

**SIDE LETTER AGREEMENT**  
Between the City of Milpitas  
and  
Mid-Management and Confidential Unit (MidCon) - LIUNA  
Regarding Sick Leave Cash Outs

On May 14, 2021, the City of Milpitas, hereinafter referred to as the City, and the LIUNA, UPEC 792, hereinafter referred to as the Union, representing the Mid-Management and Confidential Unit (MidCon), collectively referred to as (the Parties) entered into a Side Letter Agreement regarding the change to the vacation cash out election language in the MOU. This change involving the constructive receipt doctrine (codified in Section 451 of the Internal Revenue Code) also applies to Sick Leave. The IRS views an employee's choice whether to cash out sick leave within the same year as it is earned as "constructive receipt" as the IRS essentially prohibits an employee from having a choice whether or not to receive taxable wages/income in a different year outside of certain specific circumstances and programs.

To address this problem and avoid employees to be taxed, and to maximize the benefit employees now enjoy, the City proposes modifying the sick leave cash out election language in the MOU, Section 9.04 as follows:

**Proposed Language:**

9.04 Sick leave cash out for existing employee's "IRS Constructive Receipt": Employees hired on or before July 17, 1999, with five (5) or more years of service wishing to cash out future sick leave accruals may make a request by completing and submitting an Irrevocable Sick Leave Cash Out request form to the Director of Human Resources. Forms will be accepted between November 1<sup>st</sup> of each year through the end of the first full pay period in December. Payout shall be in accordance with appropriate pay out formulas described in Section 9.03. 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.

**For the City of Milpitas:**

**For Mid-Con/LIUNA:**

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Jeannine M. Seher  
Human Resources Director

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Date

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Steve Allen, LIUNA

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11/29/2021  
Date

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Steven McHarris  
City Manager

\_\_\_\_\_  
Date

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Toni-Lynn Charlop, President

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11/29/21  
Date