

SIDE LETTER AGREEMENT
Between the City of Milpitas
and
Professional and Technical Unit (LIUNA)
Regarding Vacation Leave Cash Outs

The constructive receipt doctrine (codified in Section 451 of the Internal Revenue Code) has potentially significant ramifications to employees in your bargaining unit. Under Treasury Regulation Section 1.451-2, employees who have a “choice” of taking cash for accrued vacation or using vacation accruals during a given year, are to be treated as if the employee has actually received the cash that year – regardless of whether or not the employee has actually taken the cash. The City of Milpitas and the Union want to address this, and as such, they are entering into this agreement.

This confirms the understanding reached between the City of Milpitas, hereinafter referred to as the City, and the LIUNA, UPEC 792, hereinafter referred to as the Union, representing the Professional and Technical Unit (Pro-Tech), collectively referred to as (the Parties).

The Parties agree to the following change to the Vacation cash out election language in the MOU, Section 9.09 as follows:

SECTION 9.00 – ANNUAL VACATION LEAVE

9.09 An employee may elect to cash out vacation leave accruals as either (1) a Future Vacation Leave Accrual Cash-out or (2) an Emergency Vacation Leave Cash-out, in accordance with the provisions below:

- a) An employee whose annual vacation leave accrual is 120 hours or less, may elect to cash out a maximum of a maximum of forty (40) hours of accrued vacation per calendar year.
- b) An employee whose annual vacation balance exceeds one hundred and twenty (120) hours, may elect to cash out a maximum of eighty (80) hours per calendar year
- c) An employee who cashes out the maximum vacation accruals under the Future Vacation Leave Accrual provisions shall not be eligible for Emergency Vacation Leave cash-out in the same calendar year.

9.09.1 Future Vacation Leave Accrual Cash Out Eligibility

- a) The employee uses at least one full workday of paid vacation leave in the calendar year the election request is submitted
- b) Between November 1st of each year through the end of the first full pay period in December, an employee wishing to cash out future vacation accruals in accordance with the provision above, may make a request by completing and submitting an Irrevocable Vacation Cash Out request form to the Director of Human Resources. Forms that are received after the first full pay period of

December shall be ineligible for receiving the cash out the following calendar year.

- c) Once the election is made, it is irrevocable, meaning the employees must cash out the elected number of accrued vacation hours during that calendar year. If the employee does not select a date to receive the cash out, the employee will be paid with the paycheck coinciding with the last pay period of the calendar year.
- d) The employee will select either pay period 7, pay period 13, pay period 19 or pay period 24 to receive the cash-out; however, in no circumstances can an employee receive payment for future vacation accrual cash-out until the employee has actually accrued that number of vacation hours. For example, an employee earning 5 hours of vacation per pay period, who wishes to cash out 40 hours of vacation accruals, may receive their cash-out accrual any time after eight pay periods have passed.
- e) As a condition of applying for cash-out, an employee must consent to future payroll deductions (in accordance with Section 9.09.4 below) for necessary withholdings of required taxes.
- f) All cash-outs of future vacation accruals will be included in an employee's regular paycheck.

9.09.2 Emergency Vacation Accrual Cash-out

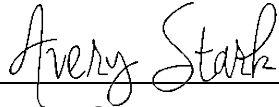
- (a) An employee may request to cash-out vacation due to an unanticipated emergency that is caused by an event beyond the control of the employee and when the employee can demonstrate that it would result in severe financial hardship to the employee if early withdrawal were not permitted. Severe financial hardship to the employee includes:
 - i. Losses resulting from a sudden and unexpected illness or accident of the employee or of a qualified family member.
 - ii. Losses of the employee's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant.
 - iii. Losses that can be resolved through reimbursement or compensation by insurance or otherwise, liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship, or by cessation of voluntary deferrals to a 457 plan shall disqualify an employee from being eligible to receive Emergency Vacation Accrual Cash-out.
 - iv. Or any other reason as allowable per the IRS.
- (b) Emergency Vacation Accrual Cash-out shall be limited to the amount of leave necessary to address the nature of the emergency and shall not exceed the maximums identified if section 9.09 (a) through (c).

9.09.3 Vacation leave may not be carried-over to cash-out in subsequent years, except upon separation from City service.

9.09.4 The Union understands and agrees that employees have a responsibility to pay their taxes in accordance with IRS regulations. Therefore, any adjustments for prior taxes shall be deducted from an employee's paycheck. The City shall provide the employee a fourteen (14) calendar day notice before taking any payroll deductions for this purpose. For amounts greater than \$100, the employee may request the deductions be taken over a period of sequential pay periods, not to exceed eight (8) pay periods.

For the City of Milpitas:

For Pro-Tech/LIUNA:

_____ Jeannine M. Seher Human Resources Director	_____ Date	_____ Ryan Heron, LIUNA	_____ Date
_____ Steven McHarris City Manager	_____ Date	 Avery Stark, President	<u>05-10-2021</u> Date