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RESOLUTION NO. _____

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILPITAS ADOPTING THE MILPITAS EMPLOYEES ASSOCIATION (MEA) MEMORANDUM OF UNDERSTANDING

WHEREAS, the most recent Memorandum of Understanding (MOU) with the Milpitas Employees Association (MEA) and the City of Milpitas covered the period of January 1, 2007 through December 31, 2010; and

WHEREAS; representatives of MEA and the City of Milpitas met in good faith and negotiated a successor Memorandum of Understanding; and

WHEREAS, the new Memorandum of Understanding between the Milpitas Employees Association and the City of Milpitas shall be effective January 1, 2011 through December 31, 2012, a copy of which is attached as "Exhibit A."

NOW, THEREFORE BE IT RESOLVED that the Memorandum of Understanding between the Milpitas Employee Association and the City of Milpitas is hereby adopted. All prior MOUs, LOUs or Side Letters are hereby superseded by this MOU and rendered null and void by its adoption.

PASSED AND ADOPTED this _____ day of _____, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

ATTEST:

_____
Mary Lavelle, City Clerk

APPROVED:

_____
Jose S. Esteves, Mayor

APPROVED AS TO FORM:

_____
Michael J. Ogaz, City Attorney

EXHIBIT A

MEMORANDUM OF UNDERSTANDING

BETWEEN

MILPITAS EMPLOYEES ASSOCIATION

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

AND THE

CITY OF MILPITAS

January 1, 2011 through December 31, 2012

As Adopted by the Milpitas City Council on June 7, 2011

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

January 1, 2011 – December 31, 2012

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 this Agreement shall commence at 12:01 a.m. on, January 1, 2011, and terminate at 12:00 midnight, on December 31, 2012. It 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 Employees receiving permanent appointment prior to July 1, 1986, are subject to the provisions of this subsection:

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 where specifically authorized by the employee in advance. Employees shall authorize deduction of dues in writing. The employee may, at any time, and for any reason, cancel his/her authorization for such a payroll deduction. 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.

3.02 All represented employees receiving a permanent appointment on or after July 1, 1986 shall be required to pay an amount, established by the Association, not to exceed the monthly membership dues, to the Association. The City agrees that the payment of said amount shall be a condition of employment, and further agrees to cause deduction of one-half the monthly sum due, from each of the first two payroll checks issued in each calendar month. The Association agrees that membership and participation in Association or union activities is not required beyond the payment of the monthly charge. The above subsection shall be applied in accordance with federal, state and local law.

3.02.1 The City and the Association recognize the right of employees to form, join and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

Accordingly, membership in the Association shall not be compulsory. A unit member has the right to choose, either: to become a member of the Association; or to pay to the Association a fee for representation services, or to refrain from either of the above courses of action upon the grounds set forth in Paragraph 3.02.07 below.

3.02.2 A bargaining unit member who does not fall within one of the exempted categories as set forth in Paragraph 3.02.07 below, and who has not voluntarily made application for membership in the Association within thirty, (30), days of either the date upon which this Agreement is executed, or the date upon which said unit member has been employed by the City, whichever is later, must, as a condition of employment in the City, pay monthly by payroll deduction to the Association, a representation/ service fee in exchange for representation services necessarily performed by the Association in conformance with its legally imposed duty of fair representation on behalf of said unit member.

3.02.3 The representation/service fee to be collected from non-Association unit members shall be an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the Association.

3.02.4 Any dispute as to the amount of the representation fee shall be resolved by an arbitration panel consisting of three members: 1) Milpitas Employees Association Treasurer, 2) City Director of Financial Services, 3) member selected by the grieved party. Pending such resolution, the representation/service fees deducted shall be held in an escrow account pending a determination of the correct amount of the fee.

3.02.5 Unit members on voluntary leave without pay, and unit members who are on laid-off status shall be exempt from these provisions herein; except that the election as to the membership or payment of a fee as set forth in Paragraph 3.02 above must be exercised within the first ten, (10), workdays upon return to paid status.

3.02.6 Any unit member may be exempted from payment of any representation/service fees to the Association if that person is a member of a bona fide religious body or section which he/she historically held conscientious objections to joining or financially supporting public employee organizations. Such exempt unit member shall, as an alternative to payment of a representation/service fee to the Association, pay an amount equivalent to such representation/service fee to a choice of any of the following: American Cancer Society, American Heart Association, Sickle Cell Anemia Foundation or any other recognized minority service organization which qualifies for tax exemption under Section 501 (c)3 of the IRS code.

3.02.7 The City, upon written request from the Association, shall require such exempt unit member to submit a written affidavit to the Association verifying the existence and nature of the allowable objection to payment of a representative/service fee and in addition, shall require such exempt unit member to submit proof of payment of an amount equivalent to such representation/service fee to the organizations listed above.

3.02.8 A unit member shall sign and deliver to the City a written authorization to deduct the properly established representation/service fee as defined in Paragraph 3.02 above. Upon receipt of the authorization duly completed and executed, the City shall deduct from the pay of unit members and pay to the Association the normal and regular monthly representation/service fee.

3.02.9 In the event that a unit member who is not exempted from payment under Paragraph 3.02.7 above does not sign and deliver to the City an authorization pursuant to Paragraph 3.02.8 above, the Association shall request in writing that the City deduct

from the pay of the unit member and pay to the Association the normal and regular monthly representation fee without the approval of the unit member. In such case, the City shall begin automatic payroll deduction for the representation/service fee due from the date of ratification of this Agreement or the first date of the unit member's employment, whichever is later. There shall be no charge to the Association for such mandatory representation/service fee deductions.

3.02.10 Prior to beginning such payroll deduction pursuant to Subsection 3.02.9, the Association shall certify to the City in writing that the unit member whose pay is affected by the deduction has: 1) not joined the Association; 2) not voluntarily tendered the amount of the representation/service fee as defined herein; and 3) has not qualified for an exemption under Paragraph 3.02.7 herein. The Association shall also notify the unit member in writing that due to the unit member's failure to fulfill any of the above three, (3), requirements, the Association has requested the City to begin automatic payroll deduction of the representation/service fee. The Association shall provide the City with a copy of said written notice to the unit member. Thereafter, the City shall begin the automatic deductions.

3.02.11 The City is under no obligation to make payroll deductions for periods during which a unit member is either terminated from employment or not on the City's payroll for any reason, including, but not limited to, layoff and voluntary leave of absence for more than thirty, (30) days.

3.02.12 Upon the rehiring of any unit member, the City shall treat such unit member as a new unit member for purposes of this Section.

3.02.13 The City's sole and exclusive obligation under this Section is to notify any unit member who has failed to comply with the provisions of this Section that, as a condition of employment in the City, such unit member must either become an Association member, pay a representation/service fee, either through voluntary or involuntary deductions, or establish an exempt status and make payment pursuant to Paragraph 3.02.7 of this Section, and to make payroll deductions pursuant to Paragraph 3.02.8 of this Section. Under no circumstances shall the City be required to dismiss any unit member for failure to fulfill his/her obligation to pay the fees established herein.

3.02.14 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 any subsection of the Section pertaining to representation/service fee. Such reimbursement shall include, but not be limited to, court costs, litigation expense, and attorney's fees incurred by the City.

3.03 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:

3.03.1 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.

3.03.2 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.

3.03.3 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.

3.04 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 his/her 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.

3.05 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 offense, 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 without leave.

(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) 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 violations or more severe misbehavior may require a more formal response by the supervisor to the employee. In this case 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.

6.03.2 Suspension: In the event of more severe or repeated violations, 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 and shall be subject to the procedures outlined in Section 6.05.

6.03.3 Reduction in Salary Range: In the event of more severe or repeated violations, 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 procedure outlined in Section 6.05. Reduction shall be made on a permanent or temporary basis.

6.03.4 Involuntary Demotion: In the event of more severe or repeated violations, the employee may be reduced in rank and pay by the City. Such demotion shall be in conformance with Section 6.05 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 or repeated violations of the City or Department rules, regulations, policies or procedures. Such termination shall be in conformance with Section 6.05.

6.04 Authority for Disciplinary Actions:

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

6.05 Proposed Discipline Notice to Employees:

6.05.1 Prior to taking any disciplinary action, as defined in Section 6.03, 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 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;

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

6.05.2 Any employee notified pursuant to 6.05.1 above who desires an opportunity to respond may do so by appearing at the appointed place and time. Said response may be oral or in writing. The employee is not entitled to an evidentiary hearing, and the sole purpose

of the 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 time of commencement thereof. Said notification will also advise the employee of any right of appeal.

6.05.3 For the purposes of the application of the procedures outlined in Sections 6.05, a disciplinary action shall be defined as a suspension of at least three (3) working days for those employees assigned to a standard 40-hour week, or an equivalent reduction in salary, demotion or discharge.

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 letter of 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 twelve (12) months.

If the employee's performance appraisal review contains any reference to the letter of 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 step, involuntary termination: Arbitration

Within ten (10) working days of the receipt of final disciplinary action, the disciplined employee may appeal the disciplinary action to arbitration by filing a written request. The request for arbitration shall be made 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 disciplined employee, or 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.

7.01.4 No layoffs or new outsourcing of MEA positions during term of this contract, except if the State eliminates any portion of RDA impacting the City and/or the General Fund's deficit exceeds $7 million or more in any fiscal year.

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 is not inconsistent, incompatible or in conflict with the Employee's duties and which does not involve time demands that would reduce the Employee's efficiency.

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

9.03 Employees must notify the Human Resources Director of other employment or business activities in writing prior to engaging in such activities. Unless such notice is impossible or impractical; in such cases notice shall be submitted on the Employee's next working day. 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 In application of MOU Section 9.00 - Other Employment, the City does not intend to take disciplinary action against any employee covered by the MEA Memorandum of Understanding who inadvertently and unintentionally fails to submit a notice of intent to engage in outside employment pursuant to Section 9.01, provided that such outside employment is not inconsistent, incompatible or in conflict with the employee's duties as defined in Section 9.02 (a) through (d).

Employees who engage in outside employment that conflicts with duties or who intentionally fail 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 f o r 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 1

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 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.

10.07 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.

10.08 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.

10.09 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 37.5 or 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.

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.

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. The City shall make every effort to fill vacancies within six months.

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 by 10:00 a.m. 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., 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. Effective January 1, 2007, 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 are 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 increased, (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.

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 37.5 or 40 hour workweek, said employee shall be compensated as follows:

17.02 A minimum of two 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.

17.03 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.

17.04 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.

17.05 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.

17.06 Compensatory time off credits may be accrued by employees, up to a maximum of 160 hours on the last day of the pay period that includes December 31 of any year. Employees shall receive pay for the hours of compensatory time off earned which exceeds the 160-hour limit at calendar year end.

17.07 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.

17.08 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. The employee shall be paid from the beginning of the employee’s next regular shift.

17.09 The City reserves the option to specify whether the employee shall be compensated in overtime pay at the rate of time and one-half or compensatory time off at the rate of time and one-half when

the employee works scheduled overtime which is charged to a Capital Improvement Project. The City shall inform the employee of the City's choice prior to the employee's acceptance of the overtime assignment. The City's choice shall apply equally to all employees working this assignment. Acceptance of the assignment shall indicate the employee's acceptance of the method of overtime payment as designated by the City.

17.10 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.

17.11 Any paid accrued leave, specifically sick leave, vacation leave, worker's 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.

17.12 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 (excepting Facility Maintenance Workers)

18.01.2 A radio equipped 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 stand-by schedules for a six month period shall be prepared six weeks in advance. The schedule shall be distributed to stand-by eligible personnel for a two week review for changes prior to release.

18.01.7 Employees shall have the right to refuse a standby 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 stand-by 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 standby when at least two volunteers are available for assignment.

18.01.9 Employees on standby assignments shall provide coverage for the entire week and be paid three hundred ($300) per week per employee on standby. For each holiday which occurs while an employee is on standby, the employee shall receive an additional fifty ($50) dollars.

18.01.10 Employees on standby who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provides 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 stand-by duty.

SECTION 19.00 - BILINGUAL ASSIGNMENT

19.01 The City agrees to pay a premium of 2.5% of base pay to employees with bilingual skills, who occupy positions where the City has determined said skills are necessary or desired to adequately serve the Milpitas community

19.02 Qualifying languages for bilingual assignment include:

(a) Spanish
(b) Vietnamese
(c) Any other foreign language as determined by the City
(d) American Sign Language (ASL)

19.03 Upon written recommendation of the Department Head the Human Resources Director may approve a bilingual assignment once the employee has undergone appropriate testing and been certified as bilingual. The Human Resources Director reserves the right to terminate a bilingual assignment when it is determined that the need for such assignment no longer exists.

19.04 An eligible employee may request to be tested for bilingual certification at any time. The method for such certification shall be the same for all bargaining units having bilingual assignment provisions.

19.05 This section shall not apply to employees who may be called upon periodically for interpretation, where Subsections 19.02, 19.03, and/or 19.04 are not met.

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 1'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 assignment 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 Ill assignment 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 Division 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 - 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 All vacant permanent positions shall be opened to lateral transfer prior to consideration for filling that position from an outside source.

21.02.1 Written notice of a vacant permanent position shall be circulated by the affected section's supervisor. 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 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 Employees assigned to four-day, 37.5 hour work schedules shall work four 9.5 hour days at straight time and be paid for 37.5 hours. The additional one half hour per week worked shall be credited toward accrued holiday leave hours. During weeks in which one or two full day paid holidays occur, those employees shall work 9.5 hour days for four days less the number of paid holidays at 7.5 hours per holiday. The balance shall be paid from the accrued holiday hours for a total of 37.5 hours for the holiday week (less any paid or unpaid leave).

Any positive balance remaining at the time of separation of employment by an employee shall be paid at the employee’s current hourly rate.

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:

	37.5 Hour Workweek In Hours/pay period	40 Hour Workweek In Hours/pay period
From date of hire through the fourth year of employment	3.17	3.38
From fifth through ninth year of employment	4.61	4.92
From tenth through fourteenth year of employment	6.05	6.46
From fifteenth through nineteenth year of employment	7.50	8.00
From twentieth year of employment and on	8.94	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 37.5 or 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 December 31 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 3.46 hours biweekly for 37.5 hour employees and 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 PERS Credit for Unused Sick Leave (GC 20965) provision—see MOU section 31.0—for all employees retiring from the City through PERS.

24.04 Employees hired on or before July 17, 1999, each November, an employee with five or more years of service may elect to cash out accrued sick leave. 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 PERS 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% x years of service x highest hourly

rate x 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. (37.5 or 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 worker's 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 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 60 plan to all new hires including the 3-year final compensation second tier (Section 20475: Different Level of Benefits Provided for New Employees) hired on or after July 1, 2011 or such time thereafter that a PERS ordinance adopted by the City Council becomes effective. Employees shall be responsible for the employee contribution to PERS retirement.

For employees hired before July 1, 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% contribution to PERS 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% x years of service x highest hourly rate x sick leave hours accrued; or

31.02.1 Upon retiring with PERS, all eligible employees may participate in the PERS Credit for Unused Sick Leave (GC 20965) provision of the City’s PERS 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 Public Employees Retirement System, (PERS), and had it approved.

31.04 Sick leave Payout provision for Retiring Employees - Medical continuation:

The City agrees to permit retiring employees to apply sick leave pay out funds to the cost of continuing a medical plan for family members provided that there shall be no additional cost to the City in permitting the employee to continue medical coverage, except for reasonable administrative costs.

31.05 Retiree Medical

31.05.1 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.

31.05.2 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.

31.05.3 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%.

31.06 Effective December 22, 1996, the City agrees, as allowed under Internal Revenue Code Section 414(h)(2), the implementation of the Public Employees' Retirement System (PERS) "Pick-Up" program (TDMC) as outlined in PERS Circular Letter 100-364. In completing the conversion to the IRC 414 (h) (2) program, the increase in salary shall be calculated on the employee's base salary. The City implemented a one-time increase of 7.53% for this purpose.

31.07 PERS Contract Amendment - Credit for Unused Sick Leave

31.07.1 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.

31.07.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out and 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 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 member of the Association.

4. The City shall provide a Short Term Disability Plan that at a minimum will provide similar coverage to the one the members of the Association possess as of June 30, 1999.

5. The City shall provide a Long Term disability Plan that at a minimum will provide similar coverage to the one the members of the Association possess as of June 30, 1999.

6. The City will provide a vision plan for each member of the Association and eligible dependents.

7. MEA agrees to discuss a “cafeteria style” benefit plan upon request of the City.

8. Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.

9. 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. 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 one the members of the Association possesses as of June 30, 1999, at no cost to part-time employees.

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 employee 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 agrees to provide all supervisors who have MEA members under their authority a copy of the most recent MOU.

33.03.1 The City of Milpitas will provide 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 S.O.P.

SECTION 34.00 - UNIFORMS

34.01 The City agrees to provide uniform work clothes for M.E.A. 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, Public Works or Parks & Recreation and/or the words City of Milpitas.

34.02 The following shall be provided:

a. Nine (9) work pants; and
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

34.02.1 The City shall provide each employee with four (4) sweatshirts annually and one jacket during the term of the MOU. If the jacket gets damaged in the course of work, the City will replace it.

34.02.2 In the event a uniform becomes damaged in the course of work, the City shall replace the damaged item.

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:

34.05.1 The City agrees to allow field maintenance employees to wear different color uniforms as differentiated by the work section to which they are assigned (i.e., Parks, Street Landscape, Equipment Maintenance, Fleet Maintenance, Utilities, Streets, Facilities, Recreation, Finance), under the following conditions:

(a) All employees in the same work section shall wear the same color, however, older shirts, regardless of color may be worn as long as the Section is identified.

(b) The color and quality shall be approved by the supervisor after voted upon by employees prior to purchase of uniforms.

(c) The final decision for the quality of uniforms shall be approved by the Department Head.

SECTION 35.00 - HEALTH & SAFETY

35.01 Employees’ Safety Committee:

The City is committed to the concept that the workplace be a safe environment for all employees. In recognition of the City's and the Association's mutual interest in mitigating and/or eliminating present and future health hazards in the workplace, an Employees’ Safety Committee shall be maintained. The committee's duties are, but shall not be limited to, developing training, subject to the City's review, for the following:

(a) equipment and vehicle operation;
(b) job safety while on stand-by duty, and;
(c) handling hazardous material, traffic control, and Corp Yard shop safety.

The Committee shall develop the guidelines for equipment operation and the City shall implement this program within six (6) months of the execution of this agreement.

35.02 The City shall reimburse up to $175 ($200 for bifocals) per employee per 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.

35.03 In addition, the City shall provide a maximum of $200 reimbursement per employee annually 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.

35.04 Employee Fitness Program:

35.04.1 Purpose: To provide employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.

35.04.2 Scope of Services: This program shall allow employee participation in all adult fitness and sports related activities offered by the Recreation Services Division. Employees shall be granted use of all sports facilities operated and/or maintained by the Recreation Services Division at the Milpitas Sports Center.

35.04.3 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.

35.04.4 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 Division 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 Services Division.

(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.

(d) The City assumes liability in connection with the use of a vehicle while on official City business unless the employee is found guilty of being negligent, reckless or under the influence of a controlled substance.

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.

36.06 Printing of Sick Leave and Vacation Accrual Rates - The City agrees to print sick and vacation accruals rates on employee's biweekly timesheets or 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 ten-wheel 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 Audit of Records: The City agrees to perform and pay for an audit of the Benefit Fund's financial records at least once a year during the term of the Memorandum of Understanding.

36.11 All employees shall be permitted release time to vote in public elections as provided for in Election Code 14000.

36.12 Overpayment Reimbursement: 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. Effective June 19, 2007 and with going forward only, the City may obtain reimbursement by payroll deduction. 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 City Finance Director.

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 Millias-Meyers-Brown-Act.

36.14 The City and MEA agree that ongoing communication between their representatives is conducive to a positive and productive working environment. Therefore, the parties agree to calendar regular meetings between their representative in order to discuss matters of mutual concern regarding the working environment. Subject to the exceptions described herein, the meeting attendees shall include the department head or designee and the Union President or their designees and Human Resources. By agreement of the department head and the Union president or designees, additional individuals may be invited to attend the meeting. In order for the meetings to serve their intended purpose, it is desirable that the parties exchange agenda items not less than one week before a scheduled meeting.

It is understood that the demands of business and/or pressing personal matters shall periodically require that meetings be canceled, rescheduled or otherwise delayed.
Additionally, the holdings of said meetings can be temporarily or permanently suspended at the request of either the City or MEA.

36.15 The yard clock shall be recognized as the official timepiece for the public works maintenance division. The yard clock shall not be supplemented by any noise making device. When the noise making device is eliminated, management will take corrective discipline actions for employees who are abusing the tardiness policy.

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 intends to implement a revised FMLA policy. The City and MEA / Local 792 agree to meet and confer to the extent required by law prior to implementation.

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 The City shall contribute half (50%) of 82% of the bargaining unit's 1% of payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.

40.02 Effective January 1, 2009 the City shall contribute 82% of the bargaining unit's 1% of payroll with benefits figure for the MILPITAS EMPLOYEES TRUST fund.

40.03 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. Approximately fifteen (15) days from the last day of the full pay period in June, 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 The City may at the discretion of the Department Head, provide a four percent (4%) base salary increase for up to forty-two (42) special certifications, licenses, or special assignments within the Public Works and Parks & Recreation Departments. This program does not apply to job classifications that require certificates or licenses. Said 4% base salary increases/incentives shall be available for assignment effective January 1, 2001. Types of incentives may be increased or modified at the discretion of the Department Head.

41.02 Longevity Pay

Effective the first full pay period following City Council adoption (June 19, 2007), 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 The City of Milpitas shall make a total contribution equal to $1.00 (effective June 19, 2007) per hour per employee covered by this MOU up to forty (40) hours per week of budgeted/approved work hours that the employee is on paid status.

42.02 The amount shall be paid to the LIUNA National (Industrial) Pension Fund, to an address specified by MEA.

42.03 The amount shall be prorated for employees working less than forty (40) hours weekly.

42.04 The City shall not make contributions for hours in excess of forty hours per week.

42.05 The monthly payments shall be for the term of this MOU. The subject payment shall be for every regular employee that is covered by this agreement.

42.06 This MOU provision shall not be construed to create a vested right that can be asserted against the City and shall not be construed to guarantee any future funding for the LIUNA pension fund beyond the term of this MOU. Future funding shall be subject to negotiations.

Unless specifically amended by the terms of this Understanding, all other terms and conditions of employment remain as previously established.

The terms and conditions set forth in this Agreement represent the full and complete understanding and commitment between the parties. The terms and conditions may be altered, changed, added to, deleted from, or modified only through the voluntary and mutual consent of the parties in a written amendment to the Agreement. During the term of this Agreement, the parties agree that neither the Union nor the City shall be obligated to reopen or renegotiate any of the provisions of this agreement.

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:

_____
Bill Marion

_____
Carmen Valdez

_____
Emma Karlen

_____
Mary Lavelle

Union Representatives:

_____
Paul Mullett

_____
Russell Casselberry

_____
Robert DeLong

_____
Curtis McGann

_____
Sunny Gallegos

_____
Steve Allen UPEC Local 792

Appendix "A" – Salary Schedule

REPRESENTED CLASSIFICATIONS
MILPITAS EMPLOYEES ASSOCIATION

SALARY SCHEDULE

A 16% base salary reduction effective the first full pay period in July 2011. The monthly base salary will be adjusted as follows:

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Job Classification	Monthly Salary Range	
Equipment Maintenance Worker I	$ 4,184.54	- $ 5,086.37
Equipment Maintenance Worker II	$ 4,603.03	- $ 5,595.03
Equipment Maintenance Worker III	$ 5,186.36	- $ 6,304.03
Fleet Maintenance Assistant - 40	$ 4,157.54	- $ 5,053.56
Fleet Maintenance Assistant - 37.5	$ 3,897.68	- $ 4,737.70
Fleet Maintenance Worker I	$ 4,019.54	- $ 4,885.74
Fleet Maintenance Worker II	$ 4,421.49	- $ 5,374.30
Fleet Maintenance Worker III	$ 5,084.68	- $ 6,180.50
Maintenance Custodian I - 37.5	$ 3,084.06	- $ 3,748.75
Maintenance Custodian II - 37.5	$ 3,392.52	- $ 4,123.63
Maintenance Custodian I - 40	$ 3,289.70	- $ 3,998.63
Maintenance Custodian II - 40	$ 3,618.71	- $ 4,398.56
Maintenance Custodian III	$ 3,901.35	- $ 4,742.17
Maintenance Worker I - 37.5	$ 3,392.52	- $ 4,123.63
Maintenance Worker II - 37.5	$ 3,731.75	- $ 4,535.95
Maintenance Worker I - 40	$ 3,618.65	- $ 4,398.56
Maintenance Worker II - 40	$ 3,980.52	- $ 4,838.34
Maintenance Worker III	$ 4,291.45	- $ 5,216.36
Printing Services Technician I	$ 3,252.30	- $ 3,953.17
Printing Services Technician II	$ 3,731.75	- $ 4,535.95
Water Meter Reader I	$ 3,392.44	- $ 4,123.59
Water Meter Reader II	$ 3,731.75	- $ 4,535.95
Assistant Water Operator	$ 4,603.03	- $ 5,595.03
Water Systems Operator	$ 5,186.34	- $ 6,304.03

MEMORANDUM OF UNDERSTANDING
REGARDING PILOT DENTAL PLAN PROGRAM
CITY OF MILPITAS AND THE UNDERSIGNED
LABOR ORGANIZATIONS

WHEREAS, the parties have discussed ways in which to achieve cost savings and other reforms relative to the dental insurance program affecting various employees and officials of the City of Milpitas; and

WHEREAS, the City has met and conferred with the appropriate labor organizations representing affected City employees; and

WHEREAS, the parties have come to an agreement on a pilot dental program; and

WHEREAS, this plan will cover all employees who are represented by the labor unions listed on Attachment A, as well as other employees and officials listed on Attachment A; and

WHEREAS, this plan is projected to achieve a substantial cost savings to the City, while nevertheless providing excellent dental coverage to City employees and officials;

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. The City will seek to contract with Delta Dental to serve as the third party administrator for the City's self-funded, dental insurance program with an annual calendar year maximum. The program will cover the employees, retirees, dependents of employees and retirees, and officials listed in Attachment A (hereafter the "covered employees"). The contract will become effective January 1, 2007. If there are any delays or problems with the contract and its effective date, the City will notify affected labor organizations and discuss alternative arrangements.

2. For active employees and officials, the City will contribute up to the monthly premium toward dental benefits. For eligible retirees, the City will contribute up to 50% of the contribution for actives per retiree, per month, toward dental benefits. MSA Retirees please refer to MSA MOU section 32.07.

3. The annual calendar year maximum for the program shall be $3500 per covered employee and dependent(s) per calendar year after satisfaction of the first, second, and third year calendar year maximum designations based on length of employment. Unused amounts may not be carried forward into a succeeding calendar

year. Claims payment is subject to the rules, exclusions and procedures provided for in the dental plan administered by Delta Dental on behalf of the employees covered by this MOU.

4. This is a pilot program that the parties intend to evaluate after approximately one year. This program supersedes and replaces all other dental programs. No later than October 2007, the parties agree to meet to review the cost, administration, and overall effectiveness of the program and to make a determination whether to adopt, continue, alter, or discontinue the program. When the parties meet they also agree to review the plan's overall costs in order to consider a potential 15% reduction in the premiums paid by retirees. If the parties do not agree to continue the program, they will meet and confer on an alternative program.

5. The labor organizations who are parties to this MOU agree to multi-union negotiations, such that one labor organization cannot drop out and obtain different benefits.

For the City of Milpitas:

Carmen Valdez — 10/18/06
Carmen Valdez, Acting Director of Human Resources — Date

Leslie Stobbe — 10/12/06
Leslie Stobbe, Representative of LIUNA — Date
For: Mid-Management & Confidential Unit

Dorsey Wiseman — 10/23/06
Dorsey Wiseman, PROTECH President — Date
For: Milpitas Professional and Technical Group

Eddie Loredo — 13 Oct. 06
Eddie Loredo, MSA President — Date
For: Milpitas Supervisors Association

Paul Mullett — 10/18/06
Paul Mullett, MEA President — Date
For: Milpitas Employees Association

Timothy McCormick — 10/20/06
Tim McCormick, Business Agent — Date
For: LIUNA Local 270

SIDE LETTER AGREEMENT
BETWEEN THE
CITY OF MILPITAS
AND THE
MILPITAS EMPLOYEES ASSOCIATION/LIUNA LOCAL 270

This Side Letter Agreement is entered into by and between the City of Milpitas ("CITY"), and Milpitas Employees Association ("MEA"). This addresses the result of several meetings with representatives of the union, Paul Mullett, Curt McGann, and Al Bennett; and City representatives, Blair King, Dennis Cuciz, Steve Smith, and Cherie Rosenquist. The effects of these proposals were reviewed and negotiated for impacts, and the following was subsequently agreed upon:

1. The City may require all employees assigned to the Public Works Utility section to possess State of California Water Distribution Operator Certificate, appropriate to the requirements the state imposes on the City of Milpitas.
2. The City may also require all stand-by employees for Utilities to possess a State of California Water Distribution Operator Certificate.
3. The Water System Operator classification must possess a higher level certification (D-5).
4. Assigned Utilities employees must achieve certification within twenty-four months of hire, promotion, or lateral transfer.
5. Employees who currently possess "interim" certification must achieve certification before December 31, 2006.
6. Any Utilities employee that does not successfully meet the certification requirements is subject to reassignment, within the classification , to a vacant position or through lateral transfer at the discretion of the Public Works Director. Assignments made within Utility Maintenance will be at the supervisor's discretion. Incentive pay may be affected as a result of the reassignment.
7. Employees who achieve Water Distribution Operator Certification will be eligible for a 4% incentive pay.
8. Employees who already receive one 4% incentive pay will also be eligible for water certification pay of 4%; with a maximum of two incentives.
9. Holders of "interim" certification will receive 4% incentive pay effective the first full pay period in January 2005.
10. If holders of "interim" certification take and fail the test, they will forfeit their 4% incentive pay until they pass the test—they will have until December 31, 2006.
11. This side letter reconfirms a previous side letter amendment of the MOU dated December 2000 pertaining to Section 41 Incentives, excepting the "job classifications that require certificates…" The exception will allow for a 4% incentive for the Water Distribution Operator Certificate.
12. Job descriptions will be modified for all classifications assigned to the Utilities Unit pertaining to Water Distribution Operator duties and certificate requirements.

The MEA signed below signifies that s/he is the authorized representative(s) and is the proper party to this Letter; that all actions necessary for the parties to ratify and accept this Letter as a binding resolution has been completed in the manner required by that party or the law; and that this Letter is hereby entered into without the need for further ratification by MEA and will take effect upon approval by the City Council of Milpitas. This Letter is valid through the term of the MEA MOU.

12/22/04
Date

Paul Mullett, MEA President

12/22/04
Date

Al Bennett, LIUNA 270 Representative

12/22/04
Date

Cherie Rosenquist, City of Milpitas

Mea/sideletter/121404waterdistribopcert

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