

MEMORANDUM OF UNDERSTANDING

BETWEEN

**MILPITAS EMPLOYEES
ASSOCIATION**

*(An Affiliate of Laborers' International Union of North America
(LIUNA/UPEC))*

AND THE

CITY OF MILPITAS

July 1, 2020 – June 30, 2023

As Adopted by the Milpitas City Council on August 4, 2020

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**CITY OF MILPITAS AND MILPITAS EMPLOYEES' ASSOCIATION
COMPREHENSIVE MEMORANDUM OF UNDERSTANDING ON
SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS**

July 1, 2020- through June 30, 2023

This Memorandum of Understanding (hereafter "Agreement") is made between the City of Milpitas ("the City") and the Milpitas Employees Association (hereafter "the Union"). The Union confirms that it is an affiliate of the Laborers' International Union of North America (LIUNA/UPEC), AFL-CIO, Local 792.

SECTION 1.00 PREAMBLE

- 1.01 The term of the prior MOU expired on June 30, 2020 This MOU is made and entered into on August 4, 2020. The terms and provisions of the prior MOU and any amendments are continued in full force and effect in accord with law through the beginning date of this MOU of July 1, 2020.

The term of this Agreement shall commence at 12:01 a.m. on July 1, 2020 and terminate on June 30, 2023. The Agreement is subject to all ordinances, resolutions and personnel rules of the City, except as expressly provided to the contrary by this Agreement, and all applicable federal and state laws.

- 1.02 The Union and the City shall attempt to create a working environment free from hostility and intimidation. To that end, the Union and the City shall encourage all employees to treat their fellow employees with dignity and respect.
- 1.03 The terms and conditions of employment set forth in this Agreement have been discussed in good faith by the authorized representatives of the City and the authorized representatives of the Union. The authorized representatives of the Union agree to recommend acceptance by the employees of all terms and conditions set forth herein. Following said acceptance by the employees, authorized representatives of the City agree to recommend to the Milpitas City Council that all terms and conditions set forth herein be approved by resolution. Upon adoption of said resolution, all terms and conditions so incorporated shall become effective without further action by either party.

SECTION 2.00 - NO DISCRIMINATION

- 2.01 The City of Milpitas shall not discriminate in employment practice in regard to race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.
- 2.02 The Union shall not discriminate based on race, color, ancestry, national origin, religious creed, sex, sexual orientation, age, medical condition (cured or rehabilitated cancer), physical or mental disability, marital status, or political opinion or affiliation or union activity, unless such factor shall be a bona fide occupational qualification for the position, or such action is required to comply with federal or state law.

SECTION 3.00 - EMPLOYEE RIGHTS

3.01 Union Membership and Dues Deduction

- 3.01.1 Any employee in the City's competitive service may join, organize or maintain membership in a labor organization if the employee so desires. The City neither encourages nor discourages these activities, nor does membership or non-membership in any labor organization affect the employee's standing or right as a City employee. The right to join, organize, or maintain membership in a labor organization is also extended to any association of municipal employees not identified with any labor organization.
- 3.01.2 The right to join a labor union or any association of municipal employees also includes the right not to join. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation, or pressure of any kind from any person. Any attempt by one City employee to unduly influence or pressure another employee regarding the employee's membership in any organization or association is contrary to this Memorandum of Understanding, and any offender shall be subject to disciplinary action. Undue influence or pressure for these purposes is an attempt to persuade an employee to change their mind by any means other than written or verbal discussion of the pros and cons of membership or non-membership.
- 3.01.3 For employees who may wish to belong to the employee's union, the City shall cause dues to be deducted from their paycheck based on written certification from the Union that it has and will maintain written authorization for the deduction from the employee. It is the responsibility of the Union to ensure that dues deductions have been authorized by the employees in writing. The employee may, for any reason, cancel his/her authorization for such a payroll deduction by providing written notice to the Union during the designated drop out period, which shall be June of each calendar year. The employee's cancellation of such authorized deductions shall in no way affect his/her job or standing as an employee. Any employee desiring to join, remain a member, or become independent of any such organization or association must be free to exercise their right without undue influence, coercion, intimidation or pressure of any kind from any person.
- 3.01.4 The Association, as defined in this Section, shall hold the City harmless, and shall fully and promptly reimburse the City for any fees, costs, charges, or penalties incurred in responding to or defending against claims, dispute, challenges which are actually brought against the City or any of its agents, in connection with the administration or enforcement of this subsection pertaining to Union dues. Such reimbursement shall include, but not be limited to, court costs, litigation expense, and attorney's fees incurred by the City.

3.02 New Employee Orientation

3.02.1 New employee orientation generally occurs on the first day of employment. The Union will be provided not less than ten (10) calendar days' advanced notice of the time, date, and location of the Orientation. If a hire is made with less than ten (10) calendar days' notice, the Union will be notified as soon as the orientation is scheduled. The Union will be given no less than thirty (30) minutes as part of and at the end of the orientation to present Union membership information. An employee's attendance at the Union portion of the orientation is mandatory. Management and Human Resources representatives may excuse themselves during the Union portion of the orientation. Employee representatives conducting the orientation shall be granted up to thirty (30) minutes of paid release time to do so, including reasonable travel time, if needed.

3.02.2 The City will provide the Union a digital file via email to the Union President and Labor Relations Representative containing the following information for every employee:

- Name
- Job Title
- Department
- Work Location
- Work, home and personal cell phone numbers
- Personal email addresses on file with the employer
- Home address

The City shall not be required to supply information it does not have.

Such information will be provided as follows:

1. For new hires, within thirty (30) days of the date of hire.
2. For existing bargaining unit employees, quarterly.

3.03 Union Activities

3.03.1 City employees participating in organizational or other labor union activities or similar activities of any employee association are required to conduct such activities on their own time and not during regularly assigned working hours, with the following exceptions:

3.03.2 A steward representing or assisting a fellow employee in the presentation of a grievance may utilize such time as is essential for the presentation of the grievance to management during working hours; however, solicitation of grievances shall be on the steward and employee's own time.

3.03.3 Officials of any organization representing City employees may meet on City time with the City Manager or other City officials when such meeting times are approved by the City Manager.

- 3.03.4 Business agents or representatives of the union or other association, or their affiliates, having business (other than recruiting of members) with the officers or individual members of the union or other recognized employee groups may meet and confer with such officers or members during the course of the working day for a reasonable period of time provided that permission is first obtained from the department head, if on duty, and the employee's immediate supervisor, and further provided that the conduct of such business shall in no way conflict with the performance of City business.
- 3.03.5 Use of the work place or premises for organizational activities other than the presentation of a grievance or the conduct of business as provided for above, is permitted before or after working hours only with the advance approval of the City Manager or designee; is subject to the availability of the desired facility, and shall in no way interfere with the performance of official duties of on-duty personnel. Official bulletin boards may be used only for notice of meetings of any employee organizations and for no other organizational purpose. The City shall, however, provide space upon request at any City facility for a union or employee association furnished, installed and maintained bulletin board for posting of notices and bulletins and a magazine rack for the distribution of union or association literature.
- 3.03.6 Time Off for Association Meeting/Training. The City shall provide annual paid release time for Association Business such as negotiations, conventions symposia, etc., excluding political activity, upon reasonable written notice to and prior approval by the appropriate department head. Release time shall not result in overtime by any employee. These events shall include but are not limited to:

Event	Personnel	Time
Labor Negotiations Training	2	5 days
LTD/Health Benefit Meetings	2	4 hours
PERS Meetings	2	1 day
Association Conferences	1	5 days
		Total 144 hours

SECTION 4.00 - CITY RIGHTS

- 4.01 The City continues to possess exclusively the rights listed below, plus all other rights to which by law the City is entitled. These rights may not be abridged or modified in any way, except by formal legislative action by the City Council (i.e. resolution or ordinance). The City has the right and may exercise its discretion:
1. To determine the mission of its constituent departments, commissions and boards;

2. To set standards of service;
3. To direct employees, make assignments, and require overtime work;
4. To take disciplinary action;
5. To relieve its employees from duty because of lack of work or other legitimate reasons;
6. To determine the methods, means, and personnel by which government operations are to be conducted;
7. To determine the procedure and standards for selection for employment and determine the content of job classifications;
8. To determine when an emergency exists and to take all necessary action to carry out its mission in emergencies, including recalling and deploying off-duty personnel and requiring that employees work overtime;
9. To exercise complete control and discretion over its organization and technology of performing its work;
10. To transfer or reassign employees, as outlined in the MOU;
11. To layoff employees by position as a result of: a material change in duties, organization, or shortage of work or funds in the Department or the City.

Any violation of the policies and procedures created by this MOU may be subject to disciplinary action as defined by this MOU. Any agreement between the City and the Association evidenced by a Memorandum of Understanding pursuant to Government Code section 3500 et. seq. shall take precedence over any of the above enumerated employee and management rights. Such a Memorandum of Understanding will be honored in good faith during the life of this contract.

Except in cases of emergency the City shall give written notice (30 days in advance of any contract with third parties) which shall result in the lay-off, demotion, or transfer of any employee represented by the Association and shall meet and confer with the Association regarding the same upon reasonable notice.

SECTION 5.00 - ADVANCE NOTICE

- 5.01 Except in cases of emergency as provided in this section, the City shall give reasonable written notice to each recognized employee organization affected by an ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation including actions taken under City Rights that affect wages, hours and other terms and conditions of employment proposed to be adopted by the City and shall give such recognized employee organizations the opportunity to meet with City representatives.

SECTION 6.00 - DISCIPLINARY ACTION/APPEALS PROCEDURE

- 6.01 The City may take disciplinary action against any Employee for just cause. The City recognizes the practice of progressive discipline; however, depending on the severity of the misconduct, the City may immediately impose more severe discipline.

- 6.02 Causes for Disciplinary Action:

- 6.02.1 Grounds for Discipline: Discipline may be imposed for just cause, including without limitation for the following grounds:

- (a) Fraud in securing appointment or falsification concerning records, fellow employees, or work performed.

- (b) Failure to satisfactorily perform the duties and responsibilities of an employee's position.
- (c) Neglect of Duty.
- (d) Insubordination.
- (e) Reporting for or performing duty under impairment as a result of alcohol and/or drug use.
- (f) Dishonesty or misuse of or misappropriation of City property and funds.
- (g) Conviction of any crime involving moral turpitude, or substantially relating to the function of an employee's position.
- (h) Unauthorized absence.
- (i) Non-observance of work hours, including tardiness, and abuse of sick leave privileges.
- (j) Discourteous or non-cooperative treatment of the public or other employees.
- (k) Conduct, either during or outside of duty hours, which is of such a nature that it causes discredit to the employee's department or the City.
- (l) Failure to abide by any condition of employment stipulated in the: Municipal Code; Personnel Rules and Regulations; any City or department policies or procedures; or Memoranda of Understanding approved by formal action of the Council;
- (m) Knowingly filing or pursuing a false charge;
- (n) Threats of violence or acts of violence towards fellow employees or members of the public in the workplace.
- (o) Abuse of any City and/or Department policies and procedures.
- (p) Abandonment of job (5 days absence without authorization).

6.03 Disciplinary Action:

- 6.03.1 Written Reprimand: Repeated and/or more severe misconduct may require a more formal response by the supervisor to the employee. In the event a Written Reprimand is warranted, the employee is provided with a written memorandum, which outlines the violation(s) and the expected actions to be taken by the employee in response to the memorandum. The Written

Reprimand contains an indication of subsequent disciplinary steps to be taken in the event that the employee fails to respond appropriately. A copy of the Written Reprimand shall be placed in the employee's official personnel record. A Written Reprimand is not subject to the procedures outlined in Section 6.05.

- 6.03.2 Suspension: In the event of more severe and/or repeated misconduct, the employee may be relieved of duty by the City for a specified period of time without pay. Such suspension shall not exceed thirty (30) calendar days. Suspensions shall be subject to the procedures outlined in Section 6.05.
- 6.03.3 Reduction in Salary Range: In the event of more severe and/or repeated misconduct, the employee's salary may be reduced by the City within the range for the position held. Such Reduction in Salary shall be subject to the procedures outlined in Section 6.05. Reduction in Salary shall be made on a permanent or temporary basis.
- 6.03.4 Involuntary Demotion: In the event of more severe and/or repeated misconduct, the employee may be reduced in rank and pay by the City. Such Involuntary Demotion shall be subject to the procedures outlined in Section 6.05. Involuntary Demotions shall be made on a permanent or temporary basis.
- 6.03.5 Termination of Employment: The City may terminate the employment of an employee for more severe and/or repeated misconduct. Termination shall be subject to the procedures outlined in Section 6.05.

6.04 Authority for Disciplinary Actions:

The Department Head, or designated representative, shall have authority to take disciplinary action.

6.05 Pre-Disciplinary Procedures:

- 6.05.1 Prior to taking any disciplinary action as defined in Section 6.03, except for Written Reprimand, against a permanent employee, the City shall notify the employee in writing of the following:
 - (a) The proposed disciplinary action;
 - (b) The nature of the charges and/or violation of Section 6.02 of this MOU, City ordinances, resolutions, written procedures, municipal code, or departmental regulations and policies;
 - (c) The reasons for the proposed action;
 - (d) The materials upon which the action is based;
 - (e) The opportunity of the employee to appear before a designated City representative and respond to the charges at a specified

place and time, or to respond to the charges in writing by a date certain;

(f) The right of the employee to be represented by an attorney or other representative at any disciplinary conferences or proceedings.

(g) The employee has the right to submit a written response within 10 days to the Human Resources Director. Responses will be attached to the Written Reprimand.

6.05.2 Any employee notified pursuant to 6.05.1 above who desires an opportunity to respond pre-discipline may do so orally or in writing. If the employee wishes to respond orally, the employee must appear at the appointed place and time. The employee is not entitled to an evidentiary hearing, and the sole purpose of the pre-discipline meeting shall be to hear the response of the employee to the charges. The employee shall be entitled to representation, but shall not be entitled to present witnesses, unless the City determines that the presentation of witnesses is necessary. If the City representative determines that he or she cannot be impartial, or upon timely written request by the employee, the Human Resources Director or designee may hear the employee's response.

In the event that the employee is unable to respond to the charges within the time permitted, and demonstrates the reasonableness of a continuance, the City may grant a continuance.

As soon as practical after the employee has had an opportunity to present a response, the City will notify the employee in writing of the nature and extent of the discipline, if any, and the date the discipline will commence. The notification will also advise the employee of any right of appeal.

6.06 Notification — Disciplinary Action: The City agrees that in any disciplinary action, except oral reprimand, taken against employees represented by the Association, the Association shall be notified by memorandum within forty-eight hours (48) hours following employees notification of pending disciplinary action, subject to employee's consent to such notification.

6.07 Right of Appeal:

6.07.1 Reprisals:

No party to the discipline process shall retaliate against any other party to the discipline process because the party participated in the discipline process.

6.07.2 Written Reprimand:

The Human Resources Director shall remove a Written Reprimand from a personnel file upon written request by the employee, provided there have

been no additional disciplinary actions of a similar nature during the subsequent twenty-four (24) months.

If the employee's performance appraisal review contains any reference to the Written Reprimand which has been removed from the employee's personnel file, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the letter of reprimand shall be deleted at the written request of the employee.

Written Reprimands are not subject to the Discipline Appeal process covered in Arbitration (Section 6.07.3) and/or the Grievance Process (Section 10.00).

6.07.3 Appeals of Suspensions, Reduction in Salary, Demotion, Involuntary Termination: Arbitration

Within ten (10) working days of the receipt of notice of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request to the Department Head with a copy sent to the Human Resources Director.

If either the City or the disciplined employee so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of the discipline appeal first. No hearing on the merits of the discipline appeal will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the employee organization, if the employee organization represents the disciplined employee at the arbitration. The services of the certified court reporter are optional. However, both parties must agree if a certified court reporter is employed. Financial responsibility shall be established before the selection of an arbitrator. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the issue of whether the grievant was disciplined for good or just cause, and if not, what the appropriate remedy should be. The arbitrator shall be without power or authority to make any decision or award that requires the City or the administration to do an act prohibited by law.

If, as a result of an arbitration award, an employee's disciplinary action is deleted or modified in any way and if the employee's performance appraisal review contains any reference to the disciplinary action, that section or page of the employee's performance appraisal review shall be rewritten and any reference to the disciplinary action shall be deleted.

Decision - Final and Binding: The decision of the arbitrator shall: (a) be made in writing within thirty (30) working days of the close of the hearing or submission of written briefs and (b) shall be final and binding upon both parties.

- 6.08 Every effort shall be made to schedule meetings for the processing of disciplinary actions/appeals procedure at times which will not interfere with the regular workday of the participants. If any disciplinary meeting or hearing must be scheduled during duty hours, any employee required by either party to participate in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.
- 6.09 Waiver of Steps or Time Limits: Notwithstanding any provision in this section, any time limit or stage of procedure specified in this section may be waived or extended upon written consent of all parties.

SECTION 7.00 - LAYOFF

- 7.01 Any layoff shall be according to seniority and the procedures as defined and set forth in Municipal Code Section VI-102 et seq.
- 7.01.1 The City Manager, after review with the Department Head and the Human Resources Director, may lay off an employee because of material change in duties, organization, or shortage of work or funds in the department or the City.
- 7.01.2 The Human Resources Director shall notify the affected Employee(s) in writing at least thirty (30) days in advance of the intended layoff and of their option to accept a voluntary demotion in lieu of layoff.
- 7.01.3 Employees laid-off or accepting demotions in lieu of layoff shall be placed on a Re-Employment List in inverse order of displacement for an appropriate Class for three (3) years.

SECTION 8.00 - RESIGNATION

- 8.01 An employee wishing to resign in good standing shall file with the Department Head a written resignation at least two calendar weeks before the effective date of termination, stating the reasons for leaving. The resignation shall be forwarded to the Human Resources Director. Failure to comply with this requirement shall be entered in the service record of the Employee and may be cause for denying future employment with the City.

SECTION 9.00 - OTHER EMPLOYMENT

- 9.01 Employees may engage in other employment or business activity that does not conflict with the Employee's duties and which does not involve time demands that would reduce the Employee's efficiency or safe operation of equipment, such as sleep deprivation or physical exhaustion prior to start of employees' shift. In no case shall the employee conduct non-city business during city work hours.

- 9.02 An employee's outside employment, activity or enterprise may be prohibited if it:
- (a) Involves the use for private gain or advantage of City time, facilities, equipment and supplies; or the badge, uniform, prestige or influence of the City office or employment.
 - (b) Involves receipt or acceptance by the Employee of any money or other consideration from anyone other than the City for the performance of an act which the Employee, if not performing such act, would be required or expected to render in the regular course of hours of City employment or as a part of regular duties.
 - (c) Involves the performance of an act which may later be subject directly or indirectly to the control, inspection, review, audit or enforcement of any other Employee of the City.
 - (d) Involves such time demands as would reduce the Employee's efficiency or safety.
- 9.03 Employees must notify the Human Resources Director of other employment or business activities in writing prior to engaging in such activities. Disapproval of other employment may be appealed to the City Manager whose decision shall be final. Documents concerning other employment shall be kept in the employee's personnel file.
- 9.04 Employees who engage in outside employment that conflicts with duties or who intentionally fails to submit a timely notice to engage in outside employment shall be subject to disciplinary action.

SECTION 10.00 - GRIEVANCE PROCEDURE

10.01 Definitions:

- (a) A grievance is any dispute which involves the interpretation or application of any provision of this MOU. A grievance does not include disciplinary actions, as a different review procedure for disciplinary matters is otherwise provided in this MOU. Performance appraisal reviews are not grievable.
- (b) A "grievant" is any employee, or union representative on behalf of an employee adversely affected by an alleged violation of the specific provisions of a Memorandum of Understanding.
- (c) A "working day" is any day in which the City Hall is open for business.
- (d) "Employee organization" is the Milpitas Employees Association, an affiliate of LIUNA/UPEC, Local 792.

10.02 Representation:

At any step in the grievance procedure, the employee concerned may choose to represent himself/herself; or be represented by the certified employee organization which has been recognized by the City for that representation unit to which the employee's classification is assigned; or by legal counsel. The employee concerned shall be personally present at all stages of the grievance procedure unless that employee specifically waives the right in writing.

10.03 Scheduling/Attendance:

Every effort will be made to schedule meetings for the processing of grievances at times which will not interfere with the regular workday of the participants. If any grievance meeting or hearing must be scheduled during duty hours, any employee required by either party to participate as a witness or grievant in such meeting or hearing shall be released from regular duties without loss of pay for a reasonable amount of time. Overtime is not provided for off-duty time except for witnesses requested by the City.

10.04 Informal Grievance

It is the intent to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible. In any instance of grievance, the Grievant shall first raise the issue with their immediate supervisor within thirty (30) calendar days following the occurrence, or knowledge of the events on which the grievance is based. Employees waive the right to grieve beyond this thirty (30) day period. Every effort shall be made to resolve such grievance at this level.

10.05 Formal Grievance--Level I

If a mutually satisfactory solution of a grievance as specified in the paragraph above is not reached, then within ten (10) working days of the immediate supervisor's decision, the grievant shall submit a grievance statement in writing. The written grievance shall set forth all of the issues involved; shall be dated and signed by the grievant; and shall be submitted to the Department Head. The grievance shall contain each of the following (providing the grievant possesses the knowledge required in order to comply):

- (a) A description of the specific facts and grounds upon which the grievance is based including names, dates, and places necessary for a complete understanding of the grievance;
- (b) A specific explanation of how the grievant has been adversely affected;
- (c) A listing of the provisions of the MOU which are alleged to have been violated;
- (d) A listing of specific actions requested by the grievant of the City which will remedy the grievance, including a specific dollar amount, and the basis for the dollar amount, of any alleged damages at issue;
- (e) An explanation why the grievant believes the decision at the informal grievance step was unsatisfactory;
- (f) A statement declaring self-representation; and
- (g) The name, address, and telephone number of the person(s) to whom notices may be sent regarding the grievance.

The Department Head, or designated representative, shall investigate the facts and issues and reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the department's business. Upon reaching such conclusion, but in any event within ten (10) working days of the receipt of the grievance statement, the Department Head or designated representative shall reply in writing stating the department's view of the issue involved.

10.06 Formal Grievance--Level II

If the grievance has not been disposed of at Level I, the grievant, within ten (10) working days after receipt of the department's written reply at the completion of Level I, shall forward the said written grievance to the Human Resources Director or designated

representative. The Human Resources Director or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the Human Resources Director or designee shall issue a written decision on the grievance appeal.

10.07 Formal Grievance--Level III

If the grievance has not been disposed of at Level II, the grievant, within ten (10) working days after receipt of the Human Resources Director's written reply at the completion of Level II, shall forward the said written grievance to the City Manager or designated representative. The City Manager or designated representative shall review the facts and issues and further investigate as is necessary and will reach a conclusion at the earliest date consistent with the nature of the investigation and within normal conduct of the City's business. Upon reaching such conclusion, but in any event, within ten (10) working days of the receipt of the grievance statement, the City Manager or designee shall issue a written decision on the grievance appeal.

10.08 Arbitration

Within ten (10) working days of the receipt of City Manager's final decision, the Grievant may request arbitration by filing a written request to the Human Resources Director.

If either the City or the grievant so requests, the arbitrator shall hear the merits of any issue raised regarding the arbitrability of a grievance first. No hearing on the merits of the grievance will be conducted until the issue of arbitrability has been decided.

The parties shall request a list of seven (7) arbitrators within ten (10) working days after receipt of the employee's request for arbitration from the California State Mediation and Conciliation Service.

The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the grievant, or employee organization, if the employee organization represents the grievant at the arbitration. The services of the certified court reporter are optional; however, if any party and/or the arbitrator desires a certified court reporter, a court reporter will be employed. The parties will share the cost of the Court Reporter, including the original transcript, and shall pay for their own copies of the transcript. However, if 1) the arbitrator does not desire a transcript or require a court reporter, and 2) a party states in writing before the beginning of the hearing both that the party (a) does not desire a court reporter and (b) will not order a transcript, that party shall not be responsible for paying any portion of the cost of the court reporter. All other expenses shall be borne by the party incurring them, and neither party shall be responsible for the expense of witnesses called by the other.

The arbitrator's power and authority is limited to the interpretation of this Agreement. The arbitrator shall be without power or authority to render any decision or award that requires the City or the administration to do an act prohibited by law.

10.09 Decision - Final and Binding:

The decision of the arbitrator shall (a) be made in writing within thirty (30) working days of the close of the hearing or the submission of written briefs; and (b) shall be final and binding upon both parties.

10.10 Waiver of Steps or Time Limits:

Notwithstanding any provision in this section, any time limit or stage of the procedure specified in this section may be waived or extended upon written consent of all parties involved.

SECTION 11.00 - WORK SCHEDULES

11.01 Employees shall work a 40-hour workweek. The Department Head shall have the authority to review, and as necessary, modify the work schedule each April 1 and September 1. However, any such modification shall not include changing from a four-day work week to any alternative schedule without meeting and conferring on the specifics of the proposed change. Said schedule shall be circulated 30 calendar days prior to the beginning of each April 1 and September 1, respectively to all affected employees. In establishing the schedule, consideration shall be given to the staffing needs of the department and the concerns of the employees. It is understood and agreed, however, that this shall not restrict or limit the ability of the City to modify schedules to respond to emergencies or immediate service needs of the City. Management retains the sole right to determine scheduling needs.

Employees will work a 4-10 (four ten-hour shifts per work week) work schedule. The following conditions will apply for employees assigned to work the 4/10 work schedule:

- Employees on the same work crew will work the same work schedule.
- Employees will work ten-hour shifts on four consecutive days per week, unless both parties agree to exception(s).
- Standard work hours for the 4/10 work schedule will be:
 - Day Shift: 7:00AM – 5:30PM
 - Evening Shift: 2:00PM – 12:30AM
- Employees will have a 30-minute unpaid lunch break. Rest breaks will not be taken consecutively or combined with the lunch break, but shall be scheduled approximately midway between the lunch break and the beginning and end of each shift.
- An employee may request to change their day off on the regular schedule from Monday to Friday, or Friday to Monday, if approved by the Manager and/or Department Head. Intermittent trades of days off is discouraged. The Manager or Department Head must approve any change in advance and determine that the change will not disrupt workload or coverage.
- On a quarterly basis, the City and MEA will evaluate the efficiency of the 4/10 work schedule and identify areas for improvement during the regularly scheduled Labor-Management Meetings.

11.02 In all cases, employees who are assigned to shifts in which one-half of their hours fall between the hours of 6:00 p.m. and 8:00 a.m. three or more times within an established work week shall receive a five percent (5%) premium for all hours worked. The 5% premium shall be calculated on the employee's base hourly rate of pay.

SECTION 12.00 - WORKING TITLES

- 12.01 It is agreed that working titles may be adopted within established job classifications with approval of the Department head.

SECTION 13.00 - TEMPORARY APPOINTMENTS

- 13.01 Any employee receiving a temporary appointment to a vacant position shall serve in accordance with the City's Personnel Rules and Regulations. Any employee who has satisfactorily served in a temporary capacity for three months or longer and is selected for a permanent appointment to the same class by the appointing authority, shall receive credit towards completion of the probationary period for the duration of the temporary appointment from the first date of the assignment. A performance appraisal of the employee is required at the time of the permanent appointment.

SECTION 14.00 - ATTENDANCE

- 14.01 General:

Employees shall be in attendance at their work place in accordance with the rules regarding hours of work, holidays, and leaves.

- 14.02 Unauthorized Absence:

14.02.1 An employee whose absence is not authorized shall not receive pay or benefits for the absent period and may be subject to discipline. Failure on the part of the employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the Department Head of the reason the employee is absent and of the employee's availability for duty.

14.02.2 Any employee shall report his/her absence at or prior to the beginning of shift of the same day to the supervisor or higher authority. Failure to do so may result in unauthorized absence.

- 14.03 Breaks:

Employees shall be entitled to the privilege of two 15-minute breaks during each standard work day.

- 14.04 Responsibility to Maintain Service:

No employee shall schedule a break at such time as to leave the office in which the employee works unstaffed.

14.04.1 Persons whose responsibility includes public contact shall advise a responsible person in their office before leaving for a break.

14.04.2 Persons alone in an office should leave a sign on the door, lock the door, and advise the receptionist before leaving for a break, in order to ease the handling of incoming phone calls and customers that may call at the office.

- 14.05 Limitations for Breaks:

- 14.05.1 For work days from 8:00 a.m. to 5:00 p.m. or 7:00 a.m. to 5:30 p.m., the morning break shall be taken between 9:30 a.m. and 11:00 a.m., and the afternoon break shall be taken between 2:30 p.m. and 4:00 p.m.
- 14.05.2 For irregular work days, breaks shall be taken after the first one and one-half hours and before the last hour of each half shift.

SECTION 15.00 - PAY PLAN

- 15.01 Advancement shall not be automatic but shall depend upon increased service value of an employee to the City as exemplified by the recommendations of the supervising official, length of service, performance record, special training undertaken or other pertinent evidence. No salary advancement shall be made so as to exceed the maximum rate established in the pay plan for the class to which the advanced employee's position is allocated.

The following is the basis of compensation for Employees on a five-step range.

- 15.01.1 Step "A" is the minimum rate for a position and shall be the hiring rate for said position. Initial appointment at a rate higher than step "A" may be made in the case of an unusually well qualified person or where other special conditions warrant, but only with the approval of the City Manager.
 - 15.01.2 Step "B" represents an incentive adjustment. An employee shall be eligible for step "B" only after completion of one year from the date of employment on recommendation from the Department Head and approval of the City Manager.
 - 15.01.3 Step "C" represents the rate at which a qualified and experienced employee should be paid after a reasonable period of service. An employee shall become eligible for step "C" only after he/she has proven himself/herself satisfactory in the given classification for a period of at least one year after completion of his/her probationary period, upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.4 Step "D" represents an incentive adjustment for satisfactory performance and increased effectiveness. An employee shall become eligible for step "D" after completion of one year at step "C" upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.5 Step "E" represents an incentive adjustment for increasingly satisfactory performance. An employee shall be eligible for step "E" after completion of one year at step "D" upon recommendation of the Department Head and approval of the City Manager.
 - 15.01.6 A merit increase prior to the normal anniversary date may be granted to a Permanent Employee for outstanding performance or unusual employment conditions at any time, on the recommendation of the Department Head and the approval of the Human Resources Director or City Manager.
- 15.02 Performance Appraisal Review - Performance appraisals are an important personnel tool, and the City should endeavor to conduct them in a timely manner.
 - 15.03 The City shall evaluate employees annually, (1) from their date of hire, or (2) the date they entered their class (when promoted or demoted the classification date shall

supersede the hire date). In any case, an employee shall be evaluated at the completion of probation, be it initial, or as a result of promotion. If an employee does not receive a performance appraisal on the date it is due and is not at top step of the salary range for his/her classification, the Human Resources Department shall process the forms necessary to advance the employee to the next step in the pay range effective with the nearest full pay period to eligibility. The nearest full pay period is defined in Section 15.06. Supervisors must complete a Performance Appraisal Review (PAR) on a timely basis if they intend to withhold a step advancement for the employee.

If a supervisor subsequently finds that the employee would have been entitled to a step increase (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within at least 30 working days after it is due, the employee shall have the right to file a grievance under Section 10 of this Understanding.

15.04 Salary Following Promotion:

Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.

15.05 In the event an employee receives overpayment by the City, the employee shall reimburse the City for the total overpayment. Typically, such repayment shall occur over a schedule equal to the amount of time over which the overpayment occurred. However, at the employee's request, the City may extend such repayment over a longer period, to be determined by mutual agreement of the employee and the Director of Financial Services.

15.06 All salary advancements specified within this section shall be effective with the nearest full pay period to eligibility. The nearest full pay period shall be defined as follows:

For eligibility dates which fall within the first seven (7) days of a pay period, any increase shall be effective at the beginning of that pay period.

For eligibility dates which fall within the second seven (7) days of a pay period, any increase shall be effective at the beginning of the following pay period.

15.07 "Y" Rate Policy - Whenever an employee would sustain an actual decrease in salary as a result of downward reclassification or reorganization within an existing department unit, without fault or inability on the part of the employee, the City Council shall adopt a "Y-Rate" to apply only to the employee so attached. A "Y-Rate" is defined as a monthly salary rate for an individual employee, which is greater than the established range for the employee's class. An employee for whom a "Y-rate" is established shall not receive an increase in salary until such time as the employee's rate of compensation is within the established range for the employee's class. An employee who accepts a reassignment to a lower paid position in lieu of layoff shall not be "Y-Rated."

SECTION 16.00 - SALARY

16.01 The monthly salary schedule labeled Appendix "A" and attached hereto is hereby made a part of this Memorandum of Understanding.

16.02 Effective the first pay period in July 2020, the salary schedule previously in effect shall be increased by 6%.

Effective the first pay period in July 2021, the salary schedule previously in effect shall be increased by 3%.

Effective the first pay period in July 2022, the salary schedule previously in effect shall be increased by 3%.

The City will provide a one-time, non-precedent setting lump sum payment equal to 2% of pay converted to equal amounts for each bargaining unit member active on payroll as of June 30, 2020.

The 2% calculation is based on the 12-month payroll data for FY 19/20, which equates to \$1,777.00 per member based on 52 active members . In accordance with PERS regulations, this will be a one-time, non-pensionable payment.

SECTION 17.00 - OVERTIME

- 17.01 Where, in the course of performing their duties, it is necessary for an employee to work more than their standard 40-hour workweek, said employee shall be compensated as described in this section.
- 17.02 A minimum of three hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any employee, at the rate of time and one-half, who after leaving their employee's place of duty is required without prior notice to return for emergency duties between the hours of 10 p.m. and 5 a.m.
- 17.03 All other overtime, scheduled or unscheduled, shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off at the option of the employee, however, that employees required to work up to eight (8) minutes beyond their normal work hours shall not receive overtime. For purposes of computing overtime pursuant to this section the City will apply a rounding up policy to the nearest quarter hour
- 17.04 Overtime occurring on a paid City holiday shall result in pay, or compensatory time off, at the rate of time and one-half in addition to base pay.
- 17.05 Compensatory time off (CTO) credits may be accrued by employees, up to a maximum of 200 hours on the last day of the pay period that includes June 30 of any year. Employees shall receive pay for the hours of compensatory time off earned which exceeds the 200-hour limit at calendar year end.
- 17.06 In the event an employee is required to work overtime beyond his/her regular shift and does not receive at least four (4) hours off before the next day's shift, he/she shall be deemed not to have left work and shall receive overtime compensation, until a break of four (4) hours or greater is taken.
- 17.07 After working overtime and not having at least eight consecutive hours of off duty, an employee shall not be required to report to work until eight hours after the completion of the overtime assignment, or such amount as may be required by federal or State of California authorities for employees holding a Commercial Driver License. The employee shall be paid from the beginning of the employee's next regular shift.
- 17.08 Permanent MEA employees will be given the first priority in the assignment of scheduled and unscheduled overtime. Temporary employees will not be assigned to scheduled or unscheduled overtime if appropriate permanent employees are reasonably available or except in the case of an emergency and/or immediate service need of the City.

- 17.09 Paid accrued leave, specifically sick leave, vacation leave, workers' compensation leave, or compensatory time off, taken by an employee during any work week shall be counted as hours worked for the purpose of calculating overtime.
- 17.10 In the event an employee is assigned to work overtime that is not pre-arranged, the City will provide meal allowance stipends under the following conditions:
- 17.10.1. An employee required to begin work two or more hours prior to the start of their regular work shift is eligible to receive a \$15 meal allowance stipend.
- 17.10.2. An employee required to work two or more hours past the end of their regular work shift is eligible to receive a \$25 meal allowance stipend.
- 17.11 All overtime is subject to prior authorization from the supervisor.

SECTION 18.00 - STANDBY ASSIGNMENT

- 18.01 The City reserves the right to assign employees to standby status during non-work hours, including week nights, weekends and holidays. Employees assigned to this status shall be required to be available for immediate return to work upon notification by their supervisor or the Police Department Communications Dispatcher. No employee shall be required to respond to a call back via cell phone, pager or other electronic device provided by the City unless they are compensated for such time waiting or on Stand-by.

When assigned to standby status, the following conditions shall apply:

- 18.01.1 Standby assignments shall be made to Maintenance Worker II's or higher with a Class B license and tanker endorsement.
- 18.01.2 A City vehicle shall be provided for use by the employee.
- 18.01.3 In the event the employee leaves home, the location and telephone number where that employee may be contacted must be provided to the Police Department Communications Dispatcher.
- 18.01.4 Travel precluding reasonable response time shall not be permitted.
- 18.01.5 Failure to respond shall automatically result in a loss of compensation for the shift of standby during which the failure to respond occurred and may cause further disciplinary action if warranted when taking the circumstances into consideration.
- 18.01.6 Preliminary standby schedules for a six-month period shall be prepared six weeks in advance. The schedule shall be distributed to standby eligible personnel for a two-week review for changes prior to release.
- 18.01.7 Employees shall have the right to refuse a stand-by assignment only in the case of a personal emergency defined as a time-sensitive and serious or life-threatening medical situation for the employee or the employee's immediate family member, or in the case of the death of an employee's immediate family member. Employees have the right to execute two changes (trades), three

weeks prior to their scheduled standby week, each fiscal year. In the event of a trade, the accepting employee shall not be deemed to have exercised one of his/her trades/changes.

- 18.01.8 No employee shall be assigned mandatory stand-by when at least two volunteers are available for assignment.
- 18.01.9 Employees on stand-by assignments shall provide coverage for the entire week and be paid four hundred twenty dollars (\$420) per week per employee on stand-by. For each holiday which occurs while an employee is on stand-by, the employee shall receive an additional fifty (\$50) dollars.
- 18.01.10 Employees on stand-by who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provide advice, shall be paid at an overtime rate or the equivalent in compensatory time off for the actual time on the phone, or one hour or the equivalent in compensatory time off, whichever is more.
- 18.01.11 Employees must complete lateral cross-training within a year to be considered for the stand-by program in an area outside of their assigned area (e.g. utility, facilities, signal, pump station alarm, etc.).
- 18.01.12 Employees on light duty or with a performance below standard (2 or less) will not be eligible for standby duty.

SECTION 19.00 - BILINGUAL ASSIGNMENT

- 19.01 Effective February 3, 2015, bilingual pay was eliminated. Those employees receiving bilingual pay at the time of the elimination shall retain the pay.

SECTION 20.00 - WORK OUT OF CLASS

- 20.01 The City agrees that upon specific assignment by the Department Head, or the designated representative, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions.
- 20.02 Employees assigned to duties of a higher class for at least one shift shall be compensated at a rate of 10% above the employee's current base salary while working out of class, except where such increase exceeds the pay range allocated of the assigned position. The employee shall be compensated at the appropriate rate commencing with completion of one shift. Assignments shall not be made for less than one shift. Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.
- 20.03 General:
 - (a) Work out of class assignments shall be given on a rotational basis, when practical.
 - (b) Work out of class assignments shall not, as a matter of routine practice, be given to probationary employees or Maintenance Worker I's.
 - (c) Work out of class assignments shall not, as a matter of routine practice, be given to employees performing at less than a competent level as determined by the last performance appraisal.

- 20.03.1 Out of class Supervisor assignments shall be made (a) when a supervisor is unavailable for one shift, (b) usually to the next lower classification in the section, (c) for specific assignment where a lower classification must serve in a capacity of a higher class, (d) when required to perform the duties of a classification with a higher pay range and outside the bargaining unit (i.e., inspection work in lieu of a Public Works Inspector). Should an assignment be made for less than one shift, the 10% rate shall be paid for the full shift.
- 20.03.2 Out of class Maintenance Worker III assignments shall be made (a) in the scheduled or unscheduled absence of the III normally assigned, (b) when assigned to operate certain heavy equipment. Exception: Work out of class assignments may not be made where permanent schedules exist without an assigned Maintenance Worker II on duty.
- 20.04 Exceptions to this policy due to working conditions and/or the needs of the City may be approved by the Department Head.
- 20.05 An employee seeking additional training in another class may waive his/her right to work out of class pay in order to pursue desired training.

SECTION 21.00 – VACANT POSITIONS AND LATERAL TRANSFERS

- 21.01 Employees shall be considered for lateral transfer subject to the following conditions:
 - 21.01.1 The transfer must be recommended by both the outgoing and incoming supervisor and approved by the Department Head.
 - 21.01.2 The transfer must be approved by both the outgoing and incoming Department and/or Division Head. Employees hired on or after January 1, 2007 must be within the same classification to be eligible for a lateral transfer. Any employee within the same classification who can clearly demonstrate knowledge and experience would be eligible to apply.
 - 21.01.3 Probationary employees shall not be eligible for lateral transfer.
 - 21.01.4 Employees who are transferred by request between Departments or between different Classifications shall be subject to a new six-month Probationary Period. Employees failing to complete Probation following such a transfer shall be reinstated to the Position from which transferred.
 - 21.01.5 Employees who are performing “below expectations” or “unsatisfactory” shall not be considered. This shall be determined by examination of the most recent employee appraisal on file. If the appraisal on file is more than twelve (12) months old, a new appraisal shall be done prior to the time the transfer is finalized.
- 21.02 The City will make reasonable effort to fill vacancies within six (6) months of a position becoming open. All vacant permanent positions shall be opened to lateral transfer and/or internal promotional candidates prior to consideration for filling that position from an outside source. Recruitments that do not yield at least three internal candidates may be open to recruitment from an outside source.

- 21.02.1 Written notice of a vacant permanent position shall be circulated by the Human Resources Department to all employees of the bargaining unit. The notice shall include the opening and closing dates for the acceptance of lateral transfer requests.
- 21.02.2 A period of ten (10) working days shall be allowed during which written requests for lateral transfer must be submitted by any interested employee.
- 21.02.3 Requests shall be reviewed, and all applicants notified of their status and scheduled for an oral interview within five (5) working days of the closing date.
- 21.02.4 Oral interviews of eligible employees shall be conducted by the hiring supervisor. Lateral transfer applicants shall be rated using a rating form pre-approved by the Department Head.
- 21.02.5 Written notice of the results of the interview process shall be made by the incoming supervisor within five (5) working days of the last interview.
- 21.02.6 Exceptions to the above process due to working conditions and/or the needs of the City may be approved by the Department Head.

SECTION 22.00 - HOLIDAYS

22.01 The following shall be paid holidays for employees:

- 1. January 1 (New Year's Day)
- 2. Third Monday in January (Observance of Dr. Martin Luther King Jr's Birthday)
- 3. February 12 (President Lincoln's Birthday)
- 4. Third Monday in February (Observance of President Washington's Birthday)
- 5. Last Monday in May (Observance of Memorial Day)
- 6. July 4 (Independence Day)
- 7. First Monday in September (Labor Day)
- 8. November 11 (Veteran's Day)
- 9. Thanksgiving Day
- 10. Day after Thanksgiving
- 11. Christmas Eve (to be observed last working day prior to Christmas Day)
- 12. Christmas Day
- 13. Each employee shall be credited with one (1) floating holiday each calendar year, which must be used by December 31, or it is lost without compensation. Section 22.03 applies in the case of the floating holiday.
- 14. In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday instead.
- 15. In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday instead.
- 16. Any other holiday declared by the City Council as a City holiday for City employees.
- 17. For other than 5-day work weeks, any work week which includes one or more holidays shall be reduced in hours commensurately. The number of days worked during the work week shall be subject to the approval of the Department Head.

18. Employees shall be permitted to take Good Friday as a vacation day by submitting a written request at least two weeks in advance to the Department Head.
- 22.02 Where one of these holidays falls on a working day, employees shall be granted the day off with eight-hours of pay and City offices shall be closed except for such municipal services that must be maintained on an around-the-clock basis seven days a week. Employees who work less than full-time shall be entitled to credit for paid holidays on a pro-rated basis. Employees required to perform their regular duties on a holiday shall be granted pay or compensatory time off, at the rate of time and one-half in addition to base salary. For the purposes of this section, a holiday shall be deemed to begin and end at 12 midnight.
- 22.03 When a holiday falls on a full-time employee's scheduled workday, the employee is entitled to be paid only eight (8) hours of holiday pay. If the workday is a ten (10) hour day, the employee may use two (2) hours of vacation or CTO to receive pay for the full shift or use two (2) hours of unpaid leave.
- 22.04 Employees who work less than full-time shall earn holiday leave on a pro-rated basis based on their regularly scheduled assignment.

SECTION 23.00 - VACATION LEAVE

- 23.01 All employees shall be entitled to paid annual vacation leave beginning at the end of the first six months of service with the City. However, vacation credits shall be accrued beginning with the date of initial appointment. The accrual rates, in hours per pay period, are as follows:

	40 Hour Workweek <u>Hours/pay period</u>
From date of hire through the fourth year of employment	3.38
From fifth through ninth year of employment	4.92
From tenth through fourteenth year of employment	6.46
From fifteenth through nineteenth year of employment	8.00
From twentieth year of employment and on	9.53

- 23.02 Employees who work less than full time shall earn vacation credits on a pro-rated basis based on their regularly scheduled assignment.
- 23.03 Each employee shall be required to have served the equivalent of one year of continuous service in the City in order to be eligible for the employee's full annual vacation leave, provided however, that after six month of continuous service, the employee may be permitted to take vacation leave not to exceed 40 work hours, depending on the employee's regular work schedule. During the first six months of initial employment an employee shall not qualify for any vacation leaves regardless of paycheck stub figures.
- 23.04 The times during a calendar year at which an employee may take vacation shall be determined by the department head with due regard for the wishes of the employee and particular regard for the needs of the municipal service. If the requirements of the

municipal service are such that an employee must defer part or all of his/her annual vacation in a particular calendar year, the appointing power shall permit the employee to take such deferred vacation during the following calendar year or allow the employee to cash out said vacation at his/her option, to the extent of the deferred portion.

- 23.05 No employee may accumulate and carryover more than 300 hours of vacation as of the last day of the pay period that includes June 30 without the express written consent of the City Manager. No employee shall be allowed to be on paid leave for a period of over 225 consecutive work hours.
- 23.06 In the event one or more municipal holidays fall within the annual vacation leave, such holidays shall not be charged as vacation leave.
- 23.07 Upon separation from the City for any reason, an employee shall be compensated for accrued vacation leave.
- 23.08 Approval shall be granted after the supervisor and department head give consideration to the employee's wishes and the needs of the City. Employees may change vacation dates with the approval of the department head. In the event, the needs of the City necessitate canceling of vacation scheduled for a minimum of 90 days in advance, which results in a financial loss to an employee, the City shall reimburse the employee the full amount of loss provided the employee demonstrates the impossibility of obtaining a refund and can document the amount of loss. At the time of making an expenditure, each employee shall advise the department head of the amount of said expenditure. In the event an employee fails to advise the department head, the employee may lose all rights to reimbursement.
- 23.09 An employee may elect to cash-out a maximum of 40 hours accrued annual leave per fiscal year as follows. An employee whose accrued annual vacation leave exceeds 120 hours may elect to cash out a maximum of 80 hours per fiscal year.

Cash-outs are subject to the following:

- (a) The employee uses at least one full work day of paid vacation leave. Vacation cash-out must be requested in advance and contingent upon having an approved vacation leave within thirty (30) calendar days, either before or after.
- (b) Requests for cash-outs other than during approved vacations must be submitted to Finance for payment in June by May 31 or December by November 30 of each year.
- (c) Vacation leave may not be carried-over to cash-out in subsequent years, except upon separation from City service.

SECTION 24.00 - SICK LEAVE

- 24.01 Employees shall be granted paid sick leave credits beginning with the date of original employment at the rate of 3.69 hours for 40-hour employees on a bi-weekly basis. Employees become eligible to take accrued sick leave upon completion of one full month of continuous services. Sick leave shall not be considered as a privilege which an employee may use at the employee's discretion but shall be allowed only in case of necessity and actual sickness or disability. Medical or dental appointments may be charged against sick leave but shall be limited to a maximum of four (4), hours per appointment and should be scheduled and approved in advance. Approval of sick leave for appointments in excess of four (4) hours are subject to the discretion of the Department/Division Head. The Human Resources Director shall direct and enforce

such administrative control as may be necessary to prevent abuse of sick leave privilege.

- 24.02 Employees who work less than full-time shall earn sick leave on a pro-rated basis based on their regularly scheduled assignment.
- 24.03 The City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) provision—see MOU section 31.0—for all employees retiring from the City through CalPERS.
- 24.04 Employees hired on or before July 17, 1999, with five or more years of service may elect to cash out accrued sick leave each November. Payout shall be in accordance with appropriate pay out formulas described in Section 24.05. However, the maximum annual amount shall not exceed 50% of employee's sick leave balance. Employees eligible for this benefit shall at all times maintain a sick leave balance of at least 240 hours.
- 24.05 For employees hired on or before July 17, 1999, the City agrees to provide CalPERS Credit for Unused Sick Leave (GC 20965) or pay an employee who is separating from the City in good standing with at least five (5) years of service an amount equal to 2.5% per year of service for unused accrued sick leave. The pay-out formula shall be $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$. Good standing shall be based on the employee's overall work record and the decision of the Human Resources Director.

SECTION 25.00 - FAMILY LEAVE

- 25.01 Employees with available sick leave accruals may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.
 - 25.01.1 In this section, family medical purposes shall mean illness, accident, medical appointments or other related occurrences.
 - 25.01.2 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.
 - 25.01.3 Each employee shall be allowed to use a maximum of up to half (50%) of the employee's annual earned sick leave per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.
 - 25.01.4 Employees may use accrued sick leave up to fourteen (14) consecutive calendar days leave for birth or adoption of a child beginning with the day of adoption or birth.

SECTION 26.00 - COMPASSIONATE LEAVE

- 26.01 The City agrees to provide compassionate leave when death occurs to a member of the employee's immediate family, not to exceed one work week (40 hours).
- 26.02 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, domestic partner, brother, sister, son, daughter, grandparent, grandchild,

adoptive parents or adoptive children, whether the immediate family is of the employee's or the employee's spouse's family.

- 26.03 Salary paid during this leave is not deducted from any leave balance. Additional leave may be granted in special circumstances by the Human Resources Director.
- 26.04 In special circumstances, the Human Resources Director may allow an employee to utilize compassionate leave for individuals who are not members of the employee's immediate family.

SECTION 27.00 - MILITARY LEAVE

- 27.01 Military leave shall be granted in accordance with the provision of State and Federal law. All employees entitled to military leave shall give the appointing power an opportunity within the limits of military regulations to determine when such leave shall be taken. An employee shall notify and provide applicable orders to the Department Head of the need for military leave as soon as possible after learning of the need.

SECTION 28.00 - WORKERS' COMPENSATION LEAVE

- 28.01 Employees unable to work because of a work-related illness or injury are eligible for workers' compensation leave, provided that the Employee has notified superiors of the illness or injury and the claim has not been denied by the Human Resources Director or worker's compensation insurance administrator authorized by the City.

Workers' Compensation leave shall be 100% of regular pay for two (2) calendar weeks (80 hours or 75 hours, depending on the employee's regular work schedule), followed by 80% of regular pay for six weeks (32 hours or 30 hours per week, depending on the employee's regular work schedule) to a maximum of sixty (60) calendar days. This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available workers' compensation leave. Leave accruals shall be prorated accordingly.

In addition, any employee incurring such an injury or disability shall be entitled to compensation to the extent provided in the State Workers' Compensation Insurance Act. An employee who has exhausted eligible workers' compensation leave shall receive full salary to the extent the employee's accrued sick leave or vacation time may be integrated. Charges to the employee's leave accounts shall be based on the ratio with Workers' Compensation Insurance temporary disability payments payment received by the City to the employee's salary for the same time period, provided that such full salary payments are subject to the following conditions:

- (a) Compensation insurance payments received by the employee, except for payments received for permanent total or partial disability, shall be withheld by the City for the period subject employee continues to receive full salary from the City through the use of leave balances.
- (b) Upon expiration of available workers' compensation leave, all time lost (including doctors' appointments and therapy treatments less than one full workday) shall be charged to earned vacation and sick leave, if available.
- (c) Upon expiration of available earned comp time, vacation and sick leave, payment of salary by the City shall be discontinued and compensation insurance payments shall be sent to the subject employee.

- 28.02 An employee returning from a work-related injury shall be reinstated to the position occupied at the time the injury occurred subject to written release by the attending physician.
- 28.03 Injured employees designated permanent and stationary or accepted into a qualified rehabilitation program and unable to return to their prior occupations may be retired (if eligible) or involuntarily terminated.

SECTION 29.00 - LEAVE OF ABSENCE

- 29.01 The Human Resources Director may grant a Permanent employee leave of absence one time per calendar year without pay not to exceed one year. Leave shall be considered upon written request of the Employee.
- 29.01.1 In evaluating employee requests, the Human Resources Director shall consider the recommendation of the Department Head, departmental workload, the best interests of the City, the employee's duration of employment, the employee's performance record, and the reason for the leave.
- 29.01.2 Any Permanent employee with a non-work-related injury or medical condition who has exhausted all sick leave may request a leave of absence with a doctor's certificate. At the City's discretion and expense, the City at any time may require a medical exam at a facility selected by the City.
- 29.01.3 An employee who is on leave without pay status shall not earn any employment benefits (including, but not limited to, such benefits as vacation leave, medical benefits, sick leave, retirement benefits, credit for time employed or seniority entitlements of any kind) for the period of such status. It is the intent of this subsection that one on leave without pay status is deemed unemployed for the period of such status in terms of earning benefits.
- 29.01.4 The Human Resources Director may authorize continuation of the employee's elected medical and/or dental coverage for all or part of the duration of leave without pay. This shall be done only in extraordinary circumstances and when it is deemed to be in the best interest of the City.
- 29.02 A department head shall have the authority to approve an unpaid leave not to exceed 150 work hours each fiscal year.
- 29.03 Nothing herein shall preclude an employee from waiving in writing the right to reinstatement as a condition to approval for a leave of absence. Any employee who waives the right may be reinstated in accordance with the City's Personnel Rules & Regulations as if they had been subject to a reduction in workforce, except that they shall be placed at the bottom of a reemployment list for any position for which they qualify.
- 29.04 Failure on the part of an employee on leave to report to duty on the date and time that leave terminates may be cause for discharge.

SECTION 30.00 - LIGHT DUTY

- 30.01 The City recognizes the importance of providing support and encouragement to employees who are recovering from an injury or illness in an effort to assist in making a

complete and healthy recovery. Therefore, the City agrees to make every reasonable effort to temporarily provide light duty as follows:

- 30.01.1 Any assignment of light duty shall be conditioned upon receipt of a statement from a physician which either recommends or requires light duty.
- 30.01.2 No employee assigned to light duty shall be required to return to their regular duties without a written release from a physician.
- 30.01.3 The temporary assignment of light duty may be in any department of the City provided that the assignment is compatible with the employee's ability, consistent with the written recommendations of the employee's physician, and is subject to the approval of the Department Head.
- 30.01.4 Said employee shall not be increased nor reduced in pay or benefit solely by virtue of said temporary transfer.
- 30.01.5 Provided that the City may verify said disability by having said employee examined by a physician of the City's choosing at the City's expense.
- 30.01.6 In the event of conflicting medical opinions, no employee shall be required to accept a light duty assignment.
- 30.01.7 The City is currently developing a policy on the subject of light duty. MEA agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 31.00 - RETIREMENT

- 31.01 The City will provide the 2% at 62 CalPERS retirement plan based on the highest 3 year annual average pensionable compensation depending on the eligibility of the new hires, hired on or after January 1, 2013. Employee shall be responsible for the member portion of the contribution to CalPERS retirement.

The City will provide the 2% at 60 CalPERS retirement plan based on the highest 3-year annual average pensionable compensation plan to all new hires (Section 20475: Different Level of Benefits Provided for New Employees) hired on or after October 9, 2011 the effective date of PERS ordinance adopted by the City Council. Employees shall be responsible for the 7% member contribution to CalPERS retirement.

For employees hired before October 9, 2011, the City shall continue, during the term of this Understanding, the present retirement plan, commonly referred to as the 2.7% at 55 plan, including the final year compensation amendment and 1959 Survivors Benefit in full force and effect. Employees shall be responsible for 8% member contribution to CalPERS retirement.

- 31.02 Upon retirement, disability retirement or death, for those employees who were hired on or before July 17, 1999 only, and who had at least five (5) years of service, the City shall pay the separating employee, or his or her estate, for unused accrued sick leave. The amount paid shall be equal to 2.5% per year of service for unused sick leave. The pay-out formula shall be: $2.5\% \times \text{years of service} \times \text{highest hourly rate} \times \text{sick leave hours accrued}$; or

- 31.02.1 Upon retiring with CalPERS, all eligible employees may participate in the PERS Credit for Unused Sick Leave (GC 20965) provision of the City's CalPERS retirement plan.
- 31.03 For the purpose of this section, an employee who is retiring is one who has submitted an application for retirement to the California Public Employees Retirement System (CalPERS) and had it approved.
- 31.04 Retiree Medical
- 31.04.1 For employees hired before June 30, 1996, the City agrees to pay the premiums for employee-only health coverage for all employees, with at least five (5) years of service, who retire after July 17, 1999 and as long as the employee maintains enrollment in one of the City health plans. Employees receiving disability retirements shall be eligible for retiree health coverage until they are covered by another health plan (such as another employer or through a spouse). Retirees may elect to continue coverage for a spouse under the retiree group medical plan provided that the spouse is covered by the group plan at the time the employee retires and maintains enrollment. The retiree is responsible for the additional monthly premium.
- 31.04.2 When the City contributes toward retiree premiums, the maximum allowable shall be based on the lowest single rate for active employees. This maximum allowable City contribution shall not apply to persons who retire prior to the date this MOU is adopted by the Milpitas City Council.
- 31.04.3 Employees hired after June 30, 1996, shall be subject to the following provisions with respect to the retiree health plan benefits:
- Upon completion of the first through the ninth year of service, and upon retirement, the City shall provide 25% of the lowest cost single medical insurance premium payment for the employee only (no more than any active employee's single lowest cost premium rate), as long as the employee remains in one of the City sponsored health care programs.
- Upon completion of the ninth year, this payment of the retiree's medical insurance shall increase to 50%.
- Upon completion of the fourteenth year, this payment of the retiree's medical insurance shall increase to 75%.
- Upon completion of the nineteenth year, this payment of the retiree's medical insurance shall increase to 100%.
- 31.05 PERS Contract Amendment - Credit for Unused Sick Leave
- 31.05.1 Effective July 18, 1999, the City has amended its PERS contract to provide for the Credit for Unused Sick Leave as set forth in Government Code Section 20862.8.
- 31.05.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out. Sections 24.03 and 31.02 of the MOU shall not apply to them.

SECTION 32.00 - BENEFITS

32.01 The City shall provide active employees the CalPERS medical insurance for health benefits. The total monthly health benefit per employee shall be based on the Kaiser rates for employee, employee +1, and family plan. Only employees who have eligible dependents shall be compensated above the single rate plans.

1. The aforementioned health care plan is currently being offered by the City of Milpitas. The City reserves the right to discontinue offering CalPERS due to the following:
 - a. The plan imposes exorbitant costs upon the City;
 - b. The health care carrier refuses to provide services to the City;
 - c. The health care provider no longer offers the services; or
 - d. The health plan is discontinued.
2. If the City discontinues use of CalPERS Health, they will provide a health care provider with similar services.
3. The City will provide a life insurance policy in the amount of \$50,000.00 for each employee.
4. The City shall continue to provide a Short-Term Disability Plan at the current benefit level.
5. The City shall continue to provide a Long-Term Disability Plan at the current benefit level.
6. The City will provide a vision plan for each employee and eligible dependents.
7. Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.
8. Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars (\$125.00) per month, paid bi-weekly (\$57.70) over 26 pay periods. Employees who wish to waive health insurance coverage must complete the City of Milpitas' "Health Insurance Waiver" indicating they agree to abide by the terms and conditions of the waiver.

32.02 Benefit Contribution Part Time Employees: The City agrees to contribute monthly premiums for medical, dental and life insurance in an amount to reflect hours budgeted, pro-rated against the amount contributed for full time employees. For example, if an employee is budgeted to work twenty (20) hours per week, the City will contribute fifty percent (50%) of the benefit contribution for full time employees. Similarly, if a part-time employee is budgeted to work thirty (30) hours per week, the City will contribute seventy-five percent (75%) of the benefit contribution. The City agrees to provide short-term disability and long-term disability insurance benefits, with similar coverage to the coverage employees possess, at no cost to part-time employees.

32.03 Constructive Receipts: The City and MEA agree to continue discussions regarding the Internal Revenue Service (IRS) regulations and opinions on rules related to constructive

receipt of income. Discussions would include what information is to be reported, and which taxes to be withheld on the value of paid leave accruals that an employee earns and is eligible to cash out in a taxable year, as well as “emergency usage” provisions.

SECTION 33.00 - TRAINING

- 33.01 If an employee is directed to participate in a training program, which is related to their job, the City shall provide compensation for the following:
- a. Regular wages for time away from the job (if during working hours);
 - b. Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the scheduled work day;
 - c. Costs of tuition and/or registration for the training;
 - d. Reimbursement for authorized transportation cost to and from the training. (i.e. Mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employees car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).
- 33.02 Participation in and successful completion of training course may be considered in making employment advancements and promotions.
- 33.03 The City of Milpitas provides a tuition reimbursement program for educational activities, which are job related and approved in advance by the Department Head and the Human Resources Director. The amount of the fund shall not exceed the amount budgeted for this purpose. Subject to the availability of monies in the fund, individual employees are subject to a total reimbursement of \$1,400 per fiscal year. Reimbursement is subject to the guidelines outlined in the Tuition Reimbursement Standard Operating Procedure (S.O.P. 6-13).

SECTION 34.00 - UNIFORMS

- 34.01 The City agrees to provide uniform work clothes for MEA employees who are required to wear such uniforms on an annual basis. Uniforms are to identify City employees. Shirts and hats shall have the city emblem, department name, and/or the words City of Milpitas.
- 34.02 The following shall be provided:
- (a) Nine (9) work pants
 - (b) A combination of fourteen (14) tee-shirts, polo shirts and tailored shirts. A maximum of nine (9) may be the tailored shirts.
 - (c) Four (4) sweatshirts
 - (d) One (1) jacket
 - (e) Choice of five (5) baseball type or brim type hats per employee annually with two (2) beanies
 - (f) Five (5) pair of coveralls
- 34.02.1 In the event a uniform becomes damaged in the course of work, the City shall replace the damaged item.

- 34.02.2 The City will endeavor to provide uniforms to employees by September 1st of each year.
- 34.02.3 The City will provide one Gerber/Leatherman multi-tool to current members who have not been issued a multi-tool. In addition, all new members will receive a multi-tool as part of their uniform package. The City will replace multi-tools if needed, with Department Head approval.

34.03 Exemption from wearing uniform:

- 34.03.1 If it is determined by a physician that there is a medical reason which prevents an employee from wearing a City uniform (i.e., fiber content), then such employee shall not be required to wear a uniform. To be eligible for this exemption, the employee must submit a physician's statement to his/her supervisor verifying the above. The City reserves the right to have the employee examined by the City physician (at the City's expense) at any time.
- 34.04 Uniform option: It is agreed that field maintenance employees shall be allowed to wear tailored walking shorts. No athletic shorts or "cut-offs" are permitted.
- 34.05 Uniform colors: All employees will wear same color uniforms, and the color and quality of uniforms shall be approved by the Department Head. The City is agreeable to two different colors to be determined by the Department Head.

SECTION 35.00 - HEALTH & SAFETY

- 35.01 The City shall reimburse up to \$200 (\$225 for bifocals) per employee per fiscal year towards the purchase of safety prescription eyeglasses provided that they are not covered by the employee's health plan. Replacement costs may be covered upon approval of the City Manager or his/her designee if there has been a significant change in the employee's prescription or damage occurred as a result of a work-related incident.
- 35.02 In addition, the City shall provide a maximum of \$250 reimbursement per employee per fiscal year for the purchase of safety shoes. If additional funds after the purchase of the shoes are available, the employee may use the funds for related footwear accessories or repairs. The wearing of said items is mandatory and said footwear must meet safety guidelines set by the City.
- 35.03 Employee Fitness Program:
- 35.03.1 Purpose: To provide employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.
 - 35.03.2 Scope of Services: This program shall allow employee participation in all adult fitness and sports related activities offered by the Recreation and Community Services Department. Employees shall be granted use of all sports facilities operated and/or maintained by the Recreation and Community Services Department at the Milpitas Sports Center.
 - 35.03.3 Cost: Programs shall be offered at no cost to employees. Spouses shall be required to pay full registration and non-resident fees if applicable. Each non-employee participant in an organized team activity shall be required to pay a

fee equal to the team registration fee divided by the number of participants. The City agrees to waive fees for use of City parks by employees for softball team practice, except for costs if field lights are used.

35.03.4 Restrictions:

- (a) Each employee shall be required to complete a registration form, medical history card, and a contract and/or a participant waiver form limiting the City's liability during the employee's participation in a particular program or activity.
- (b) Organized adult athletic programs and leagues, such as softball or basketball, require that employees register in advance. Employees choosing to participate in any of the drop-in programs shall either be issued a pass (for programs which utilize passes) or use their employee ID card (which is issued to all employees at the time of initial appointment) for admission purposes.
- (c) Employees shall not be afforded preferential treatment in instances where a program or activity has already reached its maximum enrollment and shall be added to an established waiting list as appropriate.
- (d) Participation in program requiring advanced registration shall follow the same time schedule as those established by the Department for local residents.
- (e) No limit shall be placed on the number of programs or activities in which an employee may participate except that the activity must be within the scope of services offered by the Recreation and Community Services Department.
- (f) Participation in the program is voluntary and must not conflict with normal work schedules and shall take place during off-duty periods.

35.04.5 These items are not meant to be an all-inclusive list of provisions and restrictions that shall otherwise need to be applied to this program, as it is likely that instances will arise that will require further adjustments. This program shall be evaluated annually with respect to its overall effectiveness and possible application to other Recreation Services programs outside of those offered at the Milpitas Sports Center.

SECTION 36.00 - MISCELLANEOUS

36.01 When available, the City shall furnish vehicles from the City's car pool to conduct official City business. In the event a pool car is unavailable, the employee shall use the employee's own vehicle on a temporary basis.

- (a) An employee shall receive authorization from their Department Head or their designee prior to using the employee's own vehicle.
- (b) Temporary basis shall be defined as no more than five (5) consecutive working days unless otherwise agreed to by the employee. Employees who use their car on a temporary basis shall be reimbursed by the City at the rate established by the IRS.

- (c) Any employee who drives their own vehicle on official City business must have a valid California driver's license and proof of valid insurance.
- 36.02 The City recognizes that air-conditioned City-owned/leased vehicles can contribute to a comfortable and productive working environment. When ordering new vehicles, the City intends within reason to order air-conditioning in said vehicles when said equipment is offered by the manufacturer as an option.
- 36.03 Experimentation, Working Hours - Any experimentation with hours of employment or other related criteria shall be subject to meeting and conferring.
- 36.04 Replacement of Personal Articles - The City shall replace, within reason, personal articles damaged or stolen during performance of duty upon recommendation of the individual's immediate supervisor and Department Head, and approval of the City Manager. The prior condition of the article, precautions taken to protect the article, and the exercise of proper judgment of wearing or using an expensive article on the job that has certain hazards connected with it shall be considered in determining the amount of replacement. An employee shall obtain approval from his/her supervisor to bring in and use personal articles in the line of work.
- 36.05 Seniority - The City agrees to recognize and consider seniority as a factor in approving requests for vacation leave, work schedules, work assignments, and lateral transfers, when all other factors for employees are equal. The needs of the City, however, shall also be considered, and may in some instances be the determining factor for approving such requests. If seniority is not the deciding factor, an employee not selected may within 10 days of the decision make a request in writing/email to the Human Resources Director for a meeting to discuss.
- 36.06 The City agrees to provide sick and vacation leave balances on employee's biweekly pay stubs.
- 36.07 Employees assigned as pesticide applicators shall be able to use required respirator equipment safely.
- 36.08 Copying Charges: The City agrees to waive copying charges for Association business that fall below \$10.00 per month providing that:
 - (a) the Association shall not use City copying facilities or supplies to promote positions or causes which could be inflammatory or cause adverse reactions against the City;
 - (b) if the copying charge for any one month exceeds \$10.00, then the full amount shall be payable to the Accounting Office within 30 days of receipt of statement;
 - (c) the City shall have the right to withdraw this privilege for non-compliance with 1 and 2 above.
- 36.09 Special Equipment Operation: A field maintenance employee who is assigned to operate the ten- wheel dump truck or the hydraulic vacuum line cleaning truck shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding.

- 36.10 The Utilities Camera Truck (CCTV) and Sewer Truck will be operated by employees holding the classification of Equipment Maintenance Worker II or Equipment Maintenance Worker III.
- 36.11 The City shall provide for commercial drivers to obtain the required California Department of Motor Vehicles (DMV) medical examination through the City's health care provider. Employees who choose to obtain a DMV medical through their personal doctor are eligible for reimbursement up to \$125 per employee per fiscal year towards the medical examination. Employees must submit receipts and Evidence of Benefit (EOB) coverage sheets to be eligible for reimbursement.
- 36.12 All employees shall be permitted release time to vote in public elections as provided for in Election Code 14000.
- 36.13 The City and MEA are aware that department heads and/or their designees do periodically promulgate SOPS. The City acknowledges that when the effect of any such SOP is a change regarding matters within the scope of representation, the SOP implementation shall be undertaken in accord with the Meyers-Milias-Brown-Act.

SECTION 37.00 - NO LABOR ACTION

- 37.01 Neither the Association nor its agents or any employee, for any reason, shall authorize, institute, aid, condone, or engage in a work stoppage, slowdown, strike, sick-out, or any other interference with the work and statutory functions or obligations of the City while this Memorandum of Understanding is in effect. While this Memorandum is in effect, neither the City nor its agents for any reason shall authorize, institute, aid, or promote any lockout of employees covered by this Memorandum.

SECTION 38.00 - FMLA

- 38.01 The City and MEA / Local 792 agree to meet and confer to the extent required by law prior to implementation of any changes to the City's Family and Medical Leave Act (FMLA) Policy.

SECTION 39.00 - SEASONAL WORKERS

- 39.01 Seasonal workers shall be limited to nine hundred ninety-nine (999) hours of work per fiscal year. Seasonal workers shall be limited to the duties they may perform according to section. Seasonal workers may operate any class C vehicle that is not equipped for a special purpose. The only-power equipment they may operate is equipment in the 600 & 6000 series, with the exception of chain saws and augers.

SECTION 40.00 - RETIREE CONTRIBUTION FUND

- 40.01 Effective with the term of this MOU, the City shall contribute 1.11% of the bargaining unit's payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.
- 40.02 The City's commitment to the fund will be determined as of the last full pay period of June of each year. At that time, the benefit figure will be recalculated. By approximately mid-August, the computed amount will be contributed to the MILPITAS EMPLOYEES TRUST fund.

- 40.04 This agreement does not guarantee or commit future City funding for retiree or retiree dependent health insurance premiums.

SECTION 41.00 - INCENTIVE PAY

41.01 Professional Certification Incentive Program

Employees shall be eligible for the Professional Certification Incentive Program when possessing an authorized license or certificate that reflects their achievement in attaining certification for professional excellence and experience as follows:

41.01.01 Qualifying License/Certification

The professional certificate or license must be of the highest measure and meet the following criteria:

- (a) The professional license or certification must be issued by either the State of California or a nationally recognized professional organization that administers a nationwide competency examination recognized by the City as a standard of excellence and professional competency.
- (b) The license or professional certification shall enhance the employee's ability to do their job and be over and above the basic job qualifications required for the position held.
- (c) The license or certification must be current and not expired.
- (d) All licenses or certifications must be evaluated and approved by the Public Works Director before they may be considered for this program. Decisions by the Public Works Director regarding eligibility are final.

41.01.02 Conditions and Exceptions

- (a) Employees possessing a license or certificate that meets the criteria established above, and that has been authorized by Public Works Director must submit a transmittal along with proof of license or certification.
- (b) In addition to proof of license or certification, an employee must maintain their certificate consistent with the certifying organization's criteria.
- (c) The qualified period for additional compensation under the Professional Certification Incentive Program is determined annually and is based on the month in which the license or certification is received. Once eligible, qualified employees will receive the incentive pay on the first pay period following the date that they were granted the license or certification.

41.01.03 Compensation

Incentive Pay shall be paid at a four percent (4%) base salary increase. At no time will an employee receive additional compensation for holding more than one qualifying license or certification.

41.02 Additional Pay Incentive

For the period of this Memorandum of Understanding, employees will be entitled to an additional 4% incentive pay if they hold the appropriate license or certificate listed under section 41.02.01 below. Employees are not eligible for the "Additional Pay Incentive" when the license or certification is required in the employee's existing job classification or if the license or certification is used to qualify for incentive pay under section 41.10 of this Memorandum of Understanding.

41.02.01 Grade D2 or higher Water Distribution Operation Certificate from California State Water Resources Board.

All employees receiving an Additional Pay Incentive under this section July 1, 2020, for obtaining and maintaining a California Water Distribution Operator certification under the terms and conditions of the 2017-2020 Memorandum of Understanding, are considered grandfathered in terms of the minimum certification requirement listed in section 41.02.01.

41.03 Longevity Pay

Employees shall be eligible for longevity pay as follows:

- (a) Effective the first full pay-period after the employee's 9th year of service, a longevity incentive of one-half percent (.5%) over base pay.
- (b) Effective the first full pay-period after the employee's 14th year of service, a longevity incentive of one-half percent (.5%) over base pay, (i.e. an additional one-half percent above the previous one-half percent (.5%) for a total of 1% over base pay).
- (c) Effective the first full-pay period after the employee's 19th year of service, a longevity incentive on one-half percent (.5%) over base pay, (i.e. an additional one-half percent (.5%) over the previous 1% for a total of 1.5% over base pay).

SECTION 42.00 – LIUNA NATIONAL (INDUSTRIAL) PENSION FUND

42.01 MEA members currently participate in the LIUNA National Pension Fund under terms set forth in former Section 42.00 of the Memorandum of Understanding approved by City Council on June 7, 2011, (hereafter "PRIOR MOU") and the Standard Form of Participation Agreement signed by the City and MEA in 2002. It is agreed between the Parties that this section 42.00 shall replace that earlier Section 42.00 part of the PRIOR MOU for now and in the future until such time as MEA, or its successor bargaining group or individual employee successors no longer participate in the LIUNA National Pension Fund and there exists no obligation on behalf of the City or MEA or its successor bargaining group or individual employee successors to contribute funds to the LIUNA National Pension Fund, or this Section 42.00 is rescinded or modified by mutual agreement.

42.02 It is further agreed between the Parties that all obligation to make payments to the LIUNA National Pension Fund (including the \$1.00 City contribution referred to in

Section 42.01 of the PRIOR MOU) for pension coverage for MEA employees shall be paid by MEA employees and the City will have the right to deduct the payment from MEA employee wages and make such payments as are due directly to the LIUNA National Pension Fund. This shall include any obligation to make payments to the LIUNA National Pension Fund as now exist or increased amounts which may be imposed in the future for rehabilitation plans imposed, plan restructuring, election for "preferred" benefits under the current Rehabilitation Plan or any other reason. It is further agreed that the City as employer shall elect, if such option is available, the "preferred" payment option, allowing MEA employees enhanced benefits, payment for which MEA employees will be responsible, as agreed and set forth above, but with the understanding that if payments are also due for past obligations under the "preferred" plan, then MEA employees shall be responsible for such amounts which the City may also deduct in reasonable payment amounts from MEA employee wages.

- 42.03 Employee liability for LIUNA pension payments as described in paragraph 42.02 above do not include any fund liability for the City's unilateral withdrawal from the LIUNA National Pension Fund, were that to occur in the future. Responsibility for such liability, were it to occur, shall remain subject to future negotiations between the Parties.
- 42.04 Deductions from MEA employee wages, as set forth in paragraph 42.02 above, shall be processed and deducted as pre-tax pension benefit payments from current and future MEA employees and will include a pro rata share of the indebtedness owed for MEA employees, including retirees, for the period from January 1, 2012, through the present time, until such time as that indebtedness is satisfied.
- 42.05 This section does not constitute a change in conditions from those set forth in the PRIOR MOU and any LOU incorporated therein, governing MEA and the City. To the extent this Section is inconsistent with the PRIOR MOU and any LOU incorporated therein, this Section shall constitute the intent and govern the rights of the Parties.
- 42.06 By inclusion of this section in this MOU, all parties agree that this matter has been fully discussed amongst the Parties and all meet and confer obligations under the law, including the Meyers-Milias Brown Act, have been fully complied with.

SECTION 43.00 - SAVINGS CLAUSE

- 43.01 If any section, subsection, sentence, or clause or phrase of this MOU is for any reason held illegal, invalid or unconstitutional by decision of any court of competent jurisdiction, such decision shall not affect the validity of the remaining portions thereof.

Date: _____

City Representatives:

Richard C. Bolanos

Francine Hunt

Steven McHarris

Union Representatives:

Robert DeLong

Sunny Gallegos

Debbie Barbey

Pete Scrempo

Matt Garcia

LaDondi Ceasar

Angel Lopez Jr

Ryan Heron, UPEC Local 792

Steve Allen, UPEC Local 792

Chris Darker, UPEC Business Manager

Appendix A

Effective July 5, 2020 6% Salary Increase

Classification	Monthly			
Assistant Water Operator	\$	6,537.51	-	\$ 7,946.40
Assistant Water Operator - 40	\$	6,972.74	-	\$ 8,476.53
Equip Maint Worker I - 40	\$	6,378.88	-	\$ 7,751.50
Equip Maint Worker II - 40	\$	7,014.20	-	\$ 8,528.05
Equip Maint Worker III - 40	\$	7,902.51	-	\$ 9,608.54
Equipment Maint. Worker I	\$	5,943.18	-	\$ 7,224.01
Equipment Maint. Worker II	\$	6,537.51	-	\$ 7,946.40
Equipment Maint. Worker III	\$	7,366.00	-	\$ 8,953.37
Fleet Maint Worker I -40	\$	6,089.38	-	\$ 7,402.40
Fleet Maint Worker II - 40	\$	6,697.71	-	\$ 8,141.25
Fleet Maint Worker III -40	\$	7,703.57	-	\$ 9,363.92
Fleet Maintenance Worker I	\$	5,708.80	-	\$ 6,938.99
Fleet Maintenance Worker II	\$	6,279.71	-	\$ 7,632.86
Fleet Maintenance Worker III	\$	7,221.59	-	\$ 8,777.90
Maint Worker III - 40	\$	6,559.16	-	\$ 7,973.29
Maintenance Custodian I	\$	4,380.17	-	\$ 5,324.20
Maintenance Custodian I - 40	\$	4,672.25	-	\$ 5,679.09
Maintenance Custodian II	\$	4,818.29	-	\$ 5,856.60
Maintenance Custodian II - 40	\$	5,139.53	-	\$ 6,247.10
Maintenance Custodian III	\$	5,540.94	-	\$ 6,735.13
Maintenance Custodian III - 40	\$	5,910.70	-	\$ 7,183.56
Maintenance Worker I	\$	4,818.29	-	\$ 5,856.60
Maintenance Worker I-40	\$	5,186.38	-	\$ 6,303.50
Maintenance Worker II	\$	5,300.06	-	\$ 6,442.25
Maintenance Worker II-40	\$	5,703.64	-	\$ 6,932.86
Maintenance Worker III	\$	6,095.01	-	\$ 7,408.58
Senior Public Works Lead	\$	8,695.26	-	\$ 10,569.43
Water Meter Reader I	\$	4,818.13	-	\$ 5,856.56
Water Meter Reader I -40	\$	5,139.71	-	\$ 6,247.99
Water Meter Reader II	\$	5,300.06	-	\$ 6,442.25
Water Meter Reader II -40	\$	5,653.68	-	\$ 6,872.38
Water Systems Operator	\$	7,365.98	-	\$ 8,953.37
Water Systems Operator - 40	\$	7,856.14	-	\$ 9,550.64

Appendix A

Effective July 4, 2021 3% Salary Increase

Classification	Monthly		
Assistant Water Operator	\$ 6,733.63	-	\$ 8,184.79
Assistant Water Operator - 40	\$ 7,181.93	-	\$ 8,730.83
Equip Maint Worker I - 40	\$ 6,570.24	-	\$ 7,984.05
Equip Maint Worker II - 40	\$ 7,224.63	-	\$ 8,783.89
Equip Maint Worker III - 40	\$ 8,139.59	-	\$ 9,896.80
Equipment Maint. Worker I	\$ 6,121.47	-	\$ 7,440.73
Equipment Maint. Worker II	\$ 6,733.63	-	\$ 8,184.79
Equipment Maint. Worker III	\$ 7,586.98	-	\$ 9,221.98
Fleet Maint Worker I -40	\$ 6,272.06	-	\$ 7,624.48
Fleet Maint Worker II - 40	\$ 6,898.64	-	\$ 8,385.48
Fleet Maint Worker III -40	\$ 7,934.68	-	\$ 9,644.84
Fleet Maintenance Worker I	\$ 5,880.06	-	\$ 7,147.16
Fleet Maintenance Worker II	\$ 6,468.10	-	\$ 7,861.84
Fleet Maintenance Worker III	\$ 7,438.24	-	\$ 9,041.24
Maint Worker III - 40	\$ 6,755.94	-	\$ 8,212.49
Maintenance Custodian I	\$ 4,511.58	-	\$ 5,483.93
Maintenance Custodian I - 40	\$ 4,812.41	-	\$ 5,849.46
Maintenance Custodian II	\$ 4,962.84	-	\$ 6,032.29
Maintenance Custodian II - 40	\$ 5,293.71	-	\$ 6,434.51
Maintenance Custodian III	\$ 5,707.17	-	\$ 6,937.19
Maintenance Custodian III - 40	\$ 6,088.02	-	\$ 7,399.06
Maintenance Worker I	\$ 4,962.84	-	\$ 6,032.29
Maintenance Worker I-40	\$ 5,341.97	-	\$ 6,492.61
Maintenance Worker II	\$ 5,459.07	-	\$ 6,635.51
Maintenance Worker II-40	\$ 5,874.75	-	\$ 7,140.84
Maintenance Worker III	\$ 6,277.86	-	\$ 7,630.84
Senior Public Works Lead	\$ 8,956.12	-	\$ 10,886.51
Water Meter Reader I	\$ 4,962.68	-	\$ 6,032.26
Water Meter Reader I -40	\$ 5,293.90	-	\$ 6,435.43
Water Meter Reader II	\$ 5,459.07	-	\$ 6,635.51
Water Meter Reader II -40	\$ 5,823.29	-	\$ 7,078.55
Water Systems Operator	\$ 7,586.96	-	\$ 9,221.98
Water Systems Operator - 40	\$ 8,091.82	-	\$ 9,837.16

Appendix A

Effective July 3, 2022

3% Salary Increase

Classification	Monthly			
Assistant Water Operator	\$	6,935.64	-	\$ 8,430.33
Assistant Water Operator - 40	\$	7,397.38	-	\$ 8,992.75
Equip Maint Worker I - 40	\$	6,767.35	-	\$ 8,223.57
Equip Maint Worker II - 40	\$	7,441.36	-	\$ 9,047.41
Equip Maint Worker III - 40	\$	8,383.77	-	\$ 10,193.70
Equipment Maint. Worker I	\$	6,305.12	-	\$ 7,663.95
Equipment Maint. Worker II	\$	6,935.64	-	\$ 8,430.33
Equipment Maint. Worker III	\$	7,814.59	-	\$ 9,498.64
Fleet Maint Worker I -40	\$	6,460.23	-	\$ 7,853.21
Fleet Maint Worker II - 40	\$	7,105.60	-	\$ 8,637.05
Fleet Maint Worker III -40	\$	8,172.72	-	\$ 9,934.19
Fleet Maintenance Worker I	\$	6,056.47	-	\$ 7,361.58
Fleet Maintenance Worker II	\$	6,662.14	-	\$ 8,097.70
Fleet Maintenance Worker III	\$	7,661.38	-	\$ 9,312.48
Maint Worker III - 40	\$	6,958.62	-	\$ 8,458.86
Maintenance Custodian I	\$	4,646.93	-	\$ 5,648.44
Maintenance Custodian I - 40	\$	4,956.79	-	\$ 6,024.94
Maintenance Custodian II	\$	5,111.73	-	\$ 6,213.26
Maintenance Custodian II - 40	\$	5,452.52	-	\$ 6,627.55
Maintenance Custodian III	\$	5,878.38	-	\$ 7,145.30
Maintenance Custodian III - 40	\$	6,270.66	-	\$ 7,621.03
Maintenance Worker I	\$	5,111.73	-	\$ 6,213.26
Maintenance Worker I-40	\$	5,502.23	-	\$ 6,687.39
Maintenance Worker II	\$	5,622.84	-	\$ 6,834.58
Maintenance Worker II-40	\$	6,050.99	-	\$ 7,355.07
Maintenance Worker III	\$	6,466.20	-	\$ 7,859.77
Senior Public Works Lead	\$	9,224.81	-	\$ 11,213.11
Water Meter Reader I	\$	5,111.56	-	\$ 6,213.23
Water Meter Reader I -40	\$	5,452.71	-	\$ 6,628.49
Water Meter Reader II	\$	5,622.84	-	\$ 6,834.58
Water Meter Reader II -40	\$	5,997.99	-	\$ 7,290.91
Water Systems Operator	\$	7,814.57	-	\$ 9,498.64
Water Systems Operator - 40	\$	8,334.58	-	\$ 10,132.28

Appendix B

Special Equipment Operation

Pursuant to MEA MOU Article 36.09, a field maintenance employee who is assigned to operate the following equipment shall be a Maintenance Worker III. In the event that an employee in a class with a lesser pay range is assigned to operate one of these pieces of equipment, that employee shall receive work out-of-class pay in accordance with Section 20.00 of the Memorandum of Understanding. This list of equipment will be periodically reviewed and may be updated during Labor-Management Meetings with approval of both parties.

- Ten- wheel dump truck
- Ten-wheel hydraulic vacuum line cleaning truck

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