

**RESOLUTION NO. 2018-23**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, ADOPTING A COMPREHENSIVE POLICY PERTAINING TO COMMUNICATIONS AND RELATIONS BETWEEN THE CITY OF RANCHO PALOS VERDES AND ITS EMPLOYEES**

WHEREAS, Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Section 3500 *et seq.*) was enacted for the purpose of promoting full communication and improved employer-employee relations between public employers and their employees by establishing uniform and orderly methods of communication between employees and the public agencies by which they are employed; and,

WHEREAS, Government Code Section 3507 empowers a city to adopt reasonable rules and regulations for the administration of employer-employee relations after consultation in good faith with representatives of its employee organizations regarding such proposed rules and regulations; and,

WHEREAS, there is a need to clarify and establish policies and procedures to determine Appropriate Employee Units, to recognize Employee Organizations as representatives of the employees in an employee unit, and to provide for changes thereof; and,

WHEREAS, from time to time, the City or an Employee Organization may desire to add classes or to delete classes from a recognized unit; and,

WHEREAS, the City has recognized the Rancho Palos Verdes Employees Association (RPVEA) as the authorized representative for the Competitive Unit which is comprised of non-management, full-time employees; and,

WHEREAS, the City may be requested to recognize other Employee Organizations to represent employees in the aforementioned employee unit in their employer-employee relations with the City; and,

WHEREAS, the Municipal Employee Relations Representative of the City of Rancho Palos Verdes ("City"), as defined herein below, has met and conferred in good faith with the employee representatives of the City's Recognized Employee Organization, as hereinafter defined, regarding the preparation of reasonable rules and regulations for the administration of employer-employee relations in the form of a new and complete Employer-Employee Relations Resolution; and,

WHEREAS, the City Council believes that it is in the best interests of the City and its employees to adopt a comprehensive and complete Employer-Employee Relations Resolution.

NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF RANCHO PALOS VERDES, CALIFORNIA, DOES ORDAIN AS FOLLOWS:

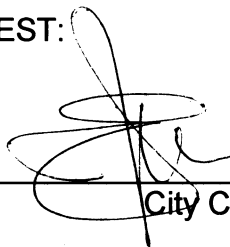
1. Pursuant to Government Code Section 3500, et seq., the City Council hereby adopts a policy, as set forth in Exhibit "A" attached hereto and incorporated by reference, which will provide orderly procedures for the administration of employer-employee relations between the City and its employee organizations.

2. This resolution shall take effect immediately upon adoption.

PASSED, APPROVED, AND ADOPTED this 17<sup>th</sup> day of April 2018.


  
\_\_\_\_\_  
Mayor

ATTEST:

  
\_\_\_\_\_  
City Clerk

State of California                    )  
County of Los Angeles            ) ss  
City of Rancho Palos Verdes       )

I, Emily Colborn, City Clerk of the City of Rancho Palos Verdes, hereby certify that the above Resolution No. 2018-23, was duly and regularly passed and adopted by the said City Council at a regular meeting thereof held on April 17, 2018.

  
\_\_\_\_\_  
City Clerk

## **ARTICLE I. GENERAL PROVISIONS**

### **Section 1. Title of the Resolution**

This Resolution shall be known as the Employer-Employee Relations Resolution of the City of Rancho Palos Verdes.

### **Section 2. Statement of Purpose**

2.1 This Resolution is adopted as authorized under Chapter 10, Division 4, Title 1 of the California Government Code (Sections 3500 *et seq.*), entitled the Meyers-Milias-Brown Act ("MMBA"), to provide reasonable, uniform and orderly procedures for the administration of employer-employee relations between the City and its employees, procedures for the recognition and/or decertification of employee organizations, procedures for determining appropriate units of representation and/or modifying such units, and a reasonable, uniform and orderly method for the resolution of questions regarding wages, hours, and other terms and conditions of employment of City employees. This Resolution rescinds and supersedes all previous resolutions pertaining to employer/employee relations, with the exception of any duly adopted Personnel Rules, Memorandum of Understanding, Tentative Agreements, and Side Letter Agreements.

### **Section 3. Definitions**

Except as otherwise specifically provided below, the terms used in this Resolution shall be defined in the same way as such terms are defined in the MMBA. In addition, the following definitions are adopted for terms used in this Resolution.

3.1 "Appropriate unit" or "Employee unit of representation" means a unit of employee classes or positions, established pursuant to Article II hereof.

3.2 "City" shall mean the City of Rancho Palos Verdes, a general law city and municipal corporation, and where appropriate herein, "City" also refers to the City Council, the governing body of said City, or any duly authorized representative of the City of Rancho Palos Verdes.

3.3 "Confer in good faith": See "Meet and Confer in Good Faith."

3.4 "Confidential Employee" means any employee who is required to develop or present management positions with respect to meeting and conferring or whose duties normally require access to confidential information which contributes significantly to the development of those management positions.

3.5 "Consult in Good Faith" or "meet and consult in good faith" means to communicate in writing or, if requested by the employee organization within the time limits set by the Municipal Employee Relations Representative (also referred to as "MERR"), orally, for the purpose of presenting and obtaining views and advising of intended actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the required scope of the meet and confer

process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a memorandum of understanding, nor is it subject to Article IV hereof.

3.6 "Days" means calendar days unless otherwise stated.

3.7 "Employee" means any person employed by the City in a position approved in the City's allocated positions and compensation plan, as approved by the City Council, except in a position designated in that plan as temporary or part-time.

3.8 "Employee Organization" or "Recognized Employee Organization" means any employee organization formally acknowledged by the City as an employee organization that represents the City's employees.

3.9 "Employee Representative" means the authorized representative of a Recognized Employee Organization or an Exclusively Recognized Employee Organization.

3.10 "Employee unit of representation" or "appropriate unit" means a unit of employee classes or positions, established pursuant to Article II hereof.

3.11 "Employer-employee relations" means the relationship between the City and its employees and their employee organization(s), or when used in a general sense, the relationship between City management and individual employees or employee organization(s).

3.12 "Exclusive Recognized Employee Organization" means a sole employee organization certified as the representative of all employees in a unit or units, whether or not those employees are its members, and having the exclusive right and duty to meet and confer in good faith on behalf of said employees concerning statutorily required subjects pertaining to unit employees and thereby assuming the corresponding obligation of fairly representing said employees. An Exclusively Recognized Employee Organization may not be challenged by another employee organization within twelve (12) months of initial recognition.

3.13 "Fiscal Analysis" means the City's Department of Finance shall prepare a fiscal impact analysis of any tentative agreement, a proposed memorandum of understanding, or a proposed amendment to a memorandum of understanding unless the City Council directs that a fiscal impact analysis shall not be obtained. If the City Council so directs, the fiscal impact analysis may be reviewed by an independent certified accountant who is not a public employee.

3.14 "Filing Period" means the period between November 1st and December 31st of every year following the adoption of this Resolution during which Employee Organizations may submit petitions to be recognized, decertified, or modified, or the period within which an Employee Organization or the City may propose to modify any existing unit of representation.

3.15 "Impasse" means that the representatives of the City and a Recognized Employee Organization or Exclusively Recognized Employee Organization have reached a deadlock or point in their meeting and conferring in good faith at which differences in positions on matters to be included in a memorandum of understanding or on more general mandatory bargaining matters within the scope of representation, and concerning that which they are required to meet and confer, are so substantial or prolonged that future meetings would be futile.

3.16 "Lead Negotiator" means the person in charge of the City's negotiating team when a tentative agreement, a proposed memorandum of understanding, or a proposed amendment to a memorandum of understanding is to be presented to the City Council. The City's Lead Negotiator may not be a City employee in negotiations for a tentative agreement for a memorandum of understanding or in negotiations of a memorandum of understanding. In matters where a tentative agreement, a proposed memorandum of understanding, or a proposed amendment to a memorandum of understanding is to be presented to the City Council, in addition to the Lead Negotiator, the City Manager may select members of the City's negotiation team and present them to the City Council for consent.

3.17 "Management Employee" means any employee in a position having significant responsibilities for formulating, administering or managing the implementation of City policies and programs through independent judgment, including, but not limited to, the exercise of discretionary authority to develop and modify institutional goals and priorities, including but not limited to the City Manager, Deputy City Manager, all Department Heads, Deputy Director of Community Development, Deputy Director of Finance, Deputy Director of Public Works, Deputy Director of Recreation & Parks, Building Official, City Clerk, Human Resources Manager, Information Technology Manager, and Principal Civil Engineer.

3.18 "Mediation or Conciliation" means the efforts of an impartial third person or persons functioning as an intermediary to assist the parties in reaching a voluntary resolution to impasse, through interpretation, suggestion and advice. Mediation and conciliation are interchangeable terms.

3.19 "Meet and Confer in Good Faith" or "Confer in Good Faith" means performance by duly authorized City and Recognized Employee Organization representatives of their mutual obligations. The City and a representative of a Recognized Employee Organization or Exclusively Recognized Employee Organization shall have the mutual obligation personally to meet within the time periods established by Section 6 of this Resolution upon request, exchange information on matters within the scope of representation, including wages, hours and other terms and conditions of employment, in a good faith effort to 1) reach agreement on those matters within the authority of such representatives, 2) freely exchange information, opinions and proposals, and 3) reach agreement in the form of a memorandum of understanding, on what will be recommended to the City Council on those matters within the decision making authority of the City Council. This does not require either party to agree to a proposal or to make a concession.

3.20 "Memorandum of Understanding" means a written document jointly prepared by the City's Municipal Employee Relations Representative, or designee(s), and a Recognized Employee Organization or Exclusively Recognized Employee Organization enumerating any agreement reached as the result of meeting and conferring on matters within the scope of representation, and the same signed by the parties involved and ratified by the relevant bargaining unit and approved by the City Council.

3.21 "Municipal Employee Relations Representative" or "MERR" means the City's principal representative in all matters of employer-employee relations with authority to meet and confer on matters within the scope of representation. The City Council hereby designates the City Manager as the MERR who is hereby authorized to delegate such duties and responsibilities. Where a tentative agreement, a proposed memorandum of understanding, or a proposed amendment to a memorandum of understanding is to be presented to the City Council; in addition to the City's Lead Negotiator as defined above, the City Manager may select the members of the negotiations team and present them to the City Council for consent.

3.22 "Professional Employee" means any employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction.

3.23 "Proof of Employee Support" means (1) an authorization card recently signed and personally dated by an employee, provided that the card has not been subsequently revoked in writing by the employee (2) a verified authorization petition or petitions recently signed and personally dated by an employee, or (3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as Proof of Employee Support for any employee organization. The only authorization which shall be considered as Proof of Employee Support hereunder shall be the authorization most recently signed by an employee within ninety (90) days prior to the filing of a petition.

3.24 "Recognized Employee Organization" means an Employee Organization that has been acknowledged by the Municipal Employee Relations Representative as an Employee Organization that represents employees of the City. The rights accompanying recognition include the right to consultation in good faith by all Recognized Employee Organizations.

3.25 "Scope of Representation" means all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order, as set forth in Section 5.

3.26 "Supervisory Employee" means any employee who has authority, in the interest of the City, to hire, transfer, suspend, lay off, recall, promote, discharge, assign,

reward, or discipline employees, or the responsibility to assign work and direct them, adjust their grievances, or effectively to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

#### **Section 4. Employee Rights**

4.1 Subject to the requirements of the law and Section 5 below, employees shall have the following rights:

4.1.1 To form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters within the scope of representation, in accordance with this Resolution.

4.1.2 To refuse to join or participate in the activities of employee organizations and to represent themselves individually in their employment relations with the City.

4.1.3 To be free from the interference, intimidation, restraint, coercion, or discrimination by the City, any employee organization, or any other employee because of the exercise of these rights.

4.2 Professional Employees shall not be denied the right to be represented separately from non-professional employees by an employee organization consisting of such Professional Employees.

4.3 Management and/or Confidential Employees shall not represent any employee organization which represents other non-Management or non-Confidential employees of the City, on matters within the scope of representation, unless as permitted by the City of Rancho Palos Verdes Personnel Rules, and Management and/or Confidential Employees may not engage in any activity with or on behalf of any employee organization which would result in an actual or apparent conflict of interest between their official duties and responsibilities of employment and their personal interests in labor relations, as determined by the MERR.

#### **Section 5. City Responsibilities and Rights**

5.1 To ensure that the City is able to carry out its functions and responsibilities imposed by law, the City has and will retain the exclusive right to manage and direct the performance of City operations and the work force performing such operations. Among the rights which are reserved to the City are the following:

5.1.1 To determine the merits, necessity, organization, expansion, or diminishment of any operation, service, or activity conducted by the City;

5.1.2 To determine and change the facilities, methods, means, and personnel by which City operations are to be conducted;

5.1.3 To determine and change the number of locations, relocations, and types of City operations and the processes and materials to be employed in carrying out said operations, including but not limited to, the right to subcontract any work or operation;

5.1.4 To determine the size, assignments, and composition of the employee work force, to determine employee job classifications and contents thereof, and to assign work to employees in accordance with requirements as determined by the City;

5.1.5 To relieve employees from duty because of lack of work, lack of financial resources, or other non-disciplinary reasons;

5.1.6 To hire, transfer, promote, and discipline employees in accordance with the City's Personnel Rules;

5.1.7 To determine policies, procedures and standards for the selection, training and promotion of employees;

5.1.8 To establish employee performance standards including, but not limited to, quality and quantity standards;

5.1.9 To maintain the efficiency of governmental operations;

5.1.10 To take any and all necessary actions to carry out the City's operations in emergencies;

5.1.11 To exercise complete control and discretion over the City's organization and the technology of performing its work and services; and

5.1.12 To establish reasonable work and safety rules and regulations to maintain the efficiency and economy desirable in the performance of City operations.

5.2 The City, in exercising these rights and operations, will not discriminate against any employee because of membership or non-membership in any employee organization.

## **Section 6. Meeting and Conferring**

6.1 The City, through its representative(s), shall meet and confer in good faith with Employee Representative(s) of any Recognized Employee Organization or Exclusively Recognized Employee Organization regarding matters within the scope of representation for its members or for all employees, whichever applies, in the unit for which such organization is recognized.

6.2 Where a Recognized Employee Organization or Exclusively Recognized Employee Organization desires to meet and confer with the City, through its Employee



Representative(s), on matters within the scope of representation, said organization shall make a request in writing and specify the subjects to be discussed.

6.3 The Recognized Employee Organization or Exclusively Recognized Employee Organization shall endeavor to submit any and all request(s) to meet and confer on matters within the scope of representation that have a fiscal impact and are not currently accounted for in the current budget in the manner specified below:

6.3.1 By March 15<sup>th</sup>, if it intends to have the requested item(s) considered for the budget for the next fiscal year, or, if there is a Memorandum of Understanding in existence between the parties, for the fiscal year following the expiration date of the Memorandum of Understanding (MOU), where March 15<sup>th</sup> immediately precedes the commencement of said fiscal year.

6.3.2 If a Recognized Employee Organization or Exclusively Recognized Employee Organization fails to submit, or to request a reasonable extension of time to submit, written requests by March 15<sup>th</sup>, the City shall send written notice requesting said employee organization to submit its written requests.

6.3.3 Promptly after such written requests have been made, a meeting shall be arranged at a time and place mutually satisfactory to the parties involved.

6.3.4 It is the goal of the City that the meet and confer process discussed in this Section 6.2 be completed by May 31<sup>st</sup> immediately preceding the commencement of the fiscal year in which the changes and/or requests are to become effective.

6.4 Where the City proposes to take action on matters regarding wages, hours, and other terms and conditions of employment within the scope of representation, whether such action be by ordinance, resolution, rule, or regulations, reasonable written notice shall be given to each Recognized Employee Organization and each Exclusively Recognized Employee Organization affected thereby, and each shall be given the opportunity to meet and confer with the City, through its representative(s). In cases of emergency when the City Council determines that an ordinance, resolution, rule or regulation must be adopted immediately without prior notice or meeting with any Recognized Employee Organization or Exclusively Recognized Employee Organization, the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of same.

6.4.1 In the event the City gives notice of an anticipated action pursuant to this Section, the City may specify in said notice a reasonable period of time within which the parties should endeavor to complete the meet and confer process.

6.5 If a tentative agreement is reached by the authorized representatives of the City and Employee Organization and ratified by the Employee Organization, the City Council shall vote to accept or reject the tentative agreement within thirty (30) days of the date it is first considered at a duly noticed public meeting but only after the tentative agreement has been placed on the agenda at a minimum of two City Council meetings

that are at least two weeks apart. If implementation of this requirement would result in the Council failing to act on a tentative agreement within thirty (30) days, the City Council may waive this requirement or call the second meeting as a special meeting within the thirty (30) day period. A tentative agreement shall not be placed on the City Council's consent calendar. If the City Council accepts the tentative agreement, the parties shall jointly prepare a written Memorandum of Understanding, signed by the City's representatives and the duly authorized Employee Representatives, which shall be brought back for approval by the City Council. Said Memorandum of Understanding shall not be binding until approved by the City Council.

6.6 If an agreement is reached by the representatives of the City and the employee representatives, all agreed matters shall be incorporated as joint recommendations to the City Council in a written Memorandum of Understanding signed by the City's representatives, and the duly authorized employee representatives. Said Memorandum of Understanding shall not be binding until approved by the City Council.

6.7 Publication of Accepted Meet and Confer Proposals. If a meet and confer proposal relating to a tentative agreement, memorandum of understanding, or an amendment to a memorandum of understanding is accepted by the party to which it is presented, the proposal and the fiscal impact analysis shall be posted on the City's website.

## **Section 7. Consult or Consultation in Good Faith**

The City, through its representatives, shall consult in good faith with representatives of recognized and exclusively recognized employee organizations prior to the modification of any rules and regulations for the administration of employer-employee relations, including any amendments to this Resolution.

## **ARTICLE II. REPRESENTATION PROCEEDINGS**

### **Section 8. Employee Unit of Representation**

8.1 The City has investigated and considered the services performed by its employees, their working conditions, and job duties, and the City's need to maintain an efficient operation while providing sound employer-employee relations and the units of representation historically recognized by the City. The City recognized the Rancho Palos Verdes Employees Association ("Association") on October 18, 2011 as the exclusive employee organization for the designated non-management employees of the City for purposes of employer-employee relations under the MMBA and regulations of the Public Employment Relations Board ("PERB")(Cal Code Reg. Section 31001-32997).

8.2 Additional, different or modified employee units of representation may be created by action of the City Council as it deems appropriate, upon the City's own written notice given to the appropriate employee organization or upon a petition filed by an employee organization pursuant to Section 9 of this Resolution. In making its determination, the City Council will investigate and consider the following factors:

8.2.1 Whether and which employees share a similar community of interests, kinds of work performed, types of qualifications required, and general working conditions;

8.2.2 The City's needs to maintain an efficient operation;

8.2.3 The units of representation historically recognized by the City, except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized;

8.2.4 Consistency with the organizational patterns of the City;

8.2.5 Effect of differing legally mandated impasse resolution procedures;

8.2.6 Number of employees and classifications, and the effect on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units; and

8.2.7 Other matters considered relevant by the City to promoting sound employer-employee relations and efficient operation of the City.

## **Section 9. Requirements For and Process of Becoming an Exclusively Recognized Employee Organization**

9.1 Only one employee organization shall be recognized as an employee organization representing employees in a unit and, after the effective date of this Resolution, only exclusive recognition on behalf of a unit established in accordance with this Resolution or amendment hereto shall be conferred.

9.2 An employee organization which was a Recognized Employee Organization immediately prior to the effective date of this Resolution shall continue to be so recognized under this Resolution in the unit for which it had been recognized, subject to this Article II, Section 9, and Sections 14 through 16 herein.

9.3 Process of Becoming Recognized. An employee organization seeking to become certified as the Exclusively Recognized Employee Organization representing employees in an appropriate unit shall file a petition ("Recognition Petition") with the MERR during the Filing Period. The Recognition Petition shall contain all of the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

9.3.1 Name and address of the employee organization;

9.3.2 Names and titles of its officers;

9.3.3 Names of employee organization representatives who are authorized to speak on behalf of the organization;

9.3.4 Names and addresses of no more than two (2) employee representatives to whom notices, if sent pursuant to this Resolution, will be deemed sufficient notice to the employee organization for any purpose;

9.3.5 A copy of the employee organization's current Constitution and Bylaws, which shall contain a statement that the employee organization has, as one of its primary purposes, the representation of employees in their employment relations with the City;

9.3.6 A statement whether the employee organization is a subordinate body of, or affiliated directly or indirectly in any manner with, any regional or state or international organization and, if so, the name and address of each such regional, state, national, or international organization;

9.3.7 A statement that the employee organization has no restriction on membership based on race, religious creed, color, national origin, ancestry, age, mental or physical disability, medical condition, marital status, sex or sexual orientation;

9.3.8 The job classifications or position titles of employees in the unit claimed to be appropriate and the approximate number of member employees therein;

9.3.9 A statement that the employee organization has in its possession Proof of Employee Support to establish that a majority of the employees in the unit claimed to be appropriate have designated the employee organization to represent them in their employment relations with the City. Such written proof shall be submitted for confirmation to the MERR or to a representative of the California State Mediation and Conciliation Service; and a request that the MERR formally acknowledge the employee organization as the Exclusively Recognized Employee Organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith.

## **Section 10. City Response to Recognition Petition for an Exclusively Recognized Employee Organization**

10.1 Upon receipt of the Recognition Petition, the MERR shall determine whether:

10.1.1 There has been compliance with the requirements of the Recognition Petition, in accordance with Section 9, and

10.1.2 The proposed representation unit is an appropriate unit, in accordance with Section 8.

10.2 If an affirmative determination is made by the MERR on the foregoing matters listed in Section 10.1, the MERR shall inform the petitioning employee organization, give written notice of the Recognition Petition to all the employees in the

unit and any other employee organization(s) representing any employee in the same unit, and take no action on said request for thirty (30) days thereafter.

10.3 If either of the foregoing matters listed in Section 10.1 are not affirmatively determined, the MERR shall deny the Recognition Petition and inform the petitioning employee organization of the reasons therefor in writing. The petitioning employee organization shall have seven (7) days to cure any defects in the Recognition Petition. All defaults must be cured, and a valid Recognition Petition must be submitted by the end of the Filing Period, unless the submission deadline is extended by the MERR, who shall not extend the cure period more than fifteen (15) days beyond the end of the Filing Period. Neither the MERR nor the City is obligated to assist the petitioning employee organization in curing the alleged defects to the Recognition Petition.

10.4 The petitioning employee organization may appeal such determination in accordance with Section 18.

### **Section 11. Open Period for Filing Challenging Petition to an Exclusively Recognized Employee Organization**

Within thirty (30) days of the date written notice was given to affected employees that a valid Recognition Petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the Exclusively Recognized Employee Organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the Recognition Petition being challenged), by filing a petition evidencing Proof of Employee Support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 9.3. If such challenging petition seeks establishment of an overlapping unit, the MERR shall call for a meeting on such overlapping Recognition Petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the MERR shall determine the appropriate unit or units in accordance with the standards in Section 8.2. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the MERR to amend their petitions to conform to such determination or to appeal such determination pursuant to Section 18.

### **Section 12. Granting Recognition to an Exclusively Recognized Employee Organization Without an Election**

If the Proof of Employee Support shows that a majority of the employees in the appropriate unit have designated the petitioning employee organization to represent them, and if no other employee organization files a challenging petition, the petitioning employee organization and the MERR shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy, and propriety of the Proof of Employee Support. If the neutral third party makes an affirmative determination, the MERR shall certify the petitioning employee organization as the Exclusively Recognized Employee Organization for the appropriate unit.

### **Section 13. Granting Recognition to an Exclusively Recognized Employee Organization Through an Election Process**

13.1 Upon the submission of valid Recognition Petitions of more than one employee organization for employees in the same or overlapping units, the MERR shall arrange for a secret ballot election to be conducted by the City Clerk or such other third party agreed to by the MERR and the concerned employee organization(s), in accordance with such party's rules and procedures, subject to the provisions of this Resolution. All employee organizations who have duly submitted Recognition Petitions which have been determined to be in conformance with this Resolution shall be included on the ballot. The ballot shall also reserve to employees the choice of representing themselves individually in their employment relations with the City. Employees entitled to vote in such election shall be those persons employed in regular, permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which ended at least fifteen (15) days before the date the election commences, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the Exclusively Recognized Employee Organization for the designated appropriate unit following an election or run-off election, if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast. The rules governing an initial election are applicable to a run-off election.

13.2 There shall be no more than one valid election under this Resolution pursuant to any Recognition Petition in a twelve (12) month period affecting the same unit.

13.3 In the event that the parties are unable to agree on a third party to conduct the election, the election shall be conducted by the California State Mediation and Conciliation Service. If a third party conducts the election, costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

13.4 A Recognized Employee Organization or Exclusively Recognized Employee Organization of the unit for which a decertification election is being conducted shall also appear on the ballot, unless within fourteen (14) days of receipt of the notice of the Decertification or Recognition Petition, or notice of the unit determined by the City Council, whichever is later, said employee organization provides written notice to the MERR that it does not intend to participate in the election. Notice of the intention not to participate in the election shall constitute withdrawal from representation of the unit effective the date the notice of intention not to participate in the election is received by the MERR.

13.5 The MERR shall announce the date of the election and the voting location or locations at least twenty-eight (28) days before the date of such election. Employees shall vote in person.

#### **Section 14. Procedure for Decertification of Exclusively Recognized Employee Organization**

14.1 A decertification petition alleging that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in an established appropriate unit ("Decertification Petition") may be filed with the MERR only during the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect for three (3) years or less, provided that a Decertification Petition may not be filed within twelve (12) months of initial recognition of an Exclusively Recognized Employee Organization. A Decertification Petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct, and complete:

14.1.1 The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

14.1.2 The name of the established appropriate unit and the incumbent Exclusively Recognized Employee Organization sought to be decertified as a representative of that unit.

14.1.3 An allegation that the incumbent Exclusively Recognized Employee Organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

14.1.4 Proof of Employee Support that at least thirty (30) percent of the employees in the established appropriate unit no longer desire to be represented by the incumbent Exclusively Recognized Employee Organization. Such proof shall be submitted for confirmation to the MERR or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a petition under this Section in the form of a Recognition Petition that evidences Proof of Employee Support of at least thirty (30) percent, that includes the allegation and information required under paragraph 14.1.3 of this Section, and otherwise conforms to the requirements of Section 9.

14.2 The MERR shall initially determine whether the Decertification Petition has been filed in compliance with the applicable provisions of this Resolution.

14.2.1 If the foregoing matters listed in Section 14.1 are not affirmatively determined, the MERR shall deny the Decertification Petition and inform the

petitioning employee organization of the reasons therefor in writing. The petitioning employee organization shall have seven (7) days to cure any defects in the Decertification Petition. Neither the MERR nor the City is obligated to assist the petitioning employee organization in curing the alleged defects to the Decertification Petition.

14.2.2 If the foregoing matters listed in Section 14.1 are affirmatively determined by the MERR, or if his/her negative determination is reversed on appeal, the MERR shall give written notice of such Decertification or Recognition Petition to the incumbent Exclusively Recognized Employee Organization and to unit employees. The MERR shall thereupon arrange for a secret ballot election to be held to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted within the same timeframe and under the same procedures as set forth in Section 13.

14.2.3 The petitioning employee organization may appeal such determination in accordance with Section 18.

14.3 During the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been for three (3) years or less, the MERR may give written notice of the city's specific intent to the affected employee organization, when the MERR has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent Exclusively Recognized Employee Organization, give notice to said organization and all unit employees that an election will be arranged and held by the MERR to determine that issue. In such event, any other employee organization may, within fifteen (15) days of such notice, file a Recognition Petition in accordance with Section 9.3, which the MERR shall act on in accordance with this Section.

14.4 If, pursuant to this Section, a different employee organization is formally acknowledged as the Exclusively Recognized Employee Organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

## **Section 15. Procedure for Modification of Established Appropriate Units**

15.1 Requests by employee organizations for modifications of established appropriate units ("Modification Petition") may be considered by the MERR. The Modification Petition shall be submitted during the Filing Period or the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect for three (3) years or less, whichever occurs later, shall be in the form of a Recognition Petition, and, in addition to the requirements set forth in Section 9.3, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 8. The MERR shall process the Modification Petition as any other Recognition Petition under this Resolution.



15.2 Proof of Support: The MERR will require proof of at least thirty (30) percent support among the affected employees if a pending representation petition by another employee organization overlaps the positions at issue in the unit modification petition.

15.3 At any time, the MERR may, by giving written notice of City's intent to the affected employee organization, propose that an established unit be modified. The MERR shall give written notice of the proposed modification(s) to any affected employee organization(s), and each employee within said affected unit or units, and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the MERR shall determine the composition of the appropriate unit or units in accordance with Section 8, and shall give written notice of such determination to the affected employee organizations.

15.3.1 The MERR's determination may be appealed in accordance with Section 18.

15.3.2 If a unit is modified pursuant to the written notice of the MERR hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the Exclusively Recognized Employee Organization for such new appropriate unit or units pursuant to Section 9.

## **Section 16. Procedure for Processing Severance Requests**

16.1 An employee organization may file a request to become the Recognized Employee Organization of a unit alleged to be appropriate that consists of a group of employees who are already a part of a larger established unit represented by another Recognized Employee Organization ("Severance Request"). The timing, form, and processing of the Severance Request shall be as specified in Section 15 for a Modification Petition.

16.2 Proof of Support: When an employee organization requests severance of classifications or positions to its established unit, the MERR will require proof of majority support of persons employed in the classifications or positions to be severed. The MERR may require proof of at least thirty (30) percent support among the affected employees. The MERR's determination may be appealed in accordance with Section 18.

## **Section 17. Amendment of Certification**

### **17.1 Employee Organization Petition**

17.1.1 A Recognized Employee Organization shall file with the MERR a petition to amend its certification or recognition ("Amendment Petition") in the event of a merger, change in affiliation, or transfer of jurisdiction.

17.1.2 The Amendment Petition shall be in writing, signed by an authorized agent of the employee organization, and contain the following information:

(a) The name, address and telephone number of the employee organization and the name, address and telephone number of the agent to be contacted;

(b) A brief description and the title of the established unit;

(c) A clear and concise statement of the nature of the merger, amalgamation, affiliation, or other change in jurisdiction, and the new name of the employee organization. The statement shall include the following information:

(1) Whether the new organization has the same structure as the former organization (e.g., eligibility for membership, dues/fees structure, continuation of the manner in which contract negotiations, administration and grievance processing will be effectuated), and if not, an explanation of the change(s) in structure;

(2) Whether the officers and representatives of the new organization are the same as the former organization, and if not, a specification of the changes in officers and/or representatives;

(3) Whether the power of the members to control the organization's agents is the same as it was in the former organization (e.g., input into contract proposals, contract ratification, frequency of membership meetings, preservation of the (former) organization's physical facilities, books, and assets, choosing/oversight of executive board members), and if not, a specification of what changes have been made; and

(4) Whether the organization's members were given an opportunity to vote on the change in status, and if so, a description of the voting process and results.

## 17.2 Review Process

17.2.1 Upon receipt of a petition filed pursuant to Section 17.1 above, the MERR shall conduct such inquiries and investigations, and hold such meetings as deemed necessary and/or conduct a representation election in order to decide the questions raised by the Amendment Petition.

17.2.2 The MERR may dismiss the Amendment Petition if the petitioner has no standing to petition for the action requested or if the Amendment Petition is improperly filed.

17.2.3 In determining whether to grant the Amendment Petition, the MERR will examine the following issues:

(a) Whether the new organization has the same or similar structure as the former organization;

(b) Whether the officers and representatives of the new organization are substantially the same as the former organization;

(c) Whether the power of the members to control the organization's agents are substantially the same; and

(d) Whether the organization's members were given an opportunity to vote on the change in status.

### 17.3 Determination

17.3.1 Unless the MERR finds that there is no substantial continuity of identity and representation between the former and new organizations, the MERR will issue an amendment of certification reflecting the new identity of the Exclusive Recognized Employee Organization. Such certification shall not be considered to be a new certification for the purpose of computing time limits pursuant to Section 14. The terms and conditions of a Memorandum of Understanding then in effect shall remain in effect until said Memorandum of Understanding expires.

17.3.2 If the MERR determines that there is no substantial continuity of identity and representation between the former and new organizations, the MERR shall order an election in conformance with Section 14.

17.3.3 The MERR's determination may be appealed in accordance with Section 18.

## **Section 18. Appeals**

18.1 Within fifteen (15) days of a final decision of the MERR, (i) an employee organization aggrieved by a determination of an appropriate unit or that a Recognition Petition (Sec. 9), Challenging Petition (Sec. 11), Decertification Petition (Sec. 14), Modification Petition (Sec. 15), Severance Request (Sec. 16), or Amendment Petition (Sec. 17) has not been filed in compliance with Article II; or (ii) employees aggrieved by a determination that a Decertification Petition (Sec. 14) or Severance Request (Sec. 16) has not been filed in compliance with Article II, may request to submit the matter to mediation by the State Mediation and Conciliation Service. In lieu thereof, or fifteen (15) days after such mediation proceedings, said employee organization or employees may appeal such determination to the City Council for final decision.

18.2 Appeals to the City Council shall be filed in writing with the City Clerk, and a copy thereof served on the MERR. The City Council shall commence to consider the matter within thirty (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining

the substance of the dispute, shall be final and binding. Any costs for the appeal shall be borne equally by the City and the employee organization.

### **ARTICLE III. ADMINISTRATION**

#### **Section 19. Submission of Current Information by Recognized Employee Organizations**

All Recognized Employee Organizations and Exclusively Recognized Employee Organizations shall advise the MERR in writing immediately of any changes in the information enumerated in Sections 9.3.1 through 9.3.9 within fourteen (14) days of such change.

Exclusively Recognized Employee Organizations that are party to an agency shop provision shall provide annually to the Employee Relations Officer and to unit members within 60 days after the end of its fiscal year the financial report required under Government Code Section 3502.5 (f) of the Meyers-Milias Brown Act.

#### **Section 20. Employee Organization Activities – Use of City Resources**

Access to City work locations and the use of City paid time, facilities, equipment and other resources by employee organizations and those representing them, shall be authorized only to the extent provided for in Memoranda of Understanding and/or administrative procedures, shall be limited to lawful activities consistent with the provisions of this Resolution that pertain directly to the employer-employee relationship and not to such internal employee organization business as soliciting membership, campaigning for office, or organization meetings and elections, and shall not interfere with the efficiency, safety, and security of City operations.

### **ARTICLE IV. IMPASSE PROCEDURES**

#### **Section 21. Initiation of Impasse Procedures**

If the meet and confer process has reached an Impasse, either party may initiate the Impasse procedures by filing with the other party a written request for an Impasse meeting, together with a statement declaring an Impasse and its position on all issues. An Impasse meeting shall then be scheduled promptly by the MERR. The purpose of such meeting shall be:

21.1.1 To review the position of the parties in a final effort to reach agreement on a Memorandum of Understanding; and

21.1.2 If the Impasse is not resolved, to discuss arrangements for the utilization of the Impasse procedures provided herein.

## **Section 22. Impasse Procedures**

Impasse procedures are as follows:

22.1 If the parties agree to submit the dispute to mediation, mediation will be conducted by a mediator from the California State Mediation and Conciliation Service, unless the parties agree to use another mediator. All mediation proceedings shall be private. The mediator shall make no public recommendation, nor take any public position at any time concerning the issues. If there is a cost for the services of a mediator, such costs shall be borne equally by the City and the employee organization.

22.2 If the parties, having so agreed to mediation, fail to resolve the dispute within thirty (30) days after the appointment of the mediator, the employee organization thereafter may request to submit the Impasse to fact-finding, as provided by state law.

22.3 If the parties do not agree to mediation, the employee organization may request to submit the Impasse to fact-finding, as provided in Section 23 below.

22.4 If the Impasse has not been resolved through fact-finding, or the employee organization fails to request fact-finding, the Impasse will be sent to the City Council, which shall then hold a public hearing on the impasse and take such action regarding the Impasse as it, in its discretion, deems appropriate as in the public interest, including but not limited to unilaterally implementing its last, best, and final offer, but shall not implement a memorandum of understanding. Any legislative action by the City Council on the Impasse shall be final and binding.

## **Section 23. Fact-Finding Procedures**

23.1 Upon failure to agree to, or upon failure to reach an agreement through, mediation, the employee organization may submit a written request to the MERR and the Public Employment Relations Board for a fact-finding panel in accordance with state law.

23.1.1 If the dispute was submitted to mediation, not sooner than thirty (30) days, but not more than forty-five (45) days, after the appointment of the mediator.

23.1.2 If the dispute was not submitted to mediation, not later than thirty (30) days following the date that either party provided the other with a written notice of an Impasse and request for an Impasse meeting.

23.2 The request for fact-finding shall be filed with the Public Employment Relations Board - Los Angeles Regional Office located at 700 N. Central Ave., Glendale, California 91203-3219, with a proof of service, containing a declaration signed under penalty of perjury with the following information: (1) the name of the declarant; (2) the county and state in which the declarant is employed or resides; (3) a statement that the declarant is over the age of 18 years and not a party to the case; (4) the address of the declarant; (5) a description of the documents served; (6) the method of service and a statement that any postage or other costs were prepaid; (7) the name(s), address(es)

and, if applicable, fax number(s) used for service on the party(ies); and (8) the date of service. The Public Employment Relations Board shall approve or disapprove all requests for fact-finding.

23.3 Within five (5) working days after notification from the Public Employment Relations Board that the fact-finding request is approved, (i) each party shall select a person to serve as its member of the fact-finding panel and notify the Public Employment Relations Board of its selection; The parties shall then select the chairperson by utilizing a strike procedure whereby each side strikes a member of a list provided by PERB until one is selected. Within five (5) working days after a chairperson is selected through this procedure, the parties may alternatively mutually agree upon another person to serve as chairperson. The strike procedure will be initiated by a coin toss by a member of the City witnessed by the employee organization. The costs for the services of the chairperson, including per diem fees, if any, and actual and necessary travel and subsistence expenses, shall be divided equally between the parties. Any other mutually incurred costs shall be divided equally between the parties. Any separately incurred costs for the panel member selected by each party shall be borne by that party.

23.4 Within ten (10) days of its appointment, the fact-finding panel shall meet with the parties or their representatives, either jointly or separately, and may make inquiries and investigations, hold hearings, and take any other steps it deems appropriate, including issuance of subpoenas requiring attendance and testimony and production of evidence.

23.5 Within thirty (30) days of its appointment, or upon agreement by the parties for a longer period, and if the dispute is not settled by the parties within said time period, the fact-finding panel shall make findings of fact and recommend terms of settlement, which shall be advisory only. In making its findings and recommendations, the fact-finding panel shall consider the following criteria:

23.5.1 State and federal laws that are applicable to the City;

23.5.2 Local rules, regulations, or ordinances;

23.5.3 Stipulations of the parties;

23.5.4 The interests and welfare of the public and the financial ability of the City;

23.5.5 Comparison of the wages, hours, and conditions of employment to employees performing similar services in comparable public agencies;

23.5.6 The consumer price index for goods and services, commonly known as the cost of living;

23.5.7 The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time,

insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment and all other benefits received; and

23.5.8 Any other facts which are normally or traditionally taken into consideration in making the findings and recommendations.

23.6 The fact-finding panel shall submit its findings and recommendations in writing to the parties prior to making them available to the public for the purpose of resolving the impasse. The City shall make the findings and recommendations available to the public within ten (10) calendar days after its receipt. If the Impasse has not been resolved within ten (10) calendar days after the City's receipt of the fact-finding panel findings and recommendations, then the Impasse shall be sent to the City Council, which shall then hold a public hearing on the Impasse and take such action regarding the Impasse as it, in its discretion, deems appropriate as in the public interest, including but not limited to unilaterally implementing its last, best, and final offer, but shall not implement a Memorandum of Understanding. Any legislative action by the City Council on the Impasse shall be final and binding, including but not limited to unilaterally implementing its last, best, and final offer.

## **ARTICLE V. MISCELLANEOUS PROVISIONS**

### **Section 24. Construction**

The City may adopt such rules, regulations and/or procedures necessary or convenient to implement the provisions of this Resolution and of the MMBA after consultation with affected Recognized Employee Organizations. Nothing in this Resolution shall be construed to deny any person or employee any rights granted by Federal or State laws. The rights, powers, and authority of the City in all matters, including the right to maintain any legal actions, shall not be modified or restricted by this Resolution.

### **Section 25. Unlawful Strikes**

Nothing in this Resolution shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations. Employees that engage in unlawful strikes may be subject to disciplinary action, up to and including termination.

### **Section 26. Severability**

If any provision or portion thereof contained in this Resolution, or the application thereof, to any person or circumstances is held to be unconstitutional, invalid, or unenforceable, the remainder of this Resolution and the application of such provision, or portion thereof, to other persons or circumstances, shall be deemed severable, shall not be affected, and shall remain in full force and effect.

## **Section 27. Notice**

Wherever written notice to either party is required by this Resolution, it shall be given by email and if to the City at 30940 Hawthorne Boulevard, Rancho Palos Verdes, California 90275, and to any employee organization at its last address furnished in writing to the City, by first class registered or certified mail, postage prepaid and shall be deemed to have been received on the third day immediately following the day it was mailed (excluding Saturdays, Sundays and holidays on which the offices of the City are closed). Service of notice by mail at the sender's option, may be given by hand delivery.