

**TENTATIVE AGREEMENT
REGARDING RETIREE HEALTH BENEFITS**

WHEREAS, by San Diego Resolution (Resolution) R-255610, adopted on January 4, 1982, the San Diego City Council (Council) authorized the establishment of a City of San Diego (City)-sponsored group health insurance plan for eligible retirees, beginning January 8, 1982.

WHEREAS, in Resolution R-255610, the Council stated its desire that certain benefits, including a program for City-sponsored group health insurance for eligible City retirees, be provided to employees in lieu of Social Security participation.

WHEREAS, as a result of the City's withdrawal from participation in the Social Security System, City employees hired before April 1, 1986, may not have Medicare coverage as a result of their City employment. City employees hired on or after April 1, 1986 contribute jointly with the City to Medicare.

WHEREAS, by direction of the Council, in San Diego Ordinance (Ordinance) O-15758, the City-sponsored group health insurance program for eligible retirees was codified in the San Diego Municipal Code (Municipal Code), at Chapter 2, Article 4. In Ordinance O-15758, the Council provided that health plan coverage for retirees "is subject to modification by the City and the provider of health care services, and may be modified periodically as deemed necessary and appropriate."

WHEREAS, since 1982, through negotiations with the City's recognized employee organizations and as a result of the settlement of litigation, the Council has modified the retiree health care benefit for eligible retirees by expanding eligibility to include certain employees not covered by the 1982 Council action, and by limiting the benefit.

WHEREAS, since 1982, certain ordinances amending the Municipal Code, Chapter 2, Article 4, related to the retiree health benefit have been approved by a vote of Retirement System Members pursuant to Charter section 143.1, including but not limited to Ordinance O-19121 which established both the base amount of the retiree health benefit allowance/reimbursement for Fiscal Year 2003 and the index by which it has escalated annually thereafter.

WHEREAS, Municipal Code section 24.1201 provides that the retiree health benefit is presently available to all City Employees' Retirement System (Retirement System) Members who: (1) were or are on the active City payroll on or after October 5, 1980; (2) were hired before July 1, 2005; (3) retire on or after October 6, 1980; (4) are eligible for and are receiving a retirement allowance; and (5) have at least ten years of City service. Employees with ten or more years of service, but less than twenty years upon retirement are eligible for a proportionally reduced benefit, depending on the number of years of service. An employee eligible for the benefit becomes a "Health Eligible Retiree," upon retirement, who is able to participate in and obtain health coverage under any currently available City-sponsored health insurance plan or any other health insurance plan of their choice, as provided in Municipal Code section 24.1202(a). The City pays or reimburses the health insurance premiums for eligible retirees, with certain limitations, set forth in Municipal Code section 24.1202(a).

WHEREAS, by Ordinance O-19567, adopted on January 17, 2007, the Council eliminated retiree health care for Retirement System Members hired or assuming office on or after July 1, 2005.

WHEREAS, the Internal Revenue Code section 401(h) retiree health trust was added to the Retirement Plan following adoption of Proposition D, by San Diego voters on November 5, 1996, which added language to San Diego Charter (Charter) section 141, authorizing the Council to provide for health insurance benefits through the Retirement System.

WHEREAS, by Ordinance O-19874, adopted on July 25, 2009, the City has established and administers a Retiree Medical Trust, which is a defined contribution plan, for General Members hired on or after July 1, 2009. The Retiree Medical Trust is funded by a .25 percent mandatory City contribution and a matching mandatory .25 percent employee contribution based on the Member's Base Compensation, as defined by the Municipal Code. This Tentative Agreement is not intended to affect the establishment or administration of the Retiree Medical Trust.

WHEREAS, by Ordinance O-19740, adopted on April 15, 2008, the Council eliminated the 401(h) retiree health trust from the Retirement Plan. As a result, the Retirement System is legally prohibited from funding the retiree health benefit or the costs associated with administering the benefit.

WHEREAS, since the establishment of the retiree health benefit, the City has not been paying the full actuarially-determined Annual Required Contribution (ARC), creating an unfunded actuarial accrued liability, that, in the City's view, makes the benefit as presently provided unsustainable.

WHEREAS, City employees desire a level of certainty related to the retiree health benefit as they plan for retirement.

WHEREAS, in a mutual effort to resolve issues of funding and sustainability related to the retiree health care benefit for active employees, the City and the recognized employee organizations have identified the following common objectives:

- (1) to reduce the cash flow pressure on the City's General Fund associated with the City's annual PAYGO expense for the retiree health benefit currently in effect for active employees hired prior to July 1, 2005,
- (2) to reduce the unfunded actuarial accrued liability associated with this benefit,

(3) to reduce the annual required contribution, and

(4) to provide a sustainable framework for a revised and secure retiree health benefit.

WHEREAS, the Parties have reached this Tentative Agreement through negotiations under the Meyers-Milias-Brown Act (MMBA).

WHEREAS, employees within the classified and unclassified service who are not represented by an employee organization (Unrepresented Employees) are not parties to this Tentative Agreement because they do not participate in negotiations under the MMBA; but, the City desires to extend the terms of this Tentative Agreement to the Unrepresented Employees as described below.

WHEREAS, except as described below in Section III, A-1 related to certain Health Eligible Retirees who retired on or after July 1, 2009, this Tentative Agreement is not intended to affect the benefits of City employees who have already retired, as of the date this Tentative Agreement is acted upon by the Council pursuant to City Council Policy 300-06.

WHEREAS, the Employee Organizations contend that the retiree health benefit is a benefit under the Retirement System and implementation of this Tentative Agreement requires a vote of Retirement System Members under Charter section 143.1(a), which provides, in pertinent part, "No ordinance amending the retirement system which affects the benefits of any employee under such retirement system shall be adopted without the approval of a majority vote of the members of said system." "Member," as set forth in this provision of Charter section 143.1 is defined at Municipal Code section 24.0103 to mean "any person employed by the City of San Diego who actively participates in and contributes to the Retirement System, and who will be entitled, when eligible, to receive benefits from the Retirement System."

WHEREAS, on April 28, 2011, MEA filed a complaint against the City for Declaratory Relief, or Verified Petition for Writ of Mandate, *San Diego Municipal Employees Association et*

al. v. City of San Diego, San Diego Superior Court, Case Number 37-2011-00090476-CU-MC-CTL, alleging, in part, that Ordinance O-19740, adopted on April 15, 2008, which involved removal of retiree health funding from the Retirement System, is not enforceable without a Charter section 143.1 vote of employees.

WHEREAS, the City disagrees with the Employee Organizations regarding the nature of the retiree health benefit and contends that the retiree health benefit is a term and condition of employment that is not a benefit under the Retirement System and not subject to a vote of Members under Charter section 143.1.

WHEREAS, a condition of this Tentative Agreement is that it will not take effect unless approved by Retirement System Members, as if Charter section 143.1 applied. By submitting the proposed changes to the retiree health benefit described in this Tentative Agreement to a vote of Members, neither the City nor the Employee Organizations are admitting to or waiving anything.

WHEREAS, if the proposed changes to the retiree health benefit described in this Tentative Agreement are approved by a vote of Members, this Tentative Agreement will resolve the disagreement regarding the application of Charter section 143.1, in that any future changes affecting retiree health benefits will not be subject to a vote of Members under Charter section 143.1.

WHEREAS, it is understood that the approval of all five Employee Organizations is not required for implementation of this Tentative Agreement, and that if the membership of any of the Employee Organizations votes to ratify this Tentative Agreement, the City and that Employee Organization will proceed with implementation, as set forth in Section VI. of this Tentative Agreement.

WHEREAS, if this Tentative Agreement is not ratified by the membership of a signatory Employee Organization, the City and that Employee Organization will proceed to an impasse

hearing over the City's and that Employee Organization's last, best and final offer .

WHEREAS, if the ordinances implementing the terms of this Tentative Agreement are not thereafter approved by a Charter section 143.1 vote , the negotiation process over this Tentative Agreement will be deemed completed, and the Parties may notice meet and confer over the retiree health benefit anew, in compliance with the MMBA and City Council Policy 300-06.

WHEREAS, the Parties acknowledge that if negotiations begin anew, all legal and factual arguments may be made by either Party, including the issues of whether the retiree health benefit is a vested benefit and whether a Charter section 143.1 vote applies to changes in retiree health benefits. Further, the Parties acknowledge that new bargaining positions may be taken by either Party and that any change in bargaining positions will not constitute regressive bargaining.

TERMS OF THE AGREEMENT

I. DEFINITIONS OF TERMS

A. "Employee Organizations," as used in this Tentative Agreement, means only the City's recognized employee organizations who have entered into and signed this Tentative Agreement.

B. "Health Eligible Retiree," as presently defined in Municipal Code section 24.1201(a), is a General Member, Safety Member or Elected Officer who: (1) was on the active City payroll on or after October 5, 1980; and (2) was hired by the City before July 1, 2005; and (3) retired on or after October 6, 1980, and (4) is eligible for and is receiving a retirement allowance from the Retirement System.

C. "Health Eligible Retiree Benefit," as presently defined in Municipal Code section 24.1202(a), is the benefit that is presently provided to Health Eligible Retirees.

D. "Member" means any person employed by the City, who actively participates in and

contributes to the Retirement System, and who will be entitled, when eligible, to receive benefits from the Retirement System. There are three classes of Member: General, Safety, and Elected Officer. "General Member" is any Member not otherwise classified as a Safety Member or Elected Officer. "Safety Member" is any Member who is: (1) a sworn officer of the City Police Department hired after July 1, 1946, (2) a uniformed member of the City Fire Department hired after July 1, 1946, (3) a full-time City lifeguard, or (4) effective July 1, 2003, a Police Department recruit employed by the City and participating in the City's Police Academy. "Elected Officer" means the Mayor, members of the Council, and the City Attorney. "Member," as used in this Tentative Agreement, has the same meaning as "Retirement System Member."

E. "Parties" means the City of San Diego and the Employee Organizations which are entering into this Tentative Agreement.

F. "Service Credit" means service rendered for compensation as an employee or officer (employed, appointed, or elected) of the City, only while he or she is receiving compensation from the City and is a Member of the City's Retirement System and contributing to the System. Service Credit includes service purchased during a Member's City employment but does not include service with a reciprocal agency.

G. "Spouse" means an employee's husband or wife, as defined and recognized under federal law, for purposes of the "Option C/Defined Contribution Plan" described in section III.B.2.b. of this Tentative Agreement.

II. REMOVAL OF ANY REFERENCE TO RETIREE HEALTH BENEFITS FOR ACTIVE CITY EMPLOYEES FROM CHAPTER 2, ARTICLE 4 OF THE MUNICIPAL CODE

Subject to the ratification and voting requirements set forth in this Tentative Agreement, the Parties agree that reference to the retiree health benefits for active employees, who retire on or after April 1, 2012, who are also known as Retirement System Members, will be removed

from Chapter 2, Article 4, of the Municipal Code, at the discretion of the Council, without further discussion or negotiation between the City and the Employee Organizations, and without objection of the Employee Organizations. The Parties further agree the reference to “a change in retiree health benefits” in Municipal Code section 24.1902(c), regarding the definition of an “increase” in Retirement System benefits, will be removed from Municipal Code section 24.1902(c). Once reference to retiree health benefits is removed from Chapter 2, Article 4, of the Municipal Code, neither Party may contend that retiree health benefits are benefits under the Retirement System, within the meaning of Charter section 143.1, or that any future modifications to retiree health benefits will require a vote under Charter section 143.1, consistent with the terms of this Tentative Agreement.

III. MODIFICATIONS TO HEALTH ELIGIBLE RETIREE BENEFIT

A. Annual Adjustment Based Upon National Health Expenditures Will Resume for Some Members Who Retire Before April 1, 2012, and Remain Frozen for Others

1. San Diego Municipal Employees’ Association (MEA), Deputy City Attorneys Association (DCAA), San Diego City Firefighters, International Association of Firefighters, Local 145 (Firefighters Local 145), California Teamsters, Local 911 (Teamsters), and Unrepresented Employees

a. Retired/Retiring 7/1/09 Through 6/30/11: NHE Annual Adjustment Resumes For FY 2012

For the Health Eligible Retirees delineated in this subsection, who retired on or after July 1, 2009, and who retire before July 1, 2011, the maximum payment of reimbursement level is established at the Fiscal Year 2009 level of \$740.27 per month for Health Eligible Retirees before they are eligible for Medicare and \$697.16 per month once they become eligible for Medicare. The annual adjustments to this maximum payment or reimbursement level which were suspended for the two-year period from July 1, 2009, through June 30, 2011, will resume for Fiscal Year 2012 based upon the projected increase for National Health Expenditures by the

Centers for Medicare and Medicaid Services, Offices of the Actuary , for the full-year period ending January 1 before each plan year, up to a maximum of ten percent for any plan year (NHE Annual Adjustment). For Fiscal Year 2012, the maximum payment or reimbursement level will be \$771.36 per month for Health Eligible Retirees under this subsection when they are not eligible for Medicare and \$726.44 per month once they become eligible for Medicare. The Health Eligible Retirees whom the NHE Annual Adjustment resumes for Fiscal Year 2012 are: (i) all General Members represented by MEA or DCAA; (ii) all Safety Members represented by Firefighters Local 145 or Teamsters; and (iii) all General or Safety Members unrepresented by any of the City's recognized Employee Organizations. There will be no retroactive adjustment for the two year period from July 1, 2009, through June 30, 2011, during which the NHE Annual Adjustment was suspended for these Members.

b. Retiring 7/1/11 Through 3/31/12: NHE Annual Adjustment Resumes FY 2013

For the Health Eligible Retirees delineated in this subsection, who retire on or after July 1, 2011, and before April 1, 2012, the maximum payment of reimbursement level is established at the Fiscal Year 2009 level of \$740.27 per month for Health Eligible Retirees before they are eligible for Medicare and \$697.16 per month once they become eligible for Medicare. The annual adjustments to this maximum payment or reimbursement level which are suspended for a three-year period from July 1, 2009, through June 30, 2012, will resume for Fiscal Year 2013 based upon the projected increase for National Health Expenditures by the Centers for Medicare and Medicaid Services, Offices of the Actuary, for the full-year period ending January 1 before each plan year, up to a maximum of ten percent for any plan year (NHE Annual Adjustment). The Health Eligible Retirees whom the NHE Annual Adjustment resumes for Fiscal Year 2012 are: (i) all General Members represented by MEA or DCAA; (ii) all Safety

Members represented by Firefighters Local 145 or Teamsters; and (iii) all General or Safety Members unrepresented by any of the City's recognized Employee Organizations. There will be no retroactive adjustment for the three-year period from July 1, 2009, through June 30, 2012, during which the NHE Annual Adjustment was suspended for these Members. .

2. Local 127, American Federation of State, County and Municipal Employees (Local 127)

Employees represented by Local 127, who become Health Eligible Retirees and retire on or after July 1, 2009, and before April 1, 2012, will continue to have a maximum benefit or reimbursement level frozen at the Fiscal Year 2009 level of \$740.27 per month for Health Eligible Retirees before they become eligible for Medicare and \$697.16 per month for Health Eligible Retirees once they become eligible for Medicare. The NHE Annual Adjustment is not available to any Members under this subsection, who were not Health Eligible Retirees on or before July 1, 2009.

B. Modifications to Retiree Health Benefit for Members Who Retire on or after April 1, 2012

1. Overview of Modifications

The current Health Eligible Retiree Benefit, codified in the Municipal Code, at Chapter 2, Article 4, Division 12, sections 24.1201 *et seq.*, for Members hired before July 1, 2005, and who retire on or after April 1, 2012, will be:

- a. removed from Chapter 2, Article 4, of the Municipal Code, subject to the ratification and voting requirements set forth in this Tentative Agreement, at the discretion of the Council, without further discussions or negotiations with the Employee Organizations, and without objection of the Employee Organizations; and
- b. modified as described below; and
- c. secured by means of a fifteen-year Memorandum of Understanding, which

will be subject to amendment during its term, if at all, under terms described in Section VI below.

2. Retiree Health Benefits for Certain Active Employees, Effective April 1, 2012

Effective April 1, 2012, there will be modified retiree health benefit options for those active employees, who are on City payroll as of that date and will be within the definition of a Health Eligible Retiree upon retirement. There is limited eligibility for Option A. Members who are eligible for Option A may elect Option B or C if they prefer; those Members who are not eligible for Option A must elect either Option B or C. Both Options A and B require a Member contribution but Option C does not.

a. Option A/Defined Benefit/Limited Eligibility:

i. Limited Eligibility. Option A is limited to Members who, as of April 1, 2012, are on City payroll, and either (i) have twenty-five years of Service Credit on or before April 1, 2012, or (ii) are eligible to retire on or before April 1, 2012. These Members are not required to elect Option A if they prefer Option B or C. The election of Option A is irrevocable.

ii. Defined Benefit. Under Option A, the City will provide the Member who irrevocably elects this option an annual retiree health allowance set at \$8,880 for Fiscal Year 2013, which will increase by two percent each year thereafter. The current NHE Annual Adjustment set forth in Municipal Code, Article 4, Division 12, section 24.1202, subd. (d) will no longer apply; however, this defined benefit will otherwise involve the same terms and conditions as presently offered under Municipal Code, Article 4, Division 12. An employee who elects this option will be eligible to receive this retiree health coverage up to the specified annual allowance upon his or her retirement in accordance with Charter section 141 and Municipal Code, Article 4, Division 4. Members will have the right to enroll in group health plans being sponsored by the City for its retirees and dependents under Municipal Code, Chapter 2, Article 4,

Division 12 or successor provisions, or to obtain any other health care coverage they choose.

iii. Required Employee Contribution. During the course of his or her employment, an eligible General Member who irrevocably elects Option A will pay \$98 per month (\$45.23 per pay period) on a pre-tax basis beginning with the first pay period that begins on or after April 1, 2012, and an eligible Safety Member who irrevocably elects Option A will pay \$103 per month (\$47.54 per pay period) on a pre-tax basis beginning with the first pay period that begins on or after April 1, 2012. These contributions will be irrevocable and deducted from an employee's bi-weekly paycheck on a pre-tax basis and will end upon retirement. An eligible employee who elects Option A may not thereafter withdraw this election for any reason, including actual financial hardship. In addition, no employee will be entitled to receive a refund of these monies for any reason. These funds will be deposited periodically into the retiree health trust account managed by CalPERS OPEB Trust Fund/CERBT (CalPERS Trust) or any successor trustee selected by the City.

iv. Local 127 Minimum Required Contribution. Because employees represented by Local 127 currently have a maximum allowance frozen at the Fiscal Year 2009 level, employees in this bargaining group who are eligible to elect Option A and do elect Option A, must make employee contributions for a minimum of twelve months at the \$98 monthly amount before they may retire with the Option A benefit with the two percent annual increases.

b. Option B/Defined Benefit:

i. Defined Benefit. Under Option B, the City will provide the employee who elects this option an annual retiree health allowance of \$5,500, which will otherwise involve the same terms and conditions as presently offered under Municipal Code, Article 4, Division 12, except that this annual amount will not increase before or after retirement. An employee who

elects this option will be eligible to receive retiree health coverage up to the specified annual allowance upon his or her retirement in accordance with Charter section 141 and Municipal Code, Article 4, Division 4. Members will have the right to enroll in group health plans being sponsored by the City for its retirees and dependents under Municipal Code, Chapter 2, Article 4, Division 12 or successor provisions, or to obtain any other health care coverage they choose.

ii. Required Employee Contribution. During the course of his or her employment, a General Member employee who irrevocably elects Option B will pay \$49 per month (\$22.61 per pay period) on a pre-tax basis beginning with the first pay period that begins on or after April 1, 2012, and a Safety Member employee who irrevocably elects Option B will pay \$52 per month (\$24 per pay period) on a pre-tax basis beginning with the first pay period that begins on or after April 1, 2012. These contributions will be irrevocable and deducted from an employee's bi-weekly paycheck on a pre-tax basis and will end upon retirement. An employee who elects Option B may not thereafter withdraw this election for any reason, including actual financial hardship. In addition, no employee will be entitled to receive a refund of these monies for any reason. These funds will be deposited periodically into the retiree health trust account managed by CalPERS or any successor trustee selected by the City.

c. Option C/Defined Contribution Plan:

i. Defined Contribution. A defined contribution-style plan will be created at the City's expense, either by amending an existing plan and trust or creating a new plan and trust. The City will not be required to participate in the administration of the trust apart from implementing payroll withholding from employees in a bargaining unit as determined by the individual bargaining unit and the trust. The City will not be responsible for the trust, and each employee group must sign appropriate hold harmless and indemnity provisions before the defined contribution plan is established. When an employee first becomes eligible to retire based

on age and years of Service Credit (see Charter section 141 and Municipal Code, Chapter 2, Art. 4, Div. 4), the City will fund the employee's individual defined contribution plan (DC Plan) within the applicable retiree health trust in an amount which, assuming an investment return of six percent, is projected to yield \$8,500 annually during the employee's life expectancy as determined by reference to the Life expectancy Table used by Buck Consultants. Although the City will be obligated to fund the employee's DC Plan when he or she first becomes eligible to retire, the employee is not required to retire at that time. The employer's contributions are immediately vested. In accordance with applicable tax laws, the funds may be used to reimburse post-retirement qualified medical expenses of the employee or the employee's Spouse or tax dependent or surviving Spouse or tax dependent, subject to applicable tax provisions. Once the retired employee, any surviving Spouse, and all tax dependents are deceased, any remaining balance is forfeited to the trust. Employees who participate in this defined contribution option will have the right to enroll in group health plans being sponsored by the City for its retirees and dependents under Municipal Code, Chapter 2, Article 4, Division 12 or successor provisions, or to obtain any other health care coverage they choose.

ii. No Required Employee Contribution. The Parties will continue to meet and confer regarding the potential for employee contributions to be made to these DC Plans. Any employee contributions that are mandatory for all employees in the same bargaining unit will be pre-tax; voluntary contributions, if permitted, will be post-tax. Any employee contributions would be immediately vested to reimburse post-retirement qualified medical expenses of the employee or employee's Spouse or tax dependent subject to plan provisions. The addition of any employee contribution feature will not require the City to make any additional contributions.

3. Failure to Make Election. If a Member fails to make an election by the established deadline (before April 1, 2012), or within fourteen work days after returning to the

City's active payroll after April 1, 2012, the irrevocable defaults will be as follows:

a. An employee who is eligible for Option A will be placed in Option A and the required employee contributions will be deducted from his or her paycheck.

b. All other employees will be placed in Option C.

4. Service Credit Requirements. Upon a service retirement with ten years of Service Credit, the Member is eligible for fifty percent of the applicable new Health Eligible Retiree Benefit (Option A, B or C). Upon a service retirement with twenty years of Service Credit, the Member is eligible for 100 percent of the applicable new Health Eligible Retiree Benefit. The new Health Eligible Retiree Benefit for a Member with more than ten but less than twenty years of Service Credit will be increased by five percent for each year of Service Credit beyond ten years until the benefit reaches 100 percent. These Service Credit requirements do not apply to those Members who become eligible for a non-industrial or industrial disability retirement.

5. Non-Industrial Disability or Industrial Disability Retirements. Effective April 1, 2012, a Member who becomes eligible for a non-industrial disability or industrial disability retirement will receive a retiree health benefit as follows:

a. If the employee is otherwise eligible for a service retirement under the Retirement System, he or she will receive a retiree health benefit in accordance with his or her irrevocable selection of Option A, B or C. As with all other retirees, the payment obligations related to Option A or B will cease.

b. If the employee is not otherwise eligible for a service retirement and he or she had made an irrevocable selection of Option A or B, the benefit will be paid without any further contributions by the disabled retiree. If the disabled retiree had selected Option C, the terminal funding associated with this benefit selection will occur when the employee becomes age eligible

for a service retirement (50 for Safety and 55 for General); meanwhile, in the intervening period, the employee will receive the Option B retiree health benefit at no cost.

6. Retiree Health Benefit for Spouses and Dependents of Members Killed In The Line of Duty. There will be no change in the benefit provisions applicable to spouses or dependents under age 21 of a City employee Member killed in the line of duty as set forth in Municipal Code section 24.1201(f)(11).

IV. MODIFICATIONS FOR MEMBERS HIRED ON OR AFTER JULY 1, 2005, WHO ARE NOT CURRENTLY ELIGIBLE FOR THE “HEALTH ELIGIBLE RETIREE BENEFIT”

Members hired on or after July 1, 2005 are not currently eligible for the Health Eligible Retiree Benefit. It is the Parties’ intent to establish a defined contribution-style retiree health benefit plan for these Members, which will be funded by Member contributions only. The Parties will continue to meet and confer over the details of a plan and its administration, with a target implementation date of April 1, 2012. This meet and confer will include, but not be limited to: (a) a determination on a per-bargaining unit basis whether employee contributions should be done on a mandatory pre-tax basis, and (b) a determination regarding the feasibility of allowing this group of employees the opportunity to re-direct their current employee contributions payable to Retirement System for their Cost of Living Annuity to their health savings accounts instead.

V. SECURITY

In reaching this Tentative Agreement, the Parties intend a level of security and stability for employees related to the retiree health benefit and a level of certainty related to funding of the retiree health benefit. To ensure the Parties’ intent is satisfied, the Parties desire that the terms and conditions of this Tentative Agreement be memorialized in a written Memorandum of Understanding (MOU), which, if adopted by ordinance by a six vote approval of the Council, will be binding on the City and the Employee Organizations for a fifteen-year period, subject to

modification only as provided for herein.

A. Once approved by the Council, the terms and conditions of the MOU may not be modified before July 1, 2014. The City may modify the retiree health benefits described in this Tentative Agreement for active employees upon a six vote approval of the Council on or after July 1, 2014, subject to compliance with MMBA and Council Policy 300-06 and the provisions set forth in this Tentative Agreement. If the Council desires to modify the MOU on or after July 1, 2014, it can reopen the meet and confer process over a proposed modification of the retiree health benefit, under the MMBA, upon a six vote approval of the Council in open session. This requirement does not preclude the Council from discussing a proposed modification with the City's management team negotiators in accordance with the Ralph M. Brown Act, before any open session discussion.

B. If the Council votes to reopen the meet and confer process over a proposed modification of the retiree health benefits, the Council may only approve a modification by a six vote approval of the Council, following agreement with any Employee Organization or by imposition under the MMBA and City Council Policy 300-06. This requirement does not preclude the Council from discussing a proposed modification with the City's management team negotiators in accordance with the Ralph M. Brown Act, before any open session discussion.

C. The City's right to modify the retiree health benefit includes but is not limited to the right to eliminate some or all of the retiree health benefits. In making a determination on whether to propose a modification to the MOU on or after July 1, 2014, but otherwise during its 15-year term in accordance with this Section, the Mayor and City Council may consider the following factors among others: (1) the good faith concessions the Employee Organizations have made in the MOU to achieve the Parties' mutual intent for a sustainable and secure benefit on which employees can rely in planning for retirement; and (2) the irrevocable elections employees

have made under the MOU.

D. Any modification of the MOU would apply only to active employees and not to retirees or those who have already had the Option C DC Plan funded by the City.

E. A modification to the MOU will not be effective until after appropriate Municipal Code sections have been amended, by ordinance of the Council, and become effective.

F. The Parties intend that the City will fund the retiree health benefits provided for in this Tentative Agreement annually. Based on current actuarial calculations, the City does not anticipate paying more than \$57,782,000 annually for Fiscal Years 2012, 2013, 2014, and 2015, and further anticipates that the City's payment will not increase by more than 2.5 percent per year after 2015. At the end of Fiscal Year 2014, in accordance with the City's annual obligations under GASB 45, the City will retain an actuary to present at a public meeting of the Council the results of the most recent actuarial valuation of the retiree health benefits, which will include projections of the cost of the benefits for future years.

VI. IMPLEMENTATION OF TENTATIVE AGREEMENT

All of the following steps will be taken to implement the terms of this Tentative Agreement:

A. Ratification of this Tentative Agreement by the memberships of each recognized Employee Organization that is a Party to this Agreement. If the Members of any Employee Organization fail to ratify this Tentative Agreement, then the Parties may proceed to impasse hearing with that Employee Organization, under City Council Policy 300-06, on each Party's last, best and final offer. It is further understood the approval of all five Employee Organizations is not necessary for this Tentative Agreement to be implemented; if this Tentative Agreement is ratified by the membership of any one of the five signatory Employee Organizations, the City and that employee organization(s) must proceed with the additional steps described below.

B. Presentation of this Tentative Agreement to the Council for approval, subject to a vote of the Retirement System Members and Council adoption of a single subject, fifteen year MOU, which incorporates and memorializes the terms and conditions of this Tentative Agreement. The intent of the Parties is that the MOU will control.

C. Vote on the retiree health benefit changes described in this Tentative Agreement by the Retirement System Members, under the Reservation of Rights, at Section VIII below, to be completed before November 1, 2011. The retiree health benefit changes in this Tentative Agreement will be set forth in the MOU and applicable ordinances amending the Municipal Code and applicable trust and plan documents. Those ordinances and documents will be presented to the Council for approval following approval of the retiree health benefit changes by a majority vote of Members under Charter section 143.1.

D. Educational and informational period related to the benefit changes and options and the security features associated with those changes and options.

E. Preparation of a satisfactory trust document related to this benefit and its administration, which complies with relevant tax codes.

F. Irrevocable election of benefit choice by each eligible Member on or before February 1, 2012.

VII. "ME TOO" CLAUSE

The City intends that the Employee Organizations that are Parties to this Tentative Agreement have retiree health benefits that are no less favorable or more detrimental to their members than the retiree health benefits that are modified through the collective bargaining process presently underway with any employee organization not a Party to this Tentative Agreement. If the City, through agreement with any employee organization not Party to this Tentative Agreement or by imposition following negotiations, provides a retiree health benefit to

the members of an employee organization not Party to this Tentative Agreement that is more favorable or less detrimental than the benefits offered in this Tentative Agreement, then this more favorable or less detrimental retiree health benefit will be extended to any Employee Organization that is a Party to this Tentative Agreement

VIII. RESERVATION OF RIGHTS

The City maintains its position that the retiree health benefit is an employment benefit and is not a benefit under the City's Retirement System; therefore, no vote is required under Charter section 143.1 to affect, modify, or eliminate the benefit. The Employee Organizations maintain their position that, based on the relevant legislative history since 1982, the retiree health benefit is a form of deferred compensation, which enjoys special contractual protection under the Constitution, and which is under the Retirement System within the meaning of Charter section 143.1. However, the Parties have agreed to set aside these differences over the legal character of the retiree health benefit in order to achieve a level of security which is an offsetting advantage for the changes in the benefit set forth in this Tentative Agreement. In addition, this Tentative Agreement will resolve the Parties' disagreement regarding Charter section 143.1, in that (1) the City agrees to allow active employees, defined as Members under Charter section 143.1, to vote on the terms of this Tentative Agreement, which modifies the retiree health benefit as set forth in this Tentative Agreement, and (2) if the Members vote in the affirmative to support the modifications to the retiree health benefits set forth in this Tentative Agreement, no future changes affecting retiree health benefits will be subject to a vote of Members under Charter section 143.1. If the Members do not vote in the affirmative to support the modifications, then the negotiations between the Parties related to the retiree health benefit will be deemed completed, and the Parties may notice negotiations, under the MMBA and City Council Policy 300-06, anew. The Parties acknowledge that any Party may take any new bargaining position,

and may make or maintain any legal or factual argument. Further, if the Members of the Retirement System do not vote to accept the terms and conditions of this Tentative Agreement, then the Parties reserve all rights and legal positions related to the retiree health benefit, including the status of the benefit and the applicability of Charter section 143.1.

IX. DISMISSAL OF *SAN DIEGO MUNICIPAL EMPLOYEES ASSOCIATION ET AL. V. CITY OF SAN DIEGO*

If MEA members vote to ratify both this Tentative Agreement , and the retiree health benefit changes are approved by a vote of Retirement System Members under Charter section 143.1 and the Council by ordinance, then MEA agrees that it will cause *Municipal Employees Association, et al. v. City of San Diego*, San Diego Superior Court, Case Number 37-2011-00090476-CU-MC-CTL to be dismissed with prejudice.

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

SAN DIEGO MUNICIPAL EMPLOYEES' ASSOCIATION

BY: Michael Zucchet
MICHAEL ZUCCHET
GENERAL MANAGER

DATE SIGNED 5-6-2011

BY: Ann M. Smith
ANN M. SMITH, ESQ.
LEAD NEGOTIATOR

DATE SIGNED 5-6-2011

BY: Antonio Ruiz, III
ANTONIO RUIZ, III
PRESIDENT

DATE SIGNED 5-6-2011

LOCAL 145, INTERNATIONAL ASSOCIATION OF FIRE FIGHTERS

BY: Frank DeClercq
FRANK DECLERCQ
PRESIDENT

DATE SIGNED 5-6-2011

BY: Michael McGhee
MICHAEL MCGHEE
DIRECTOR OF LABOR RELATIONS

DATE SIGNED 5/6/11

LOCAL 127, AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES

BY: _____
JOAN RAYMOND
PRESIDENT

DATE SIGNED _____

BY: _____
DAMIAN TRYON
BUSINESS REPRESENTATIVE

DATE SIGNED _____

DEPUTY CITY ATTORNEYS ASSOCIATION

BY: _____
GEORGE SCHAEFER
PRESIDENT

DATE _____
SIGNED _____

BY: _____
DANIEL RAWLINS
VICE-PRESIDENT

DATE _____
SIGNED _____

BY: _____
RICHARD CASTLE
LEAD NEGOTIATOR

DATE _____
SIGNED _____

**INTERNATIONAL BROTHERHOOD OF
TEAMSTERS LOCAL 911**

BY: _____
CHESTER MORDASINI
PRESIDENT

DATE _____
SIGNED _____

BY: _____
EDWARD HARRIS
LIFEGUARD SERGEANT


DATE _____
SIGNED _____

CITY OF SAN DIEGO

BY: _____

JAY M. GOLDSTONE
CHIEF OPERATING OFFICER

DATE _____
SIGNED _____

BY: _____

TIM DAVIS, ESQ. BURKE, WILLIAMS &
SORENSEN
LEAD NEGOTIATOR

DATE _____
SIGNED May 6, 2011

CITY OF SAN DIEGO

BY: [Signature]
SCOTT CHADWICK
HUMAN RESOURCES DIRECTOR

BY: _____
GREG BYCH
RISK MANAGEMENT DIRECTOR

DATE SIGNED 6 MAY 11

DATE SIGNED _____

BY: [Signature]
KAREN DECRESSENZO
LABOR RELATIONS OFFICER

DATE SIGNED 5/6/11

I HEREBY APPROVE the form and legality of the foregoing Agreement this _____ day of _____, 2011.

JAN I. GOLDSMITH, CITY ATTORNEY:

BY: _____
JAN GOLDSMITH
CITY ATTORNEY

DATE SIGNED _____

JAN I. GOLDSMITH, CITY ATTORNEY:

BY: _____
JOAN DAWSON
DEPUTY CITY ATTORNEY

DATE SIGNED _____

JAN I. GOLDSMITH, CITY ATTORNEY:

BY: _____
ROXANNE STORY PARKS
DEPUTY CITY ATTORNEY

DATE _____
SIGNED _____

