RESOLUTION NO. _____ ***14**

A RESOLUTION OF THE COUNCIL OF THE CITY OF MILPITAS APPROVING THE MID-MANANGEMENT AND CONFIDENTIAL UNIT MEMORANDUM OF UNDERSTANDING

WHEREAS, the most recent Memorandum of Understanding (MOU) with the Mid-Management and Confidential Unit and the City of Milpitas covered the period of January 1, 2009 to December 31, 2011;

WHEREAS, that MOU has been amended and extended by various Side Letter Agreements negotiated by the parties from time to time; and

WHEREAS, representatives of the Mid-Management and Confidential Unit and the City of Milpitas met in good faith and negotiated a successor MOU; and

WHEREAS, the new MOU provides for wage and benefits adjustments as provided therein; and

WHEREAS, the new MOU between the Mid-Management and Confidential Unit and the City of Milpitas shall be effective January 1, 2012 through December 31, 2012, a copy of which is attached as "Exhibit A," and which shall supersede and replace all previous MOUs and Side Letters between the parties; and

NOW, THEREFORE, the City Council of the City of Milpitas hereby finds, determines, and resolves as follows:

1. The City Council has considered the full record before it, which may include but is not limited to such things as the staff report, testimony by staff and the public, and other materials and evidence submitted or provided to it. Furthermore, the recitals set forth above are found to be true and correct and are incorporated herein by reference.

2. The MOU between the Mid-Management and Confidential Unit and the City of Milpitas, attached hereto as Exhibit A, is hereby approved and the City Representatives are hereby authorized to execute it.

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 THE

CITY OF MILPITAS

AND

UNITED PUBLIC EMPLOYEES OF CALIFORNIA
(UPEC LOCAL 792, AFL-CIO)

(MID-MANAGEMENT AND CONFIDENTIAL UNIT)

January 1, 2012 – December 31, 2012

TABLE OF CONTENTS

SECTION 1.00 - EMPLOYEE RIGHTS....1
SECTION 2.00 - CITY RIGHTS....2
SECTION 3.00 – DISCIPLINE....4
SECTION 4.00 - LAYOFF....7
SECTION 5.00 - RESIGNATION....7
SECTION 6.00 - OTHER EMPLOYMENT....7
SECTION 7.00 – GRIEVANCE PROCEDURE....8
SECTION 8.00 - ANNUAL VACATION LEAVE....12
SECTION 9.00 - SICK LEAVE....14
SECTION 10.00 - FAMILY LEAVE....15
SECTION 11.00 - COMPASSIONATE LEAVE....15
SECTION 12.00 - MILITARY LEAVE....16
SECTION 13.00 - LEAVE OF ABSENCE....16
SECTION 14.00 - JURY LEAVE....17
SECTION 15.00 - WORKERS' COMPENSATION LEAVE....17
SECTION 16.00 – OVERTIME (HOURLY EMPLOYEES ONLY)....18
SECTION 17.00 - HOLIDAYS....19
SECTION 18.00 - TRAINING....20
SECTION 19.00 - ATTENDANCE....20
SECTION 20.00 - PAY PLAN....21
SECTION 21.00 - RETIREMENT PLAN....23
SECTION 22.00 - RETIREE DEPENDENT HEALTH CARE....25
SECTION 23.00 - BENEFITS....26
SECTION 24.00 - WORK OUT OF CLASS / SPECIAL ASSIGNMENT....27
SECTION 25.00 - NO DISCRIMINATION....28
SECTION 26.00 - SALARY....29
SECTION 27.00 - BILINGUAL ASSIGNMENT....29
SECTION 28.00 – EYEGLASS REIMBURSEMENT....29
SECTION 29.00 - MOU NEGOTIATIONS....30
SECTION 30.00 - EMPLOYEE FITNESS PROGRAM AT THE MILPITAS SPORTS CENTER....30
SECTION 31.00 - MILEAGE REIMBURSEMENT....30
SECTION 32.00 - TUITION REIMBURSEMENT....30
SECTION 33.00 - REPLACEMENT OF PERSONAL ARTICLES....31
SECTION 34.00 - EMPLOYEE ASSISTANCE PROGRAM....31
SECTION 35.00 - NO STRIKE CLAUSE....31
SECTION 36.00 - SAVINGS CLAUSE....32
APPENDIX A – SALARY SCHEDULE....33

MEMORANDUM OF UNDERSTANDING BETWEEN THE CITY OF MILPITAS THE MID-MANAGEMENT AND CONFIDENTIAL UNIT, REPRESENTED BY UPEC LOCAL 792, AFL-CIO

January 1, 2012 – December 31, 2012

PREAMBLE

This Memorandum of Understanding (MOU) shall be effective from 12:01 a.m., on January 1, 2012 through December 31, 2012. This MOU shall apply to represented permanent and probationary employees hereafter referred to as "employee(s)" unless otherwise specifically indicated, assigned to those classes listed in the salary schedule set forth in Appendix "A" attached hereto. When classes are created which the City determines fall under the representation of the Union, this MOU shall also apply.

Appendix "A" also indicates whether employees covered by this MOU are "hourly non-exempt" employees whom the City pays overtime or "exempt" employees whom the City does not pay overtime. Appendix A also indicates whether employees covered by this MOU are "confidential" employees.

SECTION 1.00 - EMPLOYEE RIGHTS

1.01 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.

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.

1.02 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:

1.02.1 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.

1.02.2 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 or designee.

1.02.3 Representatives of the Union, having business (other than recruiting of members) with the officers or individual members of the Union 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 or the employee's immediate supervisor, and further provided that the conduct of such business will in no way conflict with the performance of City business.

1.03 Use of 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 only after working hours, with the advance notice to the Human Resources Director or City Manager 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.

1.04 Any employee covered by this MOU may join the Union and authorize the City to deduct dues; representation fees and/or initiation fees from their paychecks and remit said monies to the Union. The City and the Union agree to recognize all deduction authorizations of dues, representation fees, and/or initiation fees submitted by the employee(s).

1.05 The Union shall provide the City advance written notice of any change in the Union's fees, dues, or assessments that the Union believes warrant a change in deduction. The City shall implement such change, to the extent consistent with this provision and applicable law, within thirty (30) calendar days of receiving written notice from the Union.

SECTION 2.00 - CITY RIGHTS

2.01 Unless specifically in conflict with this MOU or any formal legislative action by the City Council (i.e. resolution or ordinance), all management rights shall remain vested exclusively with the City. City management rights include, but are not limited to, the following rights, which the City may exercise in its discretion:

2.02.1 To determine the mission of all constituent departments, commissions, and boards;

2.02.2 To set standards of service;

2.02.3 To determine the appropriate levels of City services, except where defined in the MOU;

2.02.4 To take disciplinary action for just and sufficient cause(s);

2.02.5 To determine the procedures and standards of selection for employment;

2.02.6 To organize and reorganize its departments and affairs, and to otherwise exercise complete control and discretion over its organization;

2.02.7 To employ any appropriate means or method to maintain the efficiency of governmental operations and administration;

2.02.8 To determine the methods, means, and personnel by which government operations are to be conducted;

2.02.9 To determine the procedure and standards for selection for employment and determine the content of job classifications;

2.02.10 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;

2.02.11 To exercise complete control and discretion over its organization and technology;

2.02.12 Except in case of emergency the City shall give written notice in advance of any contract with third parties which shall result in the lay-off, demotion, or transfer of any employee represented by the union and shall meet and confer with the union regarding the same upon reasonable written notice;

2.02.13 To direct employees, make assignments, and require overtime work;

2.02.14 To transfer or reassign employees, as outlined in the MOU;

2.02.15 To layoff employees by position for reasons such as elimination of positions through City Council resolution, lack of work, budgetary considerations (including without limitation lack of funds or revenue downturn), reorganization, and failed probation so long as the reason is legitimate.

2.02.16 Any agreement between the City and the Union 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; and that such a Memorandum of Understanding shall be honored in good faith during the life of this contract;

2.02.17 Any violation of the policies and procedures created by this MOU may be subject to disciplinary action as defined by this MOU; and

2.02.18 The parties acknowledge that the City shall have the right to amend its personnel rules and regulations, personnel ordinances and resolutions, and employer-employee relations resolution during the term of the Memorandum of Understanding. Such rules and policies may be implemented following compliance with the Meyers-Millias-Brown Act.

SECTION 3.00 – DISCIPLINE

3.01 Grounds for Discipline

Discipline shall be imposed for good cause based upon, but not limited to, the following conduct:

3.01.1 Fraud in securing appointment or falsification concerning records, fellow employees, or work performed;

3.01.2 Failure to perform satisfactorily the duties and responsibilities of an employee's classification;

3.01.3 Neglect of duty;

3.01.4 Insubordination;

3.01.5 Reporting for or performing duty under impairment as a result of alcohol and/or drug use;

3.01.6 Dishonesty or misuse of, or misappropriation of City property and funds;

3.01.7 Conviction of any crime relating to the function of an employee's classification;

3.01.8 Unauthorized absence without leave;

3.01.9 Non-observance of employee’s work hours, including tardiness, and abuse of sick leave privileges;

3.01.10 Discourteous or non-cooperative treatment of the public or other employees;

3.01.11 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;

3.01.12 Any discriminatory act or omission based on race, age, sex, religion, political opinion or affiliation, national origin, marital status, physical or mental disability, color, creed, ancestry, sexual orientation, or medical condition

towards employees, applicants, independent contractors, City Council and Commission members, and/or citizens.

3.01.13 Violation of any condition of employment set forth in the Municipal Code, Personnel Rules and Regulations, City or department policies or procedures, or Memoranda of Understanding approved by formal action of the Council;

3.01.14 Violation of the City's, department's or this MOU's outside employment work policy;

3.01.15 Knowingly filing or pursuing a false charge;

3.01.16 Acceptance of a gift or gratuity for performing a City employment related favor or service;

3.01.17 Acts of unjustified non-defensive violence towards fellow employees or members of the public in the workplace;

3.02 Types of Disciplinary Actions

3.02.1 Written Reprimand: A written memorandum outlines the violation(s) being addressed 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.

The Human Resources Director shall remove a letter of reprimand from a personnel file based upon a written request submitted by the employee provided there has been no additional disciplinary actions during the subsequent twelve (12) months.

3.02.2 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.

3.02.3 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 may be made on a permanent or temporary basis.

3.02.4 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 may be made on a permanent or temporary basis.

3.02.5 Termination of Employment: In the event of more severe or repeated violations, the City may dismiss the employee from City service.

3.03 Pre-Disciplinary Procedures

In the case of a termination, demotion, suspension of at least three (3) working days or equivalent reduction in salary, or involuntary disciplinary demotion, the following pre-disciplinary procedures shall apply:

3.03.1 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 respond to the charge(s) in writing and/or in person before a designated City representative at a specified place and time; and

(f) The right of the employee to have a representative present at any disciplinary meeting or hearing.

3.03.2 Any employee who desires to respond orally may do so by appearing at the appointed place and time. However, 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.

3.03.3 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.

3.03.4 As soon as practical after the employee has had an opportunity to present a response, the City shall notify the employee in writing of the nature and extent of the discipline, if any, and the time of commencement thereof. Said notification shall also advise the employee of any right of appeal.

3.04 Appeal: An employee may appeal a termination, suspension of at least three (3) working days or equivalent reduction in salary, or involuntary disciplinary demotion in the same

manner as a grievant may appeal a grievance determination as set forth in Section 7.03.6. of this MOU.

SECTION 4.00 - LAYOFF

4.01 Any layoff shall be according to the procedures and seniority as defined in Municipal Code Section VI-102.

4.01.1 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.

4.01.2 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.

4.01.3 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 classification for three (3) years.

SECTION 5.00 - RESIGNATION

5.01 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 6.00 - OTHER EMPLOYMENT

6.01 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.

6.02 An employee's outside employment, activity, or enterprise may be prohibited if it:

6.02.1 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.

6.02.2 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.

6.02.3 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.

6.03 Employees must obtain approval from their Department Head and 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.

6.04 In application of this section, the City does not intend to take disciplinary action against any employee covered by this MOU who inadvertently and unintentionally fails to submit a notice of intent to engage in outside employment pursuant to Section 6.03, provided that such outside employment is not inconsistent, incompatible, or in conflict with the employee's duties as defined in Section 6.02.1 through 6.02.3.

SECTION 7.00 – GRIEVANCE PROCEDURE

7.01. Definitions

7.01.1 For the purposes of this section, a "grievance" is any dispute, which involves the interpretation or application of this MOU, or appeal of certain formal disciplinary actions. If any party initiates litigation including but not limited to administrative proceedings with a state or federal agency such as OSHA, EEOC, DFEH, PERB, etc. concerning a matter which is otherwise subject to the grievance process, the other party may (at their discretion) deem the litigating party as having elected judicial/administrative remedies and waived any rights under this grievance procedure. Performance appraisal reviews are not grievable.

7.01.2 A "grievant" is any employee adversely affected by an alleged violation of the specific provisions of the MOU, or the Union, on behalf of one or more employees in the Mid-Management and Confidential Unit adversely affected by an alleged violation of the specific provisions of the MOU.

7.01.3 A "working day" is any day in which City Hall is open for business.

7.01.4 "Employee organization" is the Mid-Management and Confidential Unit, represented by UPEC Local 792, AFL-CIO.

7.02 General Provisions

7.02.1 Every effort will be made by the parties to settle grievances at the lowest possible level.

7.02.2 Until final disposition of a grievance, a grievant employee shall comply with the directions of the grievant's immediate supervisor.

7.02.3 No party to a grievance shall take any reprisals against the other party to the grievance because the party participated in an orderly manner in the grievance procedure.

7.02.4 Failure of the grievant to adhere to the time deadlines shall mean that the grievance is withdrawn. The grievant and the City may extend any time deadline by written mutual agreement. Furthermore, if there is a mutual written agreement, the grievant may skip a step in the grievance process. The employee concerned shall be personally present at all stages of the grievance procedure unless that employee specifically waives the right in writing.

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

7.02.6 Either the City or the grievant may be represented at any step of the procedure by an individual of the party's choice.

7.02.7 An employee may at any time present grievances to the City and have such grievances adjusted without the intervention of the Union, as long as the adjustment is reached prior to arbitration and is not inconsistent with the terms of this MOU or the Personnel Rules; provided that the City shall not agree to a resolution of a grievance until the employee organization has received a copy of the grievance and the proposed resolution and has been given the opportunity to file a response.

7.02.8 The City and the Union may agree to consolidate grievances at any level.

7.03 Procedure

7.03.1 Grievances must be in writing, and initiated within twenty (20) working days following the occurrence, or knowledge of the events on which the grievance

is based. Failure to do so will result in the employee being barred from advancing the grievance. A grievance, or a copy of the grievance, should be provided to the grievant's supervisor, Department Head, and the Director of Human Resources.

7.03.2 Element of a Grievance

The written grievance shall include:

(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) 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, provided the employee has access to relevant financial data;
(e) a statement declaring self representation or the selection of representation by the Union for said grievance;
(f) the printed name and signature of the grievant;
(g) the name, address and telephone number of the person(s) to whom notices may be sent regarding the grievance; and
(h) date of grievance.

Grievances that fail to include these elements may not be considered or appealed unless the City waives this section.

7.03.3 Informal Resolution

It is the intent to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible. An employee who has a grievance shall first try to settle it through discussions with the employee's immediate supervisor. The immediate supervisor shall respond within thirty (30) working days which may be extended ten (10) working days with notice to the grievant and/or the parties may by mutual agreement extend the time which is necessary to resolve the grievance. Any decisions rendered shall be consistent with the authority to do so. If the employee is not satisfied with the outcome of the informal resolution the employee may advance the grievance to Level I.

7.03.4 Level I – Department Head

If the employee is not in agreement with the informal decision rendered, he/she shall have the right to file a formal written appeal to the Department

Head (with a copy to the Human Resources Director) within fifteen (15) working days after the date a decision has been rendered. The appeal shall include a copy of the written response(s) provided by the City during the informal step of this grievance procedure. The appeal shall contain an explanation why the grievant believes the decision at the informal grievance step was unsatisfactory. The Department Head shall consider the grievance, and submit a written response within fifteen (15) working days.

7.03.5 Level II– City Manager

If the employee is not in agreement with the decision rendered by the Department Head, he/she shall have the right to file a formal written appeal to the City Manager (with a copy to the Human Resources Director) within ten (10) working days after the date a decision has been rendered at Level I. This appeal shall include a copy of the written grievance, the grievant's appeal to Level I, and any written response(s) provided by the City during the prior steps of the grievance process. The appeal shall contain an explanation why the grievant believes the decision at Level I was unsatisfactory. The City Manager shall consider the grievance, and submit a written response within fifteen (15) working days. Unless the grievance is subject to arbitration (as defined herein), the City Manager's decision is final.

7.03.6 Level III – Arbitration

(a) In the case of a disciplinary appeal of a termination, suspension of at least three (3) working days or equivalent reduction in salary, or involuntary disciplinary demotion, an employee may appeal to arbitration as set forth in this Section a final disciplinary decision made under Section 3.03.4 of this MOU.

In the case of a grievance concerning interpretation or application of this MOU, and if the grievance is otherwise subject to arbitration, and the Union is not satisfied with the decision of the City Manager, the Union may within fifteen (15) working days of the date of the City Manager's decision submit a request in writing to the Human Resources Director that the grievance be submitted to arbitration. The Union and the City shall attempt to agree upon an arbitrator. If no agreement can be reached, they shall request that the State Conciliation Service supply a panel of five (5) names of persons experienced in hearing grievances involving public employees. Each party shall alternately strike a name until only one (1) name remains. The remaining panel member shall be the arbitrator. The order of striking shall be determined by lot.

(b) If either the City or the Union so requests, an arbitrator shall hear the merits of any issue raised regarding arbitrability of a grievance first.

No hearing on the merits of the grievance will be conducted until the issue of arbitrability has been decided. If the issue of arbitrability is heard by an arbitrator and the arbitrator decides the underlying dispute is arbitrable, a different arbitrator shall hear the merits of the underlying grievance, if the City or the Union so requests.

(c) The arbitrator shall, as soon as possible, hear evidence and render a decision on the issues or issues. If the parties cannot agree upon a submission agreement, the arbitrator shall determine the issues by referring to the written grievance and the answers thereto at each step. A certified court reporter shall record the entire arbitration hearing unless the parties mutually agree otherwise.

(d) The jurisdiction and authority of the arbitrator so selected and the opinions the arbitrator expresses will be confined exclusively to the interpretation of the express provision or provisions of the MOU. The arbitrator shall be without power or authority to make any decision that requires the City to do an act prohibited by law.

(e) After a hearing and after both parties have had an opportunity to make written arguments, the arbitrator shall submit written findings and a decision which is final and binding on all parties.

(f) The fees and expenses of the arbitrator and the certified court reporter shall be shared equally by the City and the Union. The one exception is that the City shall pay all the fees and expenses of the arbitrator for employee appeals of disciplinary actions in which the Union chooses not to represent the employee at the appeal. Financial responsibility shall be confirmed prior to 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. A party requesting a transcript shall bear the cost thereof; or if each party receives a copy the cost will be shared equally.

(g) This grievance procedure is the exclusive remedy to resolve disputes as described herein.

SECTION 8.00 - ANNUAL VACATION LEAVE

8.01 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. For non-exempt employees, vacation is earned on the basis of hours in paid status. For purposes of this section, a “working day” shall refer to eight (8) work hours.

8.01.1 During the first through fourth years of service, vacation shall be accrued at the rate of 11 working days per year for hourly employees, and 16 working days per year for exempt employees.

8.01.2 Beginning the fifth year of employment through the ninth year of employment, vacation shall be accrued at the rate of 16 working days per year for hourly employees, and 21 working days per year for exempt employees.

8.01.3 Beginning the tenth year of employment through the fourteenth year of employment, vacation shall be accrued at the rate of 21 working days per year for hourly employees, and 26 working days per year for exempt employees.

8.01.4 Beginning the fifteenth year of employment through the nineteenth year of employment, vacation shall be accrued at the rate of 26 working days per year for hourly employees, and 31 working days per year for exempt employees.

8.01.5 Beginning and following the twentieth year of employment, vacation shall be accrued at the rate of 31 working days per year for hourly employees, and 36 working days per year for exempt employees.

8.02 Employees who work less than full time shall earn vacation credits on a pro-rated basis.

8.03 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 months of continuous service hourly employees may be permitted to take vacation leave not to exceed forty (40) work hours and exempt employees may be permitted to take vacation leave not to exceed the equivalent of one work week.

8.04 The times during a calendar year at which an employee may take vacation shall be determined by the department head or designee 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.

8.05 On the last day of the pay period that includes December 31, no employee may accumulate and carry-over a vacation accrual amount in excess of 260 work-hours, without the express approval of the City Manager or designee. No employee shall be allowed to be on paid leave for a period of over three-hundred and twenty (320) consecutive work hours.

8.06 In the event one or more municipal holidays fall within an annual vacation leave, such holidays shall not be charged as vacation leave.

8.07 Upon separation from the service for any reason, an employee shall be compensated for accrued vacation leave.

8.08 Each fiscal year, an employee may elect to cash out up to forty (40) hours of accrued vacation, except for employees whose annual vacation accrual rate at the time of requested cash out exceeds 15 working days per year who may cash out up to eighty (80) hours, as follows:

8.08.1 The employee uses at least one full workday of paid vacation leave. Vacation cash-outs must be requested in advance and are contingent upon having an approved vacation leave within thirty (30) days, either before or after; or

8.08.2 Requests for cash-outs other than during approved vacations must be submitted to Finance for payment in June by May 31st or in December by November 30th of each year.

SECTION 9.00 - SICK LEAVE

9.01 Employees shall be granted paid sick leave credits beginning with date of original employment at the rate of twelve (12) prorated days for each year of service. Employees become eligible to take accrued sick leave upon completion of one full month of continuous service. Sick leave is not 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 and dental appointments should be scheduled and approved in advance. The City Manager shall direct and enforce such administrative control as may be necessary to prevent abuse of sick leave privilege.

9.02 Employees who work less than full-time shall earn the sick leave described above on a pro-rated basis.

9.03 For employees hired on or before July 17, 1999, the City agrees to pay an employee who is separating from the City in good standing with at least five (5) years service an amount equal to 2-1/2% 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. (See Sections 21.04 and 21.04.1.)

9.04 For 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 9.03. However, the maximum annual amount an employee may cash out shall not exceed 50% of the employee's sick leave balance and cannot result in the employee’s sick leave balance dropping below 240 hours.

9.05 The City agrees to provide PERS Credit for Unused Sick Leave provision (20965). (See MOU Section 21.04.1.)

SECTION 10.00 - FAMILY LEAVE

10.01 Employees having available sick leave to their credit may draw upon such sick leave for family medical purposes when a member in the employee's immediate family is involved.

10.01.1 As defined for the purpose of this section, family medical purposes shall be construed to mean illness, accident, medical appointments or other related occurrences.

10.01.2 Spouse shall include registered domestic partner.

10.01.3 Immediate family is defined to include: mother, father, spouse, brother, sister, son/daughter, or registered domestic partner, whether the immediate family member is of the employee's or employee's spouse's family, including step and adoptive relatives.

10.01.4 Each employee shall be allowed to use a maximum of up to 50% of the employee's annual accrued sick leave per year per calendar year for this purpose. Additional leave may be granted in unusual circumstances by the Human Resources Director.

10.01.5 In addition, each employee shall be allowed to use fourteen (14) days of accrued sick leave for the birth or adoption of a child.

SECTION 11.00 - COMPASSIONATE LEAVE

11.01 The City agrees to provide compassionate leave when death occurs to a member of the employee's immediate family not to exceed forty hours for hourly employees and one regular workweek for exempt employees.

11.02 Immediate family is defined to include: mother, mother-in-law, father, father-in-law, spouse, registered 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.

11.03 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.

11.04 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 12.00 - MILITARY LEAVE

12.01 Military leave shall be granted, in accordance with the provisions of State and Federal Law. Employees entitled to military leave shall give the City an opportunity within the limits of military regulations to determine when such leave shall be taken.

SECTION 13.00 - LEAVE OF ABSENCE

13.01 The Human Resources Director may grant a permanent employee a leave of absence without pay not to exceed one year. Leave shall be considered upon written request of the employee.

13.01.1 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.

13.01.2 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.

13.01.3 An employee in a 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 an employee on leave without pay status is deemed unemployed for the period of such status in terms of earning benefits.

13.01.4 The City Manager or designee 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.

13.02 A Department Head shall have the authority to approve an unpaid leave not to exceed 160 work hours for hourly employees (and four weeks for exempt employees) per fiscal year.

13.03 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 force, except that they shall be placed at the bottom of a reemployment list for any position for which they qualify.

SECTION 14.00 - JURY LEAVE

14.01 When called to jury service, an employee shall be given leave with pay to do so subject to these conditions:

14.01.1 The employee shall notify the Department Head immediately upon receipt of the notice to serve; and

14.01.2 Any payment received by the employee while on jury leave for jury service shall be remitted to the City, except for mileage allowance and out-of-pocket expenses.

SECTION 15.00 - WORKERS' COMPENSATION LEAVE

15.01 An employee unable to work because of a work-related illness or injury is 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 workers' compensation insurance administrator authorized by the City.

15.02 For all employees, workers' compensation leave per incident shall be paid up to a maximum of 320 hours as follows:

Hours of Leave	Percent of Salary Paid
First 80 hours	100%
Next 240 hours	80%

This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that said hours do not exceed available workers' compensation leave. Following a maximum of 320 hours of workers' compensation leave, the City shall discontinue direct workers' compensation payments to the employee. This benefit shall be prorated based on the budgeted position. An employee may apply separately for long-term disability insurance, which becomes effective after 320 hours of workers' compensation.

Any employee sustaining such injury or disability may be entitled to compensation to the extent provided by 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, comp, or vacation time may be integrated.

15.03 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.

15.04 Injured employees designated Maximum Medical Improvement (MMI) or accepted into a Supplemental Job Displacement Program and unable to return to their prior occupations may be involuntarily terminated or retired.

15.05 The City is currently developing a policy on the subject of light duty. Mid-Management/Confidential agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 16.00 – OVERTIME (HOURLY EMPLOYEES ONLY)

16.01 Hourly employees who work more than forty hours in a workweek shall be entitled to overtime as follows:

16.01.1 All overtime shall be compensated at the rate of time and one-half pay or the equivalent in compensatory time off (CTO) in lieu of overtime pay.

16.01.2 In the event the City requires the hourly employee to work overtime, overtime pay or accrual of CTO shall be at the discretion of the employee. However, the determination as to whether overtime pay or CTO shall be taken must be made by the employee at the time the "Request for Additional Pay" form is submitted to the supervisor for signature.

16.01.3 Employees who work less than eight (8) minutes beyond their normal work hours shall not receive overtime.

16.01.4 Overtime occurring on a paid City holiday shall result in pay or CTO at the rate of time and one-half in addition to base pay.

16.01.5 A minimum of two hours pay or its equivalent in compensatory time off at the option of the employee shall be guaranteed for any hourly employee, at the rate of time and one-half, who after leaving their place of duty is required without prior notice to return for emergency duties.

16.01.6 CTO may be accrued by the employee throughout the year. However, the accrued hours may not exceed eighty (80) as of the last day of the pay period that includes December 31. Hours in excess of eighty (80) hours on that date shall be paid to the employee in the following paycheck so the employee's CTO accrual bank is reduced to eighty (80) hours.

16.01.7 Any paid accrued leave, including sick leave, vacation leave, 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.

SECTION 17.00 - HOLIDAYS

17.01 The following shall be paid holidays for City of Milpitas 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. One Floating Holiday[1]

17.01.1 In the event a holiday falls on a Sunday, the following Monday shall be the holiday instead.

17.01.2 In the event a holiday falls on a Saturday, the preceding Friday shall be the holiday instead.

17.01.3 Any other holiday declared by the City Council as a City Holiday for City employees.

17.01.4 For hourly employees on other than <u>five</u> (5) day workweeks, any workweek which includes one or more holidays shall be reduced in hours commensurately. The number of days worked during the workweek shall be subject to the approval of the Department Head.

17.02 For hourly employees 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. Hourly employees who work less than full time shall be entitled to credit for paid holidays on a pro-rated basis. Hourly 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.

[1] Each employee shall receive one "Floating Holiday" every calendar year. The Floating Holiday will become effective the first day of January or on the date of hire. Floating Holiday must be used during the calendar year accrued; otherwise, they will be lost. Prior approval must be received in order to utilize the Floating Holiday.

SECTION 18.00 - TRAINING

18.01 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:

18.01.1 Regular wages for time away from the job (if during working hours);

18.01.2 For hourly employees, overtime or compensatory time off whenever an employee's combined training time and work time exceeds forty (40) hours in a work week;

18.01.3 Costs of tuition and/or registration for the training;

18.01.4 Reimbursement for authorized transportation cost to and from the training (i.e. mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employees car-pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).

SECTION 19.00 - ATTENDANCE

19.01 Unauthorized Absence

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

19.01.2 Employees should notify their supervisors of the need to miss work. An employee's failure to report to his/her supervisor or higher authority his/her absence by 10:00 a.m. of the day of the absence may result in an unauthorized absence.

19.02 Breaks for Hourly Employees

19.02.1 Employees shall be entitled to two fifteen (15) minute breaks during each standard workday.

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

(a) Persons whose responsibility includes public contacts shall advise a responsible person in their office before leaving for a break.

(b) 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 call at the office.

19.02.3 For workdays 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. For irregular workdays, breaks shall be taken after the first one- and-one-half hours and before the last hour of each half shift.

SECTION 20.00 - PAY PLAN

20.01 Advancement shall be based on satisfactory performance and 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.

20.02 In administering the Pay Plan, the following rules shall be observed for non-exempt hourly employees:

20.02.1 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 prior approval of the City Manager.

20.02.2 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.

20.02.3 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.

20.02.4 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.

20.02.5 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.

20.02.6 Employees who have demonstrated outstanding ability may be advanced to the next higher step prior to completion of one year's service at the current step upon recommendation of the Department Head and approval of the City Manager.

20.03 In administering the Pay Plan, the following rules shall be observed for exempt employees:

20.03.1 A salary shall be paid within the range established for that classification. The minimum rate for the classification generally shall apply upon original appointment. However, when circumstances warrant, appointment may be made at a higher level upon approval of the City Manager or Human Resources Director.

20.03.2 Eligibility for salary advancement occurs on employees' anniversary date, provided that the maximum level of the established compensation range has not been met. Advancement shall be based upon satisfactory performance documented in a Performance Appraisal Review completed in a timely manner. In addition, 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 the City Manager.

20.03.3 Advancement shall be at an amount recommended by the Department Head and approved by the City Manager or the Human Resources Director.

20.04 Performance Appraisal Review - Performance appraisals are an important personnel tool, and the City should endeavor to make them promptly.

20.05 Salary Following Promotion

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

20.06 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 and 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 Finance Director.

20.07 "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 affected. 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 any 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.

20.08 During the term of this MOU the City shall endeavor to review classifications in the Mid-Management/Confidential Unit.

SECTION 21.00 - RETIREMENT PLAN

21.01 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) and Section 20037 (Three-Year Final Compensation) hired on or after October 9, 2011 (City Council Adoption). Employee shall be responsible for the employee contribution to PERS Retirement.

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

Effective July 1, 1995, 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 IRS 414 (h) (2) program, the increase in salary shall be calculated on the employee's base salary.

21.03 Effective the first full pay period after City Council Acceptance and execution of the MOU, in addition to paying the employee 8% PERS contribution rate to the Miscellaneous plan, employees will pay 14.8% of PERSable salary toward the employer PERS contribution rate on a pre tax basis.

21.04 Upon retirement, disability retirement, or death, for those employees who were hired on or before July 17, 1999, 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 accrued sick leave. The

pay-out formula shall be: 2.5% x years of service x highest hourly rate x sick leave hours accrued.

21.04.1 Upon retiring with PERS, all employees shall be eligible for the PERS Credit for Unused Sick Leave provision (20965) of the City's PERS Retirement plan. Employees hired on or before July 17, 1999, may elect either the pay-out formula in Section 21.04 or the PERS Credit for Unused Sick Leave plan.

21.05 For the purpose of this section, an employee who is retiring is one who has submitted an application for retirement and retires under the Public Employees Retirement System (PERS).

21.06 Retiree Medical

21.06.1 For permanent employees hired before July 1, 1995, who have at least five (5) years of service in the City of Milpitas, the City agrees to pay up to the single, medical premium rate (at a rate no higher than any single plan paid by City for active employees), as long as the retiree maintains enrollment in one of the eligible health plans.

21.06.2 For permanent employees hired on or after July 1, 1995, the City agrees to pay up to the single, medical premium rate (at a rate no higher than any single plan paid by City of active employees), as long as the retiree maintains enrollment in one of the eligible health plans and shall be subject to the following provisions with respect to the retirement benefits:

(a) Upon completion of the fifth through the ninth year of service, and upon retirement, the City shall provide 25% of the medical insurance premium payment for the employee only, as long as the employee remains in one of the City sponsored eligible health care programs.

(b) Upon completion of the ninth year, this payment of the retiree's medical insurance shall increase to 50%.

(c) Upon completion of the fourteenth year, this payment of the retiree's medical insurance shall increase to 75%.

(d) Upon completion of the nineteenth year, this payment of the retiree's medical insurance shall increase to 100%.

(e) Once any retiree becomes Medicare eligible, the City shall pay Medicare health insurance premiums up to the appropriate Medicare rate up to the maximums set forth in the above sections.

(f) Retirees may elect to continue coverage for dependents under the retiree group medical plan provided that the dependent is covered by the group

plan at the time the employee retires and maintains enrollment as set forth in Section 22.01.

21.07 Nothing contained in this Section 21.00 is intended and should not be construed, to restrict the CalPERS retirement rights under state and/or federal law otherwise applicable to bargaining unit employees.

SECTION 22.00 - RETIREE DEPENDENT HEALTH CARE

22.01 The Retiree Dependent Health Care Fund

Each year, the City will contribute 1% of payroll with benefits to a fund to be used to help pay the medical premiums of retirees' dependents (the "Fund"). The City's annual 1% of payroll with benefits contribution shall be recalculated each year based on the Mid-Management/Confidential Units payroll as of the last full pay period in June. The City will annually deposit this amount in the Fund approximately fifteen (15) days following the last day of the last full pay period in June.

The City will periodically present a report to the Mid-Management/Confidential Unit representative indicating the City's annual contribution, the total dollars in the Fund, and a brief description of how and the extent to which the 1% was used in the previous fiscal year to pay for the medical premiums of retirees' dependents. The City will use this report to set retiree dependent contribution rates.

22.02 Contributions From the Fund Toward Retiree Dependent Premiums

Contributions from the Fund toward the medical premiums of retirees' dependents shall be as follows:

22.02.1 For permanent Mid-Management/Confidential employees hired before July 1, 1995, and retired on or after January 2, 2007 (City Council adoption), who have at least five (5) years of full-time or equivalent service with the City of Milpitas, the City agrees to pay from the Fund up to the family, medical premium rate (at a rate no higher than any family plan paid by the City for active employees), as long as the retiree maintains enrollment in one of the eligible health plans.

22.02.2 For permanent Mid-Management/Confidential employees hired on or after July 1, 1995, and retired on or after January 2, 2007 (City Council adoption), who have at least five (5) years of full-time or equivalent service with the City of Milpitas; the City agrees to pay from the Fund up to the family, medical premium rate (at a rate no higher than any family plan paid by the City for active employees), as long as the retiree maintains enrollment in one of the eligible health plans and shall be subject to the following provisions with respect to the retirement benefits:

(a) Upon completion of the fifth through the ninth year of service, and upon retirement, the City agrees to provide 25% of the medical insurance premium payment from the Fund for the retiree dependent, as long as the employee remains in one of the City sponsored eligible health care programs.

(b) Upon completion of the ninth year, this payment of the retiree's dependent medical insurance shall increase to 50%.

(c) Upon completion of the fourteenth year, this payment of the retiree's dependent medical insurance shall increase to 75%.

(d) Upon completion of the nineteenth year, this payment of the retiree's dependent medical insurance shall increase to 100%.

(e) Once any dependent becomes Medicare eligible, the City agrees to pay from the Fund up to the appropriate Medicare rate per the above sections.

In no case will the City be required to place funds in the Fund above the 1% of payroll with benefits amount. If funds are depleted before the next year's City contribution is due, dependent medical premiums will be the responsibility of the retiree and/or dependent. If less than 1% of payroll with benefits is used in a given year for the medical premiums of retirees' dependents, the remainder shall remain in the Fund and may be used in future years to supplement the City's annual 1% of payroll with benefits contribution if this contribution is insufficient in a given year to make all the payments set forth in 22.01 above.

SECTION 23.00 - BENEFITS

23.01 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, etc. Only employees who have eligible dependents shall be compensated above the single rate plans.

23.01.1 The City reserves the right to discontinue offering any of the medical plans due to any of 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.

23.01.2 If the City discontinues use of CalPERS health care, to the extent possible, the City will provide similar services.

23.01.3 Mid-Management Confidential Unit agrees to discuss a "cafeteria style" benefit plan upon request of the City.

23.01.4 The City will provide a life insurance policy in the amount of $50,000.00 for each full-time member.

23.01.5 The City shall provide a Short Term Disability Plan that will provide similar coverage to the State Disability Insurance program.

23.01.6 The City shall provide a Long Term Disability Plan that at a minimum will provide similar coverage to the plan existing as of adoption of this MOU.

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

23.01.8 Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars ($125.00) per month. 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.

23.01.9 During the effective dates of this MOU, the City will pay seventy-five dollars ($75.00) per month toward deferred compensation for each member. The City's payments will be paid over twenty-six (26) pay periods per year.

23.02 Benefit Contribution: Regular Part-Time Employees: The City agrees to contribute monthly premiums for health and life insurance in an amount to reflect hours budgeted, pro-rated against the amount contributed for full time employees. For example, half-time employees may elect to take any or all of the benefits and the City and the employee will both pay 50% or half of the elected benefit cost(s). The City agrees to provide short-term disability and long-term disability benefits at no cost to part-time employees.

SECTION 24.00 - WORK OUT OF CLASS / SPECIAL ASSIGNMENT

24.01 General: Upon specific written assignment by the Department Head or Department Head's designee, an employee may be required to assume the duties, responsibilities, authority and accountability of a higher classification, or to perform work on a special project. An employee assigned to work out of class or on a special assignment may be paid at a rate up to 15% above the employee's current base salary as set forth in Sections 24.02 and 24.03.

24.02 Work Out of Class Pay: A non-hourly employee assigned to work out of class for two or more consecutive full work days shall qualify for work out of class pay. An hourly employee assigned to work out of class for two or more full work days within a pay period, whether consecutive work days or not, shall qualify for work out of class pay.

24.03 Special Assignment Pay: An employee assigned to work on a special assignment for sixteen or more hours (hourly employees) or two or more full days (non-hourly employees) shall be paid at a rate up to 15% above the employee's current base salary. The threshold number of hours or days for a special assignment for both hourly and non-hourly employees need not be consecutive but must occur within the same pay period to qualify. However, time spent in a special assignment in less than 3-hour increments will not qualify toward the required hours or days threshold. For non-hourly employees only, 3 to 5 hours worked shall count as a half-day, and more than 5 hours worked shall count as a full day. The Department Head may make exceptions to the special assignment rule regarding how an employee may accumulate 16 hours or the equivalent of two days within a pay period only with the approval of the Human Resources Director.

24.04 Voluntary Training: An employee seeking additional training in another classification may waive his/her right to work out of classification pay in order to pursue desired training.

24.05 An employee who serves in a special assignment in a vacant position for a minimum of three months, and receives a permanent appointment to the same position by the appointing authority, may receive credit toward completion of probation in the position up to the duration of the special assignment.

SECTION 25.00 - NO DISCRIMINATION

25.01 The City of Milpitas shall not discriminate in employment practices in regard to race, color, ancestry, national origin, religious creed, sex, sexual preference, 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.

25.02 The Union shall not restrict its membership in regard to race, color, ancestry, national origin, religious creed, sex, sexual preference, 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 26.00 - SALARY

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

26.02 All employees designated as "confidential" in this bargaining unit, other than the current Fiscal Assistant II who was employed as of the first pay period following the date this MOU is approved by the Milpitas City Council, shall receive an additional "Special "Confidential Status" pay of 2.00% in recognition of their status and duties as confidential employees.

26.03 Effective the first full pay period following the adoption of this MOU, classifications of Principal Planner and Accounting Services Manager shall no longer be eligible for the $450 monthly car allowance. The allowance shall be rolled into the base pay.

SECTION 27.00 - BILINGUAL ASSIGNMENT

27.01 The City agrees to pay a premium of 2.5% of base pay to employees with bilingual skills in positions which the City has determined the use of bilingual skills are necessary or desired to serve the Milpitas community.

27.01.1 Bilingual assignments must be recommended by the Department Head and approved by the Human Resources Director. In order to receive a bilingual assignment, the employee must undergo and pass the appropriate testing to be certified as bilingual. The Department Head or the Human Resources Director shall have the authority to terminate bilingual assignments when either: (1) the need no longer exists; (2) the number of employees who are certified as bilingual is more than is needed for the department; or (3) employees certified as bilingual are only called upon periodically to translate.

27.01.2 Authorization for testing is subject to the needs of the department as determined by the Department Head and approved by the Human Resources Director. The method for such certification shall be the same for all bargaining units having bilingual assignment provisions.

SECTION 28.00 – EYEGLASS REIMBURSEMENT

28.01 The City shall reimburse an employee up to $175 per fiscal year for eyeglasses when prescribed by a physician for use at a video display terminal, provided the glasses are not fully covered by the employee's health care plan. The employee must apply for any available insurance coverage.

SECTION 29.00 - MOU NEGOTIATIONS

29.01 Negotiations for a new MOU shall commence following written notification by either party on or after January 1, 2012 of the desire to begin negotiations.

SECTION 30.00 - EMPLOYEE FITNESS PROGRAM AT THE MILPITAS SPORTS CENTER

30.01 The City of Milpitas agrees to provide a fitness program that allows employees the opportunity to participate in City-sponsored sports and fitness programs at no cost during the employee's non-working hours. All conditions and requirements regarding the "fitness center," as set by the Recreation Services Manager, must be followed to remain eligible for this program.

30.02 Resident fees for all other recreational programs, classes and activities shall apply to bargaining unit employees, unless modified by the City Council.

SECTION 31.00 - MILEAGE REIMBURSEMENT

31.01 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.

31.02 An employee shall receive authorization from their Department Head or their designee prior to using the employee's own vehicle.

31.03 Employees who use their car on a temporary basis shall be reimbursed by the City at the rate established by the IRS.

31.04 Any employee who drives their own vehicle on official City business must have a valid California driver's license and proof of valid insurance.

31.05 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.

SECTION 32.00 - TUITION REIMBURSEMENT

32.01 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 cap for tuition and required course-related

texts of up to $1,700 per fiscal year. Reimbursement is subject to the guidelines outlined in the applicable S.O.P.

32.02 Effective with the 2004-05 fiscal year, the City shall reimburse employees in the classification of Principal Civil Engineer and Traffic Engineer up to $75 every other fiscal year for the renewal of their engineering licenses when it is a condition of employment.

SECTION 33.00 - REPLACEMENT OF PERSONAL ARTICLES

33.01 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 Human Resources Director. 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.

SECTION 34.00 - EMPLOYEE ASSISTANCE PROGRAM

34.01 The City agrees to continue to provide, fund and make available a confidential employee assistance program for employees in the bargaining unit.

SECTION 35.00 - NO STRIKE CLAUSE

35.01 The Union, on its own behalf and on behalf of the unit employees it represents, agrees that during the term of this MOU, and throughout all periods when there is any effort or procedure underway to arrive at a successor MOU and during any period when the law specifically prohibits strike activity, there will be no strikes, work stoppages, concerted unauthorized absences, slow-downs, or refusals to cross picket lines of any sort; and that the Local will not directly or indirectly encourage or condone such actions by unit employees, and will undertake all possible steps to cause any such actions to cease.

35.02 Any bargaining unit member violating this provision shall be subject to disciplinary action up to and including termination of employment.

35.03 This provision may be specifically enforced in any court of competent jurisdiction.

SECTION 36.00 - SAVINGS CLAUSE

36.01 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.

UNION REPRESENTATIVES:

_____
Steve Allen
Advocate-Organizer, UPEC Local 792

_____
Leslie Stobbe

_____
Phuong Nguyen

_____
Felix Reliford

_____
Chris Darker, Business Manager
UPEC Local 792

CITY REPRESENTATIVE:

_____
Bill Marion, IS Director

_____
Mary Lavelle, City Clerk

_____
Carmen Valdez, HR Director

_____
Emma Karlen, Finance Director

Appendix A – SALARY SCHEDULE

January 2012 – December 2012

Job Classification	Annual Salary		
Accounting Services Manager	$ 99,074	-	$ 128,534
Administrative Analyst I	$ 67,040	-	$ 88,245
Administrative Analyst II	$ 74,040	-	$ 97,459
Budget Manager	$ 93,142		$ 122,601
Buyer	$ 71,148	-	$ 93,653
Community Svcs Project Manager	$ 116,477	-	$ 153,319
Confidential Fiscal Asst II©	$ 58,531	-	$ 71,144
Confidential Office Asst I©	$ 46,271	-	$ 56,243
Confidential Office Asst II©	$ 51,146	-	$ 62,166
Confidential Office Specialist©	$ 58,530	-	$ 71,144
Crime Analyst	$ 85,950	-	$ 113,137
Customer Services Manager	$ 93,258	-	$ 122,754
Deputy City Clerk	$ 81,843	-	$ 99,481
Emergency Services Coordinator	$ 94,546	-	$ 124,450
Executive Secretary©	$ 75,337	-	$ 91,573
Fiscal Services Manager	$ 74,040	-	$ 97,459
GIS Manager	$ 100,549	-	$ 132,353
Human Resources Analyst I	$ 67,040	-	$ 88,245
Human Resources Analyst II	$ 74,040	-	$ 97,459
Human Resources Technician©	$ 58,530	-	$ 71,144
Lead Word Processing Operator©	$ 64,982	-	$ 78,984
Legal Assistant©	$ 67,427		$ 81,958
Network Manager	$ 100,549	-	$ 132,353
Operations Manager	$ 100,549	-	$ 132,353
Permit Center Manager	$ 109,032	-	$ 132,530
Principal Civil Engineer	$ 105,888	-	$ 139,381
Principal Planner	$ 103,789	-	$ 134,741
Principal Transportation Planner	$ 97,856	-	$ 128,808
Public Information Specialist	$ 74,040	-	$ 97,459
Purchasing Agent	$ 88,482	-	$ 114,100
Recreation Services Supervisor	$ 74,040	-	$ 97,459
Secretary©	$ 68,498	-	$ 83,260
Senior Accountant	$ 80,993	-	$ 106,610
Senior Administrative Analyst	$ 85,950	-	$ 113,137
Senior Human Resources Analyst	$ 85,950	-	$ 113,137
Senior Planner	$ 101,389	-	$ 123,239
Systems Administrator	$ 90,927	-	$ 119,687
Telecommunications Manager	$ 100,549	-	$ 132,353
Traffic Engineer	$ 105,888	-	$ 139,381
Video Media Specialist	$ 74,040	-	$ 97,459

© = Confidential and Non-Exempt Status