

**RESOLUTION NO. 2019-14**  
**A RESOLUTION APPROVING A FIVE-YEAR**  
**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN MONTEREY ONE WATER AND THE**  
**MID-MANAGEMENT EMPLOYEES' GROUP**

WHEREAS, the present three-year agreement with the Monterey One Water (M1W) Mid-Management Employees' Group (MMEG), Resolution No. 2016-13, expired on June 30, 2019, and the M1W Mid-Management Employees' Group has been meeting with the General Manager and staff to discuss employee wages and benefits in an attempt to reach a new agreement; and

WHEREAS, the M1W MMEG has been exclusively recognized as the mid-management employee organization during the preceding three years through resolutions covering salaries and benefits, and the MMEG wishes to have a specific Memorandum of Understanding (MOU); and

WHEREAS, based on mutual agreement, the parties now desire to formalize a new five-year agreement between the mid-management employees of the M1W and its Board of Directors;

NOW, THEREFORE, BE IT RESOLVED by the Board of Directors of the M1W that it does hereby approve the attached MOU with the MMEG, along with the employee benefits schedule attached as EXHIBIT A to said MOU and authorizes the General Manager to execute the same on behalf of the M1W.

**PASSED AND ADOPTED** at a regular meeting of the Board of Directors of the Monterey One Water duly held on September 30, 2019, by the following vote:

**AYES:           STEFANI, MOORE, GAGLIOTI, GARFIELD, PHILLIPS,  
                      WILLIAMSON, CAMPBELL, DE LA ROSA**

**NOES:           NONE**

**ABSENT:        GRIER, CARBONE**



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**Ron Stefani, Chair  
M1W Board of Directors**



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**Paul A. Sciuto, General Manager  
Secretary to the Board of Directors**

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MONTEREY ONE WATER  
AND  
MONTEREY REGIONAL WATER POLLUTION CONTROL AGENCY  
MID-MANAGEMENT EMPLOYEES' GROUP**

**STATEMENT OF FACTS**

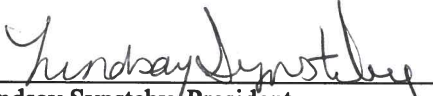
1. The Mid-Management Employees' Group (MMEG) has been exclusively recognized as the mid-management employees' organization of the Monterey One Water ("M1W") through resolutions covering salaries and benefits.
2. M1W administration of employer-employee relations shall be conducted in accordance with the M1W's (formerly known as the Monterey Regional Water Pollution Control Agency) Resolution 92-04, which provides that "[a] Resolution of the Monterey Regional Water Pollution Control Agency Establishing Rules and Regulations for the Administration of Employer-Employee Relationship between the Agency and its Employee Organizations."
3. The latest Memorandum of Understanding (MOU) between MMEG and the M1W (collectively, the "Parties") recently expired on June 30, 2019.
4. Prior to and after the expiration of the latest MOU, the Parties met and conferred in good faith discussing wages, hours and other terms and conditions of employment in an attempt to reach a successor MOU. The Parties now wish to enter into a new MOU based on the agreed-upon negotiated terms.
5. Based on mutual agreement, the Parties now desire to formalize a new five-year agreement between the MMEG and M1W.

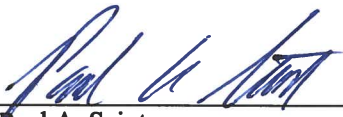
**NOW, THEREFORE, the Parties agree as follows:**

1. The length of this agreement is five (5) years, beginning September 30, 2019 and ending at midnight, June 30, 2024.
2. The agreed-upon terms and conditions of this agreement are outlined in EXHIBIT A, which is attached hereto and incorporated herein by reference.
3. M1W may periodically review position salaries to take into account expanded duties and responsibilities and use information such as the CASA Salary Survey to make adjustments, as appropriate.
4. In the event of future salary and/or benefit surveys, the following comparison agencies will be used:
  - a. Central Contra Costa Sanitary District
  - b. Central Marin Sanitation Agency
  - c. Delta Diablo Sanitary District

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- d. Dublin San Ramon Sanitary District
  - e. Encina Wastewater Authority
  - f. Inland Empire Utilities
  - g. Irvine Ranch Water District
  - h. Las Virgenes Municipal Water District
  - i. Napa Sanitation District
  - j. Silicon Valley Clean Water
  - k. Union Sanitary District
5. In accordance with the prior written agreements between the parties and except as noted above or attached, all parts and provisions of this agreement become effective on the approval date noted below.
6. The M1W Board of Directors may, in its sole discretion, elect to add employee benefits without negotiating or amending this MOU.
7. The Agency and MMEG agree to enter a successor MOU beginning September 30, 2019 and terminate at midnight, June 30, 2024. In the event a successor MOU is not entered into prior to June 30, 2024, all terms and conditions of employment set forth in the terminated MOU shall remain in force until the successor MOU is approved.

  
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Lindsay Synstebly, President  
M1W Mid-Management Employees' Group  
10-1-19  
\_\_\_\_\_  
Date Approved

  
\_\_\_\_\_  
Paul A. Sciuto  
General Manager  
10/2/19  
\_\_\_\_\_  
Date Approved

MEMORANDUM OF UNDERSTANDING  
Mid-Management Employees' Group

**EXHIBIT A:**  
**MEMORANDUM OF UNDERSTANDING BETWEEN**  
**MONTEREY ONE WATER AND THE MID-MANAGEMENT EMPLOYEES' GROUP**

**1. RETIREMENT**

**A. Tier I Employees**

For employees hired prior to May 13, 2012 (Tier I Employees), Monterey One Water ("M1W" or "the Agency") will continue to provide the 3% @ 60 California Public Employees' Retirement System (PERS) Miscellaneous Members Retirement for each employee covered by this agreement. The same 3% @ 60 will be provided to new employees who were previously employed by the Agency and covered by this formula. Employees will pay 100% of the employee PERS contribution. The Agency's contract with PERS for the 3% @ 60 plan contains the following:

1. Sick Leave Conversion
2. 1959 Survivor Benefit, third level
3. Highest twelve (12) consecutive months for purposes of determining final compensation
4. Military Service credit as Prior Service
5. Employees Sharing cost of Additional Benefits
  - Employees currently pay an additional .211% of their salary for a total cost of 8.211%.
  - Employees agree to the following cost sharing on the condition that the Management Employees' Group (MEG) participates at an equal or greater level:
    - Beginning January 1, 2020 or when MEG's cost sharing becomes effective, whichever is later, Tier I Employees will pay an additional .4795 of their salary for a total cost of 8.6905% deducted from their pay on a pre-tax basis. This represents one-half (½) of the Agency's increase in its PERS Normal Cost Rate for Tier I Employees for the 2019-2020 fiscal year. The Agency will submit the signed and ratified MOU to PERS at least 90 days prior to the January 1, 2020 effective date for this increased contribution.
    - Beginning July 1, 2020, Tier I Employees will pay, in addition to 8.6905% of their salary, one-half (½) of the Agency's increase in the PERS Normal Cost Rate for Tier I Employees for each subsequent fiscal year during the term of this Memorandum of Understanding,

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up to a maximum additional Tier 1 Employee contribution of 0.5% for each subsequent fiscal year. Thus, the July 1, 2020 increase will be one-half (½) of the Agency's increase in its PERS Normal Rate for Tier I Employees for the 2020-2021 fiscal year up to a maximum additional contribution of 0.5% for each Tier I Employee for the fiscal year. Subsequently, there will be an additional increase equal to one-half (½) of the Agency's increase in the PERS Normal Cost Rate for Tier I Employees on July 1 of each subsequent fiscal year up to a maximum additional contribution of 0.5% for each Tier 1 Employee for each fiscal year during the term of the Memorandum of Understanding.

- The Agency will convert any additional increased employee cost sharing to a percentage of salary and place in a Side Letter, which the Agency will sign and which the MMEG will promptly ratify and sign. The Agency will submit the ratified Side Letter to PERS at least 90 days prior to the July 1 effective date each subsequent fiscal year during the term of this Memorandum of Understanding.

6. Uniform allowance included as special compensation for employees in Tier I (3% @ 60).

- The Agency shall provide employees with uniforms to promote a clean and neat attire amongst our employees. Said uniforms will be the property of the Agency and/or the contractor from which such uniforms are acquired.
- The Agency shall provide for laundering of the uniforms provided to employees at no cost to the employees.
- The Agency will report to PERS the cost of the benefit in the amount not to exceed \$200.00 per pay period to each affected employee.

#### **B. Tier II Employees**

For employees hired on or after May 13, 2012 that are considered "classic members" in the PERS system (Tier II Employees), the Agency will continue to provide the 2% @ 55 PERS Miscellaneous Members Retirement for each employee covered by this agreement. The same 2% @ 55 will be provided to new employees who were previously employed by the Agency with this formula or who were previously employed by another PERS (or reciprocal) agency. Employees will pay 100% of the employee PERS contribution. The Agency's contract with PERS for the 2% @ 55 plan contains the following:

1. Sick Leave Conversion;
2. 1959 Survivor Benefit, third level

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3. Highest thirty-six (36) consecutive months for purposes of determining final compensation;
4. Military service credit as Prior Service;
5. Employees Sharing cost of Additional Benefits
  - Employees currently pay an additional .211% of their salary for a total cost of 7.211%.
  - Employees agree to the following cost sharing on the condition that the MEG participates at an equal or greater level:
    - Beginning January 1, 2020 or when MEG's cost sharing becomes effective, whichever is later, Tier II Employees will pay an additional .394% of their salary for a total cost of 7.605% deducted from their pay on a pre-tax basis. This represents one-half (½) of the Agency's increase in the PERS Normal Cost Rate for Tier II Employees for the 2019-2020 fiscal year. The Agency will submit the signed and ratified MOU to PERS at least 90 days prior to January 1, 2020.
    - Beginning July 1, 2020, Tier II Employees will pay in addition to 7.605% of the salary, one-half (½) of the Agency's increase in PERS Normal Cost Rate for Tier II Employees for each subsequent fiscal year of this Memorandum of Understanding up to a maximum additional Tier II Employee contribution of 0.5% for each subsequent fiscal year. Thus, the July 1, 2020 increase will be one-half (½) of the Agency's increase in its PERS Normal Rate for Tier II employees for the 2020-2021 fiscal year up to a maximum additional contribution of 0.5% for each Tier II Employee for the fiscal year. Subsequently, there will be an additional increase equal to one-half (½) of the Agency's increase in the PERS Normal Cost Rate for Tier II Employees on July 1 of each subsequent fiscal year up to a maximum additional contribution of .5% for each Tier II Employee for each fiscal year during the term of the Memorandum of Understanding.
    - The Agency will convert any additional increased employee cost sharing to a percentage of salary and place in a Side Letter, which the Agency will sign and which the MMEG will promptly ratify and sign. The Agency will submit the ratified Side Letter to PERS at

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least 90 days prior to the July 1 effective date each subsequent year of this Memorandum of Understanding.

6. Uniform allowance included as special compensation for employees in Tier II (2% @ 55).
  - The Agency shall provide employees with uniforms to promote a clean and neat attire amongst our employees. Said uniforms will be the property of the Agency and/or the contractor from which such uniforms are acquired.
  - The Agency shall provide for laundering of the uniforms provided to employees at no cost to the employees.
  - The Agency will report to PERS the cost of the benefit in the amount not to exceed \$200.00 per pay period to each affected employee.

**C. Tier III Employees**

New employees hired on or after January 1, 2013 who have not previously been enrolled in another PERS (or reciprocal) agency will be placed in Tier III (Tier III Employees). Tier III for these employees is the 2% @ 62 PERS formula. Employees will pay 100% of the employee PERS contribution. The Agency's contract with PERS for the 2% @ 62 plan contains the following:

1. Sick Leave Conversion;
2. 1959 Survivor Benefit, third level;
3. Highest thirty-six (36) consecutive months for purposes of determining final compensation;
4. Military service credit as Prior Service;
5. Employees Sharing cost of Additional Benefits

Employees currently pay an additional .211% of their salary.

**2. FISCAL YEAR SALARY ADJUSTMENT**

Effective September 8, 2019, a wage increase of 3.4% will be implemented.

Effective the first full pay period of FY 20/21, a wage increase of 3.4% will be implemented.

Effective the first full pay period of FY 21/22, a wage increase of 3.00% will be implemented.

Effective the first full pay period of FY 22/23, a wage increase of 3.00% will be implemented.

Effective the first full pay period of FY 23/24, a wage increase of 3.00% will be implemented.



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#### 3. HEALTH INSURANCE

The M1W Health Insurance Program includes coverage for health, dental and vision.

- A. In order to fairly share the potential issue of rising health insurance costs, an “Insurance Index” (Index) of 5% will be applied to the M1W’s current health care costs to establish the amount of the health insurance budget that is to be provided by the M1W for the following year. The amounts are as follows:
- January 1, 2019 (Base) = \$1,952,710
  - January 1, 2020 = \$2,050,347
  - January 1, 2021 = \$2,152,864
  - January 1, 2022 = \$2,260,507
  - January 1, 2023 = \$2,373,532
  - January 1, 2024 = \$2,492,209
- B. The M1W employees and management will continue to monitor and evaluate M1W’s health insurance coverage and costs through the Employee Insurance Committee. The Committee will act as an advisory body to the employees and the General Manager to apprise them of any significant change in health insurance costs and coverage and to provide the necessary research as conditions warrant. The Committee shall be made up of one to two members from each Bargaining Unit and an Agency representative.
- C. Employee contributions are the total amount that employees contribute toward health insurance costs during the fiscal year. Employees will make contributions per pay period for the family, employee-plus child(ren), and employee-plus spouse insurance plans. Employees with dependent coverage will pay 12% of the total cost to cover their *dependents only*. The Agency will continue to cover 100% of the employee cost of coverage.
- D. Each year, the M1W employees and management will structure an insurance plan that will not exceed the baseline as shown in Paragraph A. This structuring may include, but not be limited to, changes to carriers and/or benefits. All qualified cost effective plans vetted by the Insurance Committee shall be presented to employees for a vote.
- E. In the event the employees are unable, by making reasonable changes to carriers and/or benefits, to structure an insurance plan that provides coverage levels acceptable to the employees, while not exceeding the baseline amount, the employees and the M1W will share the additional health insurance costs above the baseline as shown in Paragraph A. ***50% of this additional amount will be divided equally amongst all M1W employees with dependents and the MRWPCA will pay the remaining 50% of this additional amount.*** The employee’s contribution will not increase due to an increase in staff positions. The staffing threshold established for the term of this MOU is ninety (90) benefitted employees.

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- F. The M1W is committed to promoting healthy employees and associated reduction in health insurance claims. The M1W will fund the Wellness Program that will raise the standard of health and fitness of all M1W employees. The Wellness Program will be funded by the Agency with oversight from the Wellness Committee.
- G. If modifications to the type or allocation of benefits, eligibility for coverage, employer or employee contribution to the cost of insurance or any other provision of the benefit plans covered by this MOU will be modified or may be affected by the Affordable Care Act (ACA) during the term of this agreement, it is agreed that the Agency and MMEG will reopen the contract to meet and confer and determine how such mandated changes will be implemented, and to include addressing other health plan options. It is understood that reopening of the MOU only applies to these limited circumstances and if either party is of the opinion that the subject matter is beyond the scope of the circumstances raised in this paragraph, either party may unilaterally bar the reopening of the MOU.

**4. DISABILITY AND TERM LIFE INSURANCE**

The M1W pays the full premium for the life, accidental death and dismemberment insurance. The employee is covered for term life insurance in the amount of gross annual income, rounded to the nearest \$1,000, plus an additional \$15,000.

Short-term and long-term disability insurance for non-occupational injuries is provided with 100% of the premium paid by M1W. If an employee has a non-occupational injury, after a 30-day waiting period, an employee may apply for this insurance at the rate of 66 2/3% of an employee's monthly salary.

**5. ADMINISTRATIVE LEAVE**

Mid-Management employees classified as exempt from overtime per the Fair Labor Standards Act (FLSA) are expected to work some additional hours from time-to-time as part of their normal job responsibilities. These management employees do not accrue comp time or receive overtime pay, but in recognition of these possible additional hours, mid-management employees will receive forty (40) hours annually of Administrative Leave on July 1 of each year, to be accrued each pay period up to a one hundred and twenty (120) hour accrual cap on Administrative Leave. Once the one hundred twenty hour (120) cap is reached, a mid-management employee must take some administrative leave before he/she begins to accrue additional administrative leave. Administrative Leave for new employees shall be prorated to the beginning of the pay period on which their date of hire or transfer to the Mid-Management unit occurs.

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**6. VACATION**

**A. Vacation Hours Accruals**

For regular, full-time employees:

Years of Service	Hours Accrued
a. Less 3 years:	80 hours accrued annually.
b. 3-8 years:	120 hours accrued annually.
c. 8-15 years:	160 hours accrued annually.
d. 15-20 years:	176 hours accrued annually.
e. 20-30 years:	200 hours accrued annually.
f. Greater than 30 years	receive 4 additional hours per year of service
g. Maximum vacation accumulation	is four hundred forty (440) hours (any exception or use restrictions are stated in the Employee Handbook).

**B. Annual Vacation Cash Out**

During the month of December of each year, employees may, at their option, elect to cash out up to fifty percent (50%) of their respective annual vacation hours accrual, provided that there is at least eighty (80) hours remaining in their vacation bank after each cash out. Employees must submit a written request to Employee Services for the cash out by the conclusion of the last pay period in December. Payment will be made on the last pay date in June and will be calculated at the employee's base salary per hour (shift and other premiums will not apply).

**7. HOLIDAYS**

New Year's Day	Martin Luther King's Birthday
President's Day	Spring Holiday
Memorial Day	Independence Day
Labor Day	Columbus Day
Veterans Day	Thanksgiving Day
Day following Thanksgiving	Christmas Day
Work day immediately preceding Christmas Day	Floating Holiday (All employees will receive one per fiscal year and if not used during the fiscal year, the day will be lost)

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Sunday Holidays: Take the following Monday

Saturday holidays: Take the preceding Friday

All Holidays are worth nine (9) hours. If an employee is not on the flex schedule and works eight (8) hour days, they will be able to put one (1) hour per holiday into the Holiday Leave bank.

All employees who are required or authorized to work on a holiday listed above (not including the floating holiday) will be paid at the rate of time and one-half the normal regularly assigned basic pay rate in addition to the normal pay except for New Year's Day, Thanksgiving Day and Christmas Day, which will be paid at a double-time rate in addition to their normal pay.

**8. SICK LEAVE**

Employees accrue 3.70 hours of sick leave per pay period from their date of hire (for a total of 96.2 hours annually). Since the Agency provides for PERS sick leave credit and that employees are encouraged to conserve sick leave should it be needed for an unexpected personal disability, there is no limit on the maximum number of hours an employee can accumulate. Refer to the Employee Handbook for additional information.

**9. BEREAVEMENT LEAVE**

Employees are eligible to use up to five (5) days of accrued paid time off to make funeral arrangements and to attend the funeral of an immediate member of the family. Refer to the Employee Handbook for additional information.

**10. CERTIFICATION AND LICENSE FEES**

The M1W will pay pertinent original certification, license, registration, and renewal fees related to the job. M1W will pay for a vehicle license or certificate, other than a Class C, if the employee is required by a regulatory authority or the Agency to possess such a license to perform work duties as assigned.

**11. CERTIFICATION/CAREER INCENTIVES**

The current certification & career incentives are listed in Appendix A1 & A2 of the Employee Handbook.

**12. CAREER INCENTIVES**

Employees will receive a 2.5% salary increase if they receive a four year degree. If they receive a degree beyond a four year, i.e. an MA/MS/MBA, they will receive an additional 3.5% salary increase. If the employee's position requires a high school diploma or equivalent and they have a degree beyond a four year degree, they will receive 6%, which is the cumulative amount for both grades. Refer to Appendix A2 of the Employee Handbook for additional information.

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**13. TUITION REIMBURSEMENT PROGRAM**

Employees are encouraged to advance their job-related skills and education through the Agency's Tuition Reimbursement Program. Reimbursement is limited to the following:

- Community College = \$1,000 per calendar year
- University/State School = \$2,500 per calendar year
- Master's Degree level = \$3,500 per calendar year

Refer to the Employee Training and Development policy for additional information on qualifications.

**14. EMPLOYEES ASSIGNED M1W VEHICLES**

Employees assigned M1W vehicles shall comply with all policies set forth in Appendix B of the Employee Handbook.

**15. LONGEVITY PAY**

Employees attaining ten (10) years of service with the Agency will receive a 2.5% longevity pay increase.

Employees attaining twenty (20) years of service will receive an additional 5% longevity pay increase.

**16. NEGOTIATION TIME**

The mid-management employees and their negotiating team will be granted a reasonable amount of time during regular work hours to negotiate and meet-and-confer for the preparation of a Memorandum of Understanding and associated benefits.

**17. RETIREMENT HEALTH SAVINGS PROGRAM**

The Agency will reactivate its Retirement Health Savings Account (RHSA) with ICMA-RC for members of MMEG. The Agency shall not make any contribution to the RHSA. Each employee shall be responsible for 100% of the contribution to his/her RHSA.

Upon adoption of this MOU, the Agency and MMEG agree to work out the details of the RHSA for members of MMEG through a Side Letter Agreement. The Agency agrees to arrange an informational meeting between MMEG and a representative of ICMA-RC.

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#### **18. TERMINAL LEAVE**

Upon separation of employment from the Agency, an employee is entitled to cash out his/her remaining accrued but unused leave balance at his/her regular rate of pay. In lieu of a cash out, an employee who voluntarily separates from the Agency may request to use his/her remaining accrued but unused vacation hours, compensatory time and/or administrative leave over a period of time prior to the effective date of his/her separation (i.e. Terminal Leave).

Employees who want Terminal Leave must submit a written request to Employee Services which includes: (1) the proposed date the Terminal Leave will commence; and (2) a final and irrevocable separation date. Such written requests must be submitted at least fourteen (14) calendar days before the Terminal Leave commences.

Terminal Leave is subject to the General Manager's approval at his/her sole discretion. If authorized, the maximum allowed hours to be used for Terminal Leave is one hundred and sixty (160) hours. Hours acceptable for use in Terminal Leave are limited to the employee's vacation hours, compensatory time and administrative leave bank. Terminal Leave shall not extend over a period of time beyond thirty (30) consecutive days.

#### **19. LAYOFF**

##### **A. General**

When the Board of Directors determines that a reduction in staffing is or may be warranted, the following procedures will be followed. Before any reduction in staffing is implemented, the Board will evaluate alternatives by which it may attempt to avoid layoffs. The alternatives will include methods that are designed to achieve a reduction in personnel costs in a manner that will enable the Agency to avoid or limit layoffs while still meeting its needs. The Agency retains full authority and discretion to determine what measures are most appropriate under the circumstances. Depending upon the circumstances that give rise to such a situation, the Agency may respond in several ways, including, but not limited to, offering a voluntary reduction of hours or days of work, reducing employee's hours or days of work, considering pay reductions for certain classifications, or implementing a reduction in staff, i.e., layoffs.

##### **1. Voluntary Reduction of Hours**

When the Agency deems it necessary to reduce the number of work hours for a particular classification or department, herein called "the affected area," the following guidelines will apply:

1. All recruitment and hiring in and transfers to the affected area will be frozen.
2. Employees in the affected area may be invited and permitted to request a voluntary reduction of their hours or days of work.
3. The Agency will consider any request for time off without pay.

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4. An employee who desires to take extended time off without pay and without loss of seniority may apply through the appropriate Department Head to the General Manager. Accrual of benefits during any such period shall be as agreed to by the Agency and the employee, with advance notice to the appropriate bargaining unit.

**2. Involuntary Reduction of Hours**

If a voluntary reduction in employees' hours is not sufficient to meet the Agency's needs and objectives, the Agency may implement an involuntary reduction in hours or days of work, under the following guidelines:

1. Such reductions will be administered to maximize productivity and efficiency as determined in the sole discretion of the Agency Board and can be made on a temporary, indefinite or permanent basis.
2. In making its determination, the positions of all Agency employees shall be considered except those required by law to be staffed to a specific standard or those required by the public health, safety or welfare.
3. If the Agency, in its sole estimation, determines it is feasible, a reduction of not more than twenty percent (20%) from the regular hours of any employee may be made, unless the position is reclassified as part-time.
4. Any reduction shall be made only after a minimum of ten (10) working days' notice to an affected employee.
5. Those benefits which are directly based on salary or hours worked, such as vacation, sick leave, PERS and Long-Term Disability insurance, shall be reduced proportionately for an employee whose hours have been reduced, during such period of time as the involuntary reduction is in effect.
6. Any employee affected by such a reduction may appeal the decision to the General Manager through the appeal procedure, set forth herein.
7. The Agency shall meet and confer with the appropriate bargaining unit over the effects of such reductions to the extent required by law.

**B. Layoff Procedures**

If the Agency in its sole discretion determines that these or other options are insufficient or inappropriate to meet its needs and objectives, it may decide to implement a layoff. A layoff involves discharging or terminating certain employees for non-disciplinary reasons.

1. **Layoff Policy:** If layoffs are determined to be necessary, employees will be selected carefully to ensure fairness. All provisions of this MOU and all

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personnel policies, except those in conflict with this section, including the policy prohibiting discrimination, shall be followed. When selecting employees for layoff in a classification, department, work group, or job classification, the General Manager, in coordination with Department Heads, will choose employees based on a combination of factors, except as otherwise required by law, including (but not limited to) qualifications, productivity, and general performance. Any individual selected for layoff may elect to retire, if eligible.

2. **Vacancy and Demotion:** Except as otherwise provided, whenever there is a reduction in the work force, the appointing authority shall first demote to a vacancy, if any, in a lower class for which the employee who is the latest to be laid off in accordance with section 8.e. of this Article is qualified. All persons so demoted shall have their names placed on the re-employment list.
3. **Employee Bumping Rights:** An employee affected by layoff shall have the right to displace an employee in the same department who has less seniority in a lower class in the same class series or in a lower classification in which the affected employee once had permanent status. For the purpose of this section and section 4., seniority includes all periods of full-time service at or above the classification level where layoff is to occur.
4. **Seniority:** In order to retreat, i.e., move to a former or lower class, an employee must have more seniority than at least one of the incumbents in the retreat class and must request displacement action in writing to the General Manager within five (5) working days of receipt of Notice of Layoff. Employees retreating to a lower or similar class shall be placed at the salary step representing the least loss of pay. In no case shall the salary exceed that received in the class from which the employee was laid off. Employees retreating to a lower or similar class shall serve a probationary period in the new class unless they have previously successfully completed a probationary period in the class or a class in the class series. For purposes of layoff, seniority shall be defined as the length of paid continuous service in regular full-time positions with the Agency as determined by the Agency personnel records. Continuous service for purposes of determining seniority shall be defined to include work-related injury leave of up to one year's duration.
5. **Employment Status:** Wherever possible, in each class of position, employees shall be laid off according to employment status in the following order: temporary, probationary and regular, according to the following guidelines:
  - a. Temporary and probationary employees shall be laid off according to the needs of the department as determined by the General Manager.
  - b. If there are two or more regular employees in a class from which the layoff is to be made with equal performance ratings, such employees shall be laid off in inverse order of seniority of total paid Agency service.



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- c. If employees have identical periods of service, the following criteria shall be used to determine the order of layoff:
    - i. First, all employees having overall ratings of "below standards"  
Second, all employees having overall ratings of "meets standards"  
Third, all employees having overall ratings of "above standards"
    - ii. If two or more employees have the same overall ratings, the evaluations for each preceding year will be used until the tie has been broken, as determined by the General Manager.
  
6. **Re-Employment List:** The names of persons laid off or demoted in accordance with these rules shall be entered upon a re-employment list. Lists from different departments or at different times for the same class of position shall be combined into a single list. Such list shall be used by the appointing authority when a vacancy arises in the same or lower class of position before certification is made from an eligible list.
  
7. **Duration of Re-Employment List:** Names of persons laid off shall be carried on a reemployment list for two (2) years, except that persons appointed to regular positions of the same level as that which laid off, shall, upon such appointment, be dropped from the list. A person so appointed shall have any unused sick leave or vacation time accrued prior to the layoff but not paid at the time of layoff re-credited to that person's record. Persons re-employed in a lower class, or on a temporary basis, shall be continued on the list for the higher position for the balance of the two (2) year period. Persons who refuse re-employment shall be dropped from the list.
  
8. **Official Notice of Layoff:** Official Notice of Layoff shall be issued by the General Manager and shall:
  - a. Specify the date on which the employee is due to be laid off, such date to be a minimum of twenty-one (21) working days following the date the notice is issued.
  - b. Cite the employee's right to re-employment, if any, and indicate the date on which the right expires.
  - c. Advise the employee of the right to appeal the layoff to the General Manager through the procedure specified in Article 19.C below, but note that the effective date of the layoff shall not be stayed pending resolution of the appeal.
  - d. Advise the employee that requests for paid time off to participate in employment interviews with other employers will be considered by the appropriate supervisor, subject to the needs of the department.

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- e. Advise the employee regarding the right, if any, to displace another employee and to which department, classification and salary rate the employee would be assigned if the right is used.
- f. Specify the date and time by which the General Manager must receive the employee's written response as to whether or not the employee shall exercise the rights under the displacement procedure, such date not to exceed five (5) working days following the date the Official Notice of Layoff is issued.
- g. Advise the employee that if a clear response indicating a desire to exercise displacement rights is not received within five (5) working days, the employee will be designated for layoff, and that any rights under the displacement procedure shall be deemed to have been forfeited.

#### **9. Benefits:**

- a. Employees who are laid off shall be paid for all benefits, including vacation benefits, that would be payable in the event of any termination of employment, as of the date of layoff.
- b. An employee who is laid off and his or her dependents shall be eligible to continue the Agency's group health coverage at the individual's expense pursuant to the Consolidated Omnibus Reconciliation Act of 1984 (COBRA). Details of this continuation coverage shall be provided to the employees by official notice from Employee Services.
- c. While on layoff, an employee shall not accrue any seniority or benefits.

#### **C. Appeal Procedure**

An employee directly affected by the operation of this policy may, within five (5) working days after notice of layoff is received, request a meeting with his or her Department Head to review the application of this policy as it affects the employee's status. The employee may be accompanied by the representative of his or her choice.

If the employee is not satisfied with the review provided by his or her Department Head, a further review of the application of the layoff policy may be requested by the employee with the General Manager. Review by the General Manager must be requested within three (3) working days of a determination by the Department Head. The determination of the General Manager shall be final.

Appeals regarding the layoff policy shall be limited solely to alleged misapplications of the policy relating to the following:

- 1. Determinations of seniority

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2. Determinations of an employee's current or prior service in a classification.
3. Determinations as to whether a classification is in a series.
4. Other decisions directly affecting an employee's layoff status under this policy.

## **20. DISCIPLINARY ACTION**

### **A. Progressive Discipline**

As a general policy, the Agency generally follows a progressive discipline policy to ensure a fair method of disciplining employees. The progressive discipline policy is intended to give employees advance notice of problems with their conduct or performance in order to provide them an opportunity to correct any problems through the use of disciplinary actions less severe than termination. Normally, progressive discipline involves verbal counseling, being sent home with pay for one full-shift, one or more written warnings, suspensions without pay, and discharge; however, exceptions or deviations from progressive discipline may occur whenever the Agency deems that circumstances warrant that one or more steps in the process be skipped. However, progressive discipline is not mandatory. Disciplinary action taken by the Agency should be commensurate with the severity of the employee's misconduct, offense, or performance level. Accordingly, circumstances may sometimes warrant immediate termination.

Additionally, the Agency may place an employee on paid administrative leave pending a personnel investigation. Placing an employee on paid administrative leave while the Agency investigates alleged misconduct does not constitute a disciplinary action and is not subject to the Disciplinary Procedure set forth in subsection B of this Article.

### **B. Disciplinary Procedure**

The following provisions shall apply only to disciplinary action of a regular employee involving discharge, demotion, or suspension in excess of three (3) working days without pay.

1. A Notice of Intent to Take Disciplinary Action shall be provided to the employee by his/her department manager. The Notice shall include the following:
  - a) The disciplinary action proposed.
  - b) The effective date of the action.
  - c) A statement of the specific grounds (causes) and particular facts upon which the proposed disciplinary action is based. The employee shall be provided with copies of any known written materials, reports or documents upon which the proposed action is based.
  - d) A statement advising the employee of his/her right to respond to the charges either in writing orally and/or in a predisciplinary hearing, and notice that either the request for the oral hearing or the written response must be received in writing by the manager within ten (10) working days after receipt of the Notice.
  - e) A statement advising the employee of his/her right to make an appointment with Employee Services to view his/her personnel file and

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request a photocopy of any document containing the employee's signature.

- f) A copy of the Notice shall be placed in the employee's personnel file.

#### 2. Predisciplinary (Skelly) Hearing

If the employee chooses to exercise his/her right to a predisciplinary hearing, said hearing must be requested within ten (10) working days of receipt of the Notice of Intent to Take Disciplinary Action or such right is waived. Where an employee has made such a request, the department manager shall conduct an informal hearing to provide the opportunity for the employee or his/her representative to respond to the charges (Skelly hearing). The employee shall have the right to be represented by a person of his/her choice, at the employee's expense, at any such hearing. If only a written response is received, the department manager will make his/her decision based upon the written response with no testimony taken. The department manager will issue a written decision to the employee within ten (10) working days.

#### 3. Decision

If the decision is to affirm or reduce the proposed disciplinary action, such decision shall be served on the employee in the form of a Notice of Disciplinary Action which shall contain the following:

- a) The reasons for the disciplinary action, including the facts which are the basis for the disciplinary action and copies of all written materials upon which the disciplinary action is based.
- b) The specific disciplinary action imposed (or recommended to be imposed if the department manager does not have the authority to impose the action), including any time period or other conditions associated with the discipline.
- c) The effective date of the discipline.
- d) The right of the employee to appeal the discipline to the General Manager. The employee shall be advised that he/she has ten (10) working days within which to file a written appeal.
- e) That a copy of the Notice of Disciplinary Action will be placed in the employee's personnel file.
- f) Exercise of Skelly Rights shall not preclude the employee from exercising his/her right to appeal.

If the decision is to abandon the disciplinary action, the Notice of Intent to Take Disciplinary Action shall be removed from the employee's personnel file.

#### **C. Appeal to General Manager**

In the event the employee believes the discipline is excessive or unjustified, the employee may appeal the department manager's decision to the General Manager within ten (10) working days of receipt of the Notice of Disciplinary Action. Within ten (10) working days of receipt of an appeal, the General Manager shall schedule a hearing. The employee, at his/her expense, and the department manager may be represented by counsel and may call witnesses. The hearing shall be

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tape recorded unless either the employee or Agency requests and makes arrangements for a stenographic reporter. If a stenographic reporter is used, each party shall pay one-half of the fee for such reporter. Any transcripts requested shall be paid for by the party requesting the same. The General Manager shall issue a written decision to the employee within ten (10) working days of the hearing.

#### **D. Appeal to Board of Directors**

1. A regular employee suspended in excess of five (5) working days, demoted or dismissed may appeal the General Manager's decision to the Agency's Board of Directors (Board) within five (5) working days after receiving written Notice of that action by submitting a written statement of appeal to the General Manager. The appeal shall contain an explanation of the basis for the appeal. Within ten (10) working days of receipt of an appeal, a hearing shall be scheduled. The hearing shall be conducted by the Board, or the Board Chair, who in his or her discretion, may appoint a committee of less than a quorum of the Board's members to conduct such a hearing and report, in closed session, its findings and recommendations. (For the purposes of this policy only, the term "Board of Directors" shall include a committee of the Board if one has been appointed.)
2. Appeal can be made only upon any of the following grounds:
  - a) That the procedures set forth in this Disciplinary Action provision to this Memorandum of Understanding have not been followed;
  - b) That the action was taken solely because of discriminatory practices;
  - c) That the action taken was not in accord with the facts; and
  - d) That the grounds for the action taken are without merit or unfounded.
3. The following procedures shall apply to the appeal:
  - a) The hearing shall be in closed session, unless the appealing employee requests a public hearing, provided, however, if the hearing is to be conducted by a committee of the Board, the hearing shall be in closed session.
  - b) The employee, at his/her expense, and the General Manager may be represented by counsel.
  - c) The Board's review shall be based on the record of the proceedings before the General Manager, with no new testimony taken, and the final determination of the General Manager.
  - d) Each party may submit written argument to the Board. The written argument shall not exceed seven (7) 8 1/2 by 11 inch typewritten pages, and shall be submitted at least five (5) working days before the hearing for inclusion in Board agenda materials. If such written argument is not received within this time frame, it shall be deemed waived.
  - e) Each party shall be allotted fifteen (15) minutes for presentation of the oral argument to the Board.
  - f) The hearing shall be tape recorded unless either the employee or Agency requests and makes arrangements for a stenographic reporter. If a stenographic reporter is used, each party shall pay one-half of the

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- fee for such reporter. Any transcripts requested shall be paid for by the party requesting the same.
- g) The technical rules of evidence shall not be applicable to the hearing; however, hearsay alone shall not be sufficient to sustain a finding of fact.
  - h) The decision of the Board of Directors shall be made at the next regularly scheduled Board meeting following the hearing. However, if the hearing was conducted by a committee of the Board the committee shall report to the Board its findings and recommendations in closed-session within ten (10) working days after the hearing. The Board shall then make its determination at the next regularly scheduled Board meeting following the hearing. If the hearing was conducted in closed session, at the employee's request at the prior Board meeting, the Board will make its determination and inform the employee of the decision in the closed session immediately preceding that regularly scheduled Board meeting. The determination of the Board shall be final.
  - i) The Board may affirm, reverse or modify the decision of the General Manager.
4. No action shall be brought in Superior Court to challenge the Board's decision more than ninety (90) days after that decision becomes final.

## 21. GRIEVANCE PROCEDURE

### A. **Scope of Policy**

It is the desire of Monterey One Water to provide a method for employees to register grievances or complaints concerning the interpretation or application of any provision of this Memorandum of Understanding. Efforts will be made to provide employees an opportunity to raise their questions or grievances in confidence.

Through the following procedure, the Agency will make diligent efforts to investigate and settle an employee's grievance/complaint on a fair and equitable basis. Further, the Agency retains the sole discretion to deviate from or disregard, in whole or in part, any provision(s) of this procedure.

For purpose of this procedure, a "complaint or grievance" shall be defined as any dispute arising during the term of this Memorandum of Understanding concerning the interpretation or application of any provision of this Memorandum of Understanding. Specifically excluded from this grievance procedure are disputes concerning this Grievance Procedure itself, the Disciplinary Action Procedure, and the Layoff Procedure set forth in this Memorandum of Understanding. Also excluded from the scope of this Grievance Procedure are all ordinances, resolutions, rules, written policies and regulations.

### B. **Grievance Procedure**

All current regular (**non-introductory**) employees, and any regular employee involuntarily terminated, may utilize the grievance procedure. No complaint/grievance will be considered which is presented later than thirty (30) calendar days after such incident has occurred. Exceptions in the form of extensions to this policy will be considered on a case-by-case basis.

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There are four (4) steps in the grievance procedure. These steps must be taken in order until the complaint/grievance is resolved.

The Agency encourages that all complaints/grievances be handled at the department level. However, the following exceptions are recognized as instances in which an employee may file a written complaint/grievance with the General Manager without first meeting with the supervisor or Department Manager:

1. If the employee suspects or has proof that a federal or state law is being violated or is about to be violated.
2. If the complaint/grievance directly involves either the Supervisor or Manager and the employee can reasonably demonstrate that their Supervisor or Manager may not be able to deal objectively with the situation.

If the complaint /grievance directly involves the General Manager, the employee and the General Manager shall first attempt to resolve the matter informally. This could include the use of a neutral third party mediator. Most complaint/grievances should be resolved in Steps I or II.

#### **STEP I – Supervisor**

An employee having a complaint/grievance relating to interpretation or application of this Memorandum of Understanding, should discuss the matter with his/her supervisor first. The employee and supervisor should try to affect a resolution at this stage. It is of the utmost importance that in all instances the supervisor verbally notifies the employee of the action to be taken to correct the situation. If the supervisor believes no action is warranted or possible, the employee should receive a verbal explanation as to the reasoning of such decision. The supervisor must document the complaint/grievance and action taken for the employee's personnel file. Generally the supervisor should provide a verbal reply to the employee within three (3) to five (5) working days.

If, after discussion, the complaint/grievance is not resolved, and the employee wishes further review, the employee should submit something in writing to the appropriate Department Manager within ten (10) working days.

Meanwhile, the supervisor will fully inform the Management Staff member of all details (including written documentation) of Step I. If the supervisor is a Management Staff member at Step I, Step III is to be followed. The supervisor should document their understanding of the circumstances and note the content of the discussion in the Step I meeting.

#### **STEP II - Department Manager**

The Department Manager will fully inform the Assistant General Manager (“AGM”), Chief Financial Officer (“CFO”), or Director in their chain of command of all details (including written documentation) of Step I and discuss the most appropriate method(s) of responding to the employee. Within five (5) working days (or as soon as reasonably possible) of receipt of the written response, the Department Manager will arrange a meeting with the employee and the supervisor to discuss the grievance. The meeting should be documented carefully.

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After assessing the complaint/grievance and formulating a solution, the Department Manager will orally communicate it to the employee, generally within three (3) to five (5) working days following the meeting. This will ordinarily end the grievance procedure.

If the employee is not satisfied with the proposed solution, the Department Manager will then advise the employee of the next step available in the process. The Department Manager will refer the complaint/grievance to the Assistant General Manager, Chief Financial Officer or Director in the employee's chain, as described in Step III.

#### **STEP III - Assistant General Manager/Chief Financial Officer/Director**

The Assistant General Manager ("AGM"), Chief Financial Officer ("CFO"), or Director in the employee's chain of command will fully inform the General Manager of all details (including written documentation) of Step I and II and discuss the most appropriate method(s) of responding to the employee. Within five (5) working days (or as soon as reasonably possible) of receipt of the written response, the AGM, CFO or Director in the employee's chain of command will arrange a meeting with the employee Department Manager and the supervisor to discuss the complaint/grievance. The meeting should be documented carefully.

After assessing the complaint/grievance and formulating a solution, the AGM, CFO, or Director in the employee's chain of command will orally communicate it to the employee, generally within three (3) to five (5) working days following the meeting.

If the employee is not satisfied with the proposed solution, the AGM, CFO, or Director in the employee's chain of command will then advise the employee of the next step available in the process. The AGM, CFO, or Director will refer the complaint/grievance to the General Manager as described in Step IV.

#### **STEP IV - General Manager**

Within five (5) working days (or as soon as reasonably possible) of formal notification of the Step IV grievance, the General Manager will arrange for a meeting with the employee and involved parties. The arranged meeting should be scheduled to take place within fifteen (15) working days unless it is determined that additional time is required under the circumstances.

Prior to the meeting with the employee, the General Manager will meet with the AGM, CFO, Director in the employee's chain of command, Department Manager and Supervisor and review the written complaint/grievance submitted including documented results of Steps I, II, and III. The General Manager may interview other employees, and involved parties as indicated. After completing his/her review and investigation of the complaint/grievance, the General Manager will prepare a written decision to be presented at the previously arranged meeting with the employee and involved parties.

Appeal to the General Manager is the final step in this Grievance Procedure. The General Manager's decision is final.

#### **DOCUMENTATION**

Documentation of the complaint/grievance and its resolution will be kept in the employee's personnel file.



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**NON-RETALIATION**

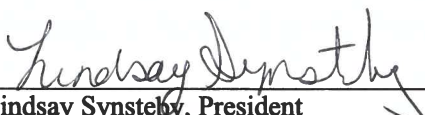
It is the intention of the Agency to be as fair and as impartial as possible in the application of this procedure. No employee will be discriminated or retaliated against, or in any way penalized for using this procedure. Moreover, appropriate disciplinary action will be taken against any individual who violates the understanding of Non-Retaliation.

**22. SCOPE OF REPRESENTATION/AGENCY RIGHTS**

Consistent with the requirements of Government Code Section 3504, the Agency will provide the MMEG with notice and an opportunity to meet and confer with the General Manager or his or her designee prior to making changes to policies that directly affect and primarily involve the wages, hours and other terms and conditions of employment of employees in the unit represented by the MMEG (as defined in Cal. Government Code Section 3504) and for which the MMEG has not waived its right to bargain in this Memorandum of Understanding. The Agency and the MMEG agree that the policies the MMEG has waived its right to bargain over include the Disciplinary Action, Layoff and the Grievance Procedure.

However, the scope of representation shall not be construed to include any legal or inherent exclusive Agency rights with respect to matters of general legislative or managerial policy which include among others: Those rights set forth in the Agency Rights section of the Monterey One Water Employee Handbook; as well as the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards for selection for employment; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other lawful reasons; maintain the efficiency of agency operations; determine the methods, means, and personnel by which agency operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organizations and the technology of performing its work; and to make rules and regulations consistent with this MOU.

**For the MMEG**

  
\_\_\_\_\_  
Lindsay Synstebly, President  
Mid-Management Employees' Group President

10-1-19  
\_\_\_\_\_  
Date Approved

**For Monterey One Water**

  
\_\_\_\_\_  
Paul A. Sciuto  
General Manager

10/2/19  
\_\_\_\_\_  
Date Approved