

COPY

RESOLUTION NO. 3842

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE ASSOCIATION OF CAPITOLA EMPLOYEES (ACE) BARGAINING UNIT EFFECTIVE JANUARY 1, 2011 THROUGH JUNE 30, 2012

WHEREAS, the current Memorandum of Understanding (MOU) with the Association of Capitola Employees Bargaining Unit expires on December 31, 2010; and

WHEREAS, in conformance with Section 3500 et seq. of the State of California Government Code, the City of Capitola has met and conferred in good faith with the unit on wages, hours and working conditions; and

WHEREAS, both parties have come to an agreement for a term of 18 months, expiring on June 30, 2012, as well as on all parts of the negotiations as detailed below by year:

Year 1: Effective January 1, 2011 an additional flexible spending contribution rate of \$799 for Employee plus one and \$999 for employee plus two or more, a reduction in the amount of vacation hour's employees can accrue from 504 hours per year to 360 hours per year. In addition, the City and ACE have agreed to continue the Labor-Management committee to discuss emerging issues.

Year 2: Effective January 1, 2012 the employees will receive a cost of living increase based on the average the San Francisco - Oakland - San Jose Consumer Price Index (all urban consumers) reported CPI for December 2010, February 2011, April 2011, June 2011, August 2011 and October 2011. If the resulting figure for averaged CPI is greater than 0%, that figure shall be used as the percentage for salary increase for members of the unit, effective January 1, 2012.

NOW, THEREFORE, BE IT RESOLVED that the City Council of the City of Capitola does hereby approve the executed Memorandum of Understanding with the Association of Capitola Employees (ACE) bargaining unit effective January 1, 2011 through June 30, 2012, and authorizes the City Manager to execute the MOU on behalf of the City.

I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 23rd day of November, 2010, by the following vote:

AYES: Council Members Graves, Norton, Nicol, Begun, and Mayor Storey
NOES: None
ABSENT: None
ABSTAIN: None

[Handwritten signature of Sam Storey]
Sam Storey, Mayor

ATTEST:

[Handwritten signature of Pamela Greeninger] MMC
Pamela Greeninger, City Clerk

This is to certify that the above and foregoing is a true and correct copy of Resolution No. 3842 passed and adopted by the Capitola City Council on the 23rd day of November, 2010.

[Handwritten signature of Pamela Greeninger] MMC
Pamela Greeninger, City Clerk

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**ASSOCIATION OF CAPITOLA EMPLOYEES**  
**AND CITY OF CAPITOLA**  
**PERIOD 01/01/2011 to 06/30/2012**  
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**ASSOCIATION OF CAPITOLA EMPLOYEES  
MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is made and entered into between the City of Capitola (hereinafter referred to as "City") and Laborers International of North American (LIUNA) Local 792 (herein referred to as "the union") for the Association of Capitola Employees (ACE) for and on behalf of its members identified. This agreement shall cover the period from January 1, 2011 through June 30, 2012 and shall be effective upon ratification by the bargaining unit and approval by the Capitola City Council.

The City's "Standard MOU Provisions" and "Additional MOU Provisions" are hereby incorporated into this MOU by this reference. To the extent there is a conflict between either the Standard MOU Provisions or Additional MOU Provisions with this MOU, this MOU shall govern. The City and Union agree that, prior to March 31, 2007, they shall incorporate provisions from the Standard MOU Provisions and Additional MOU Provisions not specifically set forth in this MOU into this MOU, so long as incorporation does not result in a substantive change in the terms and conditions of employees covered by this MOU.

**I. UNION RECOGNITION**

1. Pursuant to the Meyers-Milias-Brown Act and the City's Employer-Employee Relations Resolution, the Union, affiliated with Laborer's International Union of North America, Local 792, is hereby recognized as the exclusively recognized employee organization of the General Government Employees and Association of Capitola Employees bargaining unit. Classifications in the bargaining unit are listed in Section I.16 below. Pursuant to language in the Employee-Employer Relations Ordinance, this list can be amended from time to time.
2. The parties hereto recognize that membership in the Union is not compulsory, that employees have the right to join, not join, maintain, or drop their membership in the Union and that neither party shall exert any pressure on or discriminate against an employee regarding such matters. In light of the agency fee provisions contained in this section, the Union agrees that it is obligated to represent all of the employees in the bargaining unit fairly and equally, without regard to whether or not an employee is a member of the Union. (Government Code Section 3502)
3. Effective 30 days after the effective date of this MOU, in accordance with Government Code Section 3502.5, employees who are members of the bargaining unit represented by the Union, as a condition of continued employment, shall be required to either belong to the Union or to pay to the Union an amount equal to a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments for the Union. (Government Code Section 3502.5(a)) The Union shall notify the City in writing as to the amount of the service fee.
4. Any employee of the City subject to this MOU who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting a public employee organization will, upon presentation of verification of active membership in such religion, body or sect be permitted to

make a charitable contribution equal to the service fee in lieu of Union membership or service fee payment.

Declarations of or applications for religious exemption and any supporting documentation will be forwarded to the Union within fifteen days of receipt by the City. The Union will have fifteen days after receipt of a request for religious exemption to challenge any exemption that the City grants. If challenged, the deduction to the charity of the employee's choice will commence but will be held in escrow pending resolution of the challenge. Charitable contributions will be by regular payroll deduction only. For purposes of this paragraph, charitable deduction means a contribution to a non-religious and non-labor charitable organization exempt from taxation under Section 501(c)(3) of the IRS Code chosen by the employee. (Government Code Section 3502.5(c))

5. The City shall notify new employees that the Union is the exclusive recognized bargaining representative for employees in the bargaining unit and provide new employees with a copy of the current Memorandum of Understanding. Within 30 days after employment, new employees shall, as a condition of continued employment, be required to either belong to the Union or to pay to the Union an amount equal to a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments for the Union. (Government Code Section 3502.5(a))
6. This section of the MOU shall not apply to supervisory employees. (Government Code Section 3502.5(e))
7. The City shall make available payroll deductions for unit members for both regular Union dues and for payment of the service fee to the Union pursuant to an appropriate authorization form signed by the employee or the provisions of this Section. Those funds shall be remitted to the Union on a monthly basis. An employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues or service fee. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full dues or service fee, no deduction shall be made. In addition, all other legal and required deductions have priority over Union dues and the service fee.
8. The Union shall keep an adequate itemized record of its financial transactions and shall make available annually, to the City and to the employees who are members of the Union, within 60 days after the end of its fiscal year, a detailed written financial report in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or by a certified public accountant. The Union, if it is required to file financial reports under the Labor-Management Disclosure Act of 1959 or required to file financial reports under Government Code Section 3546.5, may satisfy this financial reporting requirement by providing the City with a copy of those financial reports. (Government Code §3502.5(f))

9. The Union shall indemnify, defend and hold the City, its employees, officials, representatives and agents harmless against any claims made, and against any suit instituted against the City on account of payroll deductions made pursuant to this Section for dues or service fees. In addition, the Union shall refund to the City any amount paid to it in error upon presentation of supporting evidence.
10. Any dispute between the Union and any employee on the interpretation or application of this Section shall, at the request of the Union or the affected employee, be decided by final and binding arbitration under the rules of the American Arbitration Association. The Union and the employee shall each bear one half the cost of the arbitration, including the fee of the American Arbitration Association, the arbitrator and any court reporter fees and costs. The City will not protest or interfere with any final and binding decision under this Section.
11. Union Notification. The City shall give reasonable written notice to Union when it is affected by any ordinance, rule, resolution; or regulation proposed to be adopted and directly relating to matters within the scope of representation.
12. Bulletin Boards. The Union shall be provided a bulletin board in the employee break room. The Union agrees that notices posted on the bulletin boards shall not contain anything that may be construed as maligning or derogatory to the City or its representatives. The Union shall be responsible for maintaining the bulletin board in a business-like manner. The Union shall be responsible for placement of and removal of outdated material. However, the City shall retain the right to remove maligning, derogatory, or inappropriate or outdated material.
13. Time Off for Union Officials. During the term of this agreement, two employees from the unit shall be allowed a reasonable amount of paid release time off for "meet and confer" or "meet and consult" sessions scheduled with the City's designated representatives, providing there is no disruption of work. The Union shall notify the City Manager in advance of the meeting of the specific members who will be in attendance. Union members shall obtain permission through supervisory channels before leaving their work or work locations.
14. Time Off Without Loss of Pay. The Union may request, and the City may grant, time off without loss of pay to Union representatives to assist the City in the formulation of policies and procedures mutually beneficial to the City and the Union. However, such time off shall be at the discretion of the City Manager.
15. Union Stewards. The unit shall be authorized to designate two employees within the unit as stewards and must furnish a list of these stewards to the City Manager within five working days after appointment or election. One steward at a time shall be allowed a reasonable amount of paid release time for the purpose to representing a unit employee within the steward's area of representation in the filing or processing of grievances or disciplinary appeals, as long as there is no interruption of work in the employee's division. Stewards must first obtain permission.
16. Represented Employees. This unit represents the following classifications: Accounts Receivable/Payable Clerk, Account Technician, Accountant I,

Accountant II, Administrative Assistant, Administrative Clerk I, Administrative Clerk II, Building Inspector I, Building Inspector II, Class Coordinator, Development Services Technician, Data Entry Clerk, Equipment Operator, Maintenance Worker, Mechanic, Museum Coordinator, Parking Enforcement Officer, Planner, Receptionist, Records Clerk, Records Coordinator, Records Management Clerk, Recreation Assistant, Recreation Facility Custodian, Recreation Receptionist, and Sports Coordinator.

17. When a new position is created by the City that is not managerial, supervisory or confidential, the City will provide the Union with a position description and will advise the Union as to whether or not, in its judgment, the position is appropriate for inclusion in the bargaining unit. If the Union disagrees with the City's decision, it will notify the City, and the City and the Union will meet to resolve the disagreement.

## II. WAGES

- A. Wage Schedule and Wage Increases: The wage schedule attached to this Memorandum of Understanding sets forth the base pay, subject to such adjustments (such as longevity pay) as are specifically set forth in this MOU. Letters "A" to "E" have been used to designate the respective pay steps for each position. The rates contained in the wage schedule are base salary rates and do not include overtime or benefits. The City will compile and average the San Francisco – Oakland – San Jose Consumer Price Index (all urban consumers) reported CPI for December 2010, February 2011, April 2011, June 2011, August 2011 and October 2011. If the resulting figure for averaged CPI is greater than 0%, that figure shall be used as the percentage for salary increase for members of the unit, effective January 1, 2012.
- B. Specialty Pay for Police Department Administrative Assistant: The Police Department Administrative Assistant will be granted a specialty pay increase of 5% when certified by POST to conduct back ground investigations. This pay will be retroactive to the time of certification.
- C. Conversion To Hourly Rate: Whenever it is necessary to compute an hourly pay rate in order to apply any provision of this MOU, that will be done by multiplying any monthly rate by 12 in order to derive an annual rate, and dividing the annual rate by 2080 (or proportionate number of hours for part time positions, e.g., 1040 for a half-time position).
- D. Service: The word "service" as used in this MOU means continuous full-time service in the position in which the employee is being considered for salary advancement, service in a higher position, or service in a position allocated to the same salary schedule and having generally similar duties and requirements. A lapse of service of any employee for a period of time longer than thirty days by reason of resignation or discharge shall serve to eliminate the accumulated length of service time of such employee, and any such employee re-entering the service of the City shall be considered as a new employee, unless another standard is established by the personnel rules, in which case that standard shall apply.

E. Types of Appointment

For all types of appointments, refer to the personnel rules, except for Acting Appointments.

1. Acting Appointments

Acting appointment may be either full-time or part-time, as established by the City Manager. An acting appointment occurs when an employee is temporarily appointed to a higher class position. While serving under an acting appointment, an employee will receive additional compensation as determined by the City Manager. Such pay will be no less than 5% above the employee's regular compensation. It may be up to, but ordinarily will not be in excess of the first step of the position occupied. Such pay shall begin on the first work day of the appointment.

2. Work Out of Class

Work out of class occurs when an employee is designated to work in a higher classification and actually performs or is responsible for performing the majority of duties of the higher classification. If an employee works out of class for four or more consecutive hours, the employee will receive work out of class pay for all hours worked out of class. The employee shall receive either 5.0% above the employee's usual rate of pay, or pay at the next highest pay step in the out of class job classification, whichever is greater.

3. Acting Supervisors Pay for Public Works

If an employee is designated by the Department Head or the Department Head's designee to perform the duties of Park's Maintenance Supervisor or Facilities and Street Maintenance Supervisor for a period of three consecutive days, with Fridays and Mondays being consecutive days, then that employee shall receive a 10% increase to his or her salary for all such hours worked.

4. Equipment Operators Pay

If an employee is designated by the Department Head or the Department Head's designee to perform the duties of an Equipment Operator for a period of at least four consecutive hours or longer, then that employee shall receive a 5% increase to salary for all such hours worked.

F. Public Works Employees, Shift Changes Shift Differential

1. Shift Changes: In order to provide necessary services, the hours of Public Works employees may be adjusted from time to time. However, when a change in a schedule occurs within the given two-week pay period, all

non-overtime hours worked outside of the pre-adjustment work schedule shall be additionally compensated at a rate equal to 5% of base wage rate.

2. Shift Differential: Employees who are required to report to work two or more hours before the employee's regular time to begin work, shall receive a 5% increase to salary for all such hours worked prior to regular work hours.

G. Emergency Call Back Compensation

1. "Call back" refers to a situation where an employee has completed his/her regular work day without knowing that he/she would be called back (by his/her superior or as a result of emergency circumstances) to work during hours of the day not occurring during the employee's regular workday. An employee who is required to come to work not more than one hour early, but is not thereafter released from work before the start of the regular workday is not on "call back".
2. Employees called back to work shall be treated as having worked at least two hours, even if actual time is less.
3. Public Works: The rate of pay for Public Works department employees (except the department head and the Maintenance Superintendent) call back hours is as follows
  - i. Two and a half times the employee's hourly base rate for hours served between the hours of 10pm and 6 am; or
  - ii. Two times hourly base rate for hours served during other times of the day.
4. For all employees not covered by subsection (c) (except those in the management bargaining unit) call back hours will be paid the same as overtime.
5. Time spent traveling to and from the place of call back work is not counted in applying the provisions of this section, or XXIX. E.
6. Units of time that are both call back and overtime will receive the most favorable of the two treatments, but no single unit of time will be treated as both call back and overtime.

H. Parking Enforcement Officers: Parking enforcement officers shall receive a minimum of 4 hours pay for court appearances that are not scheduled as part of their regular workday.

I. License and Certificate Reimbursement: The City will reimburse employees for the cost of specialized licenses and certificates required to perform their job.

### **III. OVERTIME**

All employees within the Union are hourly employees and can accrue overtime subject to the laws, rules, regulations and any other MOU provisions of the City, state and federal government. The normal regular work week commences on Sunday and consists of forty (40) hours except that the regular work week of public works department personnel engaged in maintenance activities shall be as approved by the City Manager. Except for employees exempt under the FLSA, overtime will be compensated at the rate of one and one-half times the base rate of pay for all hours worked over 40 hours per week in a workweek. Such additional compensation shall, at the employee's election, be either in cash or compensatory time off, in accordance with Labor Code section 204.3. The Department Head must approve overtime.

"Hours worked" shall not include sick leave. Nor shall such a definition include vacation or compensated leave time off not scheduled in advance by at least ten working days. "Hours Worked" shall also not include workers compensation time off unless immediate treatment is required on the date of injury for the injury incurred, in which case overtime is allowed providing the overtime accrued is an extension of the workday and the hours worked for the week exceed 40 hours.

### **IV. MERIT PAY AND EFFECTIVE DATE OF INCREASES**

A merit pay advancement for an employee shall become effective on the first day of the pay period in which the minimum length of service has been satisfactorily completed.

Any other mid-pay period payroll adjustments will occur at the beginning of the pay period in which the adjustments falls for all odd numbered calendar years; and, at the beginning of the following pay period for the even number calendar years.

When an employee has not been approved for advancement to the next higher wage step, the employee shall be reconsidered for such advancement after the completion of either three months of additional service, or after a period of three to six months of additional service if the supervisor concludes that three months will be insufficient time to evaluate whether the performance deficiencies that led to the denial of the step increase have been adequately addressed. At the time a step increase is denied, the supervisor shall identify in writing the timing of reconsideration of the step increase. An employee whose step increase is denied shall also be advised in writing (typically in a performance evaluation) of the reason(s) why the step increase was denied. Grants and denials of step increases shall be on a merit basis only.

Regardless of whether subsequent reconsideration of a denial of a step increase does or does not result in a step increase, the employee's annual review date shall be as originally designated.

V. **VACATION**

A. Accrual

Vacation accrues on a prorated basis, based upon a 30-day month. The rates of accrual are as follows:

<u>Years of Employment</u>	<u>Vacation Days</u>
1 and 2	12
3 and 4	14
5 through 9	17
10 through 19	22
20 and higher	27

B. Accumulation

1. An employee may not accumulate more than, but instead each year must cash out pursuant to Section V.E. below, all accumulated vacation in excess of (360)hours; except that
2. An employee who had accumulated more than 360 hours as of January 1, 2011 may maintain that level: provided, however, that if accumulated vacation falls below 360 hours, the provisions of Section V.B.1, above, shall thereafter apply.

C. Scheduling

Vacations shall be scheduled upon the request of the employee and the approval of the Department. The Department shall consider both the desire of the employee and the needs of the Department in deciding whether to approve or deny a vacation request.

Vacation sign-ups shall be on a first come first serve basis. If more employees request vacation for a given time than can be accommodated by the Department, the more senior employee shall be given the time off. Nothing herein shall require the cancellation of an already approved vacation for a less senior employee upon the request of a more senior employee. "Seniority" as used in this section shall mean length of continuous employment in a paid status in a regular position.

D. Vacation Cash Out On Termination

Upon termination, an employee shall be paid for all accumulated vacation to the separation date, at a rate equal to 100% of his/her current hourly pay rate.

Alternatively, an employee may individually contractually establish, in writing, with the City Manager, mutually agreeable provisions regarding the timing and terms of the cash pay out.

E. Mandatory Cash Out Before Termination

An employee who has accumulated more than 360 hours or who is subject to a higher accumulation level under Section V(B)(2), as of the last pay period in April of any year shall be paid in cash at a rate equal to 100% of his/her current hourly pay rate for all hours in excess of 360 or that applicable higher accumulation level except that such payment shall not exceed the employee's annual vacation accrual

amount. These cash out payments will be included with the paycheck for the first full pay period in May.

F. Optional Vacation Cash Out

In any calendar year, an employee may cash out up to 40 hours of accumulated vacation.

**VI. SICK LEAVE**

A. Sick Leave Accrual

Sick leave accrues on a pro-rated basis, based upon a 30-day month. Twelve days accrue each calendar year. Effective retroactive to January 1, 2005, Parking Enforcement Officers working a 4/10 shift shall accrue 120 hours per calendar year.

B. Sick Leave-Family Care

Sick leave may be used to care for members of the immediate family in accordance with the FMLA and CFRA, or as approved by the City Manager.

C. An employee who becomes ill or is hospitalized while on vacation and provides a written statement from a licensed physician or medical doctor that the illness would have resulted in the employee not being able to come to work, shall have the period of illness charged against sick leave and not vacation leave.

D. Sick Leave Cash Out

Sick Leave may not be cashed out.

**VII. HOLIDAYS**

A. Schedule

There shall be twelve (12) holidays granted annually for the term of the MOU. The holidays to be observed during calendar year are set forth below.

---

New Year's Day	1/01/
Martin Luther King Day	*
Lincoln's Birthday	2/12/
Washington's Birthday	*
Memorial Day	*
Independence Day	7/4/
Labor Day	*
Columbus Day	10/11/
Veterans' Day	11/11/
Thanksgiving Day	*
Friday Following Thanksgiving	*
Christmas Day	12/25/

\* These holidays shall be taken at the same time as the federal holidays are taken. Holidays listed above occurring on a Saturday shall be observed on Friday. Holidays occurring on a Sunday shall be observed on Monday.

In addition, City Hall will be closed for one week during the Christmas holidays during which employees affected by the closure will be permitted to use vacation, personal holidays or sick leave in order not to lose compensation.

**B. Personal Holidays**

All regular positions are entitled to three (3) personal holidays per calendar year. Unused Personal Holidays are not cumulative.

**C. Holiday Hours Bank**

Police Clerks, Parking Enforcement Officers and the Police Department Administrative Assistant shall receive a bank of holiday hours, based upon eight (8) hours for each holiday, to be taken in the same manner as Police Officers.

**VIII. BEREAVEMENT LEAVE**

Leave of absence with pay because of death in the immediate family of an employee shall be granted for a period not to exceed three days. Entitlement to leave of absence under this section shall be in addition to any other entitlement for sick leave, or any other leave. For purposes of this section, "immediate family" means mother, step-mother, father, step-father, husband, wife, domestic partner as defined by the State of California, son, step-son, daughter, step-daughter, brother, sister, foster parent, foster child, brother-in-law, sister-in-law, mother-in-law, father-in-law and grandparents, and any individual to whom an employee is serving in Loco Parentis.

**IX. JURY DUTY**

Leave of absence with pay shall be granted to an employee while serving on jury duty. Time spent commuting from home to and from jury duty is not compensable; time spent traveling from court to place of work is compensable. Any jury fee awarded shall be deposited with the City Treasurer.

**X. LEAVE OF ABSENCE WITHOUT PAY**

A leave of absence without pay may be granted by the City Manager upon the request of the employee seeking such leave, but such leave shall not be for longer than one year.

**XI. ACCRUALS AFTER DATE OF SEPARATION**

An employee's separation date is the last date actually worked, except that an employee who, as of the last day worked, has not used all of his/her yearly allotment of vacation may extend the separation date by the number of days necessary to reach the full yearly allotment. "Yearly allotment" means the amount of vacation that the employee was entitled to accrue in his/her last year of employment. Unless otherwise provided by state law, none of the following accrue after the date of separation: sick leave, vacation,

personal holidays, holiday pay, administrative leave, Flex Plan contributions, or payment of the insurance premiums described in Section XIII.A. below.

## **XII. BENEFITS FOR PART-TIME EMPLOYEES**

Sick leave benefits are described in Section VI above.

## **XIII. FLEXIBLE SPENDING ARRANGEMENT CONTRIBUTIONS**

- A. The City makes a flexible spending arrangement ("Flex Plan") contribution on behalf of each qualified employee for medical, dental & vision coverage. For those employees who have selected health coverage through PERS, from the monthly contribution set forth herein, \$108 per month effective January 1, 2011 will be paid to PERS for what is sometimes referred to as "employer contribution". *For all employees the City will no longer charge to the employee the \$1.50 per paycheck plan fee.* Effective January 1, 2011 the contribution, for full-time regular employees, shall be:
- \$650 per month for employee only
  - \$799 for employee plus one
  - \$999 for employee plus two or more
- B. Employees who can verify to the City's satisfaction that: they have equivalent health coverage for medical (including dental & vision), which will remain in effect until the next enrollment date; or who purchase a CalPERS Health Plan and dental and vision coverage, but do not use their entire monthly contribution, may use the remaining funds to purchase benefits other than medical (including dental & vision) coverage or take this amount in cash for the "employee only" contribution amount. (If a cash payment is taken, it is not included in the employee's compensation for the CalPERS retirement plan.)
- C. The City reserves the option of adding additional programs to the cafeteria plan, as they may become available.
- D. The City will allow, and to a minor degree facilitate, the LIUNA Health Care Health Care plan availability to the represented membership. This benefit shall be at no cost to the City, with the exception of a minor amount of staff time, as may be determined by the City Manager, to administer the disbursements of premium payments. This benefit prior to availability shall be reviewed by the City Attorney or other authoritative source to determine that it does not violate any law or existing contractual relationship. Further, the City will exercise its best efforts to secure this benefit by February 6, 2004.
- E. The City reserves the option of adding additional programs to the cafeteria plan, as they may become available.

#### **XIV. RETIREMENT BENEFITS**

##### **A. PERS**

The City participates in the Public Employee Retirement System (PERS) operated by the State of California. Benefits provided are detailed in separate publications, depending upon the plan. The City provides 2.5% at 55 Retirement Plan for non-sworn employees, with the single-highest year option. The City's contribution toward the combined employer and employee cost of PERS retirement is capped at no more than 16.488% of reportable salary. If the actual PERS contribution rate exceeds 16.488% of reportable salary for any fiscal year, the employee will pay the difference on a pre-tax basis. Contributions will be reported in accordance with the current CalPERS contract, ie: the employee portion (7%) plus any amount above the cap is reported to PERS as paid by the employee.

##### **B. LIUNA National Industry Pension**

General Government Employees: The City will contribute \$0.25 per hour (not including overtime or compensatory time) each pay period to the LIUNA pension fund on behalf of each of the following classifications (which were formerly a separate unit with a separate MOU represented by LIUNA): Mechanic, Parking Enforcement Officer, Equipment Operator, Maintenance Worker and Recreation Facility Custodian. The compensation schedules attached hereto will be reduced \$.25 per hour. The City's sole obligation shall be to forward designated amounts to the fund. The Union shall indemnify and hold harmless the City against any and all claims made as a result of the City's actions pursuant to this section.

Association of Capitola Employees: The City will allow the pretax contributions to LIUNA National Industry Pension for the following classifications formerly comprising the separate ACE Unit in the same manner as the General Government Employees when, and if past service credit benefit again becomes available: Account Technician, Accounts Receivable/Payable Clerk, Accountant I, Administrative Assistant, Administrative Clerk I, Administrative Clerk II, Building Inspector I, Building Inspector II, Class Coordinator, Development Services Technician, Data Entry Clerk, Information Systems Specialist, Museum Coordinator, Planner, Receptionist, Records Clerk, Records Coordinator, Records Management Clerk, Recreation Assistant and Recreation Receptionist, Sports Coordinator.

#### **XV. PHYSICAL EXAMINATIONS**

The City, for any employee receiving flex credit contributions, will provide a bi-annual physical examination for employee. Public Works employees may have the physical on an annual basis. The City will pay the amount not covered by the health care program.

#### **XVI. LIFE INSURANCE**

The City will continue to provide term life insurance in the amount of \$50,000 and long-term disability insurance.

**XVII. MILEAGE REIMBURSEMENT**

Employees required to use their personal vehicles while on City business will be reimbursed at the rate set by the Internal Revenue Service.

**XVIII. UNIFORMS**

City will purchase uniforms for newly hired police department employees and will repair or replace uniforms on an as needed basis. In addition City will cover the cost of reasonable cleaning of police department authorized uniforms. Employees will be responsible for delivering uniforms to, and retrieving uniforms from, the employer designated cleaning establishment.

**XIX. SHOES, APPAREL AND EQUIPMENT REIMBURSEMENTS**

- A. Parking Code Enforcement Officers: The City will also cover the cost of needed uniform item replacements, including shoes and will provide needed wheelchair repair and maintenance. Necessity will be reasonably determined by employer. Wheelchairs provided by the City shall remain property of the City.
- B. Safety shoes and Apparel: Equipment Operator, Mechanic, Maintenance Worker and Recreation Facility Custodian will each calendar year receive: one pair of approved safety shoes, up to five city-logged shirts, and up to five pairs of denims. The Public Works Director shall determine replacement frequency and kind.

**XX. INCENTIVE PROGRAMS**

A. Longevity Pay Incentive

Upon completing continuous years of service with the City, an employee's base pay shall be increased as follows:

- 1. 15 years' continuous service – 5.0%
- 2. 20 years' continuous service - an additional 5.0%, which shall be compounded with the 15 year recognition.

B. Education Reimbursement Program

For employees who received advance approval from the City Manager prior to October 12, 2006, the City will reimburse employees for tuition and textbooks upon the completion of courses approved in advance by the City Manager in accordance with the following schedule:

State supported California colleges and universities - 100% tuition and textbook reimbursement.

Private colleges and universities - 100% of tuition or the tuition of the University of California whichever is less. Textbook reimbursement will be at 100%.

The grandfathered employees are listed in Attachment 2 to this MOU.

For all other employees, the City will reimburse employees for tuition upon the completion of courses approved in advance by the City Manager up to a maximum of \$500 per calendar year for classes completed in that same calendar year. Textbook reimbursement for courses approved in advance by the City Manager shall be at 100%.

C. Bilingual Pay

Employees proficient in the Spanish language shall receive premium pay equal to five (5%) percent of base salary in addition to their regular wage, if:

1. Employee passes the City's bilingual competency test as administered by the Personnel Department on an annual basis to maintain the bonus pay. The City Manager may waive the annual testing requirement for individuals upon recommendation of the department head. Annual basis refers to the fiscal year; and
2. The employee is required to serve as a translator on a regular and ongoing basis, as certified by the Department Head.

**XXI. PERSONNEL EVALUATIONS**

For probationary employees, a performance evaluation is required, at a minimum, every three months.

For permanent employees, a performance evaluation is required annually. The completed evaluation should be submitted ten working days before the annual due date. Nothing in this provision shall prevent departments from issuing performance evaluations more frequently than the required time period.

Merit pay increases will go into effect on a timely basis, unless the performance evaluation of less than "meets standards" has been completed at least two weeks prior to the anniversary date.

If an employee does not agree with an evaluation, the employee may prepare a written response to the evaluation which shall be kept in the employee's personnel file with the contested evaluation. The employee also may request a meeting with the City Manager to discuss the evaluation.

**XXII. LUNCH AND REST PERIODS**

Full-time employees shall be entitled to an unpaid lunch period of thirty (30) minutes at or about the mid-point of their workday. If an emergency occurs such that there is a need for the employee to work during the employee's lunch period, the employee will be compensated for the lunch period.

Employees shall be allowed a 15 minute rest period during each four hours of work. An exception to this general rule is that the rest periods may be combined and scheduled as mutually agreed to by an employee and supervisor. In addition, the City reserves the right in emergency situations to require employees to work through rest periods.

Rest periods shall be considered compensable work time.

### **XXIII. EMERGENCY MEALS**

The City shall arrange for meals for employees assigned to work four (4) or more hours contiguous to the employee's shift when the employee is not provided notice of the need to work the overtime at least 12 hours prior to either commencing the overtime work or shift.

### **XXIV. LIGHT DUTY ASSIGNMENT**

An employee who has been cleared by a physician to return to work with specified medical restrictions, may return to work within those restrictions, at the City's discretion. The release must be in writing. Nothing in this section is intended to imply that an employee has a right to a light duty assignment. All such assignments are temporary assignments and are subject to the Department Head's periodic review of the employee's continued need for limited duty and the City's ability to continue the employee in the assignment. No change in base pay will result from this assignment.

### **XXV. PROBATIONARY PERIOD**

Regular Appointment Following Probationary Period. All original and promotional appointments shall be tentative and subject to an initial probationary period of six (6) months actual service, as may be adjusted for approved leave, to be determined for each class by the Personnel Officer. The Department Head may recommend and the Personnel Officer may approve an extension of the initial probationary period up to six (6) additional months. The Probationary employee shall be informed three (3) weeks prior to the expiration of any probationary period, that the probationary period will be extended, and reasons shall be given for the extension.

The Department Head shall file with the Personnel Officer a Personnel Action Form that either (1) the service of the probationary employees has been satisfactory and that retention in the competitive service of such employee is denied; (2) the probationary period should be extended; or (3) the service of the employee has been unsatisfactory and his/her employment should be terminated. If at anytime during the probationary period the department head notifies the Personnel Officer that performance is less than satisfactory, the Personnel Officer will communicate that less than satisfactory performance to the appointing authority who may give or cause to be given to the employee a notice of immediate termination.

Objective of Probationary Period. The probationary period shall be regarded as part of the examination process and shall be utilized for closely observing the employee's actual performance and for securing the most effective adjustment of a new employee to his/her position.

Rejection of Probationer. During the probationary period, an employee may be rejected at any time by the appointing authority and without the right of appeal. Written notification of rejection by the appointing authority shall be served on the probationer.

Rejection Following Promotion. The rules and rights afforded employees rejected during or at the conclusion of the probationary period following a promotional assignment shall be as set forth in the City's Personnel Rules.

## **XXVI. GRIEVANCE PROCEDURE**

- A. Definition of a Grievance: A grievance is defined as an allegation presented in writing by an employee or group of employees that the City has failed to provide a condition of employment, which is established by law, Memorandum of Understanding, by written City or departmental rules, provided that the enjoyment of both such right is not made subject to the discretion of the Department Head or the City by the terms of law, Memorandum of Understanding, or by written City or departmental rules and, provided further, that the conditions of employment which are the subject matter within the scope of representation as defined in California Government Code Section 3504. Notwithstanding the above, excluded from this grievance procedure are employee evaluations, and any other matter that is assigned its own appeal procedure such as discipline and an alleged violation of the harassment policy.
- B. Right to Representation: An employee having a grievance shall have the right to consult with and be assisted by a representative of his/her own choice throughout the grievance process. In those cases in which an employee elects to represent him/herself or arranges for other representation, the Union shall have the right to participate in the grievance procedure to the extent necessary to protect the interest of its members in negotiated conditions of employment.
- C. Limitations on Money Damages: In no event shall any grievance include a claim for money relief for more than the twenty-one day period plus such reasonable discovery period, unless otherwise provided by law.
- D. Procedure: Failure of the employee to timely file a grievance and/or comply with the time limits at any step of this grievance procedure shall constitute an abandonment of the grievance. Failure of the employer to respond within the time limits at any step of this grievance procedure shall result in an automatic advancement of the grievance to the next step. The parties may mutually agree to extend the time permitted under any of the steps

### **Step 1**

A grievance must be presented to the grievant's supervisor within twenty-one (21) calendar days from the day upon which the City allegedly failed to provide a condition of employment, or within twenty-one (21) calendar days from the time in which an employee might reasonably have been expected to have learned of such alleged failure to provide. The written grievance shall include the following:

- a) Date of submission;
- b) Signature of employee or employees;

- c) The MOU provision, Personnel Rule, Administrative Policy or other rule or policy allegedly violated;
- d) A description of the relevant facts, including specifically how, when and by whom the grieved condition of employment was violated;
- e) The requested resolution or remedy; and
- f) The name of any representative chosen by the grievant.

The supervisor shall provide the grievant with a written response within seven (7) actual working days.

### **Step 2**

If the grievance is not resolved at Step 1, the employee shall have seven (7) actual working days after receipt of the supervisor's Step 1 response to file an appeal with the Department Head. The Department Head may, but is not required to, meet with the grievant to discuss the grievance. The Department Head shall have seven (7) actual working days from either receipt of the appeal, or the meeting with the grievant, whichever is later, to provide the grievant with a written response.

### **Step 3**

If the grievance is not resolved at Step 2, the employee shall have seven (7) actual working days after receipt of the Department Head's Step 2 response to file an appeal with the City Manager. The City Manager shall meet with the grievant and other persons the City Manager believes would be useful to the City Manager's consideration of the grievance within seven (7) actual working days after receipt of the grievant's appeal. The City Manager shall have seven (7) actual working days from the date of the meeting with the grievant to provide the grievant with a written decision.

The Union may, in its own name, file a grievance with the City Manager alleging that the City has failed to provide it some organizational right which is established by law, provided that such right is not made subject to the discretion of the City. Such Union grievance shall be filed with the City Manager and heard and determined pursuant to the provisions of this step of the grievance procedure. The City Manager shall meet with the Union and other persons the City Manager believes would be useful to the City Manager's consideration of the grievance within (7) actual working days after receipt of the Union's grievance. The City Manager shall have seven (7) actual working days from the date of the meeting with the Union to provide the Union with a written decision.

### **Step 4**

An employee dissatisfied with the City Manager's decision on the employee's Step 3 grievance may appeal the grievance to the City Council within (7) seven actual working days of receipt of the City Manager's decision. The City Council will schedule a hearing within a reasonable time period after receipt of the appeal. The decision of the City Council following the hearing shall be final.

## **XXVII. LAYOFFS**

Layoffs shall be governed by Personnel Rule 12. The City will make its best efforts to provide an additional 30 days of EAP benefits to employees who are laid off to assist them in their transition. If continued EAP benefits are not available, the City will meet with the Union to discuss the possibility of the City providing laid off workers with guidance on resume writing, conducting a job search, job interviewing, coping with stress and/or unemployment insurance benefits.

## **XXVIII. SAFETY**

The City and employees shall comply with all Federal, State and local health and safety laws and regulations and the City's "Loss Control, Injury and Illness Prevention Safety Program." At least two employees within this bargaining unit shall be permitted to serve on the City-wide safety committee called for in the City's "Loss Control, Injury and Illness Prevention Safety Program."

## **XXIX. MISCELLANEOUS**

Nothing in this plan will preclude the incumbents of any position from negotiating individual contractual provisions, provided that: such individual negotiations arise out of situations in which the employee has, or is negotiating towards, voluntarily terminating his/her employment or temporarily working in a higher paid position; and any resulting provision does not purport to affect the rights of any other member of the unit.

### **A. Legal Defense**

Except as provided in Government Code Section 995.2, City shall provide a defense including but not limited to legal counsel in: a) any civil action or proceeding described in Government Code Section 995; b) any administrative action or proceeding described in Section 995.6; or any criminal action or proceeding described in Government Code Section 995.8. "Proceeding" as used in this section is applicable to situations where a claim or action is threatened, but not filed, if a reasonable, prudent person would consult or retain counsel in response to the possibility of actual civil, administrative, or criminal action. If City pays for a defense, but a court or tribunal issues a final ruling that would, under Section 995.2, preclude City payments for defense, employee shall immediately reimburse City, and if he/she fails to do so, City may offset any such amounts against compensation otherwise due employee under this contract.

### **B. Use of Employer Facilities**

Employer facilities, such as the City Hall Community Room, may be made available, upon timely application, for use by employees and the recognized entity representing the employees. Such use shall not occur during regular duty hours, other than the lunch period. Application for such use shall be made to the management person under whose control the facility is placed.

### **C. Bargaining Time**

A reasonable number of Employee members of the entity representing the bargaining unit shall be allowed time to absent themselves from duties for a

reasonable period without loss of pay, for the purpose of participating in contract negotiations. They shall be extended the same privilege to participate in any meetings mutually called by the parties during the term of this agreement for review of grievances and contract compliance questions.

D. Re-opener

Upon the request of this bargaining unit, the parties will negotiate whether specific provisions will be added to the MOU about awards of days off for five years of accident-free work.

E. Required Meetings

Administrative staff members covered under this MOU who are required to attend meetings outside their regular work schedules will be paid at the overtime rate (1.5) for two hours, or for the hours actually worked, whichever is greater.

F. Disciplinary Appeal

Employees of this unit shall have available to them the predisciplinary Skelly meeting for any discipline that results in a suspension of one day without pay or more. In addition, all disciplinary matters of three days suspension without pay or greater shall be subject to Personnel Rule 11, section 7.a. for post discipline appeals.

G. Personnel Rules

The City retains the right to amend and create personnel rules, provided they are not in conflict with specific provisions of this MOU. Where appropriate, City will meet and confer with applicable employee group or groups (Government Code Section 3300 and following), before amending or creating new personnel rules

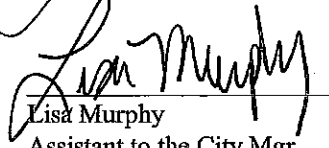
H. Fair Labor Standards Act


All positions included in this Memorandum of Understanding are covered by appropriate sections of the Fair Labor Standards Act of 1935, as amended.

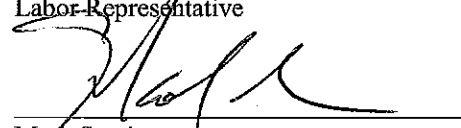
**CITY OF CAPITOLA**


**ASSOCIATION OF CAPITOLA EMPLOYEES**

  
Jamie Goldstein  
City Manager

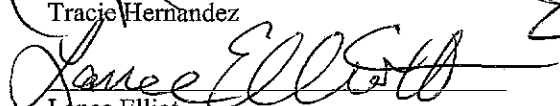
  
Lisa Murphy  
Assistant to the City Mgr.

  
Dave Ritchie, UPEC, Local 792  
Labor-Representative

  
Mark Sessions

  
Denice Pearson

  
Tracie Hernandez

  
Lance Elliot

Attachments:

1. Salary Schedule
2. Educational Reimbursement "Grandfathered Employees"

Reference Documents

\*Amended June 28, 2007 to include Accountant II (Reso. No. 3642)

\*\*Amended May 24, 2007 to change Counter/Records Technician to Development Services Technican (Reso. No. 3633)

\*\*\*ISS Position moved to the Confidential Unit Effective July 1, 2007 (letter agreement)

\*\*\*\*Amended July 6, 2007 as per the original agreement to incorporate those provisions from the Standard and Additional MOU not specifically set forth in this agreement.

Attachment 1: Salary Schedule