income. Individual employees would not have the option to deviate from this breakout.

The Association has decided to participate in Part C contribution, at the level of zero percent (0%). This amount may be changed, on a go forward basis, as part of the future meet and confer process. However, the participation level must be the same for all employees within the Association except that Safety members and Non-safety members within an Association may have different levels. Additionally, the purpose and focus of these changes should be toward long-term, trend type adjustments. Due to IRS restrictions regarding "constructive

receipt,” the City will impose restrictions against frequent spikes or drops that appear to be tailored toward satisfying the desires of a group of imminent retirees.

Spillover pay is not eligible for Part C contributions.

Nothing in this section restricts taking leave for time off purposes.

Sick leave balances may also be included in the RHS Part C contributions, but only to the extent and within all the numeric parameters specified in the Employee Policy Manual. Section 11.21 of the Manual contains a schedule which specifies the amount of sick leave that can be “cashed out,” based on time of service. The manual also caps the number of hours that can be “cashed out” at 800, and specifies that sick leave hours are “cashed out” on a 2 for 1 basis (800 hours of sick leave are converted to 400 hours for cash purposes). Sick leave participation is a separate item from vacation/flex leave participation, and thresholds must be separately identified by the Association.

Part A contributions may be included in PERS compensation. Part B and Part C contributions will not be included in PERS compensation.

Part A contributions begin upon enrolment in the program and are credited to each RHS Employee Account each pay period. Eligibility for Part B contributions is set at five years of vested City employment. At that time, the City will credit the first five years’ worth of Part B contributions into the Employee Account (interest does not accrue during that period). Thereafter, contributions are made bi-weekly. Part C deposits, if any, will be made at the time of employment separation.

Each Employee has a right to reimbursement of medical expenses (as defined below) from the Plan until the Employee Account balance is zero. This right is triggered upon separation. If an employee leaves the City prior to five years employment, only the Part A contributions and Part C leave settlement contributions, if any, will be in the RHS Employee Account. Such an employee will not be entitled to any Part B contributions. The exception to this is a full-time employee, participating in the program, who leaves the City due to industrial disability during the first five years of employment. In such cases, the employee will receive exactly five years’ worth of Part B contributions, using the employee’s age and compensation at the time of separation for calculation purposes. This amount will be deposited into the employee’s RHS account at the time of separation.

Distributions from RHS Employee Accounts are restricted to use for health insurance and medical care expenses after separation, as

defined by the Internal Revenue Code Section 213(d) (as explained in IRS Publication 502), and specified in the Plan Document. In accordance with current IRS regulations and practices, this generally includes premiums for medical insurance, dental insurance, vision insurance, supplemental medical insurance, long term care insurance, and miscellaneous medical expenses not covered by insurance for the employee and his or her spouse and legal dependents – again only as permitted by IRS Publication 502. Qualification for dependency status will be determined by guidelines in IRC 152. If used for these purposes, distributions from the RHS accounts will not be taxable. Cash withdrawal for any other purpose is prohibited. Under recent IRS Revenue Ruling 2005-24, any balance remaining in the Employee Account after the death of the employee and his or her spouse and/or other authorized dependents (if any) must be forfeited. That particular RHS Employee Account will be closed, and any remaining funds will become general assets of the plan.

The parties agree that the City's Part B contributions during active employment constitute the minimum CalPERS participating employer's contribution towards medical insurance after retirement. The parties also agree that, for retirees selecting a CalPERS medical plan, or any other plan with a similar employer contribution requirement, the required City contribution will be withdrawn from the retiree's RHS account.

- b. For employees in Category 2, the program is the same as for those in Category 1, with the following exception:

In addition to the new plan contributions listed above, current employees who fully convert to the new plan will also receive a one-time City contribution to their individual RHS accounts that equates to \$100 per month for every month they contributed to the previous "defined benefit" plan, to a maximum of 15 years (180 months). This contribution will be made only if the employee retires from the City and at the time of retirement. No interest will be earned in the interim.

Employees in Category 2 who had less than five years' service with the City prior to implementation of the new program will only receive Part B contributions back to January 1, 2006 when they reach five years total service.

- c. For employees in Category 3, the program is the same as for those in Category 2, with the following exception:

For employees in this category, the City will make no Part B contributions while the employees are still in the active work force.

Instead, the City will contribute \$400 per month into each of their RHS accounts after they retire from the City, to continue as long as the employee or spouse is still living.

Each employee will contribute a flat \$100 per month to the plan for the duration of their employment to partially offset part of this expense to the City. The maximum benefit provided by the City after retirement is \$4,800.00 per year, accruing at the rate of \$400.00 per month. There is no cash out option for these funds, and they may not be spent in advance of receipt.

Employees in this category will also receive an additional one-time City contribution of \$75 per month for every month they contributed to the previous plan prior to January 1, 2006, up to a maximum of 15 years (180 months). This contribution will be made to the RHS account at the time of retirement, and only if the employee retires from the City. No interest will be earned in the interim.

- d. For employees (retirees) in Category 4, the structure is very similar to the previous retiree medical program, except that there is no cost share requirement, and the \$400 City contribution after retirement can be used for any IRS authorized purpose, not just City insurance premiums.

Effective July 1, 2006, a RHS account has been opened for each retiree in this category, and the City will contribute \$400 per month to each account as long as the retiree or spouse remains living.

3. Administration

Vendors have been selected by the City to administer the program. The contract expense for program-wide administration by the vendor will be paid by the City. However, specific vendor charges for individual account transactions that vary according to the investment actions taken by each employee, such as fees or commissions for trades, will be paid by each employee.

The City's Deferred Compensation Committee, or its successor committee, will have the authority to determine investment options that will be available through the plan.

4. Value of Benefit

For all purposes, including compensation comparisons, the Retiree Medical Program shall be valued at 1% of salary on which PERS retirement is based (Part A); plus .25% of other compensation (Part B).

F. Tuition Reimbursement

Full-time and part-time NBLMA members attending accredited community colleges, colleges or universities may apply for reimbursement of one hundred percent (100%) of the actual cost of tuition, books, fees or other student expenses for approved job-related courses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a grade of "C" or better for undergraduate courses and a grade of "B" or better for graduate courses. All claims for tuition reimbursement require the approval of the Human Resources Director.

NBLMA members attending pre-approved, directly job-related classes, courses and seminars given by recognized agencies, organizations or individuals other than accredited college institutions may apply for reimbursement of actual cost of tuition, books, fees or other student expenses. Reimbursement is contingent upon the successful completion of the course. Successful completion means a document or certificate showing successful completion of the course or seminar. All claims for reimbursement require the approval of Fire Chief or designee before submittal to Human Resources.

Maximum tuition reimbursement for full-time employees shall be \$1,500.00 per fiscal year and the maximum reimbursement for part-time employees shall be \$1,125 per fiscal year.

SECTION 5. MISCELLANEOUS PROVISIONS

A. Reductions in Force/Layoffs

The provisions of this section shall apply *to full-time and part-time members* when the City Manager determines that a reduction in the work force is warranted because of actual or anticipated reductions in revenue, reorganization of the work force, a reduction in municipal services, a reduction in the demand for service or other reasons unrelated to the performance of duties by any specific employee. Reductions in force are to be accomplished, to the extent feasible, on the basis of seniority within a particular Classification or Series and this Section should be interpreted accordingly.

1. Definitions

- a. "Layoffs" or "Laid off" shall mean the non-disciplinary termination of employment.
- b. "Seniority" shall mean the time an employee has worked in a Classification or Series calculated from the date on which the employee was first granted permanent status in their current Classification or any Classification within the Series, subject to the following:

- i. Credit shall be given only for continuous service subsequent to the most recent appointment to permanent status in the Classification or Series;
 - ii. Seniority shall include time spent on industrial leave, military leave and leave of absence with pay, but shall not include time spent on any other authorized or unauthorized leave of absence.
- c. "Classification" shall mean one or more full time positions identical or similar in duties and embraced by a single job title authorized in the City budget and shall not include part-time, seasonal or temporary positions. Classifications within a Series shall be ranked according to pay (lowest ranking, lowest pay).
- d. "Series" shall mean two or more Classifications within a Department which require the performance of similar duties with the higher ranking Classification(s) characterized by the need for less supervision by superiors, more difficult assignments, more supervisory responsibilities for subordinates. The City Manager shall determine those Classifications, which constitute a Series.
- e. "Bumping Rights", "Bumping" or "bump" shall mean the right of an employee, based upon seniority within a series, to displace a less senior employee in a lower Classification within the Series. No employee shall have the right to Bump into a Classification for which the employee does not possess the minimum qualifications such as specialized education, training or experience.

2. Procedures

In the event the City Manager determines to reduce the number of employees within a Classification, the following procedures are applicable:

- a. Temporary and probationary employees within any Classification shall, in that order, be laid off before permanent employees.
- b. Employees within a Classification shall be laid off in inverse order of seniority;
- c. An employee subject to layoff in one Classification shall have the right to Bump a less senior employee in a lower ranking Classification within a Series, provided, however, that the determination of the employee to be terminated from the position shall be based on seniority within the Series. An employee who has Bumping Rights shall notify the Department Director within

seven (7) working days after notice of layoff of his/her intention to exercise Bumping Rights.

- d. In the event two or more employees in the same Classification are subject to layoff and have the same seniority, the employees shall be laid off in inverse order of their position on the eligibility list or lists from which they were appointed. In the event at least one of the employees was not appointed from an eligibility list, the Department Director shall determine the employee(s) to be laid off.

3. Notice

Employees subject to lay-off shall be given at least thirty (30) days advance notice of the layoff or thirty (30) days' pay in lieu of notice. In addition, employees laid off will be paid for all accumulated paid leave, holiday leave (if any), and accumulated sick leave to the extent permitted by the Personnel Resolution.

4. Re-Employment

Permanent and probationary employees who are laid off shall be placed on a Department re-employment list in reverse order of layoff. The re-employment list shall remain in effect until exhausted by removal of all names on the list. In the event a vacant position occurs in the Classification which the employee occupied at the time of layoff, or a lower ranking Classification within a Series, the employee at the top of the Department re-employment list shall have the right to appointment to the position, provided, he or she reports to work within seven (7) days of written notice of appointment. Notice shall be deemed given when personally delivered to the employee or deposited in the U.S. Mail, certified, return receipt requested, and addressed to the employee at his or her last known address. Any employee shall have the right to refuse to be placed on the re-employment list or the right to remove his or her name from the re-employment list by sending written confirmation to the Human Resources Manager.

5. Severance Pay

Permanent employees who are laid off shall, as of the date of lay-off, receive one week severance pay for each year of continuous service with the City of Newport Beach, to a maximum of ten (10) weeks of severance pay.

B. Discipline

Any discipline shall be in accordance with the Department SOP and the Employee Policy Manual.

C. Health and Fitness Evaluations

All NBLMA members shall participate in the Department Fitness Program.

D. Provision for Sun Protection

1. *The first full pay period of each fiscal year, the City will provide \$400 to each full-time unit member and \$300 to each part-time unit member for sunglasses and other sun protection materials (not restricted to use at Lifeguard Store).*
2. Each unit employee shall receive an annual skin cancer screening, which will be conducted either on or off duty at the Department's discretion. Employees directed to receive this screening off duty shall receive one (1) hour of compensatory time off as compensation.

E. Fitness Equipment and Exercise Time

At a time, during the life of this MOU, selected by NBLMA, the City will provide up to \$3,000.00 per year towards the purchase of fitness equipment to be used on duty for the intended benefit of NBLMA for the term of this agreement. The actual equipment to be purchased shall be recommended by NBLMA, and shall require the final approval of the Fire Chief. Unit employees shall be allowed up to three (3) hours per week for physical fitness training.

F. Employee Policy Manual

The City and NBLMA have agreed on implementation of the City's revised 2001 Employee Policy Manual. *Should additional revisions to the Manual be proposed, the City will meet and confer on applicable policy manual provisions.*

G. Direct Deposit

All Unit employees shall participate in the City's Direct Deposit Program.

H. Part-Time Conversion

Part-time Lifeguard IV employees converted to full-time status in January 2000 shall utilize their original Lifeguard IV hire date as their anniversary date. Any changes resulting from this change shall be prospective only.

Signatures are on the next page.


Executed this 9TH day of JUNE, 2015:

NEWPORT BEACH LIFEGUARD MANAGEMENT ASSOCIATION

BY: 
Brent Jacobsen, President

BY: 
Gary Conwell, Vice President

CITY OF NEWPORT BEACH

BY: 
Edward D. Selich, Mayor

ATTEST:

BY: 
Leilani Brown, City Clerk



APPROVED AS TO FORM:

 6/3/15
Aaron Harp, City Attorney

EXHIBIT A

**Newport Beach Lifeguard Management Association Represented Classifications
and Pay Rate Adjustments**

July 1, 2014 through December 31, 2017

| Represented Classification | Hourly Pay Rate | | Monthly Pay Rate | |
|--|-----------------|---------|------------------|-------------|
| | Minimum | Maximum | Minimum | Maximum |
| Effective July 1, 2015 (2.6% Adjustment) | | | | |
| Lifeguard Officer (Part-Time) | \$24.50 | \$34.48 | - | - |
| Lifeguard Captain | \$32.05 | \$45.14 | \$5,555.33 | \$7,824.27 |
| Lifeguard Battalion Chief | \$39.59 | \$55.67 | \$6,862.27 | \$9,649.60 |
| Effective July 1, 2016 (2.5% Adjustment) | | | | |
| Lifeguard Officer (Part-Time) | \$25.12 | \$35.34 | - | - |
| Lifeguard Captain | \$32.85 | \$46.27 | \$5,694.00 | \$8,020.13 |
| Lifeguard Battalion Chief | \$40.58 | \$57.06 | \$7,033.87 | \$9,890.40 |
| Effective July 1, 2017 (2.5% Adjustment) | | | | |
| Lifeguard Officer (Part-Time) | \$25.74 | \$36.22 | - | - |
| Lifeguard Captain | \$33.67 | \$47.43 | \$5,836.35 | \$8,221.20 |
| Lifeguard Battalion Chief | \$41.60 | \$58.49 | \$7,210.67 | \$10,136.53 |