

MEMORANDUM of UNDERSTANDING

**MILPITAS SUPERVISORS
ASSOCIATION**

and the

CITY OF MILPITAS

January 1, 2011 through December 31, 2012

TABLE OF CONTENTS

	<u>PAGE</u>
SECTION 1.00- PREAMBLE	1
SECTION 2.00 - NO DISCRIMINATION.....	1
SECTION 3.00 - EMPLOYEE RIGHTS.....	1
SECTION 4.00 - CITY RIGHTS	3
SECTION 5.00 - ADVANCE NOTICE	4
SECTION 6.00 - DISCIPLINARY ACTION/APEALS PROCEDURE.....	4
SECTION 7.00 - LAYOFF	9
SECTION 8.00 - RESIGNATION.....	9
SECTION 9.00 - OTHER EMPLOYMENT	10
SECTION 10.00 - GRIEVANCE PROCEDURE	10
SECTION 11.00 - WORK SCHEDULES.....	13
SECTION 12.00 - TEMPORARY APPOINTMENTS.....	13
SECTION 13.00 - ATTENDANCE.....	14
SECTION 14.00 - PAY PLAN.....	14
SECTION 15.00 - SALARY	15
SECTION 16.00 - OVERTIME.....	15
SECTION 17.00 - BILINGUAL ASSIGNMENT	17
SECTION 18.00 - WORK OUT OF CLASS.....	17
SECTION 19.00 - SUPERVISORY DIFFERENTIAL	18
SECTION 20.00 - PAGER COMPENSATION	18
SECTION 21.00 - LATERAL TRANSFERS	18
SECTION 22.00- HOLIDAYS.....	18
SECTION 23.00 - VACATION LEAVE.....	20
SECTION 24.00 - SICK LEAVE	21
SECTION 25.00 - FAMILY LEAVE.....	22
SECTION 26.00 - COMPASSIONATE LEAVE	22

SECTION 27.00 - MILITARY LEAVE	23
SECTION 28.00 - WORKERS' COMPENSATION LEAVE	23
SECTION 29.00 - UNPAID LEAVE OF ABSENCE	24
SECTION 30.00 - LIGHT DUTY.....	25
SECTION 31.00 - RETIREMENT.....	25
SECTION 32.00 - RETIREE MEDICAL.....	26
SECTION 33.00 - RETIREE DEPENDENT HEALTH CARE	27
SECTION 34.00 - INCENTIVE PAY	29
SECTION 35.00- BENEFITS	29
SECTION 36.00 – TRAINING.....	30
SECTION 37.00 - HEALTH & SAFETY	31
SECTION 38.00 - MISCELLANEOUS.....	32
38.01 Use of City Vehicles.....	32
38.02 Experimentation, Working Hours.....	33
38.03 Replacement of Personal Articles.....	33
38.04 Negotiations	33
38.05 Seniority	33
38.06 Printing of Sick Leave and Vacation Accrual Rates.....	34
38.07 Audit of Records	34
38.08 Voting.....	34
SECTION 39.00 - NO LABOR ACTION.....	34
SECTION 40.00 - FAMILY MEDICAL LEAVE ACT (FMLA).....	34
SECTION 41.00 – FINAL CLAUSES	34
APPENDIX “A1” SALARY SCHEDULE.....	36

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

January 1, 2011 – December 31, 2012

SECTION 1.00- PREAMBLE

- 1.01 The term of this understanding 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 Memorandum of Understanding, and all applicable federal and state laws.
- 1.02 The Association and the City shall attempt to create a working environment free from hostility and intimidation. To that end, the Association 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 Understanding have been discussed in good faith by the authorized representatives of the City and the authorized representatives of the Association. The authorized representatives of the Association 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 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.
- 2.02 The Association 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 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.

- 3.01.1 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.
- 3.01.2 For employees who may wish to belong to an employees' union or association, the City will cause dues to be deducted from their paycheck where specifically authorized by the employee in advance. 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 will in no way affect his/her job or standing as an employee.
- 3.02 Association members on voluntary leave without pay, and/or are on laid-off status shall be exempt from paying Association fees.
- 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 An MSA representative 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 MSA representative 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 or designee.
 - 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 will in no way conflict with the performance of City business.

3.03.4 Time off for Association Meetings/Training:

The City shall provide annual paid release time for Association officers and members to conduct 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:

<u>Event</u>	<u>Personnel</u>	<u>Time</u>
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

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 City bulletin boards may be used only for notice of meetings of any associations and for no other organizational purpose. The City will, however, provide space upon request at any City facility for a union or 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.

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 while 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.
- 4.02 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.
- 4.03 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

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 and confer 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: 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: Termination means the dismissal of an employee from the City's service.
- 6.04 Authority for Disciplinary Actions:
- 6.04.1 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.
- 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.
- 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.

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.

6.06 Right of Appeal

6.06.1 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 6.06.5) and/or the Grievance Process (Section 10.00).

6.06.2 Appeals of Suspensions, Reduction in Step, Involuntary Termination, Demotion: Arbitration

6.06.3 Level I - Department Head

Within ten (10) working days of receiving notification of the disciplinary action, the employee may reduce to writing his/her appeal. The written appeal shall set forth all of the issues involved; shall be dated and signed by the employee; and shall be submitted to the Department Head. 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 written appeal, the Department Head or designated representative shall reply in writing stating the department's view of the issue involved.

6.06.4 Level II - City Manager

If the appeal has not been disposed of at Level I, the employee, within ten (10) working days after receipt of the department's written reply at the completion of Level I, shall forward the said written appeal 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 shall 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 written appeal, the City Manager or designated representative shall reply in writing to the employee setting forth the City's decision.

6.06.5 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.

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.

If either the City or the disciplined employee so requests, an 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 fees and expenses of an arbitrator and a certified court reporter shall be shared equally by the City and the disciplined employee, or association, if the association represents the disciplined employee at the arbitration. The services of a certified court reporter are optional. Both parties must agree if a certified court reporter is employed and the cost equally shared. 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. However, if either party declines the use of a court reporter, the party requesting a court reporter shall pay the entire cost of employing a court reporter.

The arbitrator's power and authority is limited to the issue of whether the employee 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 either party 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.

6.06.6 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.

- 6.07 Every effort shall be made to schedule meetings for the processing of disciplinary actions/appeals during the employee's work hours and at a time mutually agreed upon by the employee and his/her supervisor. Any employee required by either party to participate in meetings or hearings shall be released from regular duties without loss of pay for a reasonable amount of time.
- 6.08 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.
- 6.09 Reprisals: No party to the discipline or appeal process shall retaliate against any other party to the discipline process because the party participated in the discipline appeal process.

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. and the Personnel Rules and Regulations.
- 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 classification for three (3) years.
- 7.01.4 No layoffs or new outsourcing of MSA positions during the 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

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 or designee whose decision shall be final. Documents concerning other employment shall be kept in the employee's personnel file and maintained according to Personnel Rules Section 11.00.
- 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 MSA 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 fails to submit a timely notice to engage in outside employment shall be subject to disciplinary action.

SECTION 10.00 - GRIEVANCE PROCEDURE

- 10.01 Definitions:

- (a) A "grievance" is any dispute which involves the interpretation or application of any provision of this MOU dealing with personnel matters affecting a named member of the bargaining unit. 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 the Milpitas Supervisors Association on behalf of more than one employee(s), adversely affected by an alleged violation of the specific provisions of this MOU or the Personnel Rules and Regulations.
- (c) A "working day" is any day in which the City Hall is open for business.
- (d) "Association" is the Milpitas Supervisors Association.

10.02 Representation:

At any step in the grievance procedure, the employee concerned may choose representation by himself/herself, representation by the Association, or representation by legal counsel. The concerned employee 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 during the employee's work hours and at a time mutually agreed upon by the employee and his/her supervisor. Any employee required by either party to participate as a witness or grievant in meetings or hearings shall be released from regular duties without loss of pay for a reasonable amount of time

10.04 Informal Grievance

The parties shall attempt to deal with and settle grievances informally, at the nearest practical organizational level, and as promptly and fairly as possible.

10.04.1 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.

10.04.2 Level 1 - Department Head

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 may reduce to writing his/her grievance. The 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 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.

10.04.3 Level II - City Manager

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 designated representative shall reply in writing to the employee setting forth the City's decision.

10.04.4 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. The request for arbitration shall be in writing to the Department Head with a copy sent 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, 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. However, if either party declines the use of a court reporter, the party requesting the court reporter shall pay the entire cost of employing the court reporter.

The arbitrator's power and authority is limited to the interpretation of this Memorandum of Understanding and/or the City's Personnel Rules and Regulations. 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.

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.

10.05 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.

SECTION 11.00 - WORK SCHEDULES

11.01 MSA employees shall continue to work their current work schedules. If the work schedules of employees supervised by MSA employees change, consideration shall be given to changing the work schedule of the MSA employee. The Department Head shall have the authority to review, and as necessary, modify an employee's work schedule each April 1 or September 1. However, any such modification shall not include changing from alternative schedules 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 or 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 Employees with shifts in which one-half of their hours fall between 6:00 p.m. and 8:00 a.m. shall receive 5% additional pay when occurring three or more times within the established workweek.

SECTION 12.00 - TEMPORARY APPOINTMENTS

Any employee receiving a temporary appointment to a vacant position shall be paid at an hourly rate based on the classification of the position filled. 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 will make every effort to fill vacancies within six months.

SECTION 13.00 - ATTENDANCE

13.01 General

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

13.02 Unauthorized Absence

13.02.1 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 may 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.

13.02.2 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.

13.02.3 Breaks

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

13.03 Responsibility to Maintain Service

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

SECTION 14.00 - PAY PLAN

14.01.1 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. Advancement for employees in classes without designated salary steps shall be an amount recommended by the Department Head and approved by the Human Resources Director or City Manager. 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.

14.01.2 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.

- 14.01.3 Performance Appraisal Review: Performance appraisals are an important personnel tool, and the City should endeavor to conduct them in a timely manner.
- 14.02 The City shall evaluate employees annually, (1) from their date of hire, or (2) the date they entered their class. In any case, an employee will be evaluated at the completion of probation, be it initial, or as a result of promotion. If an employee does not receive a performance appraisal on the date it is due and the supervisor subsequently finds that the employee would have been entitled to a step increase, (under this Section) as of that due date, the step increase shall become effective retroactively as of the due date of the performance appraisal. If an employee does not receive a performance appraisal within at least 30 working days after it is due, the employee shall have the right to file a grievance under Section 10.00 of this Understanding.
- 14.03 Salary Following Promotion: Employees receiving a promotion shall receive at least a 5% increase in salary unless limited by the maximum salary range.
- 14.04 In the event an employee receives overpayment by the City, the City may obtain reimbursement by payroll deduction (s). 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.
- 14.05 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.
- 14.06 During the term of this MOU the City shall endeavor to review classifications in the Milpitas Supervisors Association.

SECTION 15.00 - SALARY

The monthly salary schedule labeled Appendix "A1" and attached hereto is hereby made a part of this Memorandum of Understanding.

SECTION 16.00 - OVERTIME

- 16.01 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:

- 16.02 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.
- 16.03 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.
- 16.04 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.
- 16.05 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.
- 16.06 Compensatory time off credits may be accrued by employees, but must not exceed 240 hours on January 1 of any year. Employees will receive pay for the hours of compensatory time off earned which exceeds the 240-hour limit as of January 1.
- 16.07 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.
- 16.08 After working overtime, and not having at least eight consecutive hours of rest, an employee shall not 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.
- 16.09 Any paid accrued leave, specifically 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.
- 16.10 Supervisors who are contacted and consulted by telephone about a City emergency between the hours of 10 p.m. and 5 a.m. and who provide advice, shall be paid a minimum of one hour of overtime or compensatory time.

Additionally, telephone response to a page from the end of the individual's scheduled work day through and including 9:59 p.m., and from 5:00 a.m. through and including the scheduled time of an individual's commencement of his/her shift, shall be considered "hours worked" for purposes of computing eligibility for overtime compensation as otherwise set forth within this MOU. Telephone response to a page from 10:00 p.m. through and including 4:59 a.m., shall result in compensation for actual hours worked, but with a one-hour minimum being credited to hours worked.

- 16.11 With the exception of emergency situations, an employee shall obtain prior authorization from his/her supervisor to work overtime.

SECTION 17.00 - BILINGUAL ASSIGNMENT

- 17.01 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.
- 17.02 Eligibility for a bilingual assignment shall be based on the following criteria:
- 17.02.1 Employee must be assigned to a position where assisting the general public is the primary emphasis of his or her job. Qualifying classes include:
- (a) One designated employee in the Public Works Department, (not located at City Hall or the Community Center)
 - (b) Any other class as determined by the City
- 17.02.2 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)
- 17.02.3 Upon written recommendation of the Department Head or designee may approve a bilingual assignment once the employee has undergone appropriate testing and been certified as bilingual. The City Manager reserves the right to terminate a bilingual assignment when it is determined that the need for such assignment no longer exists.
- 17.02.4 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.
- 17.02.5 This section shall not apply to employees who may be called upon periodically for interpretation, where Subsections 17.02.1, 17.02.2, and/or 17.02.3 are not met.

SECTION 18.00 - WORK OUT OF CLASS

- 18.01 Upon specific assignment by the Department Head, or the designee, an employee may be required to perform the duties of a higher classification. Such assignment shall be made only to existing authorized positions which are not actively occupied due to the temporary absence of the regularly appointed employee. Such assignment shall not be made to vacant positions.

- 18.02 Employees assigned to duties of a higher class for one (1) shift shall be compensated at a rate 10% above the employee's current base salary while working out of class, except where such increase exceeds the pay range allocated to the assigned position. The employee shall be compensated at the appropriate rate retroactive to the start of the assignment. Assignments shall not be made for less than one (1) shift.
- 18.03 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 19.00 - SUPERVISORY DIFFERENTIAL

Upon an affected employee completing an entire shift as the direct supervisor of an individual occupying a classification with a higher salary range than that of Maintenance Worker III, said affected employee shall be credited with a 15% base salary increase for the completed shift as long as the increase does not exceed the maximum pay range of the assigned position. However, as a condition precedent to the receipt of the supervisory 15% differential, the affected employee shall, not later than the end of the shift for which the differential is being claimed, submit in writing to the direct supervisor the facts demonstrating the required supervisor-subordinate relationship for the entire shift.

SECTION 20.00 - PAGER COMPENSATION

Subject to the terms and conditions set forth herein, affected employees required to utilize a paging device other than during scheduled hours of work and to immediately respond to the pager when it is activated, shall be paid the amount of \$89.93 per pay period where the employee is subject to page during the entire pay period. A minimum of two employees shall be required to maintain pager availability.

SECTION 21.00 - LATERAL TRANSFERS

In the event of a vacancy, employees within the same classification will be given written notification of the vacancy. Any employee within the same classification who desires to be considered for lateral transfer to the vacant position may so request by written notification to their current supervisor and the supervisor of the vacant position. The supervisor of the vacant position will fairly consider the request of each employee and respond in writing as to whether or not the transfer has been accepted. No recruitment process selection can be made until after the supervisor has determined that a lateral transfer is not appropriate and notified the employee(s) that they have not been accepted for lateral transfer. The decision is at the discretion of 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. 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. Floating Holiday: 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 23.03 applies in the case of the floating holiday. In August of each year, covered employees shall receive a notice regarding the status of their floating holiday usage.
- 22.01.2 In the event a holiday falls on a Sunday, the following Monday will be observed as the holiday instead.
 - 22.01.3 In the event a holiday falls on a Saturday, the preceding Friday will be observed as the holiday instead.
 - 22.01.4 Any other holiday declared by the City Council as a City holiday for City employees.
 - 22.01.5 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.
 - 22.01.6 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 will be credited toward accrued holiday leave hours. During weeks in which one or two full day paid holidays occur, those employees will work 9.5 hour days for four days less the number of paid holidays at 7.5 hours per holiday. The balance will 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.

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:

	<u>37.5 hour workweek</u>	<u>40 hour workweek</u>
From date of hire through the fourth year of employment	3.1731	3.3846
From fifth through ninth year of employment	4.6154	4.9231
From tenth through fourteenth year of employment	6.0577	6.4615
From fifteenth through nineteenth year of employment	7.5000	8.000
From twentieth through twenty-fourth year of employment	8.9423	9.5385
From the twenty-fifth year of employment and on	7.0063	7.4734

23.02 Employees who work less than full time shall earn vacation credits on a prorated basis.

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 months of continuous service, the employee may be permitted to take vacation leave not to exceed one (1) work week.

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 municipal service needs. If the municipal service requirements 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 On the last day of the pay period that includes December 31, no employee may accumulate and carryover more than 260 hours of vacation without the express written consent of the City Manager. No employee shall be allowed to be on paid leave for a period of over 240 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 On or about December 1 of each year, each Department Head may circulate a vacation roster for the forthcoming calendar year. Employees are then encouraged to indicate vacation choices. On or about January 1 of each calendar year, the Department Head will notify employees of the approved vacation calendar for that year. Approval will 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 will 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 each 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 to qualify. A 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 the request.
- (b) Requests for cash-outs other than during approved vacations must be submitted to Finance by May 31 or November 30 for payments in June or December respectively.
- (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 (accruals) beginning with the date of original employment at the rate of 12 days per year prorated over 26 pay periods; employees become eligible to take accrued sick leave upon completion of one full month of continuous service. Sick leave shall not be considered 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 will 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 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.

24.03 For employees hired prior to July 18, 1999, the City agrees to 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.

24.03.1 See section 32.07.2 for employees hired on or after July 18, 1999--PERS amendment/Credit for Unused Sick Leave.

24.04 In November of each year, an employee with five or more years of service may elect to cash out accrued sick leave. Pay-out shall be in accordance with appropriate pay-out formulas described in Section 25.03. However, the maximum annual amount shall not exceed 50% of the employee's sick leave balance. Employees eligible for this benefit shall at all times maintain a sick leave balance of at least 240 hours.

SECTION 25.00 - FAMILY LEAVE

25.01 Employees with available sick leave may use such sick leave for family medical purposes when a member in the employee's immediate family is involved.

25.01.1 Family medical purposes means illness, accident, medical appointments, or other related occurrences.

25.01.2 Immediate family includes: mother, father, spouse, domestic partner, brother, sister, son/daughter, and grandparents of the employee or employee's spouse or employee's domestic partner. This includes step and adoptive relatives.

25.01.3 Each employee shall be allowed to use a maximum of up to 50% of the employee's annual accrued 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 the 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 due to the death of 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, or domestic partner, brother, sister, son, daughter, grandparent, grandchild, adoptive parents, children or sibling, whether the immediate family member is of the employee or his/her spouse/domestic partner.

- 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

Military leave shall be granted in accordance with the provision of State and Federal law. All employees entitled to military leave shall give the Department Head an opportunity within the limits of military regulations to determine when such leave shall be taken.

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 Workers' Compensation Insurance Administrator authorized by the City.
- 28.02 Worker's compensation leave shall be paid up to 320 hours as follows: 100% regular pay for the first 80 hours, followed by 80% regular pay for the next 240 hours. This leave shall cover all time off from work related to the injury, including doctor's appointments and therapy treatments, provided that set hours do not exceed available worker's compensation leave.
- 28.03 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.
- 28.04 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.
- 28.05 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 leave may be integrated. Charges to the employee's leave accounts shall be based on the ratio with Workers' Compensation Insurance temporary disability payments 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 deposited in the City Treasury for the period subject employee continues to receive full salary from the City.

- (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 vacation and sick leave, payment of salary by the City shall be discontinued and compensation insurance payments shall be endorsed to the subject employee.

SECTION 29.00 - UNPAID 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 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 will 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 160 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 without pay. 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. MSA agrees to meet and confer with the City during the term of the MOU regarding the policy.

SECTION 31.00 - RETIREMENT

- 31.01 On April 16, 2002, the Milpitas City Council approved adoption of an enhanced CalPERS retirement plan for "local miscellaneous" employees commonly known as the 2.7% at 55 plan. For employees hired before July 1, 2011, the City will continue to offer the 2.7% at 55 retirement plan along with the final year compensation amendment, 1959 Survivors Benefit, the IRS (414)(h)(2) program and the PERS Credit for Unused Sick Leave. The Association understands and acknowledges that the employees' mandatory contribution changed under the 2.7% at 55 plan, and the affected employees, therefore, will continue to pay an increased mandatory contribution of 1% for a total employee contribution of 8%.

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.

31.02 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.

31.03 Sick Leave Pay-out Provision for Retiring Employees - Medical Continuation:

The City agrees to permit retiring employees to apply sick leave payout 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.

SECTION 32.00 - RETIREE MEDICAL

32.01 For permanent employees hired before June 30, 1995 and retired on or after November 27, 2007 (City Council adoption) 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. (Employees receiving disability shall be eligible for retiree health coverage until they are covered by another health plan such as another employer or through a spouse).

32.02 For permanent employees hired on or after June 30, 1995 and retired on or after November 27, 2007 (City Council adoption) 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 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 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 not to exceed 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 34.02.

SECTION 33.00 - RETIREE DEPENDENT HEALTH CARE

- 33.01 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 Milpitas Supervisors Association 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 Milpitas Supervisors Association president 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. The City will also prepare projections for the following fiscal year for contributions and expenditures. The Human Resources Director and MSA President will meet to discuss corrective measures so the fund does not deplete or end with a negative balance before the next year's contribution is due.

- 33.02 Contributions From the Fund Toward Retiree Dependent Premiums

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

- (a) For permanent MSA employees hired before June 30, 1995, and retired on or after November 27, 2007 (City Council adoption), who have at least five (5) years of full-time or equivalent service with the City of Milpitas and MSA, 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.
- (b) For permanent MSA employees hired on or after June 30, 1995, and retired on or after November 27, 2007 (City Council adoption), who have at least five (5) years of full-time or equivalent service with the City of Milpitas and MSA; 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:

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.

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

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

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

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

- 33.03 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 contributions 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.
- 33.04 Retirees and spouse will be permitted to remain members of the Employee Dental Fund at their own expense at a rate of \$62.50 per month. Eligible retirees who retired after November 27, 2007 (City Council Adoption) will contribute up to 50% of the premium each month toward dental benefits.
- 33.04.1 PERS Contract Amendment - Credit for Unused Sick Leave 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.
- 33.04.2 All employees hired on or after July 18, 1999 shall not be entitled to sick leave cash out and Section 25.03 of the MOU shall not apply to them.
- 33.04.3 Laborers' International Union of North America National (Industrial) Pension Fund.
- 33.04.4 For the purpose of providing supplemental retirement benefits for employees covered by this Agreement, the City of Milpitas shall make a total contribution equal to \$2.00 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.
- 33.04.5 Effective January 2008 the City of Milpitas shall make a total contribution equal to \$2.50 per hour per employee covered by this MOU up to forty (40) hours per week of budgeted/approved work hours as long as the employee is on paid status.

- 33.04.6 The amount shall be paid to the LIUNA Pension Fund, to an address specified by MSA.
- 33.04.7 The amount shall be prorated for employees working less than forty (40) hours.
- 33.04.8 The City shall not make contributions for hours in excess of forty hours per week.
- 33.04.9 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.
- 33.04.10 This MOU shall not be construed to create a vested right that can be asserted against the City.

SECTION 34.00 - INCENTIVE PAY

- 34.01 Upon approval of the Department Head and on a employee by employee basis, a four percent (4%) of base pay incentive for Federal, State, or local government mandated certifications or licenses not required or described in the job description for the classification for which the employee is assigned. Employees need to be actively certified or licensed in order to receive the incentive.
- 34.02 Longevity Pay – Effective November 6, 2007. Effective first full pay period of July 2011 the 1%, 3% and 6% longevity will be discontinued.
- 34.03 Effective the first full-pay period following the completion of an employee's 24th year of service, a total longevity incentive of two percent (2%) over base pay.

SECTION 35.00- BENEFITS

- 35.01 The City shall provide active employees the CALPERS medical insurance for health benefits. The total monthly health benefit for employees shall be based on the Kaiser rates for employee, employee + 1, and the family plan. Only employees who have eligible dependents shall be covered above the single rate plans.
1. CALPERS (PEMCHA) health plan is 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 existing plan.
5. The City shall provide a Long Term Disability plan that at a minimum will provide similar coverage to the existing plan.
6. The City will provide a vision plan for each member of the Association.
7. Payroll deductions for benefit costs above the City benefit contribution shall be permitted, provided that the City shall not assume unreasonable administrative costs.
8. Employees who are covered as an eligible dependent under another health insurance plan may waive health coverage and receive a total of one hundred and twenty-five dollars (\$125.00) per month. 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.
9. MSA agrees to discuss a "cafeteria style" benefit plan upon request of the City.
10. Effective the first full pay period of July 2011 the City will discontinue the contribution of \$900 annually to the Deferred Compensation Plan to MSA.

35.02 Benefit Contribution For 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 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 insurance benefits, with similar coverage at no cost to part-time employee.

SECTION 36.00 – TRAINING

- 36.01 If an employee is directed to participate in a training program which is related to their job, the City shall provide compensation for the following:
- a. Regular wages for time away from the job (if during working hours);
 - b. Overtime or compensatory time off whenever an employee's combined training time and work time exceeds the scheduled work day;
 - c. Costs of tuition and/or registration for the training;
 - d. Reimbursement for authorized transportation cost to and from the training. (i.e. Mileage reimbursement if an employee uses their personal automobile as allowed by the City. However, if employees car pool to a training session, only the employee who is the owner of the automobile shall be entitled to mileage reimbursement).

- 36.02 Participation in and successful completion of a training course may be considered in making employment advancements and promotions.
- 36.03 The City agrees to instruct all supervisors who have MSA members under their authority to review MSA's most recent MOU. In addition, the City agrees to provide training regarding the MSA MOU whenever requested by a supervisor.
- 36.04 MSA supervisors shall be allowed to operate equipment and vehicles during the course of the normal day and conduct routine maintenance activities provided that it does not result in loss of compensation to any MEA member. It is understood that in order to provide adequate training, the supervisors must be able to operate the equipment and vehicles in an efficient and effective manner.
- 36.05 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 Standard Operating Procedure (SOP).

SECTION 37.00 - HEALTH & SAFETY

- 37.01 The City shall reimburse up to \$200 (\$225 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 Human Resources Director if there has been a significant change in the employee's prescription or damage occurred as a result of a work-related incident.
- 37.02 In addition, the City shall provide a maximum of \$200 reimbursement per employee annually for the purchase of safety shoes, and related footwear accessories/repairs if additional funds after the purchase of the shoes are available. The wearing of said items is mandatory and said footwear must meet safety guidelines set by the City.
- 37.03 Employee Fitness Program:
- 37.03.1 Purpose: To provide permanent, full-time benefited employees the opportunity to voluntarily participate in City-sponsored recreation programs at no cost during non-work hours.
- 37.03.2 Scope of Services: This program shall allow employee participation in adult fitness and sports related activities offered by the Parks & Recreation Services Department. Employees shall be granted use of all sports facilities operated and/or maintained by the Parks & Recreation Services Department at the Milpitas Sports Center.

37.03.3 Cost: Programs shall be offered at no cost to employees. Spouses shall be required to pay full registration and non-resident fees if applicable. Each non-employee participant in an organized team activity shall be required to pay a fee equal to the team registration fee divided by the number of participants. The City agrees to waive fees for use of City parks by employees for softball team practice, except for costs if field lights are used.

37.03.4 Restrictions

- (a) Each employee shall be required to complete a registration form, medical history card, and a contract and/or a participant waiver form limiting the City's liability during the employee's participation in a particular program or activity.
- (b) Organized adult athletic program and leagues, such as softball and 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 a program requiring advanced registration shall follow the same time schedule as those established by the Department for local residents.
- (e) No limit shall be placed on the number of programs or activities in which an employee may participate except that the activity must be within the scope of services offered by the Parks & Recreation Services Department.
- (f) Participation in the program is voluntary and must not conflict with normal work schedules and shall take place during off-duty periods

37.03.5 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 38.00 - MISCELLANEOUS

38.01 Use of City Vehicles

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 with prior authorization from their Department Head or their designee.

38.01.1 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. Two current employees (Maintenance Supervisor for the Building Maintenance Section and the Senior Maintenance Supervisor assigned the duty of coordinating Stand-by)) who are taxed by the IRS or Franchise Tax Board for the personal use of City vehicles will be compensated for the amount of taxes which their income taxes are increased as a result of such use.

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

38.01.3 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 reckless, and/or under the influence of a controlled substance.

38.02 Experimentation, Working Hours

Any experimentation with hours of employment or other related criteria shall be subject to meet and confer.

38.03 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 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.

38.04 Negotiations

Negotiations for a new MOU shall commence by the written notification by either party to the other by September 1 of the last contract year.

38.05 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.

38.06 Printing of Sick Leave and Vacation Accrual Rates

The City agrees to print sick and vacation accruals rates on employee biweekly timesheets or pay stubs.

38.07 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.

38.08 Voting

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

SECTION 39.00 - NO LABOR ACTION

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 40.00 - FAMILY MEDICAL LEAVE ACT (FMLA)

The Family Medical Leave Act (FMLA) is a Federal Law. The City adheres to all laws required under this policy.

SECTION 41.00 – FINAL CLAUSES

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

41.02 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.

Dated: 6/8/11

CITY:

Bill Marion
Bill Marion

Carmen Valdez
Carmen Valdez

Emma Karlen
Emma Karlen

Mary Layelle
Mary Layelle

ASSOCIATION:

Stephan Smith
Stephan Smith

David Gordillo
David Gordillo

Eddie Loredo
Eddie Loredo

Garry Mahan
Garry Mahan

Steve Allen, UPEC Local 792
Steve Allen, UPEC Local 792

APPENDIX "A1" SALARY SCHEDULE

An 11.14% base salary reduction effective the first full pay period in July 2011. The annual base salary will be adjusted as follows:

Milpitas Supervisors Association
ANNUAL SALARY SCHEDULE
As of July 3, 2011

Maintenance Supervisor – 40 Hours	\$ 72,401 - \$ 88,004
Maintenance Supervisor – 37.5 Hours	\$ 67,877 - \$ 82,503
Public Services Supervisor	\$ 56,535 - \$ 68,719
Senior Maintenance Supervisor	\$ 79,642 - \$ 96,805
Fleet Maintenance Supervisor	\$ 76,600 - \$ 93,107
Water Meter Reader Supervisor	\$ 51,340 - \$ 62,405