

RESOLUTION NO. 09-06

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF  
LANCASTER, CALIFORNIA APPROVING THE MEMORANDUM  
OF UNDERSTANDING (MOU) BETWEEN THE CITY AND  
LANCASTER CODE ENFORCEMENT OFFICERS ASSOCIATION

WHEREAS, the City Council is desirous of approving the Memorandum of Understanding between the City and Lancaster Code Enforcement Officers Association

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF LANCASTER DOES HEREBY RESOLVE, DETERMINE AND FIND AS FOLLOWS;

Section 1. Approving the Memorandum (MOU) between the City and Lancaster Code Enforcement Officers Association effective February 1, 2009.

Section 2. Any Resolutions in conflict with provisions stated herein shall be considered superseded by the provisions contained within this Resolution.

PASSED, APPROVED and ADOPTED this \_\_\_ day of \_\_\_\_\_, 2009, by the following vote.

AYES:

NOES:

ABSTAIN:

ABSENT:

ATTEST:

APPROVED:

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GERI K. BRYAN, CMC  
City Clerk  
City of Lancaster

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R. REX PARRIS  
Mayor  
City of Lancaster

STATE OF CALIFORNIA            )  
 COUNTY OF LOS ANGELES        ) ss  
 CITY OF LANCASTER             )

CERTIFICATION OF RESOLUTION  
 CITY COUNCIL

I, \_\_\_\_\_, \_\_\_\_\_ City of Lancaster, CA, do hereby certify that this is a true and correct copy of the original Resolution No. 09-06, for which the original is on file in my office.

WITNESS MY HAND AND THE SEAL OF THE CITY OF LANCASTER, on this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

(seal)

\_\_\_\_\_

MEMORANDUM OF UNDERSTANDING  
(MOU)

CITY OF LANCASTER

AND THE

LANCASTER CODE ENFORCEMENT ASSOCIATION

EFFECTIVE

February 1, 2009

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THROUGH

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December 31, 2010

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## ARTICLE 1 - PREAMBLE

This Memorandum of Understanding (hereinafter referred to as "MOU") is entered into by and between the City of Lancaster (hereinafter referred to as "City") and the Lancaster Code Enforcement Association (hereinafter referred to as the "Union" or "Association"). It is the purpose of this MOU to promote and provide for harmonious relations, cooperation and understanding between Management and the employees covered by this MOU; to clarify City ordinances, rules and regulations and administrative procedures, thereby providing an orderly and equitable means of resolving any misunderstanding or differences which may arise under this MOU; and to set forth the understanding of the parties reached as a result of good faith meeting and conferring regarding the wages, hours and other terms and conditions of employment of the employees covered by this MOU. This article is not subject to the grievance procedure.

## ARTICLE 2 – RECOGNITION

The City recognizes the "ASSOCIATION" as an organization representing those employees in the Code Enforcement Officer classifications. Recognition is in accordance with Resolution No. 83-10.

## ARTICLE 3 – RIGHTS

### SECTION 1: Rights of Employees

The parties mutually recognize and agree fully to protect the rights of all employees covered by this MOU to join and participate in the activities of the Union and corresponding rights of covered employees to refrain from joining and participating in the activities of the Union, and all other rights guaranteed by law. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against because of the exercise of these rights or any other rights prescribed by law. This section is not subject to the grievance procedure.

## SECTION 2: Rights of Management

The parties mutually recognize the right of Management as prescribed by law. See City Rights, Section 15.02 Personnel Rules and Regulations for full listing. This section is not subject to the grievance procedure.

## SECTION 3: Equal Employment

The provision of this MOU shall be applied to all represented employees without favor or discrimination because of race, color, sex, age, national origin, handicap, political or religious opinions, sexual orientation, or affiliations. This section is not subject to the grievance procedure.

## SECTION 4: Rights of Employees to Representation

The rights described herein do not in any way abridge the rights of a covered employee who desires to represent himself or herself in employee relations with the City, or through the Union, or through any person of his/her choice.

## SECTION 5: Union Rights

### A. Use of Bulletin Boards

The City shall provide for the Union's use, a designated bulletin board for posting official Union notices within their work area. Employees in the bargaining unit will have access to the bulletin board during regular business hours, subject to the following conditions:

- 1) All postings must contain the date of posting and the identification of the organization, and
- 2) The Union will not post information which is defamatory, derogatory or obscene. Such posting are subject to immediate removal and the loss of the right to post for a period not to exceed 90 days.

### B. Access to Facilities

All Union business will be conducted by employees and Union representatives outside of established work hours.

Nothing herein shall be construed to prevent a Union representative or an employee from contacting the Human Resources Director or other management representatives regarding personnel related matters during work hours.

The Union may schedule after work hours meetings in the City Conference rooms or the City Council Chambers at such times these facilities are not in use by submitting a written request to the appropriate City administrator which shall include date, time, number of people expected, general reason for the meeting, and an acknowledgment that no food or beverages will be consumed in City facilities. Approval will be granted in the same manner as it is granted to other organizations.

#### ARTICLE 4 – STEWARDS

The City recognizes the right of the Union to designate one job steward and one alternate from the bargaining unit. The authority of the job steward so designated by the Union shall include: investigating and processing grievances on non-work time. In the event the steward cannot process or investigate a grievance on non-work time he/she shall obtain the prior authorization of the Human Resources Director to use his/her work time for such activities. A Steward must complete a Union Leave form when requesting to conduct union business during work hours.

#### ARTICLE 5 – COMPENSATION

##### SECTION 1: Salaries

- A. The step plan for represented employees shall provide for eleven steps (A thru K) with a 2 1/2% increment between steps. Steps J and K will be incentive steps. Represented employees shall meet the same eligibility requirements as other employees for advancement to the incentive steps.
- B. Effective the first full pay period in July, 2009 all classifications will receive a 3.0% salary increase. Effective the first full pay period in July, 2010 all classifications will receive a 1.0% salary increase.

- C. A list of classifications and a salary schedule is provided in Appendix A to this agreement. Wage adjustments will become effective the first day of the first full pay period following the date of eligibility.
- D. Authorized overtime shall be compensated for at the rate of one and one-half (1 1/2) times the regular hourly rate of pay. All work (or sick, vacation, holiday or floating holiday leave) in excess of 40 hours per work week shall be considered overtime. Overtime will be distributed as equitably as possible.
- E. Overtime work to meet an emergency situation does not require advance approval, but shall be certified by the division head before being credited to the employee.

## SECTION 2: Insurance

### A. Life

The City shall provide represented employees with a minimum of \$50,000 or one times annual salary, whichever is greater, life insurance protection through its insurance provider. Employees may purchase additional insurance at the employee's cost where the carrier permits. The City reserves its right to determine the provider of life insurance.

### B. Medical

The City shall pay 100% of the employee's premium to a comprehensive medical and health insurance plan and, up to a maximum of 75% per month for all regular and probationary represented employees electing dependent health insurance coverage. The City shall pay 100% of the represented employee's premium to a dental plan for employees covered by this MOU. Represented employees shall be able to enroll their dependents in the dental plan at their option at their expense. The City shall pay 100% of the represented employee's premium to a vision plan for employees and their dependents. The City reserves its right to determine the provider of health, dental, and vision insurance.

C. Long Term Disability

The City shall continue to contribute and pay 100% for the employee's long term disability insurance premium which shall provide the employee with 60% of the employee's base monthly salary pursuant to the requirements and conditions set forth in the insurance policy with the City. The City reserves its right to determine the provider of long term disability insurance.

D. Supplemental

The City will continue to offer a Section 125 Benefit Plan and provide supplemental insurance products for employees to expand their benefits based on individual needs. Enrollment in supplemental plans is voluntary and the employee is responsible for all premium payments through bi-weekly payroll deductions.

E. Retiree Medical

All regular Represented employees, hired before July 1, 2009, who retire from City service, shall be eligible for a discount on the employee's portion of the medical, dental, and vision premiums. Discount Schedule:

Age/Years of Service

	5	6	7	8	9	10	11	12	13	14	15+
55	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
56	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
57	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
58	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
59	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
60	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
61	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
62	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
63	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
64	50%	55%	60%	65%	70%	75%	80%	85%	90%	95%	100%
65+ older					70%	75%	80%	85%	90%	95%	100%

All regular represented employees hired on or after July 1, 2009, shall be eligible for a City contribution of \$175.00 per month to the Retiree Health Savings Plan. The money in this account can be used to pay health care costs upon retirement.

Represented employees may maintain dependent coverage in the plan at their option and at their expense.

F. Long Term Care

The City will contribute up to \$90.00 per month towards the Public Employees Retirement System Long Term Care Insurance premium for an employee only. In order to receive this benefit the employee must be enrolled or enroll during the annual open enrollment period in April. Upon retirement after 6/27/04 this benefit will continue in conformance with above schedule (Article 9, Section 5).

SECTION 3: Bilingual Pay

Represented employees required by the City to use their knowledge and skills to assist the City by providing translation services will be compensated at a rate of \$25.00 per month after successful completion of a proficiency test.

SECTION 4: Tuition Reimbursement

The City shall pay represented employees tuition reimbursement with eligibility restricted to tuition and books for classes which will directly benefit the City. Employees are eligible for up to \$1500.00 per semester in accordance with Section 16.04 of the Personnel Rules and Regulations.

SECTION 5: Retirement

- A. The City shall cause the full 7% contribution paid by the City to be placed in the employee's account. The monthly employee's contribution for the 1959 Survivor's Benefit Plan shall be borne entirely by the employee.

- B. The City shall contract with the Public Employees Retirement System (PERS) for the 2% at 55 Retirement Plan for all regular and probationary employees.
- C. The City shall contract with the Public Agency Retirement System (PARS) for the 2.7% at 55 Retirement Option for all regular and probationary employees. The City will contribute .7% to PARS as a supplemental to the PERS 2% @ 55 Plan.
- D. The City shall contract with the Public Employees Retirement System (PERS) for the 7% Employer Paid Member Contribution Conversion Plan for the employees' final 12 months of employment for all regular and probationary employees.
- E. The City shall contract with the Public Employees Retirement System (PERS) for the One-Year Final Compensation Option for the employees highest 12 consecutive months of employment to be effective 1/1/01.
- F. The City will contribute 1% to the 401(a) ICMA Deferred Compensation Retirement Program for all Represented employees.

#### SECTION 6: Sick Leave

- A. Sick leave shall be requested only in cases of actual sickness or disability, medical or dental treatment, or as authorized by the City Manager under special circumstances. The employee requesting sick leave shall notify his/her supervisor or department head prior to the time set for reporting to work or as soon after start of the work day as possible. Sick leave with pay shall not be allowed unless the employee has met and complied with the provisions of the Personnel Rules and Regulations, and the department head or City Manager has approved such payment. The department head or the Human Resources Director may require a written statement from the attending physician or dentist of his/her choice that the employee is or was incapacitated and unable to perform his/her duties during the time for which sick leave was requested.

Under normal conditions, employees will not be required to provide a doctor certificate when absent due to illness or injury unless the employee is notified in advance of such requirement.

The department head or the Human Resources Director may require a written statement from the attending physician or dentist of his/her approval that the employee is capable of and released to return to the performance of all the duties of his/her position.

- B. Employees may be granted time off with pay due to the death or life threatening illness of a relative of the employee who resides in the employee's household up to a maximum of 96 hours of sick leave per year. The determination of what constitutes a life threatening illness shall be within the sole discretion of the department head and City Manager. The granting of sick leave for death or life threatening illness shall be subject to the discretion of the department head and City Manager. When any such time is authorized, it shall be charged against the employee's accumulated sick leave amount.
- C. An employee may use up to 48 hours a calendar year of banked sick leave to attend to the illness of one's child, parent or spouse or 40 hours per year for a mother-in-law, father-in-law, brother/brother-in-law, sister/sister-in-law, son-in-law, daughter-in-law grandparents or grandchild.
- D. The sick leave payment program, pursuant to the Personnel Rules and Regulations will be as follows:

<u>Hours</u>	<u>% Total Accrual Paid</u>	<u>Years of Service Required</u>
0-200	5%	1 year of service
0-200	10%	2 years of service
0-200	15%	3 years of service
200-299	25%	"
300-399	33%	"
400-1,000	50%	"
1,001-2,000 hours	50%	15 years of service

- E. Employees absent from work due to a work related injury will be paid full pay for up to eighty (80) hours from and including the first day of disability for claims filed after 1/1/93 pursuant to Section 10.11 of the Personnel Rules and Regulations.

SECTION 7: Vacation

A. Each full-time regular and probationary Represented employee having worked 60 paid hours during the 1<sup>st</sup> (first) and 2<sup>nd</sup> (second) pay checks each month shall accrue vacation leave calculated in accordance with the following formula:

<u>Start of Service Year</u>	<u>Annual Hours Accrued</u>	<u>1<sup>st</sup>/2<sup>nd</sup> paycheck p/month Accrual Rate</u>
1	80 hours	3.33
2	88 hours	3.66
3	96 hours	4.00
4	104 hours	4.33
5	112 hours	4.66
6	120 hours	5.00
7	128 hours	5.33
8	136 hours	5.66
9	144 hours	6.00
10	152 hours	6.33
11+	160 hours	6.66

Probationary employees accrue vacation credits during the initial probation, but are not allowed to use them until they have satisfactorily completed probation.

B. Employee's Vacation hours shall not exceed the following maximum amounts:

<u>Service Year</u>	<u>Full Time</u>
1	-
2	176 hours
3	192 hours
4	208 hours
5	224 hours
6	240 hours
7	256 hours
8	272 hours
9	288 hours

10	304 hours
11+	320 hours

Employees reaching the maximum allowable vacation accrual shall cease to accrue monthly vacation hours until such time as total vacation accrual falls below maximum. They shall then accrue at their monthly rate as prescribed in Section 9.03 of the Personnel Rules and Regulations.

- C. An employee shall have the option to cash in at 100% compensation all vacation in excess of 80 hours, twice per year.
- D. The time at which an employee's vacation is to occur shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of service. The dates of vacation leave may be selected by the employee but shall be approved by the department head who shall consider the wishes of the employee and the needs of the City.

SECTION 8: Holidays

- A. Pursuant to section 5.18 of the Personnel Rules and Regulations, the following holidays shall be observed by the City with respect to all employees of the City:
  1. New Year's Day
  2. Martin Luther King Day
  3. President's Day
  4. Memorial Day
  5. Independence Day
  6. Labor Day
  7. Veteran's Day
  8. Thanksgiving Day
  9. Day after Thanksgiving
  10. Christmas Eve (1/2 day)
  11. Christmas Day
  12. New Year's Eve (1/2 day)

- 13. Floating Holiday (to be used, July 1 – June 30)
- 14. Floating Holiday (to be used, January 1 – December 31)

B. When a holiday falls on a Sunday, the next day shall be observed as the holiday. When a holiday falls on a Saturday, the preceding Friday shall be observed as the holiday. If the normal work week is not the standard Monday through Friday, the holiday falls on the day preceding or following the normal days off.

C. One floating holiday shall be credited to each full-time employee on July 1 of each fiscal year; the 2<sup>nd</sup> floating holiday shall be credited on January 1 of each calendar year. Employees entering the City service after July in a fiscal year shall be credited with holiday hours according to the following formula.

1<sup>st</sup> Floating Holiday

Hire Date July 1st thru September 30th	8 hours
Hire Date October 1st thru December 31st	6 hours
Hire Date January 1st thru March 31st	4 hours
Hire Date April 1st thru June 30th	2 hours

2<sup>nd</sup> Floating Holiday

Hire Date January 1st thru March 31st	8 hours
Hire Date April 1st thru June 30th	6 hours
Hire Date July 1st thru September 30th	4 hours
Hire Date October 1st thru December 30th	2 hours

Such holiday time shall not be carried from one year to the next, and all accumulated time on the books shall not be paid employees on termination or resignation from the City service. Employees shall not work on a day elected as a floating holiday and would not be eligible to receive double compensation from the City.

D. Pursuant to Section 5.19 of the Personnel Rules and Regulations, any employee eligible for holiday pay, required to work on a day designated as a holiday under the provision of the Personnel Rules, shall be paid at the time and one-half rate

for the normal work hours on said day and in addition, shall receive equal time off within a 30 day period before or after the day in which the designated holiday falls. Assignment of these holiday changes will be at the discretion of the department head.

#### ARTICLE 6 – TRAINING TIME

The City shall have the authority to designate the mode of transportation to training programs. The City shall make its best effort to provide or arrange transportation. When traveling for City business, whenever possible, no personal vehicle shall be used.

#### ARTICLE 7 – SAFETY COMMITTEE

The Association may select one member to attend meetings of the City's Safety Committee.

#### ARTICLE 8 – GRIEVANCE PROCEDURE

##### SECTION 1: Definition

A "grievance" shall be defined as a controversy between the City and the Union representing employees or an employee or employees covered by this MOU. Such controversy must pertain to the following: (1) Any matter relating to working conditions adversely impacting the employee's ability to perform the job not specifically covered by this Agreement, or (2) Any matter involving the interpretation or application of any provision of this MOU. This Article does not apply to reviews of evaluation and matters of discipline.

##### SECTION 2: Time Limits

The time limits for filing a written formal grievance shall be strictly construed, but may be extended by mutual agreement evidenced, in writing, and signed by a duly authorized representative of the City and the grieving party. Failure of the grieving party to comply with any of the time limits set forth hereunder shall constitute a waiver and bar further processing of the grievance. Failure of the City to comply with the time limits set forth in this Section shall automatically move the grievance to the next level of the Grievance Procedure. The grieving party in a represented unit may request the assistance of a

Union Representative in presenting a grievance at any level of review or may represent him/herself.

### SECTION 3: Informal Procedure

There shall be an earnest effort on the part of both parties to settle grievances promptly through the steps listed below.

Step 1: An employee's grievance must be submitted to his/her first line supervisor or management representative immediately in charge of the aggrieved employee within fifteen (15) working days after the event giving rise to the grievance, or fifteen (15) working days after the date that he/she should have been reasonably expected to have had knowledge of the grievance. The supervisor or management representative will give an answer to the employee by the end of the tenth (10) working day following the presentation of the grievance and the giving of such answer will terminate Step 1.

### SECTION 4: Formal Procedure

If the grievance is not settled at Step 1, the employee may elect to proceed to Step 2 by reducing the grievance to writing.

Step 2: The written grievance shall fully state the facts surrounding the grievance and detail the specific provision alleged to have been violated, signed and dated by the employee and presented to the Department Head or his designee within ten (10) working days after termination of Step 1. A copy of the grievance shall be presented to the Human Resources Department by the employee. A meeting with the employee, shop steward and Department Head or his/her designee will be arranged at a mutually agreeable location and time to review and discuss the grievance. Such meeting will take place within ten (10) working days from the date the grievance is received by the Department Head or his/her designee. The Department Head or his/her designee may invite other members of management to be present at such meeting. The Department Head or his/her designee will give a written reply by the end of the fifth (5) work day following the date of the meeting, and the giving of such reply will terminate Step 2.

## SECTION 5: City Manager Review

If the grievance is not settled at Step 2, the grievant may elect to proceed to Step 3 of the grievance procedure.

Step 3: The grievant shall have five (5) days to appeal to Step 3. The grievant or his/her Union Representative(if appropriate) and the City Manager or the appropriate management representative shall within five (5) working days after the appeal from Step 2 arrange a meeting to be held at a mutually agreeable location and time to review and discuss the grievance. Such meeting will take place within ten (10) working days from the date the grievance is referred to Step 3. A decision shall be rendered within ten (10) working days from the date of such meeting. The decision of the City Manager is final and binding.

## ARTICLE 9 – APPEAL AND HEARING PROCEDURE

### SECTION 1: Pre-Discipline Procedure (Skelly Process)

Where a regular employee is recommended to be terminated, suspended, or demoted, the employee will be entitled to the following prior to the discipline being imposed:

- A. The employee will be provided with written notice of the proposed discipline. Such notice shall also contain the date the action is intended to become effective and the specific grounds and particular facts upon which the action is based.
- B. Along with this notice, the employee shall be provided with written materials upon which the action is based. The employee shall be afforded the right to respond either orally or in writing or both to the proposed charges within five (5) working days after the date of the notice.

### SECTION 2: Appeal Procedure

- A. Where an employee is suspended without pay for one or two days, the following procedure shall apply:
  1. Following a review of a proposed disciplinary action, if discipline is to be imposed, the Human Resources Director, shall cause to be served on the employee affected, by registered mail or personal delivery, a notice of discipline signed by the

Department Head indicating the Department Head's decision to impose discipline, the specific charges against the employee, that he/she has the right, within ten working days after receipt of this notice to request a review of the decision by the City Manager by filing the request with the Human Resources Director. The City shall have the authority to impose discipline on the effective date indicated in the notice.

2. If, within the ten-day appeal period, the employee involved does not request a review, the action of the City shall be considered conclusive.
  3. If, within the ten-day appeal period, the employee involved files a request for review by giving written notice of appeal to the Human Resources Director, the City Manager shall, where practicable, set a meeting within thirty (30) days of the date of the filing of the appeal.
  4. At the meeting between the City Manager (or his/her designee) and the employee, the employee and/or his/her representative shall be afforded the opportunity to make an oral presentation to the City Manager (or his/her designee) as to why he/she does not agree with the discipline. The City Manager at his/her discretion may have other management representatives present at this meeting.
  5. The City Manager shall have thirty (30) days from the date of the meeting to sustain, reject, or modify the discipline. The City Manager's decision is final and binding.
- B. Where an employee is suspended without pay for three or four days, the following appeal procedure shall apply:
1. Following a review of a proposed disciplinary action, if discipline is to be imposed, the Human Resources Director shall cause to be served on the employee affected, by registered mail or personal delivery, a notice of discipline signed by the Department Head indicating the Department Head's decision to impose discipline, the specific charges against the employee that he/she has the right, within ten (10) working days after receipt of this notice, to request a hearing before the City Manager on the charges by filing the request with the Human Resources Director.

The City shall have the authority to impose discipline on the effective date indicated in the notice.

2. If, within the ten-day appeal period, the employee involved does not file said appeal, unless good cause for failure is shown, the action of the City shall be considered conclusive.
3. If, within the ten-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Human Resources Director, the City Manager shall where practicable set a date for the hearing not less than twenty (20) and not more than sixty (60) days from the date of the filing of the appeal with the Human Resources Director.
4. All hearings shall be private, provided, however, that the City Manager shall, at the request of the employee and the concurrence of the City, open the hearing to the public unless opening it to the public would not be in the best interest of the City.
5. Subpoenas and subpoenas duces tecum relevant to a hearing shall be issued at the request of either party, not less than five (5) working days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the City Manager.
6. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely on the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The City Manager shall not be bound by technical rules of evidence. The City Manager shall rule on the admission or exclusion of evidence.

7. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the respondent does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter may be engaged to record the hearing at the request of either party. The party requesting the reporter shall bear the cost of the reporter.
8. The hearing shall proceed in the following order, unless the City Manager, for special reason, otherwise directs:
  - a. The party imposing discipline shall be permitted to make an opening statement;
  - b. The appealing party shall then be permitted to make an opening statement;
  - c. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
  - d. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
  - e. The parties may then, in order, respectively offer rebutting evidence only, unless the City Manager, for good reason, permits them to offer evidence upon their original case.
  - f. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the City Manager.

9. The City Manager shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the City Manager in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during the hearing. The City Manager, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The City Manager shall render his/her decision as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after the close of the hearing. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact and conclusions.
  10. The City Manager shall have the authority to sustain, modify or reject any or all of the charges filed against the employee.
  11. The City Manager's decision shall be served on the employee and the Human Resources Director. If it is a discipline hearing and a suspension is not the City Manager's decision, the opinion shall set forth the effective date the employee is to be reinstated and/or any other action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.
  12. If discipline is reversed or reduced, the appropriate pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate.
- C. Where discipline of dismissal, suspension without pay of five or more days or demotion is imposed, the following appeal procedure shall apply:
1. Following a review of a proposed disciplinary action, if discipline is to be imposed, the Human Resources Director shall cause to be served on the employee affected, by registered mail or personal delivery, a notice of discipline signed by the appointing power indicating the Department Head's decision to impose discipline, the specific charges against the employee, that he/she has the right, within ten (10)

working days after receipt of this notice, to request a hearing on the charges by filing the request with the Human Resources Director. The City shall have the authority to impose discipline on the effective date indicated in the notice.

2. If, within the ten-day appeal period, the employee involved does not file said appeal, unless good cause for failure is shown, the action of the City shall be considered conclusive.
3. If, within the ten-day appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Human Resources Director, the City and the employee or his/her representative shall have ten (10) working days from the date of the appeal to attempt to mutually agree to a hearing officer. If no agreement is reached, the City shall request a list of third-party neutrals who specialize in employee discipline hearings from the California State Conciliation Service. Within ten (10) days following receipt of the list of hearing officers the parties shall confer to select the hearing officer. The parties shall alternately strike one name from the list of hearing officers (the right to strike the first name to be determined by lot) until one name remains, and that person shall be the hearing officer.
4. Where practicable, the date for a hearing shall not be less than twenty (20) days, nor more than sixty (60) days, from the date of the filing of the appeal with the Human Resources Director. All interested parties shall be notified in writing of the date, time, and place of hearing.
5. All hearings shall be private, provided, however, that the hearing officer shall, at the request of the employee and the concurrence of the City, open the hearing to the public unless opening it to the public would not be in the best interest of the City.
6. Subpoenas and subpoenas duces tecum relevant to a hearing shall be issued at the request of either party, not less than five (5) working days, prior to the commencement of such hearing. After the commencement of such hearing, subpoenas shall be issued only at the discretion of the hearing officer.

7. The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions. Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in civil actions. The rules of privilege shall be effective to the same extent that they are now or hereafter may be recognized in civil and criminal actions, and irrelevant and unduly repetitious evidence shall be excluded. The hearing officer shall not be bound by technical rules of evidence. The hearing officer shall rule on the admission or exclusion of evidence.
  
8. Each party shall have these rights: To be represented by legal counsel or other person of his/her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him/her to testify; and to rebut the evidence against him/her. If the employee does not testify in his/her own behalf, he/she may be called and examined as if under cross-examination. Oral evidence shall be taken only on oath or affirmation. A court reporter will be engaged to record the hearing, unless the parties (City and employee/employee representative) mutually agree that the same is not necessary.
  - a. The hearing shall proceed in the following order, unless the hearing officer, for special reason, otherwise directs:
    1. The party imposing discipline shall be permitted to make an opening statement;

2. The appealing party shall then be permitted to make an opening statement;
  3. The party imposing disciplinary action shall produce the evidence on his/her part; the City bears the burden of proof and burden of producing evidence;
  4. The party appealing from such disciplinary action may then open his/her defense and offer his/her evidence in support thereof; the employee bears the burden of proof and the burden of producing evidence for any affirmative defenses asserted;
  5. The parties may then, in order, respectively offer rebutting evidence only, unless the hearing officer for good reason permits them to offer evidence upon their original case.
  6. Closing arguments shall be permitted and written briefs may be permitted at the discretion of the hearing officer.
- b. The hearing officer shall determine relevancy, weight, and credibility of testimony and evidence. He/she shall base his/her findings on the preponderance of evidence. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing unless the hearing officer in his/her discretion, for good cause, otherwise directs. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing. The hearing officer, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to reaching a fair and proper decision. The hearing officer shall render his/her judgment as soon after the conclusion of the hearing as possible and in no event later than thirty (30) days after conducting the hearing. His/her decision shall set forth which charges, if any, are sustained and the reasons therefore. The opinion shall set forth findings of fact conclusions. The opinion shall be advisory only.
- c. The hearing officer may recommend sustaining or rejecting any or all of the charges filed against the employee. He/she may recommend sustaining, rejecting or modifying the disciplinary action invoked against the employee.

- d. The hearing officer's opinion and recommendation shall be filed with the City Manager, with a copy sent to the employee and the Human Resources Director and shall set forth his/her findings and recommendations. If it is a dismissal hearing and a dismissal is not the hearing officer's recommendation, the opinion shall set forth the recommended effective date the employee is to be reinstated and/or other recommended action. The reinstatement date, if appropriate, may be any time on or after the date of disciplinary action.
- e. Within thirty (30) days of the receipt of the hearing officer's recommendation, or a transcript (which is optional), whichever date is later; the City Manager shall adopt, amend, modify or reject the recommended findings, conclusions, and/or opinions of the hearing officer. The City Manager shall not conduct a de novo hearing. The City Manager may, at his/her option, allow limited oral arguments and/or may request and review written statements from either side. The decision of the City Manager shall be final and conclusive. Copies of the City Manager's decision, including the hearing officer's recommendation(s) shall be filed where appropriate, including the employee's personnel file, unless no discipline is upheld by the City Manager.
- f. Each party shall bear equally the cost of facilities, fees and expenses of the hearing officer, including the court reporter and transcripts. Each party shall bear its own witness and attorney fees. If either party unilaterally cancels or postpones a scheduled hearing, thereby resulting in a fee charged by the hearing officer or court reporter, then the party responsible for the cancellation or postponement shall be solely responsible for payment of that fee.
- g. If discipline is reversed or reduced, the appropriate pay loss shall be restored to the employee based on the number of standard work hours lost computed at his/her then base hourly rate deducting any income the employee earned which resulted from his/her dismissal or suspension.

## ARTICLE 10 – NO STRIKE - NO LOCKOUT

During the life of this MOU, no work stoppages, strikes, slowdowns, or picketing shall be caused, sanctioned, or condoned by the Union. No lockouts shall be made by the City. In the event that any employees covered by this MOU, individually or collectively, violate the provisions of this Article and the Union fails to exercise good faith in halting the work interruption, the Union and the employees involved shall be deemed in violation of this Article and the City shall be entitled to seek all remedies available to it under applicable law. Employees engaged in a work stoppage, strike, slowdown or picketing during the term of this agreement shall be subject to disciplinary action up to and including termination.

## ARTICLE 11 – ENTIRE MEMORANDUM OF UNDERSTANDING

A. It is the intent of the parties hereto that the provisions of this MOU shall supersede all prior agreements and memorandums of agreement, or memorandums of understanding, or contrary salary and/or personnel resolutions or Administrative Codes, provisions of the City, oral or written, expressed or implied, between the parties, and shall govern the entire relationship, and shall be the sole source of any and all rights which may be asserted hereunder. This MOU is not intended to conflict with Federal or State law.

B. Notwithstanding the provisions of paragraph A above, there exists within the City certain personnel rules and regulations and departmental rules and regulations. To the extent that this MOU does not specifically contradict these personnel rules and regulations or departmental rules and regulations or City ordinances, they shall continue subject to being changed by the City in accordance with the exercise of City rights under this MOU and applicable State law.

## ARTICLE 12– WAIVER OF BARGAINING DURING TERM OF THIS AGREEMENT

Except where required by the terms of this MOU, the parties mutually agree that they will not seek to negotiate or bargain with regard to wages, hours, and terms and conditions of employment, whether or not covered by this Memorandum or in the

negotiations leading thereto, and irrespective of whether or not such matters were discussed or were even within the contemplation of the parties hereto during the negotiations leading to this MOU. Regardless of the waiver contained in this Article, the parties may, however, by mutual agreement, in writing, agree to meet and confer about any matter during the term of this MOU.

#### ARTICLE 13 – EMERGENCY WAIVER PROVISION

In the event of circumstances beyond the control of the City, such as acts of God, fire, flood, insurrection, civil disorder, national emergency, or similar circumstances, provisions of this MOU or the Personnel Rules and Regulations of the City which restrict the City's ability to respond to these emergencies shall be suspended for the duration of such emergency. After the emergency is over, the Union shall have the right to meet and confer with the City regarding the impact on employees of the suspension of these provisions in the MOU and any Personnel Rules and policies.

#### ARTICLE 14 – SEPARABILITY

Should any provision of this MOU be found to be inoperative, void, or invalid by a court of competent jurisdiction, all other provisions of this MOU shall remain in full force and effect for the duration of this MOU.

#### ARTICLE 15 – IMPLEMENTATION

The provisions as contained in this MOU shall not be binding on either party until this MOU is approved by the City Council of the City of Lancaster through adoption of appropriate ordinances and/or resolutions and ratified by all Union membership. This MOU represents a mutual understanding of both parties in accordance with the provisions of the Meyer-Milias-Brown Act, Government Code Section 3500 et seq. of the California Government Code.

ARTICLE 16 – RENEGOTIATIONS

In the event the Association desires to meet and confer in good faith on the provisions of a successor MOU, it shall serve upon the City, not later than July 31, 2010 its written request to commence meeting and conferring in good faith as well as its full and entire written proposal for such successor MOU. Upon receipt of such written notice and proposals, the parties shall utilize their best efforts to commence meeting and conferring by September 1, 2010.

ARTICLE 17 – TERM OF MEMORANDUM OF UNDERSTANDING

The City Council shall consider this Memorandum of Understanding at their meeting of January 27, 2009. Once signed the Memorandum of Understanding is effective from February 1, 2009 through December 31, 2010.

City Representative

Association Representatives

\_\_\_\_\_  
Mark V. Bozigian  
City Manager

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## Appendix A

### SECTION 1: Covered Classifications

	<u>Grade</u>
Code Enforcement Officer I	A
Code Enforcement Officer II	B

### SECTION 2: Monthly Salary Ranges

	<u>Grade A</u>	<u>Grade B</u>
2008	\$4607 – \$5868	\$5084 – \$6476
2009	\$4,745 – \$6015	\$5236 – \$6637
2010	\$4,792 – \$6075	\$5288 – \$6703

SIDE LETTER

City of Lancaster

And

Lancaster Code Enforcement Association

IMPLEMENTATION OF THE  
2008 CLASSIFICATION and TOTAL COMPENSATION STUDY

This letter is entered into in anticipation of the City of Lancaster adopting changes to its total compensation system as a result of the 2008 study.

The parties hereby agree that should the City elect to implement changes recommended in the study, the parties will meet and confer for the purpose of allowing the Association to participate in any changes. The meet and confer process will be limited to items in the compensation article.

TENTATIVE AGREEMENT

DATE: \_\_\_\_\_

FOR ASSOCIATION

FOR CITY

\_\_\_\_\_  
Scott Frayer

\_\_\_\_\_  
Beverly Glode