

MEMORANDUM OF UNDERSTANDING
BETWEEN
CITY MID-MANAGEMENT/CONFIDENTIAL GROUP AND
THE CITY OF LINCOLN

April 1, 2018 through March 31, 2020

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PREAMBLE

This Memorandum of Understanding (MOU), hereinafter sometimes referred to as the Agreement, describes salaries, benefits and working conditions approved by the City of Lincoln, hereinafter referred to as the "City" for employees in the City's Midmanagement/Confidential Group, hereinafter referred to as "Group".

ARTICLE I -- RECOGNITION

1.1 RECOGNITION

The City recognizes the Group as the exclusive representative of those employees within the bargaining unit for the purpose of meeting and conferring in good faith on matters within the mandatory scope of representation, pursuant to California Government Code 3500 et. Seq.

ARTICLE II -- GROUP RIGHTS

2.1 ACCESS TO EMPLOYEE WORK LOCATIONS

Representatives of the Group shall have the right of reasonable access to bargaining unit members outside of their assigned duties; before and after work hours, at meal and break periods; and at other non-work times with the approval of the City Manager or his designee.

2.2 DISTRIBUTION AND POSTING OF GROUP LITERATURE

The Group may use bulletin boards designated for its use in appropriate places. All items to be posted shall be officially authorized by the Group and shall bear the date of posting.

2.3 USE OF CITY FACILITIES

The City Manager or his designee, upon request, may permit the Group the use of designated facilities, depending upon availability of space, for meeting purposes. No request for use of City facilities shall be unreasonably denied.

2.4 DISCRIMINATION

The City and Group agree not to discriminate against, any employee for the employees' membership in, activity on behalf of or other means of lawful participation in the Group which is authorized and protected by statutory law, MOU or City code, ordinance or resolution.

ARTICLE III -- MANAGEMENT RIGHTS

3.1 MANAGEMENT RIGHTS

The City retains all rights, powers, duties, responsibilities and authority of a managerial or administrative character, except as specifically modified by the express provisions of this Memorandum. The exclusive rights of the City shall include, but not be limited to, the right to determine the organization of City government and the purpose and mission of its constituent agencies; to set standards of service to be offered to the public, and through its management officials to exercise control and discretion over its organization and operations; to establish and effect administrative regulations and employment rules and regulations consistent with law and the specific provisions of this Memorandum; to direct its employees; to take disciplinary action; to relieve and lay off employees from duty because of lack of work or for other legitimate reasons, including but not limited to the economic condition of the City; to determine whether goods or services shall be made, purchased or contracted for; to determine the methods, means and personnel by which the City's services are to be provided, including the right to schedule and assign hours of work and overtime, or reduce same; and to otherwise act in the interest of efficient service to the City. The City shall meet and confer, upon request of the Unit, over the impact to employees of any decision by the City to contract-out significant bargaining unit work to a non-City enterprise or agency. The decision to contract-out such work shall not be subject to meet and confer during the term of this Memorandum; however, the City shall endeavor to facilitate the employment of the impacted employee(s).

ARTICLE IV -- HOURS OF WORK AND BASIS OF COMPENSATION

4.1 HOURS OF EMPLOYMENT

The hours of employment and legal holidays to be observed shall be with due regard for the convenience of the public. Employees in this Unit who are defined as exempt status employees are expected to work whatever numbers of hours are necessary beyond normal workdays, periods, or weeks without additional compensation to accomplish their duties and responsibilities.

4.2 PAY PERIODS

The "pay period" shall be fourteen (14) calendar days from Sunday (starting at midnight Saturday) to midnight of the second Saturday thereafter, and refers to the period for computing compensation due for all normal working days during that period. Actual payment of payroll shall be made the ensuing Friday at noon following the end of the pay period.

4.3 WORK PERIODS

The normal work period shall be eighty (80) hours within each pay period for each full time regular employee unless established otherwise for any classification by the City Council. The work period shall coincide with the established two (2) week period (consisting of 14 days or 2 weeks) from Saturday midnight to the second (2nd) Saturday midnight. The normal workday generally means a day on which an employee works eight (8) hours or such other number of hours when authorized by the City Council.

4.4 ALTERNATIVE WORK SCHEDULE

A regular full time employee, whose department has the ability to accommodate said employee's duty/work coverage 5 days a week during the normal work hours, may upon Department Head approval work an alternative schedule. All employees must meet a minimum requirement of 80 hours of work per pay period. The schedule will be in effect until such time as the City determines that is in the City's best interests to terminate the alternative schedule. Reasonable notice, unless an emergency dictates otherwise must be given to change an agreed upon schedule. Reasonable notice is defined as 40 normal work hours. Employees required to attend meetings outside or normal work hours must still meet this requirement, regardless of their work schedule.

- (a) Exempt positions are not eligible for overtime. Overtime for non-exempt positions shall be paid for any time worked in excess of 80 hours in a 10-day work cycle.
- (b) Sick leave will be earned in accordance with the current MOU language between the City of Lincoln and the Mid-Management/Confidential Group. Any Sick Leave used will be charged on an hour for hour basis.
- (c) Vacation leave will be earned in accordance with the current MOU between the City and the Mid-Management/Confidential Group. Any vacation time used will be charged on an hour for hour basis. Vacation Leave cannot be taken in increments less than 2 hours, unless a non-exempt employee has a holiday fall on a schedule work day. In this event vacation leave may be used in the applicable amount to equal a normal work shift.
- (d) Holiday pay will be in accordance with this MOU. Personnel assigned to work schedules other than the traditional 8 hour schedule may be required to use vacation or CTO in addition to holiday pay to cover their full scheduled work day.
- (e) Any alternative work schedule agreement shall terminate immediately upon a transfer, promotion and/or demotion. Alternative work schedules may not be grieved. In all matters related to an alternative work schedule, the City Manager shall have the final decision.

ARTICLE V – SALARY ADMINISTRATION

5.1. WAGE INCREASE

All miscellaneous employees within the bargaining unit shall receive a base wage increase of one and one-half percent (1½ %) each fiscal year during the term of the Agreement, commencing on July 1, 2018.

5.2 MERIT AND SALARY ADJUSTMENT

- a) Effective on the date of ratification of this agreement, salary ranges for current employees shall consist of 13 steps with 12 advancements between each step of 2.5 percent. For those bargaining unit members who are currently employed as of the ratification of this MOU and have not yet

reached top step on the salary scale for his or her respective classification, those bargaining unit members will continue to receive 5 percent merit increases (i.e double bumps).

Salary ranges for new employees hired after April 1, 2018, the salary scale shall consist of a thirteen (13) level salary scale with twelve (12) steps of advancement, resulting in a 2.5% merit increase.

- b) The GFE designation will be eliminated as of the date of ratification of this agreement. No bargaining unit member will have a decrease in salary given the elimination of the GFE scale.

5.3 SALARY RANGE ADJUSTMENTS

- (a) For those bargaining unit members who are currently employed as of the ratification of this MOU and have not yet reached top step on the salary scale for his or her respective classification, those bargaining unit members will continue to receive 5 percent merit increase (i.e. double bump on the 2.5 percent salary scale). The next merit advancement for those eligible, will occur on April 1, 2018 and then again for those eligible on April 1, 2019.
- (b) For employees either hired or promoted after April 1, 2015, merit salary increases shall accrue pursuant to the City of Lincoln Personnel Rules.

5.4 EDUCATION ROLLED INTO BASE PAY

The parties agree to incorporate the educational pays that current employees have earned into a new salary schedule. This salary schedule will only pertain to the current employees (as of July 1, 2012) and any new employee to the bargaining unit will be compensated based on a newly developed salary schedule.

Current employees will be compensated at the step (level) that includes their current base pay and their educational pays. An employee's step may change during this process, but the base pay should not decrease due to this specific activity. Those individuals currently in the bargaining unit as of July 1, 2012 who show proof of ongoing education (as noted in Section 5.5 in the 2005 MOU, degrees/certifications) shall be grandfathered into this education pay roll up language upon completion of their respective education, prior to June 30, 2015. The educational pays will no longer be paid to employees as of the date of this contract.

Example:

Prior to the new salary schedule being implemented:

An individual currently at Step F and receives 3 educational pays at 5% each (\$39.08/hr base pay, plus \$6.16/hr for 3 educational pays)

After new salary schedule is implemented:

The same individual is now at Step D with a new base pay of \$45.24/hr. The changes do not lower the individual's salary; the individual has the same rate of pay.

5.5. DEFERRED COMPENSATION

The City's participation in the Matching Deferred Compensation program shall cease. The City shall pay the "maintenance fee" associated with the Deferred Compensation Program up to a maximum of \$30.00 per year for those individual employees who wish to continue with the program without City participation.

ARTICLE VI -- OVERTIME

6.1 POLICY

(Non-Exempt Employees)

It is the policy that overtime work be discouraged; that each Department Head arrange the work of his or her department so that full-time employees shall normally work not more than eight (8) hours per workday or more than five (5) consecutive work days consisting of forty (40) hours without at least one (1) day off, or more than eighty (80) hours in any pay period, and that overtime work be held to a minimum consistent with the efficient performance of necessary functions.

6.2 DEFINED

All work authorized as overtime shall be calculated at the overtime rate which is one and one-half (1 ½) times the regular hourly rate of pay.

6.3 AUTHORIZATION OF OVERTIME WORK

Overtime work not specifically authorized by the City Manager shall be performed only upon express authorization of the Department Head or subordinate empowered by him/her to authorize the same.

6.4 REPORTING OVERTIME

Total hours of recorded authorized overtime for each pay period for each employee shall be reported on an attendance report and shall be signed by each Department Head or his/her designated alternate. The total hours of accumulated compensatory time taken off during each pay period shall be likewise reported.

6.5 FRINGE BENEFITS NOT AFFECTED BY OVERTIME

Overtime work shall not be a basis for increasing vacation or sick leave benefits, nor shall it be a basis of advancing completion of required periods for probation or salary step advance.

6.6 COMPENSATION FOR OVERTIME

Compensation of overtime and holidays shall either be paid at the rate of time and one-half (1 ½) or accrued as Compensatory Time Off as determined by the Department Head at the rate of time and one-half (1½).

Employees may, upon the prior request of the employee and prior authorization of the Department Head, accumulate Compensatory Time Off in lieu of overtime pay, or receive overtime pay for that pay period. Provided, however, in no event shall an employee be allowed to accumulate in excess of one hundred (100) hours of Compensatory Time Off. Employees shall have the option to sell back any amount of their accrued compensatory time during any pay period. Requests for Compensatory Time payout must be submitted with and when timecards are due to payroll.

In the event an employee has accumulated one hundred (100) hours of Compensatory Time Off, payment of overtime shall be automatically made unless mutually agreed otherwise by the City Manager and the employee. Compensatory Time accrual is at the discretion of the City Manager.

The balance of any accumulated Compensatory Time shall be paid upon termination of employment or under such other circumstances as authorized by the City Manager.

Sick leave and bereavement leave shall not be counted as hours worked for the purposes of computing overtime.

6.7 CALL BACK TIME - (Non-exempt employees)

Call back time shall be that time an employee is called back to work by the Department Head before or after a normal work day, or when an employee is required to work on a normal day off by the Department Head in the event of an emergency; or when an employee is required to work on any holiday recognized by the City Council. The time actually worked or a minimum of two (2) hours at one and one-half (1½) times shall be accrued as Compensatory Time, or taken as pay subject to Department Head approval and the same rules for compensation of overtime.

6.8 SHIFT CHANGES NOTICE

An employee's shift shall not be changed solely to avoid overtime. Normally, an employee shall be given at least forty-eight (48) hours notice of a shift change. In the absence of such notice, the employee shall receive 5% differential over base salary for each day in which the notice was not given.

ARTICLE VII -- LEAVES

7.1 VACATION

Employees within the Mid-Management/Confidential Group shall be entitled to vacation leave as follows:

No employee shall be entitled to take vacation leave until such employee has completed six (6) months of service, after which the employee shall be entitled to the use of accrued vacation leave.

No employee shall accrue more than two hundred and forty (240) hours of vacation. If an employee accrues vacation time in excess of two hundred and forty (240) hours, he/she shall have his/her accrual frozen until he/she

falls below two hundred and forty (240) hours. An employee shall be paid for any vacation accrual in excess of the cap in the event the City has denied the use of vacation twice in the preceding 6 months. Proof of vacation denial is required.

In case of termination or discharge, all employees shall be entitled to pay for all accrued but unused vacation.

No vacation leave shall be granted in increments of less than one (1) hour within any workday.

Employees shall continue to be paid during the period of their vacation at the same rate of compensation in effect at the commencement of the vacation period.

For each completed payroll period of service, or portion thereof, an Employee shall receive credit for a prorated portion of vacation leave in accordance with the following schedule:

0 to 3 years	10, 8-hour working days per year
3 years + 1 day to 5 years	11, 8-hour working days per year
5 years + 1 day to 8 years	15, 8-hour working days per year
8 years + 1 day to 11 years	16, 8-hour working days per year
11 years + 1 day to 13 years	17, 8-hour working days per year
13 years + 1 day to 15 years	18, 8-hour working days per year
15 years + 1 day to 18 years	19, 8-hour working days per year
18 years and over	26, 8-hour working days per year

All vacations shall be at such time as is mutually agreed between the Employee and the Department Head and shall be without loss of pay. Credits of vacation earned by an Employee shall be vested to such Employee at the conclusion of each payroll period.

An employee shall be allowed to cash-out accrued leave balances in excess of 180 hours once per calendar year, up to 60 hours of accrued vacation leave with a minimum vacation usage of 40 hours in that calendar year. An employee shall be allowed to cash out vacation in the event the employee is capped out and the City has denied the use of vacation twice in the preceding six months. Proof of vacation denial is required.

Employees that work less than full-time, but more than 999 hours per fiscal year shall be credited vacation on a prorated basis. Maximum accumulation of vacation time shall be twelve (12) days.

Employees of the City of Lincoln as of April 1, 2015, with less than 4 years of service shall continue to accrue leave at the same rate as employees with 4 (+1 day) - 5 years of service as indicated above.

7.2 SICK LEAVE

Sick leave shall be considered as a privilege by an Employee to use at his/her discretion as provided herein.

Each employee shall be entitled to one (1) day sick leave with full pay for each month of full time employment commencing on the first day of the month following the month in which said person was employed.

Sick leave shall be credited to the employee's account upon completion of each month with accrual of sick leave credited based upon 4 hours per pay period. A maximum of one thousand four hundred and forty (1,440) hours may be accumulated by employees hired prior to the ratification of this Memorandum of Understanding by the City Council.

Employees hired after the ratification of the Memorandum of Understanding shall be limited to a maximum of 1000 hours.

Employees that work less than full-time, but more than 999 hours per fiscal year shall be credited with sick leave on a prorated basis. Maximum accumulation of sick leave shall be twelve (12) days.

Sick leave may be applied to:

- (a) An absence necessitated by the employee's incapacitation from the performance of regular duties due to personal illness, injury or pregnancy.
- (b) Medical, optical or dental office appointments.
- (c) Absence due to the severe illness of an immediate member of the employee's family, immediate member is spouse, child, father, father-in-law, mother, mother-in-law, grandparent or grandchild or any relative living in the immediate household of the Employee.

7.3 PAY FOR UNUSED SICK LEAVE

Employees in good standing whose employment with the City is otherwise terminated shall be paid for unused sick leave in accordance with the following:

- (a) Employees with five (5) or less years of continuous service shall receive no payment.
- (b) Employees with five (5) years to twelve (12) years of continuous service shall receive 25% of said leave.
- (c) Employees with twelve (12) or more years of continuous service shall receive 100% of said leave.
- (d) Payment for unused sick leave shall be at the employee's rate of pay at the time.
- (e) Payment for unused sick leave does not extend the employee's status as a City employee.

Effective July 1, 2019, Employees with twelve (12) or more years of continuous service and who have accumulated in excess of 500 hours of sick leave shall be allowed to cash out no more than 60 hours per each fiscal year, contingent on available funds at the discretion of the City Manager.

7.4 BEREAVEMENT LEAVE

- (a) A Department Head or designee shall authorize bereavement leave with pay for a regular full-time employee due to the death of his/her parent, step parent, spouse, child, grandchild, grandparent, brother, sister, mother-in-law, father-in-law, step child, adopted child, aunt, uncle, or death of any person residing in the immediate household of the employee at the time of death. Such bereavement leave shall be authorized for up to three (3) days (24 hours per occurrence). The employee shall give notice to his/her immediate supervisor as soon as possible and shall, if requested by the employee's supervisor, provide substantiation to support the request.

- (b) If the death of a person as enumerated above requires the employee to travel over four hundred (400) miles one-way from his/her home, upon request, additional time off with pay shall be granted for two (2) additional days, which shall be deducted from accrued sick leave. Should additional leave be necessary, the Department Head or designee may authorize the use of CTO, vacation or authorized leave without pay. Such leave shall be denied or granted according to Article VII of this agreement.
- (c) Employees who have used their three (3) paid bereavement days may on subsequent requests use sick leave, CTO, Administrative or vacation leave if they suffer more than one bereavement as enumerated in Item I above during the year.

7.5 JURY DUTY

When an employee is summoned to jury duty he/she shall immediately inform his/her supervisor and, if required to serve, may be absent from work with full pay while actively rendering such service. Any jury moneys received by an employee shall be remitted to the City, exclusive of any meal and/or travel reimbursements rendered by the courts.

7.6 HOLIDAYS

- (a) The following days shall be paid holidays for employees in the Mid-management/Confidential unit.
 - 1. New Year's Day
 - 2. Third Monday in February- President's Day
 - 3. Memorial Day
 - 4. July 4th
 - 5. Labor Day
 - 6. Veteran's Day
 - 7. Thanksgiving Day
 - 8. The Friday immediately following Thanksgiving Day
 - 9. Christmas Day
 - 10. Two (2) Floating holiday per calendar year.
- (b) If an employee does not utilize the use of all Floating holidays by October of the current calendar year the City shall payout the remaining balance of floating holidays time.

- (c) If a holiday falls on Saturday, then the previous Friday is to be taken. If a holiday falls on Sunday, then the following Monday is to be taken.
- (d) Any non-exempt employee who might be required to work on any of the above holidays shall be compensated at overtime rates of one and one-half (1 ½) times his/her regular salary per hour worked, in addition to the holiday pay.

7.7 MILITARY LEAVE

Military leave shall be granted in accordance with the provisions of state law (Military and Veterans Code). All employees entitled to military leave shall give their Department Head and the City Manager a notice and opportunity, within the limits of military requirements, to determine when such leave shall be taken. If available, a copy of military orders received shall be delivered to the City prior to the taking of such leave. If not available, then upon return from military duty a copy of military release shall be given to the City.

7.8 ADMINISTRATIVE LEAVE (Exempt Employees only)

All eligible employees shall receive Administrative Leave days in lieu of overtime. Such leave will be given under the following terms and conditions.

- (a) Beginning January 1, 2013, eight (8) days of leave shall be credited to the employees at the beginning of the calendar year.
- (b) Leave must be taken in the calendar year in which it is credited and cannot be carried over into the next calendar year.

ARTICLE VIII -- INSURANCE

8.1 HEALTH CARE

- (a) The City agrees to pay the following monthly contributions for active health care coverage (employee is responsible for remaining balance):
 - (i) Employee only: An amount equal to 80% of the Kaiser Sacramento Region premium rate for employee only.

- (ii) Employee plus one: An amount equal to 80% of the Kaiser Sacramento Region premium rate for employee plus one.
- (iii) Employee plus 2: An amount equal to 80% of the Kaiser Sacramento Region premium rate for employee plus two or more (family).

Employees who select a health plan with higher monthly premiums than the maximum monthly premium paid by the City (item a and b above) shall pay the difference through payroll deduction taken out equally from two pay checks a month (taken from 24 paychecks each year). Should employees select a health plan with lower monthly premiums than the maximum premium contribution paid by the City, the City's contribution shall be limited to the cost of the monthly premium.

- (b) The City will pay the full cost of dental premiums for employees and eligible dependents. Vision Dependent coverage is the responsibility of the employee. Dental and vision care coverage shall be determined by the respective plan documents.
- (c) Any employee waiving medical insurance coverage from the City of Lincoln shall receive a 66 2/3% cash back monthly benefit payment of the Kaiser, Sacramento Region, employee only premium rate. This cash back (in lieu of medical) benefit due to qualified employees shall be paid in a bi-weekly sum which will not be PERSable. An employee waiving the employee healthcare coverage must show evidence of insurance coverage.
- (d) All part-time, regular employees hired on or before July 1, 2012 will be grandfathered in and will not be responsible to pay a prorated portion of their healthcare benefits and will be treated in the same manner as regular full-time staff.
- (e) All part-time, regular employees hired after July 1, 2012 will be subject to prorated health care benefits.

8.2 RETIREE HEALTH BENEFITS

The City shall maintain lifetime retiree medical health benefits for those employees (and their families, where applicable) within the classifications covered by this MOU who were hired prior to January 1, 1998, worked for the City for the requisite five (5) year vesting period and retired, or retire,

from the City. Employees hired after January 1, 1998, and who retire from the City shall vest in lifetime retiree medical health benefits as provided in Government Code Section 22893.

8.3 LIFE INSURANCE

The City agrees to pay 100% of the premium rate for \$50,000 term life insurance policy, which includes a double indemnity clause for employees covered by this agreement. As soon as administratively possible, the City will arrange the availability of employee paid term voluntary life insurance coverage with its life insurance provider.

ARTICLE IX -- RETIREMENT

9.1 RETIREMENT BENEFITS

- (a) The City currently provides three retirement formulas based on an employee's hire date and previous CalPERS service time.
1. Tier 1 has a formula of 2.7% at 55 with the employee paying the entire employee portion of the retirement contribution currently at 8%. This only pertains to employees who were working for the City of Lincoln prior to 2011.
 2. Tier 2 has a formula of 2% at 60 with the employee paying the entire employee portion of the retirement contribution currently at 7%. This only pertains to employees who worked for the City of Lincoln from 2011 through 2012 or are considered a classic CalPERS member (left a CalPERS service agency within 6 months of working for the City of Lincoln).
 3. PEPRA has a formula of 2% at 62 with the employee paying the entire employee portion of the retirement contribution currently at 6.25%. This only pertains to employees who work for the City of Lincoln since 2013 and are not considered a classic CalPERS member.
- (b) Employees within the Mid-Management/Confidential bargaining unit shall continue paying three percent (3%) of the **EMPLOYER'S** contribution towards PERS in addition to what is noted in subsection (a) above. This payment shall be done on a pretax basis, in accordance with IRS Code 414 (h) (2).

ARTICLE X -- GRIEVANCE PROCEDURE

10.1 PURPOSE

In order to establish harmonious and cooperative relationships between the City and its employees, and to keep open the channels of communication, it shall be the City's policy to provide for the settlement of differences through an orderly grievance procedure. The Mid-management/Confidential Group agrees that the grievance procedure is the exclusive dispute resolution mechanism for resolving issues within the MOU; employees may not engage in self-help or concerted activities as a forum of dispute resolution.

10.2 DEFINITION OF GRIEVANCE.

A grievance is a complaint of an affected employee or group of employees alleging unfair treatment resulting from a management decision concerning the interpretation or application of this Agreement, or the City rules or regulations governing personnel practices or working conditions, within the control of management and for which there are no other procedures in existence which may be used to resolve such problem.

10.3 INFORMAL GRIEVANCE PROCEDURE

All persons having a grievance shall make every effort to resolve such grievance by discussion with his/her immediate supervisor prior to submission of a formal grievance.

10.4 FORMAL GRIEVANCE PROCEDURE

- (a) In the event that a settlement is not affected after the informal review, the written grievance may be presented within five (5) working days to the Department Head. The Department Head shall have five (5) working days to investigate and render a written decision. Unless an extension of time has been confirmed in writing. Failure of the Department Head to render a written denial of the grievance, the grievant shall proceed to, and be governed by the time limitations of Step 2 of this procedure.

- (b) If a mutually satisfactory solution has not been reached, the grievant has three (3) working days to submit the grievance to the Human Resources Manager. The Human Resources Manager shall have five (5) working days after receipt of the grievance in which to schedule such investigations or hearings as may be necessary and has been confirmed in writing, failure of the Human Resources Manager to render a written decision within five (5) working days shall constitute a denial of the grievance, and the grievant shall proceed to, and be governed by the time limitations of Step 3 of this procedure.

10.5 MEDIATION PROCESS

This procedure shall apply to disputes involving the interpretation and application of an existing MOU or a negotiated personnel rule or regulation, other than employee discipline.

- (a) An appeal may be referred to mediation if the appellant is not satisfied with the disposition of the City Manager's review step of the procedure.
- (b) The appellant must notify the Employer in writing within five (5) working days of the conclusion of the review of the appellant's desire to refer the matter to mediation. The Employer shall respond to the appellant, and schedule a mediation hearing with the California State Mediation and Conciliation Service.
- (c) Mediation conference will take place at a mutually convenient location and shall not be open to parties other than those who are direct parties in the action.
- (d) Proceedings before the mediator shall be confidential, informal in nature and shall not be admissible in any subsequent hearing. No transcript or record of the mediation conference shall be made. The mediator shall attempt to assure that all necessary facts and considerations are revealed to him/her. In the event a resolution is reached, the matter shall be reduced to writing. In the event that a resolution is not reached, the parties may stipulate the unresolved issues in writing and submit them to the Hearing Officer within five (5) working days.

10.6 PROCEDURE FOR APPEAL HEARING BEFORE HEARING OFFICER

- (a) An impartial arbitrator shall be selected jointly by the parties in order to conduct the hearing and report findings, conclusion, and recommendations to the City Manager. All parties to the agreement shall endeavor to adhere to the Arbitrator's final decision.
- (b) Such hearings shall take place within a reasonable period of time, not sooner than five (5) calendar days after the filing of a request for a hearing, but as soon thereafter.
- (c) Hearings will be presided over by the hearing officer.
- (d) The grievant shall have a right to appear in person on his/her own behalf, with Counsel or such representation as he/she requests to represent his/her case.

10.7 HEARING PROCEDURE

- (a) The hearing officer shall conduct the hearing and shall rule on questions, evidence, and procedure.
- (b) Either party may call witnesses, introduce evidence, testify, and question witnesses.
- (c) Except for appeals of discipline (suspension, demotion, termination), the grievant has the burden of proof and shall first present evidence and testimony.
- (d) The customary order of proceedings is as follows:
 - (i) Opening statement by the initiating party, followed by a similar statement by the other party.
 - (ii) Presentation of evidence, witnesses, and arguments by the initiating party.
 - (iii) Cross examination by the other party.
 - (iv) Presentation of evidence, witnesses, and arguments by the defending party.
 - (v) Cross-examination by the initiating party.

- (vi) Summation by both parties, usually following the same order as in the opening statements.

This is the "customary order." The hearing officer may vary this order, either on his/her own initiative or at the request of a party. In any case, the order in which the facts are presented does not imply that the "burden of proof" is more on one side than the other, for both parties must try to convince the hearing officer of the justice of their positions.

- (e) The hearing may be recorded at the request of either party with such expense being borne equally by the parties.
- (f) If the parties want to file written post hearing briefs, or other data, the time limits shall be set by the hearing officer, and the hearing shall remain open until these documents are received.
- (g) After both parties have had an equal opportunity to present all their evidence, the hearing officer shall declare the hearing closed.

ARTICLE XI -- DISCIPLINARY REVIEW PROCEDURE

11.1 NOTICE OF PROPOSED DISCIPLINE

The City Manager shall, prior to taking disciplinary action to demote (except for demotion in lieu of layoff), discharge or suspend without pay for one (1) day or more a regular employee, provide the employee with a written notice of proposed disciplinary action which shall contain the charges and the specific factual basis for the charges and the nature of the proposed disciplinary action. Said notice shall inform the employee of his/her right to respond to the charges.

11.2 RESPONSE

The employee shall have the right to respond to the charges set forth in the Notice of Proposed Discipline, orally or in writing, within five (5) days of receipt of said notice. Any written response shall be delivered to the office of the City Manager for a response meeting within the time allowed. The employee may bring a representative of his/her choice to a response meeting

11.3 DISCIPLINARY ACTION

After the employee's response is received or, if no response is received, after the five (5) day period expires, the City Manager shall determine whether to proceed with the proposed disciplinary action and notify the employee in writing.

11.4 NOTICE OF DISCIPLINARY ACTION

If the City Manager decides to proceed with the disciplinary action, a Notice of Disciplinary Action shall be sent to the employee by certified Mail. Said notice shall contain the charges, the factual basis for the charges, the disciplinary action which shall not be earlier than five (5) days after the notice of proposed disciplinary action is sent to the employee. This notice shall inform the employee of the right to appeal the action.

11.5 APPEAL

In cases of discharge, demotion (except for demotion in lieu of layoff) and suspension without pay for five (5) days or more, the employee may appeal the disciplinary action by filing a Notice of Appeal containing a detailed statement of the grounds for appeal with the City Manager within five (5) days of receipt of Notice of Disciplinary Action. In cases of suspension without pay for one (1) day or more but less than five (5) days, the employee may file a formal grievance with the City Manager within five (5) days of receipt of Notice of Disciplinary Action. Thereafter, the grievance procedure set forth in Article X of this Memorandum.

11.6 ARBITRATION HEARING PROCESS

If after consideration of the employee's appeal of and response to the Disciplinary action, the City Manager affirms the penalty imposed. The Employee may appeal the decision of the City Manager to an arbitrator pursuant to this section. The appeal of the City Manager's decision must be made within five (5) days of the issuance of the City Manager's decision to the employee. The date of issuance shall be calculated from the date of the postmark and the City Manager's decision to be sent to the employee at his/her home address. Within ten (10) days of the City Manager's decision, the parties must select an arbitrator. If the parties cannot mutually agree upon an arbitrator, the arbitrator shall be selected from a list provided by the California State Mediation and Conciliation Service (CSMS). The CSMS list

shall contain five (5) names of labor relations neutrals, and the parties shall alternately strike names from the list. The first strike shall be determined by lot. The last name remaining on the list shall be the arbitrator.

The parties to this agreement shall share equally in the cost of the arbitration.

The arbitrator will operate under the rules of proceeding of the American Arbitration Association unless such rules are in conflict with this Memorandum of Understanding.

The arbitrator shall have no authority to add to, delete, modify, change, reconstruct or ignore this Memorandum of Understanding, City Policies or Rules and Regulations. Moreover, the arbitrator shall not have the authority to waive any time limits under this procedure; only the parties may do so by mutual agreement in writing. The decision of the arbitrator shall be final, binding and conclusive of all parties.

The appeal hearing before the arbitrator shall be conducted as a full evidentiary hearing with the right to represent witnesses in evidence, cross-examine opposing witnesses, representation by counsel and findings to support the decision. Said hearings shall be conducted in closed session. The City shall not be held to the evidentiary standard applied in criminal matters of proof beyond a reasonable doubt.

11.7 SUSPENSION PENDING ACTION

The City Manager shall have the power to suspend the employee, with or without pay, during the period between the date the notice of proposed disciplinary action is sent and the date the disciplinary action becomes effective. The employee shall be reimbursed for any loss of pay or benefits incurred during this period and seniority shall not be negatively affected, should the disciplinary action be overturned or modified accordingly.

11.8 PROBATIONARY EMPLOYEES

Newly hired employees, while on probationary status, are not entitled to notice or hearing, in the event they are terminated during the probationary period.

Current employees who are on probationary status shall receive a notice of rejection during probation five (5) business days prior to the imposition of the rejection.

11.9 LIMITATION ON APPLICATION

This section shall not apply to suspensions without pay of less than five (5) days, demotions in lieu of layoff, or any disciplinary actions not previously listed above. Employees shall be entitled to grieve disciplinary actions not covered by this section through the grievance procedure set forth in Article X of the Memorandum only; provided, however, that in the case of suspension of one (1) day or more but less than five (5) days, the City shall comply with Subsections A - D of this Article.

11.10 PERSONNEL FILE ACCESS

The employee shall have access to his/her personnel file with adequate notice to Human Resource Manager.

Parties to this agreement recognize the confidential nature of the employees' personnel file (s). City agrees to limit access to an employee's personnel file to regular employees, who, by their position have a legitimate reason to review said files.

ARTICLE XII -- CLASSIFICATION, RECLASSIFICATION

12.1 CLASSIFICATION

The City shall determine the need for and number of positions and classifications necessary to perform services as determined by the City Council. All such bargaining unit positions shall be placed in the City's classification plan.

New positions may be authorized by the City Council and added to the City's classification plan. However, no new position may be filled without the authorization of the City Manager who, in so doing, shall determine that sufficient funds are available. When a new position is created, the department head must obtain the City Manager's approval to fill the position. The City Manager shall then notify the department head as to the approval and method of filling said position.

Except as provided by these rules, or otherwise, no person shall be appointed or employed to fill any new regular part-time positions or regular full-time positions until the Classification Plan has been amended by the City Council.

12.2 RECLASSIFICATION

Positions whose duties and responsibilities have changed so as to depart significantly from an assigned class description, or positions which have been structurally affected by organizational changes may be authorized by the City Manager for reclassification study. Such requests for study may be initiated by the City Manager or City Council. Upon approval of a reclassification study, the person studying the position shall in the course of such study consult with the affected employee, the employee's supervisor and department head, and gather any other information pertinent to issues related to the study. Upon the completion of the study, a report of the analysis and findings shall be submitted and recommendations made to the City Manager who shall consult with the appropriate department head and determine the disposition of the study. Recommendations on such study results may be submitted to the City Council for approval of reclassification and any related compensation approval of reclassification and any related compensation issues. Should such reclassification study involve the creation of a new classification, Council may approve the study results pending final review and approval of any new classification by the City Council.

Upon reclassification of a position to a class which has a higher salary range than the previous class, the City Manager shall determine whether the incumbent meets the requirements of the new class. If the incumbent does not meet the requirements of the new class, the City Manager shall determine the method and means of filling the position.

Reclassification shall not be used for the purpose of prejudicial promotions of disciplinary demotions.

12.3 TEMPORARY WORK IN A HIGHER CLASSIFICATION

- (a) Temporary assignments to higher classifications shall be permitted only in those classifications where in the judgment of the Department Head or designee, it is necessary to maintain proper and efficient departmental operations. An employee specifically assigned in writing to perform the duties of a higher classification for greater than five (5)

working days, shall be compensated for the duration of the out- of- classification assignment, of the salary provided for in Step "A" of the higher classification, whichever is greater, but not to exceed the top step. Said compensation shall begin on the sixth (6th) working day after the assignment to the higher classification.

- (b) The City recognizes that temporary work in a higher classification shall not be used as a device for circumventing regular positions.

ARTICLE XIII -- TRANSFER AND PROMOTION

13.1 TRANSFER

- (a) The City reserves the right to transfer employees in accordance with the needs of the City.
- (b) No bargaining unit employee shall be transferred as a punitive measure.

13.2 WORKSITE AND SHIFT TRANSFER

- (a) No bargaining unit employee shall be permanently transferred between worksites without ten (10) days prior written notice.
- (b) No bargaining unit employee shall be temporarily transferred without notice at least one day prior to said transfer, except in case of emergency.
- (c) Temporary worksite transfers shall be for a period not to exceed thirty (30) working days

13.3 VOLUNTARY POSITION TRANSFER

- (a) Voluntary position transfer for this section shall mean a change of employment from one position to another in the same classification in the same or different department.
- (b) When the City decides to fill a vacancy as defined below, employees holding regular full-time status in their classification, may request in writing to be reassigned should a position or shift assignment become

vacant in their classification. For a request to be given consideration under this section, it must be filed in accordance with paragraph b. Regular status for purposes of this section shall mean an individual who has successfully passed his/her probationary period in the class.

- (i) The City shall notice employees of openings created by vacancy within their classification. Regular employees who wish to submit a reassignment request to the notice may do so.
 - (ii) The employee requesting the reassignment, or in the case of multiple requests for the same position, the employee with the greatest amount of continuous work location seniority in the class shall be selected over other employees. A vacancy shall be deemed to exist when a position is unoccupied as a result of retirement, transfer, termination, reassignment or new funding.
- (c) The City agrees that it is desirable to offer transfer opportunities to qualified applicants from within the bargaining unit.
- (d) The City shall provide the Group with recruitment notices.

13.4 PROMOTION

- (a) Employees in the bargaining unit shall be considered for job vacancies within the bargaining unit which can be considered a promotion, providing they stand within the group included on the certification list for final consideration and are qualified by virtue of successful examination.
- (b) Employees must file a city employment application form for such vacancy within the specified filing period.
- (c) A notice of job vacancy shall be provided to the Group.
- (d) The city agrees that it is desirable to offer promotional opportunities to qualified applicants from within the bargaining unit.
- (e) An employee who applies for and is appointed to another position within the City shall have the right to return to his/her former position or to a comparable position if the former no longer exists. Such right shall exist for positions within and without the bargaining unit. The right of return shall be exercised prior to or within three (3) days of a notice of

rejection of probation, and only during the six (6) month probationary period.

- (f) In no event shall any employee be subject to the loss of his/her employment from the City for not successfully completing a promotional or transfer probationary period.

ARTICLE XIV -- SAFETY

14.1 SAFE CONDITIONS, EQUIPMENT AND DUTIES

- (a) The City and its employees agree to maintain a safe and healthful place of work and to maintain safety as well as sanitary conditions in accordance with all applicable state laws. Unsafe working conditions or hazardous jobs which jeopardize the health and safety of the employees shall be directed to the attention of the City. The City shall investigate the complaint and make any and all corrective measures as deemed necessary by the City. The employees and the Group shall cooperate fully in carrying out safe practices and in using safety devices provided by the City.
- (b) The City shall provide all needed and/or necessary safety equipment for the employee(s) to perform the normal tasks of their respective classification(s). These devices and equipment shall be customary safety appliances to safeguard the employees against danger to health, life and limb. The City will make available to the employees updated training programs on safety matters and issues as it deems necessary. Such training will be provided as the City deems necessary and will include, but shall not be limited to, training on first aid, cardiopulmonary resuscitation (CPR), toxins and corrective procedures in dealing with toxins.
- (c) Employees agree that the duties and tasks performed by them shall be performed in a safe and healthful manner.

14.2 TRAINING

- (a) Educational Training

Employees interested in professional training shall submit written requests through their immediate supervisor. Such requests shall be reviewed by the supervisor with recommendations to the department head. Funding for the training shall be subject to available funds within the department budget, or if necessary and possible, through approved budget adjustments.

(b) Training, Licenses And Certificates.

The City shall pay to reimburse employees for required or approved special training, licenses, and certificates, including renewals, so long as the employee successfully completes all phases of the training, license, and certification including passing required examinations.

- (i) Training and testing shall be scheduled during employee's normal work day, if possible.
- (ii) When training and testing cannot be scheduled during employee's normal work day/hours, the employee's time shall be compensated.
- (iii) The City will provide necessary equipment and/or tools necessary for training and/or testing.

14.3 TUITION REIMBURSEMENT.

The City agrees to reimburse employees for the cost of tuition, books, and fees, excluding parking, up to a maximum of \$750.00 per semester or per quarter not to exceed \$1,500.00 per calendar year. This section incorporates section 2.41.30 of the City Code except to limit § G to one (1) year and omit § H.

ARTICLE XV -- REDUCTION IN FORCE

15.1 RESIGNATION

- (a) An employee wishing to leave the classified service in good standing shall file a written resignation with the department head at least two (2) weeks before leaving the service, stating the effective date and reasons for leaving. The resignation shall be forwarded to the City Manager with

a statement by the department head as to the resigning employee's service performance and other pertinent information concerning the cause for resignation. Failure of the employee to give the required notice shall be entered on the service record of the employee and may be cause for denial of future employment with the City. The resignation of an employee who fails to give notice shall be reported immediately by the department head to the City Manager.

- (b) When a Friday is observed as a designated holiday for applicable employees, the resigning employee shall be paid for such Friday, provided the employee works at least one (1) day following the holiday prior to service separation.

15.2 DISMISSAL

- (a) Regular full-time employees may be dismissed at any time for cause by the City Manager. The affected employee shall be notified in writing at least five (5) calendar days prior to the effective date of dismissal to allow implementation of the pre-disciplinary and appeal processes, except for dismissal based on emergency circumstances, in which case the employee may be released immediately, but this shall not affect the employee's due process rights.

15.3 LAYOFF

Non-Discrimination In Work Force Reduction

Layoffs and demotions which result from a reduction in force shall be made without regard to an employee's race, color, creed, national origin, religion, gender, sexual orientation, age, or physical handicap.

Layoff Plan

In the interest of employees who may be adversely affected by a general layoff arising from the need to reduce the work force, the City may first solicit volunteers for alternative measures, such as early retirement, demotion, job sharing, reduced work hours and the like, in order to reduce the impact upon employees, so long as it is in the City's best interest to take such measures.

Abolition of Positions

The City Council may abolish any position in City service when, in Council's judgment, such action becomes necessary. Employees transferred, demoted or laid off because of abolition of positions shall receive written notice of such fact but shall not have the right of appeal in such cases. Employees transferred or demoted because of the abolition of a position or positions shall receive written notice of such fact thirty (30) days prior to the City's action. The employee shall not have a right of appeal in such cases. When a position is abolished the affected employee(s) shall be transferred to a comparable classification. If no comparable classification is available, the reduction in force procedures articulated in § 6 of this Article shall be utilized.

Layoff Area and Priority

The City Manager, in consultation with the City Council, shall determine the area(s) and position(s) in which layoffs may occur, including the identification of the department, division, work unit, class, and specific position. When a list of the affected areas and/or positions has been prepared, a copy shall be submitted to all affected and recognized employee organizations, and these regulations shall prevail as to the method and manner for implementing such layoffs.

- i. Employees holding temporary, seasonal, part-time, probationary, or provisional appointments shall be laid off first. Employees serving in a regular part-time position shall be laid off second. Employees in classified service who have completed probation (i.e. regular classified employees) shall be laid off last.
- ii. Should it become necessary to layoff regular classified employees, the person(s) laid off shall be those with the least service credit within an identified position in the affected department, if two (2) or more employees in this circumstance possess essentially the same amount of service credit, the City Manager shall determine which person shall be laid off on the basis of efficiency and effectiveness.

Layoff Notification

The City Manager shall give notice personally or in writing to the last known address to each employee affected by a layoff at least fifteen (15) working days prior to the effective date of such action. The notice shall include:

- i. The reason(s) for layoff;
- ii. Classes or positions to which the employees may transfer or demote within the department, if any;
- iii. Effective date of the action;
- iv. Rules regarding waiver of reinstatement and voluntary withdrawal from the reinstatement list; and
- v. Appeal right of the employee; excluding layoff resulting from abolition of the position.

Reduction in Force

Except in those instances where senior employees are not qualified to perform the remaining work duties seniority shall determine the order of layoff, which shall be in inverse order of seniority within each work classification, provided that any employee who is to be laid off and has previously served in a lower classification covered by this agreement, may exercise seniority rights to such a lower classification. Final determination of qualifications to perform remaining work duties shall be made by the City Manager, after discussion with the Group, and shall be a determining factor in allowing the displacement of a junior employee; however, where all factors considered are equal between employees, retention shall be on the basis of seniority.

Layoff of Bumped Employee

The employee laid off as a result of a displaced employee's reversion to a lower classification shall receive written notice of layoff not less than ten (10) calendar days prior to the effective date of the layoff.

The names of regular full-time classified employees who have been laid off due to reduction in force shall be placed on an appropriate reinstatement list according to the date of separation on the following basis; last employee laid off is the first employee on the list with other employees eligible in sequential order thereafter. Such list shall be used by the appointing authority when a vacancy for that class is to be filled before certification of any other employment list.

Reinstatement Lists

The eligibility of individuals on Reinstatement Lists shall extend for a period of one (1) year from the date of layoff. Eligibles not responding to written notification of an opening within five (5) working days shall have their names removed from the Reinstatement Lists.

Notice of Recall From Layoff

Notice shall be given by Return Receipt Requested Mail and shall specify the date for reporting to work, which shall be not more than twenty-one (21) days from the date the notice is received. Notice shall be deemed to have been received when sent to the last known address on file with the City, and attempted delivery or actual delivery is certified by the Postal Service. Upon receiving notice, the person on layoff shall have five (5) days to accept or decline the recall opportunity.

An employee who fails to respond in writing within five (5) days, refuses recall, or fails to report on the prescribed date within the twenty-one (21) days maximum, thereby waives all further right to recall and reinstatement as an employee. When recall is declined, the City will proceed to the next person on the reinstatement list and follow the same notice and response procedure. This process will continue through the list until recall needs are met or until the list is exhausted. Reinstated persons shall receive the following upon return to service:

- i. Retention of regular full-time service length accrued as of date of layoff.
- ii. The salary for the classification in effect as of the date of return, at the same step level as the date of layoff, not to exceed the top step.

The accrual rate of vacation and sick leave in effect for the employee's service length and class at the time of rehire, but insurance contributions shall be at the level of a new employee. All other benefits and programs shall be consistent with those provided to new hires.

Resignation In Lieu Of Recall

An employee who elects to resign in lieu of layoff, while laid off shall forfeit all rights to reinstatement, and shall be entitled only to those rights under normal separation of service.

ARTICLE XVI -- MISCELLANEOUS

16.1 FULL UNDERSTANDING, MODIFICATION, WAIVER

- (a) The parties jointly represented to the City Council that this Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein.
- (b) Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its rights and agrees that the other shall not be required to meet and confer with respect to any subject or matter covered herein, nor as to wages or fringe benefits during the period of the term of this Memorandum. The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the term of this agreement with respect to any subject matter within the scope of the meeting and conferring for a proposed Memorandum of Understanding between the parties.

16.2 SEPARABILITY OF PROVISIONS

Should any provision of the Memorandum of Understanding be declared illegal by final judgment of a court of competent jurisdiction, such invalidation of such provisions shall not invalidate the remaining portions thereof; and such remaining portions shall remain in full force and effect for the duration of the Memorandum of Understanding.

16.3 NO STRIKE CLAUSE

During the term of this agreement, neither the Group nor its agents, for any reason, will authorize, institute, and condone or engage in a work close down, work stoppage, strike or any other interference with the work and statutory functions of obligations of the City.

16.4 NO LOCKOUT

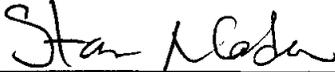
No lock out of employees shall be instituted by the City during the term of this agreement.

16.6 AGREEMENT

This Agreement shall be in force from April 1, 2018, to March 31, 2020. This memorandum of understanding is hereby executed this 10th day of July, 2018, by the Employer-Employee Representatives whose signatures appear below on behalf of their respective organizations.

Representatives whose signatures appear below on behalf of their respective organizations.

FOR THE CITY:



Stan Nader
Mayor
City of Lincoln



Gabriel Hydrick
Mayor ProTempore
City of Lincoln

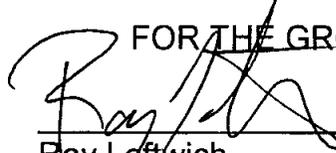


DOUG LEE
INTERIM CITY MANAGER
City of Lincoln

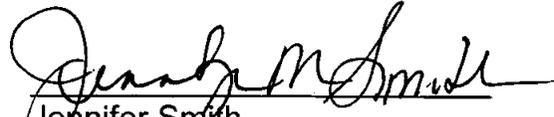


Kristine Mollenkopf
City Attorney
(As To Form Only)

FOR THE GROUP:



Ray Leftwich
Representative



Jennifer Smith
Representative