



SUPPLEMENTAL
MEMORANDUM OF UNDERSTANDING

BETWEEN

RAINBOW MUNICIPAL WATER DISTRICT

AND

RAINBOW EMPLOYEES ASSOCIATION



SUPPLEMENTAL MEMORANDUM OF UNDERSTANDING

Preamble

This Agreement, made and entered into this 6th day of July, 2017 to be retroactively effective July 1, 2017, is between the Rainbow Municipal Water District, hereinafter referred to as the District, and the Rainbow Employees Association, hereinafter referred to as the Association.

Recitals

WHEREAS, the District has voluntarily endorsed the practices and procedures of collective negotiations as a fair and orderly way of conducting its relations with its employees insofar as such practices and procedures are appropriate to the functions and obligations of the District to retain the right to operate the District effectively in a responsible and efficient manner; and

WHEREAS, The District and the Association have conducted negotiations which resulted in a Memorandum of Understanding covering rates of pay, wages, hours of employment, and other conditions of employment that is dated July 1, 2017; and

WHEREAS, there were certain issues related to disciplinary processes that both the District and the Association determined would be better served through a separate Supplemental Memorandum of Understanding; and

WHEREAS, this Supplemental Memorandum of Understanding is intended to define the disciplinary processes applicable to District employees whose term of service began on or before July 1, 2017.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties do mutually covenant and agree as follows:

Both parties mutually agree that their objective is for the good and welfare of the District and Association members alike. Both parties further agree that in the interest of collective bargaining and harmonious relations they will at all times abide by the terms and conditions as hereafter set forth and agreed upon. The District and Association regard all personnel as public employees who are to be governed by high ideals of honor and integrity in all public and personal conduct so as to merit the trust and confidence of the general public and fellow employees.

Article 1 Recognition

The District recognizes the Rainbow Employees Association as representative of the representation unit set forth below if said Association represents a simple majority of the District's non-management, maintenance and operations employees. The District agrees to meet and confer with said Association on all matters relating to the scope of representation pertaining to the employees of said representation unit, as required by the Meyers-Milias

Brown Act and other laws. The recognized representation unit shall consist of all non-supervisory and non-confidential employees of the District whose positions are non-exempt.

Article 2 Implementation

It is agreed that this Supplemental Memorandum of Understanding shall not be effective until:

1. The District Board of Directors acts, by majority vote, formally to approve and adopt said Supplemental Memorandum of Understanding;
2. The Membership of the Association acts, by majority vote, formally to approve and adopt said Supplemental Memorandum of Understanding; and
3. The Supplemental Memorandum of Understanding is signed by the designated District Board President and the President of the Association.

Article 3 Term

This Memorandum shall be in effect commencing on July 1, 2017, and shall remain in effect until District employment of all employees whose tenure began with the District on or before July 1, 2017, has ended.

Article 4 Discipline Procedure

California Water Code Section 71362 states that District employees serve at the pleasure of the General Manager. However, in prior Memorandums of Understanding (“MOU”), the Board of Directors provided for appeals of disciplinary actions in the MOU agreements. So, separate discipline procedures are provided for employees hired before and after July 1, 2017.

Employees Hired After July 1, 2017

Disciplinary procedures and terminations pertaining to employees hired after July 1, 2017, are set forth in the Employee Handbook.

Employees Hired Before July 1, 2017

If an employee receives a disciplinary written counseling or warning, the employee shall be entitled to prepare a written rebuttal. The written rebuttal must be submitted to Human Resources and the employee’s immediate supervisor within three (3) business days of the date the written counseling or warning is presented to the employee. The employee shall be given a reasonable period of work time to prepare a rebuttal. The amount of work time allowed to prepare a rebuttal is up to the discretion of the supervisor and/or Human Resources and will depend upon the complexity of the issues that resulted in the written counseling or warning. Any rebuttal submitted will be attached to and kept with the written counseling or warning.

In the event a proposed disciplinary action may result in a suspension without pay, a salary reduction, a demotion, or termination, the District shall provide the employee notice of the proposed disciplinary action in writing at least five (5) working days before the proposed discipline would be effective. The notice shall contain the following:

- a) A description of the proposed action, its effective date, and the ordinance, regulation, policy, or rule that was violated;
- b) The reasons why such action is being taken;
- c) Copies of the materials upon which the action is based;
- d) Information advising the employee of the right to request an informal meeting or to provide a written response to the proposed disciplinary action.

All notices of the proposed action shall be personally served or mailed to the last known address of the employee. All disciplinary actions, if upheld, shall remain part of the employee's personnel file unless the District agrees otherwise.

An employee may respond in writing, within five (5) working days to the proposed disciplinary action or may request an informal meeting and may bring a representative to an informal meeting to address the proposed disciplinary action. The employee must notify the Human Resources Manager that a representative will be attending the informal meeting and include the representative's relationship to the employee as far in advance as is practical. If the employee's chosen representative is anyone other than another District employee or a non-attorney representative from the Employee Association, the notice must be given to Human Resources at least 48 hours before the scheduled informal meeting. Although the employee is encouraged to provide any written documentation or other evidence pertaining to his or her challenge of the proposed disciplinary action, witnesses may not be brought or presented at this informal meeting. If an employee attends an informal meeting or provides a written response to the proposed disciplinary action, the District will notify the employee in writing whether the proposed disciplinary action is upheld, modified, or withdrawn.

If the proposed disciplinary action is upheld, the employee may file an appeal of the final disciplinary action with Human Resources within 10 days of the service (personally or by mail) of the final disciplinary action. Upon receipt of a timely appeal of the specified disciplinary actions, the General Manager will schedule an evidentiary hearing, including sworn testimony from witnesses, in accordance with due process before the Board of Directors. Failure to respond within the 10-day time frame will result in the loss of right to appeal.

If an employee who was hired before July 1, 2017, separates from the District for a period of greater than six months and is subsequently re-hired by the District, that employee will not be entitled to these disciplinary processes and will be subject to the disciplinary procedures outlined in the Employee Handbook.

Article 5 Indemnity

This Supplemental Memorandum of Understanding acknowledges that California Water Code section 71362 provides that District employees serve at the pleasure of the General Manager. However, this Supplemental Memorandum of Understanding continues similar pre- and post-discipline procedures that were provided in the previous Memoranda of Understanding for employees hired before July 1, 2017, without a six month or greater break in District service only.

The Association negotiation team has expressed concern over possible liability to the Association related to agreeing to the discipline procedure in this Supplemental Memorandum of Understanding as possibly constituting a waiver of a statutory right providing a property interest in District employment belonging to future employees.

The District's position is that no waiver of statutory rights is occurring; therefore, to the extent and in any manner permitted by law, the District shall defend, indemnify, and hold the Association, its directors, officers, employees, authorized volunteers and agents, and each of them ("Indemnitees"), free and harmless from any liability from loss, damage, or injury to property or persons that arise out of, pertain to, or relate to any duty of fair representation claim related to this Supplemental Memorandum of Understanding made by any employee hired after July 1, 2017. As such, the District will provide for the costs and fees and provide legal representation to the Association for such defense.

This indemnity will remain in place for the duration of this Supplemental Memorandum of Understanding.

Article 6 – Modifications

No agreement, alteration, understanding, variation, waiver, or modification of any of the terms or provisions contained herein shall in any manner be binding upon the parties hereto unless made and executed in writing by all parties hereto and, if required, approved and implemented by the District's Board of Directors.

Article 7 – Provisions of Law

This Supplemental Memorandum of Understanding is subject to all current and future applicable federal, state, and local laws. If any part or provision of the Supplemental Memorandum of Understanding is in conflict or inconsistent with such applicable provisions of federal, state, or local laws or regulations, or is otherwise held to be invalid or unenforceable by a tribunal of competent jurisdiction, such applicable law or regulations, and the remainder of the Supplemental Memorandum of Understanding shall not be affected thereby.

Approved by the Board of Directors of the Rainbow Municipal Water District on July 6, 2017.

RAINBOW MUNICIPAL WATER DISTRICT

RAINBOW EMPLOYEES ASSOCIATION



Helene Brazier, Board President



Stephen Coffey, President

July 6, 2017

Date

July 6, 2017

Date