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RESOLUTION NO. 3843

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CAPITOLA
APPROVING A MEMORANDUM OF UNDERSTANDING WITH THE
CONFIDENTIAL BARGAINING UNIT
EFFECTIVE JANUARY 1, 2011 THROUGH JUNE 30, 2012**

WHEREAS, the current Memorandum of Understanding (MOU) with the Confidential 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:

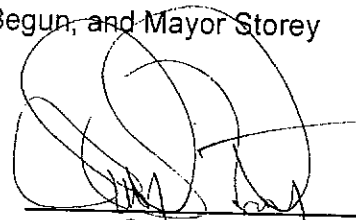
Year 1: Effective January 1, 2011 an additional flexible spending contribution rate of \$799 for Employee plus one and \$999 for employee plus two or more, a reduction in the amount of vacation hours employees can accrue from 504 hours per year to 360 hours per year.

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 Confidential bargaining unit effective January 1, 2011 through June 30, 2012, and authorizes the City Manager to execute the MOU on behalf of the City.

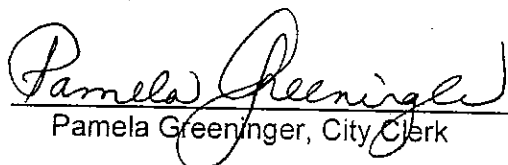
I HEREBY CERTIFY that the foregoing resolution was passed and adopted by the City Council of the City of Capitola at its regular meeting held on the 23rd day of November, 2010, by the following vote:

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



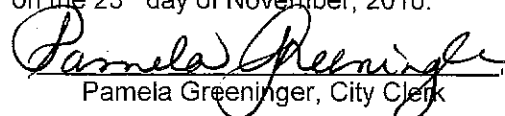
Sam Storey, Mayor

ATTEST:



Pamela Greeninger, City Clerk MMC

This is to certify that the above and foregoing is a true and correct copy of Resolution No. 3843 passed and adopted by the Capitola City Council on the 23rd day of November, 2010.



Pamela Greeninger, City Clerk MMC

**MEMORANDUM OF UNDERSTANDING
 BETWEEN
 CONFIDENTIAL EMPLOYEES' AND CITY OF CAPITOLA
 PERIOD 01/01/2011 to 6/30/12**

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CONFIDENTIAL 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 the Confidential employees, who are: City Clerk, Assistant to the City Manager, Information Systems Specialist and Executive Assistant to the City Manager. This MOU covers the period beginning 01/01/11 to 6/30/12.

SECTION I. Wage Schedules/Hourly Rates/Employment Status

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

Whenever it is necessary to compute an hourly pay rate to apply a provision of this MOU, that will be done by multiplying the monthly rate by 12 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).

1. 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.

2. Types of Appointment: For all types of appointments refer to the personnel rules except for 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 assigned to, and performs all duties of a position other than the position he/she normally occupies or when an employee is assigned an acting appointment pending evaluation of the employee's ability to perform the duties of the 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.

3. Overtime

Confidential employees are exempt under FLSA, and therefore not entitled to overtime compensation.

4. Effective Date of Pay Increase

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.

All other pay rate changes, except those given a specific calendar date herein, shall become effective at the beginning of a two week pay period as approved by the City Manager.

SECTION II: LEAVE PROVISIONS

1. Vacation

a. Vacation 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 12.c, 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 (b) (1), above, shall thereafter apply.

c. 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.

d. Vacation- 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.

e. Optional Vacation Cash Out

In any calendar year an employee may cash out up to 80 hours of accumulated vacation.

2. 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.

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. Sick Leave Cash Out:

Sick Leave may not be cashed out.

3. Administrative Leave Accrual

As exempt employees, the Confidential Employees are entitled to ten days per year of administrative time off. Administrative Leave is non-cumulative. It may not be converted to cash. One year's worth of Administrative Leave becomes available on the first day of the calendar year. The exception is persons hired mid-year, in which case administrative leave is prorated for the applicable period.

4. Personal Holidays

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

5. 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, grandparents and any individual to whom an employee is serving in Loco Parentis.

6. FMLA and CFRA

The City shall follow the provisions provided for family leave as specified in the federal Family & Medical Leave Act of 1993 (FMLA), and the California Family Rights Act (CFRA) as they apply to public employers.

7. Holiday 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	*
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.

8. 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.

9. 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.

10. 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 III.5 below.

SECTION III: BENEFITS

(Regarding benefits available to part-time employees', see Section 2, above.)

1. Flexible Spending Arrangement Contributions

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.* The contribution, for full-time regular employees, shall be:

Employee Only:	\$650 per month
Employee Plus One:	\$799 per month
Employee Plus Two or More:	\$999 per month

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.)

The City reserves the option of adding additional programs to the cafeteria plan, as they may become available. The City will enable interested employees to participate in union sponsored medical plans.

2. Retirement Benefits 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.

3. Physical Examinations

The City, for any employee receiving flex credit contributions, will provide a biannual physical examination for employee. The City will pay the amount not covered by the health care program.

4. Insurance

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

5. 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.

SECTION IV: INCENTIVE PROGRAMS

1. Longevity Pay Incentive

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

- a. 15 years' continuous service - 5%
- b. 20 years' continuous service - an additional 5%, which shall be compounded with the 15 year recognition.

2. Education Reimbursement Program

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%.

3. 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:

- a. 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
- b. The employee is required to serve as a translator on a regular and ongoing basis, as certified by the Department Head.

SECTION V: 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.

1. Fair Labor Standards Act

All positions included in this Compensation Plan are covered by appropriate sections of the Fair Labor Standards Act of 1935, and are specifically subject to Rule No. 54.118 (salaried executive employees are not paid at a higher rate for what might otherwise be labeled "overtime", correspondingly, their salary is not reduced "for any week in which (s)he performs any work without regard to the number of days or hours worked." Accordingly, bi-weekly time sheets will not result in adjustments to the compensation for the period, but merely for yearly evaluation of whether the position is, after factoring in administrative leave, over or under staffed. However, time off for sick leave purposes shall be reported and reflected in the accumulated sick leave calculations.

2. 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.


3. 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.

4. 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.

CITY OF CAPITOLA

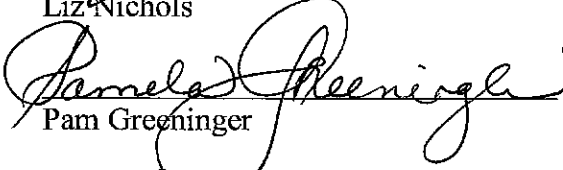


Jamie Goldstein
City Manager


CONFIDENTIAL EMPLOYEES



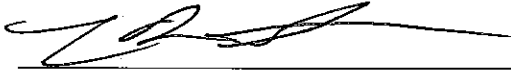
Liz Nichols



Pam Greeninger



Lisa Murphy



Larry Laurent

Attachment: Salary Schedule

SALARY SCHEDULE**CONFIDENTIAL SALARY SCHEDULE
JANUARY 1, 2011 - DECEMBER 31, 2011**

	A	B	C	D	E
ASSIST TO CITY MGR	\$ 6,139	\$ 6,447	\$ 6,768	\$ 7,107	\$ 7,462
CITY CLERK	\$ 5,669	\$ 5,952	\$ 6,249	\$ 6,561	\$ 6,891
EXEC ASSIST TO CITY MGR	\$ 4,437	\$ 4,658	\$ 4,891	\$ 5,136	\$ 5,393
INFORMATION SYSTEMS SPECIALIST	\$ 4,379	\$ 4,598	\$ 4,828	\$ 5,069	\$ 5,322