

**MEMORANDUM OF UNDERSTANDING**

between the

City of Hollister

and the

Service Employees International Union, Local 521

January 1<sup>st</sup>, 2011 - June 30, 2013

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**Article 1. Preamble**

This Memorandum of Understanding is entered into by the City of Hollister, hereinafter referred to as "City", and the Service Employees International Union, Local 521, CTW-CLC, hereinafter referred to as "Union". Further, the City recognizes the City of Hollister Municipal Employees Association, hereinafter referred to as "CHMEA", as an autonomous chapter of the Union. This Memorandum of Understanding hereinafter referred to as "M.O.U.", is subject to Sections 3500-3510 of the Government Code of the State of California, otherwise known as the Meyers-Milias-Brown Act.

**Article 2. No Discrimination**

The City and Union agree that there shall be no discrimination against any employee in the unit because of race, religion, creed, political affiliations, color, national origin, ancestry, age, sexual orientation, or sex, unless defined as a bona-fide occupation qualification as defined by Federal or State law. The City and Union also agree not to discriminate against any employee for his/her activity on behalf of, or membership in or lack of membership in, the Union. Any employee alleging a violation of this article shall have the burden of proving the existence of a discriminatory act or acts and of proving that but for such act or acts the alleged injury or damage to the grievant would not have occurred.

**Article 3. Recognition**

Pursuant to Section 3500-3510 of the Government Code, the City certifies the Union as the recognized majority representative for all regular career, full-time employees in the General Unit. The General Unit includes all classifications of non-management, non-supervisory, and non-confidential employees in the City other than those classifications designated as local-safety in the Police and Fire Departments and the classes of Police Services Officer, Police Services Supervisor, and Multi Services Officer.

**Article 4. No Abrogation of Rights**

This M.O.U. does not modify any City Council rights.

**Article 5. Maintenance of Benefits**

The articles included in this agreement constitute a full and complete agreement with the City and Union on all matters within the scope of representation for the period stated in Article 19. Term Of Agreement. All present resolutions, ordinances, rules and regulations, practices and policies covering matters within the scope of representation will continue in force and effect during said period without change, except to conform to the terms of this M.O.U. subject to meet and confer. Notice of any matter proposed to be changed will be provided to the Union in a timely fashion.

**Article 6. Salary and Special Compensation**

**A. Salary Adjustment**

1. Beginning December 7, 2009 the City and the Union entered into a side letter agreement to implement Furloughs as a City cost savings measure of five percent (5%). Pursuant to the requirements of the side-letter agreement Union Members agreed to take 60 hours (7.5 days) off work without compensation during the remainder of fiscal year 2009-2010, and 104 hours (13 days) off work without compensation for fiscal year 2010-2011. During contract negotiations in July 2011, the City and Union agreed to extend the provisions for Furloughs for an additional 24 hours total for the months of July, August, and September 2011 per side letter dated July 26, 2011. Upon ratification of the M.O.U. the Furloughs will continue to be applied to all Union Employees pursuant to the following:
  - A. All Employees will be credited for the hours used between July 1, 2011 and September 30, 2011. Any hours not used per the side letter dated July 26, 2011 will have to be used by December 31, 2011.
  - B. For each day of Furlough, the Union Employee shall not report to work or provide any services to the City and shall not receive any compensation whatsoever, including but not limited to, annual leave, sick leave, administrative leave, or compensatory time. The exception to this provision shall be if the employee's supervisor provides written notification to the employee requiring the employee to work on a scheduled furlough day off. Under this exception, employees that work on a furlough day will receive full pay benefit compensation for the time worked that day.
  - C. A Union Employee who improperly work or provide services to the City on a Furlough day shall not receive any compensation.
  - D. The schedule of Union Furlough days shall be the last Friday of each month plus four (4) hours on Christmas Eve and four (4) hours on the afternoon of New Year's Eve.
  - E. The 5% reduction for each employee shall be accounted for by implementing the "smoothing" technique during the furlough time period. In this manner, the City shall recognize a savings of 5% with the employee receiving compensation reduced by 5% for each paycheck issued during the furlough period.
  - F. The City Manager shall take furlough time into consideration when considering requests from employees for extension beyond the maximum Vacation Leave Accrual Limits.

**B. Retirement**

**1. Contribution**

- a. All Union Employees shall continue to be responsible for payment of all costs associated with the increase in the Employee's contribution from the "2.0% @ 55 to the 2.5% to Age 55" Retirement Benefit in excess of the original 7% Employee Contribution. This increase will be determined through an actuarial valuation conducted annually in accordance with Paragraph [b] below.
- b. All Employees in this unit continue to pay the difference in the cost associated with the increase in the Employer's Contribution from the "2% @ Age 55" to the "2.5% @ Age 55" Retirement Benefits.
- c. Each year the City will obtain the services of a Certified Actuary at the City's Sole Discretion. Each year the cost of the Actuarial Services shall be paid by each employee within the City of Hollister's Miscellaneous Plan on a proportional basis. Each employee shall pay his/her share of these actuarial costs through payroll deductions which will vary from year to year depending on the cost of the services and the number of employees in the Miscellaneous Plan.
- d. All Employee deductions, except for actuarial costs, shall be Pre-taxed Payroll Deductions pursuant to CalPERS IRC 414h[2].
- e. In addition to an employee's current contributions for CalPERS Benefits, effective the first full Pay Period beginning on or after July 1, 2012, all Union Employees shall pay 4% of their salary as part of the Employees' contribution to the Miscellaneous CalPERS "2.5% @ age 55" Retirement Benefit.

**2. 1959 PERS Survivor Death Benefit**

The City shall provide the PERS Section 21574 "Fourth Level 1959 Survivor Death Benefit" for all eligible unit members for the term of this contract. The City shall pay the employer rate contribution. The employee shall pay the member rate contribution.

**3. One-Year Final Compensation Benefit**

- a. The City shall provide the PERS Section 20042 "One Year Final Compensation" benefit for eligible unit members.

- b. The City shall continue to pay all of the employer and member contributions to CalPERS for each eligible member of the unit for this benefit based upon the 2% @ 55 Retirement Formula. Any costs associated with the increase in contributions for the CalPERS "2.5% @ 55" Retirement Benefit, if applicable, shall be paid by the members in accordance with Article 6, Section [1b] above.

**4. Modifications**

Service Employees International Union, Local 521 agrees to support the Contract Amendment between the City of Hollister and the California Public Employees Retirement System establishing a second level of benefits at the 2.0% @ 60 Retirement Formula.

Upon membership approval by the majority of all eligible employees within the City's CalPERS Miscellaneous Plan, and in accordance with the CalPERS Schedule of Agency Actions as required for the Miscellaneous Plan, the City shall implement a CalPERS "2% at age 60" Retirement Plan for all eligible employees who are hired on or after the date of the CalPERS contract amendment.

**C. Bilingual Allowance**

Employees who perform technical bilingual skills (reading, writing, translation) and who successfully pass a City-administered proficiency test shall receive an allowance of one hundred twenty-five dollars (\$125.00) per month.

**D. Compensatory Time**

**1. Overtime**

Employees shall have the option to either receive paid compensation at a rate one and one-half (1½) times the employees regular rate of pay for all hours worked in excess of eight (8) hours per day or forty (40) hours per week, or to take compensatory time off from duty at a rate of one and one-half (1½) times the amount of each overtime hour worked which exceeds eight (8) hours per day or forty (40) hours per week.

**2. Holidays**

Employees who work holidays shall have the option to either receive paid compensation at a rate one and one-half (1½) times the employees' regular pay rate plus receive the employees' regular paid compensation for the holiday, or to take compensatory time off from duty at a rate one and one-half (1½) times the amount of each hour worked plus receive eight (8) hours regular paid compensation. Employees who are called in on holidays shall also receive this option.



**E. Overtime and Holiday Pay**

**1. Overtime Pay**

Any employee represented by this unit who is authorized or required to work overtime in excess of eight (8) hours per day or forty (40) hours per week shall be compensated at the rate of time and one-half for each hour worked.

**2. Holiday Pay**

Any employee represented by this unit who is authorized or required to work on any City recognized holiday shall be compensated at the rate of time and one-half for each hour worked, in addition to regular pay for the holiday.

**3. Maximum Accrual**

Employees may accumulate a maximum of 240 hours (160 FLSA overtime hours worked) in their "comp time bank".

**4. Compensatory Time Conversion To Cash**

Employees may convert accumulated compensatory time to cash as follows:

- a. Twice during the fiscal year an employee may request a cash payment of accumulated Compensatory Time Off (CTO).
- b. Requests for payment must be made in writing to the Finance Department at least thirty (30) days in advance of June 1st and December 1st of each year.
- c. Cash payment of CTO shall be paid on the first pay day which follows June 1st and December 1st of each year. This payment will be made in a check separate from the normal payroll check issued for that pay period.

**F. 24-Hour Hazardous Materials (Hazmat) Certification Premium Pay**

Employees covered by this agreement who are required to perform duties and respond to emergency situations involving exposure to hazardous materials, and who possess and maintain a 24-Hour Hazardous Materials Technician Level III certification that meets 29 CFR 1910.120(q) shall be paid premium pay of five percent (5.0%) so long as they are assigned such responsibilities and maintain current certification for this Premium Pay.

Eligibility shall be effective on the first Payroll Period following ratification of this Memorandum of Understanding.

The City will review annually the number and types of occurrences to which employees qualifying for this premium pay are called to respond to in order to determine the cost-effectiveness of maintaining this program. The City reserves the right to re-negotiate the amount of the premium pay in consideration of the number and magnitude of the incidents, the actual response by the employee(s) both during and outside normal business hours, and other factors deemed relevant by the City.

**G. Heavy Equipment Operation Premium**

Effective upon execution of this M.O.U., Employees in the class of Maintenance Worker I/II, Senior Maintenance Worker, Junior Water Operator, and Water Operator I/II who maintain a Class A license and operate heavy equipment for a minimum of two (2) hours in a shift shall receive a premium payment of one dollar (\$1.00) over his/her regular base rate for each hour worked in such assignment, rounded down to the nearest hour. An employee whose job description assigns him/her specifically to a piece of heavy equipment shall not be eligible for this premium pay.

**H. License Certification**

**1. Land Surveyor License Certification**

All employees who possess and maintain a valid California Land Surveyor License shall receive Annual Incentive Pay of five percent (5%) of base salary, payable as part of the employee's bi-weekly payroll.

**2. Qualified Stormwater Developer (QSD)/ Qualified Stormwater Practitioner (QSP) Certification**

Upon execution of the M.O.U., an employee who possesses and maintains a valid QSD/ QSP Certification as required by the State of California for storm water best management practice shall receive Annual Incentive Pay of five percent (5%) of base salary, payable as part of the employee's bi-weekly payroll. Only one City employee at a time may receive this incentive pay at the sole discretion of the City Manager.

**I. Longevity Pay**

Effective July 1<sup>st</sup>, 2009 a longevity bonus shall be paid to employees of this unit who complete the following specified consecutive years of service after the effective date of this M.O.U.:

<u>NUMBER OF CONSECUTIVE YEARS</u>	<u>LONGEVITY BONUS</u>
<i>10 - 14 Years</i>	<i>Three Percent (3.0%) of Base Salary</i>
<i>15 - 19 Years</i>	<i>Six Percent (6.0%) of Base Salary</i>
<i>20 or more Years</i>	<i>Nine Percent (9.0%) of Base Salary</i>

Unit members who have achieved a longevity bonus prior to July 1<sup>st</sup>, 2009 shall be entitled to receive the difference between the previous longevity bonus and the increased longevity bonus provided in this M.O.U. so that the net result is that employees receive the same bonus amount with equivalent years of service.

**J. Standby Pay**

Employees covered by this agreement who are assigned to standby duty shall be paid two-hundred dollars (\$200.00) for each week that they are so assigned. The City shall have full discretion in making and administering standby assignments. This shall include, but not be limited to, the authority to:

1. Require an employee to be available at all hours by telephone or to use a pager.
2. To restrict travel.
3. Require employee to refrain from activities which would impair the ability to respond to emergency situations.

Management agrees to involve employees in discussions regarding standby policy modifications.

Standby assignments shall be scheduled three (3) months in advance to provide even distribution of on-call assignments to the extent possible. However, schedule adjustments may be necessary due to illness, vacation, vacancy, and/or other types of approved leave.

**K. Uniform Allowance**

An allowance for the maintenance of uniforms in the amount of sixty dollars (\$60.00) per month will be granted to employees in the classifications of Animal Control Officer and Animal Control Officer Assistant when said employees are required to wear a uniform.

**L. Cell Phone Allowance**

At the execution of the M.O.U., the City will pay a cell phone allowance of \$40 per month to eligible employees (Water Maintenance Operator II, Senior Maintenance Worker, Wastewater Treatment Plant Operator II, Utility Engineer, Assistant Engineer, and Public Works Inspector) and those who are assigned by management to maintain a cell phone. Employees receiving this allowance shall keep the phone in service at all assigned times and shall maintain the phone in proper working order at the employee's expense. City has no financial responsibility for lost or damages cell phones.

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**M. Cross-Connection Specialist Certification**

At the execution of the M.O.U., an employee who possess and maintains a valid California/Nevada Cross-Connection Specialist Certification shall receive Annual Incentive Pay of five percent (5%) of base salary, payable as part of the employee's bi-weekly payroll, only at City Manager's discretion, if that employee's job assignment requires that a certified individual perform the work. This certification shall be utilized for the upkeep and maintenance of, and be funded solely by, the City's Water and Wastewater Enterprise Systems.

**Article 7. Insurance**

**A. Description**

The City of Hollister Flexible Benefits Plan/Cafeteria Plan (hereinafter "Plan") is available to full-time employees (hereinafter "Employees"). There will be three participation levels as referenced under Section [E]. Optional benefits are listed below. Once an election is made, it will remain in force until the next open enrollment period. A Third Party Administrator (T.P.A.) fee will be paid by the employees that participate in the Plan.

**B. Health Insurance Options**

The City shall provide employees with the choice of participating in either the Public Employees' Medical and Hospital Care Act (PEMHCA) program offered by CALPERS or the Blue Cross HMO program.

**C. IRS Code Section 125 Flexible Benefits/Cafeteria Plan**

1. The City shall provide for unit members an IRS Code Section 125 Flexible Benefits/Cafeteria Plan in accordance with all applicable state and federal laws and regulations.
2. The City shall contribute towards the PEMHCA or Blue Cross HMO medical, dental and vision care plan amounts allocated in accordance with the City's IRS Code Section 125 Flexible Benefits/Cafeteria Plan as specified below.
3. The City shall allocate specified amounts of "Flex Credits" to the employee's flexible benefit account. These amounts shall consist of the following:
  - A. An amount up to and not to exceed the City's contribution towards medical insurance, based upon either the Blue Cross HMO or PEMHCA's PERS Choice medical plans, whichever plan is greater. The required contribution for employees electing dependent coverage in accordance with Section [E] below shall be excluded from this total.

- B. An amount equivalent to the City's contribution towards dental insurance. The required contribution for employees electing dependent coverage in accordance with Section [E] below shall be excluded from this total.
  - C. An amount equivalent to the City's contribution towards vision insurance. The required contribution for employees electing dependent coverage in accordance with Section [E] below shall be excluded from this total.
4. In the event that surplus Flex Credits are available, all Union Employees shall have the option to allocate such Flex Credits to one or more of the following:
- a. Union Employees' Flexible Spending Account.
  - b. Roth Individual Retirement Account (IRA).
  - c. ICMA or City-authorized 457 Deferred Compensation Plan.

If a Union Employee's residual "Flex Credits" are reduced, the employee will have the responsibility to pay the contribution no longer covered by the Surplus Flex Credits.

5. Employees who waive either dental and/or vision coverage shall have the option to apply available flex credits towards the cost of any optional premium listed in the respective sections below. The cost of the optional premium not covered by available flex credits shall remain the employee's responsibility.
6. Employees who elect to waive any or all health coverage shall be subject to the terms and provisions described under Section [J] below.

#### **D. Terms for Health Care Participation**

Participation and coverage in the medical, dental, and vision care plans shall be in accordance with the terms and conditions of the insurance carrier.

#### **E. Health Care Contributions**

##### **1. Employee-only Premium**

The City shall contribute towards the medical, dental, and vision insurance plans an amount equal to the employee-only premium at the time of adoption of this M.O.U. for each member of the unit for the term of this M.O.U. The employee-only premium for medical insurance shall be based on the higher premium of either PEMHCA's PERS Choice or Blue Cross HMO.

**2. Employee Option for *Dependent Coverage***

For those employees who elect the option for dependent coverage for medical, dental, and vision insurance plans, the City shall contribute monthly amounts toward such dependent coverage based upon the higher premium of either PEMHCA's PERS Choice or Blue Cross HMO in accordance with Section [C] above, so that the employee pays no more than the following:

<i>Medical - One Dependent</i>	<b>\$ 32.55</b>
<i>Medical - Family</i>	<b>\$ 57.54</b>
<i>Dental - One Dependent</i>	<b>\$ 8.69</b>
<i>Dental - Family</i>	<b>\$ 19.39</b>
<i>Vision - One Dependent</i>	<b>\$ 29.93</b>
<i>Vision - Family</i>	<b>\$ 29.93</b>

**F. Vision Insurance**

The City shall provide a vision care insurance plan which is available to eligible unit members and qualified dependents during the term of this M.O.U.

The City shall offer vision care insurance for employees and qualified dependents as a pre-tax flexible benefit option. Participation and coverage shall be in accordance with the terms and conditions of the insurance carrier.

**G. Dental Insurance**

The City shall offer dental care insurance for employees and qualified dependents as a pre-tax flexible benefit option. Participation and coverage shall be in accordance with the terms and conditions of the insurance carrier.

**H. Life Insurance**

The City shall provide term life insurance in the amount equal to \$50,000.00 for each member of the unit for the term of this M.O.U. Additional term life insurance may be purchased by the employee in increments of \$10,000.00 up to a total of \$250,000.00.

**I. Long Term Disability Insurance**

The City agrees to provide to all employees within this unit at City cost a Supplemental Long Term Disability Plan, coordinated with other existing benefits to provide no more than a thirty (30) day exclusion or elimination period; no less than a one year benefit for accident or illness; and a minimum scheduled benefit of sixty-six percent (66%) or two-thirds (2/3) of gross salary to a maximum of \$3,500.00 per month for the term of this M.O.U.. The City in its sole discretion shall select the Supplemental Long Term Disability Plan carrier that meets these requirements.

**J. Health Insurance Waiver Option**

1. Employees within this bargaining unit who elect not to participate in the City's health care insurance program will be compensated in an amount equivalent to seventy-five percent (75%) of the employer's contribution towards the premiums for the City's health plan at the level in which the employee was participating (employee only, employee plus one dependent, employee plus two or more dependents) at the time of waiving City insurance coverage in accordance with Section [3] below. This cash amount will be paid as part of the employee's bi-weekly payroll.
2. Employees within this bargaining unit shall be eligible to elect not to participate in the City's health care program only after participating under the same level of the City's health care insurance plan for a minimum period of one year immediately preceding the election.
3. Employees within this bargaining unit electing not to participate in the City's health care insurance program must annually provide proof of medical insurance coverage by an outside provider in order to maintain payment under this waiver option.
4. In addition to the coverage options specified under "Article 7. Insurance" of the Memorandum of Understanding between the City of Hollister and the Service Employees International Union, Local 521, the following optional health benefits shall be available to the employees of this bargaining unit.

**K. Optional Health Benefits**

Employees that have elected to participate in a City offered medical plan can also elect to participate in the optional benefits. If the employee has any surplus flex credits after making all elections required to participate in the medical insurance, the employee can use that surplus toward optional qualified insurance benefits or one or both of the pre-tax spending accounts. Employees that wish to participate in the optional benefits plan, but do not have any surplus credits, can elect to have pre-tax payroll deductions in an amount to cover the cost of their elections.

Employees may pay the premiums for the following benefits on a voluntary basis:

- Medical Insurance
- Dental Insurance
- Vision Insurance
- Group Term Insurance up to \$50,000.00 for Employees only
- Accidental Death and Dismemberment Insurance
- Short Term Disability
- Cancer Insurance
- Supplemental Health Insurance
- Vision or Dental Insurance
- Accidental Only Insurance
- Intensive Care Insurance

**L. Flexible Spending Accounts (FSA's)**

The City agrees to establish a pre-tax dependent care reimbursement account up to the maximum reimbursement allowed by law.

The City agrees to establish a pre-tax medical reimbursement account, up to two thousand five hundred dollars (\$2500.00) per year per employee.

**M. Voluntary Life Insurance**

The City shall offer a voluntary supplemental life insurance plan through the flexible benefits plan for pre-tax contributions by the employees. Participation and coverage shall be in accordance with the terms and conditions of the insurance carrier. Employees may also elect pre-tax payroll deductions to support other City sponsored voluntary supplemental insurance benefits.

**N. Miscellaneous**

The City of Hollister does not allow the employee to take the surplus credits in taxable cash.

For employees who elect not to participate in the group medical coverage offered by the City, the City will provide dental and vision coverage for the employee and his/her dependents at no cost to the employee.

**Article 8. Personnel System Rules and Regulations**

This M.O.U. sets forth certain benefits and working conditions for employees in the General Employees' Unit. Other rules, regulations, policies and general working conditions governing employment for employees covered by this M.O.U. are set forth in the Personnel System Rules and Regulations of the City except that the discipline proposed or imposed on employees within this unit shall be subject to the procedures specified in Exhibit [A] entitled Section 12. Disciplinary Procedures, which is incorporated herein by this reference. If during the term of this M.O.U. the City desires to amend the Personnel System Rules and Regulations, the City shall give notice to the Union of the proposed changes. Representatives of the City and Union shall meet in a timely manner. Hours, wages, and general working conditions contained in the Personnel System Rules and Regulations are the proper subjects of the grievance procedure.

The City intends to revise Personnel Rules and Regulations in 2012 at which time the City will consider incorporating a Violence in the Workplace Prevention Policy. When the revisions to the Rules and Regulations are discussed with all employee associations, City will consider Union's requests relating to that policy.



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**Article 9. Job Related Disabilities and The Americans With Disabilities Act**

**A. Job Related Disabilities**

City agrees to comply with the Labor Code of the State of California for employees within this unit deemed disabled or temporarily disabled as a result and because of such job related injury which requires them to be absent from active City service.

**B. Americans With Disabilities Act**

The parties recognize that the City may be required to make accommodations in order to carry out its obligations under the Americans with Disabilities Act (ADA). Some of the accommodations may require actions which are contrary to the language or intent of existing provisions of this agreement. The parties agree that such accommodation relating to ADA shall not constitute a 'past practice' or waiver by either party of its right to fully enforce such provisions in the future with regard to persons not subject to the protection of the ADA. The parties recognize that circumstances surrounding ADA compliance in individual cases may involve matters which are personal and require the utmost confidentiality. Specifics of an individual case may not be divulged by the City. However, the City, when the release of information is either authorized or will not violate confidentiality, will notify the Union when an accommodation has been made that affects other employees in the workplace. Accommodations made by the City under this Article shall not be subject to the grievance procedure.

**Article 10. Safety Compliance and Equipment**

**A. Safety Compliance**

The City and Union shall meet the requirements of Cal OSHA. The Union further agrees to bring any safety concerns immediately to the attention of management.

**B. Safety Boot Allowance**

Eligible unit employees, other than those assigned to the Public Works Department Operations and Maintenance Section, Utilities, Streets, Parks, and Buildings & Grounds Divisions and the Animal Control Division of the Management Services Department, shall be reimbursed up to \$150.00 per year, upon presentation of satisfactory proof-of-purchase, for safety shoes or boots which are approved and authorized by City management. Eligible unit employees assigned to the Public Works Department Operations and Maintenance Section, Utilities, Streets, Parks, and Buildings & Grounds Divisions, and eligible unit employees assigned to the Animal Control Division of the Management Services Department shall be reimbursed up to \$300.00 per year, upon presentation of satisfactory proof-of-purchase, for safety shoes or boots which are approved and authorized by City management. Used safety shoes and boots are the property of the City and shall be returned to the City.

This allowance is to assist employees in purchasing City-approved work shoes and/or boots appropriate for the type of work being performed in accordance with General Industry Safety Orders, Title 8, Section 3385. Appropriate safety shoes and boots shall incorporate the following safety factors depending on the type of work performed:

- 1) Non-skid sole
- 2) Adequate ankle protection
- 3) Puncture protection
- 4) Impact/compression protection

### **C. Animal Control Safety Equipment**

The City agrees to provide necessary safety equipment for the classifications of Animal Control Officer and Animal Control Officer Assistant. This equipment may include, but not be limited to, bullet proof vests, utility belts, and bite sticks. This equipment will be purchased by the City at no cost to unit members.

## **Article 11. Grievance Procedure**

This grievance procedure shall be the sole and exclusive procedure for resolving grievances filed by employees covered by this M.O.U.

### **A. Definition**

A grievance is a claimed violation, misapplication, or misinterpretation of a specific provision of this agreement or the City's Personnel System Rules and Regulations which adversely affects the grievant.

### **B. Stale Grievance**

A grievance shall be void unless filed in writing within fifteen (15) calendar days from the date upon which the City is alleged to have misinterpreted or misapplied this agreement, or within fifteen (15) calendar days from the time an employee might reasonably have been expected to have learned of the alleged misinterpretation or misapplication. Such discovery period shall not exceed 180 days regardless of the date of discovery. In no event shall a grievance include a claim for money relief for more than the fifteen (15) day period plus such reasonable discovery period.

### **C. Informal Discussion with Employee's Supervisor**

Before proceeding to the formal grievance procedure, an employee shall discuss his/her grievance with his/her immediate supervisor in private and attempt to work out a satisfactory solution. Any solution reached at this level must be reviewed by the Personnel Officer to assure compliance with this agreement before it has any binding effect.

**D. Formal Written Grievance to Employee's Supervisor**

If the employee chooses to formally pursue his/her grievance, he/she or his/her representative shall present the written grievance to his/her immediate within five (5) working days after the date upon which the grieving employee informally discusses the grievance with the supervisor. (In the event a group grievance is formally submitted by the recognized employee organization, its initial submission will be to the department head and subsequent steps will be followed as outlined in this section.) The formal written grievance shall specify the provisions of this M.O.U. or the City's Personnel System Rules and Regulations alleged to have been misinterpreted or misapplied, the remedy sought, and such other specific dates, times, places and persons and other facts necessary to derive a clear understanding of the matter being grieved. The immediate supervisor shall return a copy of the written grievance to the employee with the supervisor's answer thereto in writing within five (5) working days from receipt of the supervisor's answer within which to file an appeal to the next level.

**E. Grievance to Department Head/City Manager**

The department head or the City Manager, if the department head was the grievant's immediate supervisor, shall have seven (7) working days in which to review and answer the grievance in writing. Unless waived by mutual agreement of the employee or his/her representative and the department head or City Manager, a meeting is required at this level and the employee and his/her representative shall have the right to be present and participate in such a meeting. The time limits at this level may be extended by mutual agreement between the department head or City Manager and the employee or his/her representative.

**F. Waiver of Appeal Steps**

If the grievance is not resolved after the immediate supervisor has answered it in writing, the grievant(s) and the department head may, by mutual agreement, waive review of the grievance at Step E and proceed to present the grievance to the City Manager.

**G. Advisory Fact Finding of Grievances**

In the event the grievance is not resolved by the City Manager, the recognized employee organization may with fifteen (15) calendar days after receipt of the decision of the City Manager, request that the grievance be heard by a fact finder.

**H. Selection of a Fact Finder**

The fact finder shall be selected by mutual agreement between the City and the Union. If the parties are unable to agree on the selection of a fact finder, they shall jointly request the State Mediation and Conciliation Service to submit a list of five (5) qualified fact finders. The City and the grievant, or his/her representative, shall then alternately strike names from the list until only one name remains, and that person shall serve as fact finder.

**I. Duty of Fact Finder**

Except when an agreed statement of facts is submitted by the parties, it shall be the duty of the fact finder to hear and consider evidence submitted by the parties and to thereafter make written findings of fact and a proposed disposition of the grievance which shall be advisory in nature.

The proposed disposition shall be based solely on the interpretation of the applicable provisions of the M.O.U. and other personnel rules if applicable to the grievance, and he/she shall not add to, subtract from, modify or disregard any of the terms or provisions of the M.O.U. or such rules.

**J. Payment of Costs**

Each party to a hearing before a fact finder shall bear its own expenses in connection therewith. All fees and expenses of the fact finder shall be borne one-half by the City and one-half by the grievant.

If the City does not implement the proposed disposition of the grievance made by the fact finder, the City shall pay all fees and expenses of the fact finder.

**K. Effect of Failure of Timely Action**

Failure of the employee(s) to file an appeal within the required time period at any level shall constitute an abandonment of the grievance. Failure of the City to respond within the time limit at any step shall result in an automatic advancement of the grievance to the next step.

**Article 12. Union Security**

**A. Union Dues Check-Off and Agency Fee Deductions**

1. In accordance with the provisions of this Article, the City shall make payroll deductions from the pay of employees who authorize such deductions in writing on a form provided and/or approved by the City or who are subject to automatic payroll deductions of an Agency Fee. Such deductions shall be made in accordance with rules and regulations established by the City and the provisions of this Article. Deductions shall be in a pay period basis and shall be made payable to the Union. The Union, as the formally recognized employee organization, may designate the Hollister Municipal Employees Association as the payee of the dues check-off check from the City and to receive the check on behalf of the Union by providing specific written authorization to the City Finance Director. In lieu of such written authorization the dues check-off check shall be forwarded directly to the Union.

2. All other legal and required payroll deductions shall have priority over dues check-off and Agency Fee deductions. The employee's earnings must be sufficient after other legal and required deductions are made to cover the amount of the dues check-off authorized or the automatic Agency Fee. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover that pay period from future earnings nor will the employee be required to deposit the amount of deductions with the City which would have been withheld if the employee had been in a pay status during the pay period. In the case of an employee who is in a non-pay status during only a part of the pay period and the salary is not sufficient to cover the full withholding, no deduction shall be made.

### **B. Maintenance Of Membership**

This section shall be applicable to employees hired by the City on or before November 15, 1995. All affected employees who have authorized payroll deductions for payment of Union dues prior to the effective date of this M.O.U. (and have reaffirmed such deductions by completing the dues check-off addendum), and all affected employees who establish dues payroll deductions during the term of this M.O.U., shall remain members of the Union throughout the life of the M.O.U., provided that Union members on payroll deduction may terminate their authorization for deduction of Union dues by giving written notice to the Director of Management Services during the month of April of the last year of this M.O.U.

### **C. Agency Shop/Fee**

1. This section shall be applicable to regular full-time employees hired by the City into classifications represented by the Union after November 15, 1995, (Excluding regular part-time, temporary, and seasonal employees). Membership in the Union shall not be compulsory. An affected employee has the right to choose either to become a Union member or to refrain from becoming a Union member. If an employee chooses to refrain from becoming a Union member, such employee must pay the Union a fee for representation services (hereinafter termed "Agency Fee") unless exempt pursuant to Section 8. Exemptions. Any new employees that elect to join the Union also join CHMEA and are subject to both Union and CHMEA membership dues. New employees that do not elect to join the Union are subject to the Agency Fee only.
2. An affected employee who is not exempt pursuant to Section 8. Exemptions, and who has not voluntarily authorized Union dues deductions within thirty (30) calendar days of the date the employee is hired must, as a condition of employment, pay each pay period, an Agency Fee in exchange for agent services necessarily performed by the Union in conformance with its legally imposed duty of fair representation on behalf of such employee. If an employee takes no action to become a Union member within that time period, the City will start automatic deduction of the Agency Fee beginning the first payroll period following the 30th calendar day of City employment.

3. The amount of the Agency Fee collected by the City from a non-member employee shall be determined by the Union. The Union shall inform the City in writing of the Agency Fee. Such Agency Fee shall be a percent of the Union's normal dues initiation fee and the Union's normal dues, initiation fees and special assessments to members which does not:
  - a. Exceed the Union's normal dues, initiation fees, and special assessments to members.
  - b. Include Union expenses for political or ideological efforts.
  - c. Exceed Union expenses necessary for meeting and conferring.
4. Disputes over amount of Agency Fee shall be resolved pursuant to "Rules for Impartial Determination of Union Fees" promulgated by the American Arbitration Association of June 1, 1986 (as may be revised).
5. The Union shall keep an itemized record of its financial transactions and shall provide the City, and any requesting employee, with a detailed written financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by the Union president and treasurer (or corresponding principal officer) or certified public accountant. Such report(s) shall be provided to the City prior to March 1st of each year. If the Union fails to provide the required written financial report(s), the City shall suspend dues check-off and Agency Fee deductions for each pay period the report(s) is unavailable.
6. A non-member employee, who is not exempt pursuant to Section 8. Exemptions, shall sign and present to the City an authorization form, determined to be appropriate by the City, which authorizes the City to deduct the Agency Fee for payment to the Union.
7. If a non-member employee, who is not exempt pursuant to Section 8. Exemptions, does not sign and present the appropriate authorization form to the City, the City shall not deduct an Agency Fee from such employee's pay until:
  - a. After City receipt of a request from the Union for the City to deduct and forward an Agency Fee payment to the Union from such employee.
  - b. After City receipt of written certification from the Union that the non-member employee has not :
    - 1). Joined the Union.
    - 2). Voluntarily authorized the City to deduct an Agency Fee, and
    - 3). Applied for, and is not qualified for, an exemption, and
  - c. After City receipt of a copy of the Union's written notification to the employee that the Union has requested the City to initiate automatic payroll deduction of an Agency Fee payment to the Union from the employee.

If all conditions set forth above have been met, the City shall initiate automatic payroll deduction of an Agency Fee payment to the Union from the employee's earnings.

8. Exemptions

An affected employee shall not be obligated to pay an Agency Fee if:

- a. The employee has supervisory responsibilities. For purposes of this M.O.U. a "supervisor" is defined as any individual, regardless of the job description or title, having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or effectively to recommend such action, if, in connection with the foregoing, the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.
- b. The employee has confidential responsibilities. For purposes of this M.O.U., a "confidential employee" is defined as any employee who is required to develop or present management positions with respect to employer-employee relations or whose duties normally require access to confidential information contributing significantly to the development of management positions.
- c. The employee is a member of a bonafide religion, body, or sect which has historically held conscientious objections to joining or financially supporting a Union.
- d. The employee is not in a paid status for at least one (1) full pay period.
- e. The employee has other payroll deductions which after deduction from the employee's gross pay do not leave sufficient funds to deduct the full Agency Fee.

9. The City's sole and exclusive responsibilities pursuant to this Article are limited to:

- a. Notifying an employee who has failed to comply with the provisions of this Article that, as a condition of employment, the employee must either become a Union member, pay an Agency Fee either through voluntary or involuntary deductions, or qualify and establish an exempt status, and
- b. Making payroll deductions pursuant to the applicable provisions above.

Notwithstanding any other provision in this Article to the contrary, under no circumstance shall the City be required to discharge or discipline an employee for failure to fulfill the employee's obligation to pay an Agency Fee.

**D. Agency Fee Cancellation Election**

The employees shall have the right to an election by secret ballot on the question of canceling an Agency Fee as a condition of employment pursuant to the following conditions:

1. Pre-Election Conditions
  - a. Presentation to the City Manager of a petition, titled "Petition to Cancel Agency Fee", signed by at least thirty percent (30%) of the employees eligible to vote in the Agency Fee Cancellation Election within thirty (30) calendar days prior to presentation of such petition to the City Manager, and
  - b. Verification by a State Mediation and Conciliation Service representative of the validity of such petition.
2. Election Conditions
  - a. The Agency Fee Cancellation Election shall be conducted, and the results shall be certified, pursuant to rules and regulations of the State Mediation and Conciliation Service.
  - b. At least fifty percent (50%) plus one (1) employee of all employees in this unit who have no supervisory or confidential responsibility vote in the election, and
  - c. At least fifty percent (50%) plus one (1) or those voting vote to cancel the Agency Fee.
3. Post-Election Conditions

If a State Mediation and Conciliation Service representative certifies in writing to the City Manager that the conditions of Section 2. Election Conditions, have been satisfied, the City shall cancel Agency Fee deductions on the first (1st) payday which is at least thirty (30) calendar days after the date of receipt of written certification by the State Mediation and Conciliation Service Representative. The Union Security provisions of Section B. Maintenance of Membership, shall be applicable to all regular full-time, career employees except that all employees on payroll deduction may terminate their authorization for deduction of Union dues by giving written notice to the Director of Administrative Services during the thirty (30) calendar days following the first (1st) payday on which the Agency Fee deductions have been canceled by the City.

4. There shall be no more than one (1) Agency Fee Cancellation Election in any twelve (12) month period.



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**E. Union Indemnification, Hold Harmless, and Defense**

1. The Union agrees to indemnify, hold harmless, and defend the City and its officers, employees, and agents against all claims, proceedings, actions, and liability arising, directly or indirectly out of any actions taken or not taken by or on behalf of the City pursuant to any claims made and against any suits instituted against the City on account of the City's implementation and enforcement of Section A. Union Dues Check-Off and Agency Fee Deduction, and Section B. Maintenance Of Membership of this Article.
2. The Union shall hold the City harmless and shall fully and promptly reimburse the City for any fees, costs, charges, penalties, or judgments, incurred by the City in responding to or defending against claims, disputes, or challenges which are brought against the City or any of its agents in connection with the administration or enforcement of any provision of Section C. Agency Shop/Fee. Such reimbursement includes, but is not limited to, court costs, litigation expense, and internal and external attorney's costs incurred by the City.

**Article 13. Miscellaneous**

**A. Deferred Compensation Plan**

The City shall continue to provide a voluntary Deferred Compensation Plan for all employees of this unit for the term of this M.O.U.

**B. Tool Replacement Allowance**

1. The City shall provide a tool replacement fund for the replacement of worn out or broken shop tools and the purchase of new shop tools as needed. This allowance will be available to those employees in classifications which are required as a condition of employment to provide their own shop tools for the performance of their duties within City service. The utilization of this fund shall not exceed \$300.00 per employee for any fiscal year. All shop tools purchased and reimbursed under this provision shall be maintained by the employee so as to be immediately available for City work.
2. The employee shall acquire the tool(s) and shall present documentary evidence (receipts and invoices, etc.) of the acquisition and ownership to the City for reimbursement. The Department Head or his designee may inspect and inventory all tools acquired under this provision.

**C. Working Out of Classification Assignment**

Unit employees assigned by management on a Personnel Action Form (P.A.F.) shall be compensated within the salary range for which the assignment is made, but in no case less than five percent (5%) subject to the following:

1. The position must be vacant and budgeted.
2. Must be assigned by Management.
3. The grievance procedure shall not be utilized by unit members in any conflict and Management's assignment or non-assignment is final a binding upon all parties.

**D. Sick Leave Conversion To Cash**

Eligible unit employees may convert a percentage of accrued, unused sick leave to cash at death or retirement from City employment. The provisions for this policy are as follows:

1. Employees of this unit may not "cash out" or be compensated for any of the first 240 hours of sick leave accrued.
2. Any current employee of this unit having completed 10 years of continuous service with the City and who retires from City service, will be compensated for fifty-percent (50%) of accrued, unused sick leave in excess of 240 hours at the employee's hourly rate of pay at the time of retirement from City service.
3. The surviving spouse, beneficiary(s), dependent(s), or estate of any current employee of this unit who has completed 10 years of continuous service with the City and dies while employed by the City prior to retirement, will be compensated for fifty percent (50%) of accrued, unused sick leave in excess of 240 hours at the employee's hourly rate of pay at the time of death.
4. Any current employee of this unit having completed 10 years of continuous service with the City and having an unused sick leave accrual balance exceeding 500 hours may, at their option, "cash out" up to a maximum of 96 hours (12 days) of unused sick leave annually as long as the "cashed out" hours do not diminish the unused sick leave accrual balance to an amount less than 500 hours.
5. Compensation for unused, accrued sick leave will be made at the employee's rate of pay at the time of "cash out". Requests for payment of unused sick leave as described herein, shall be made in writing to the Administrative Services Department at least 30 days in advance of June 1st and December 1st of each year.
6. Payments of "cashed out" unused sick leave will be made on the first pay day which follows June 1st and December 1st of each year. A check separate from the normal payroll check shall be issued for payment of unused sick leave.

**E. Vacation Leave**

Vacation leave accrual for each represented unit member shall be as follows:

<u>Years of Service</u>	<u>Annual Vacation Accrual</u>
<i>1st through completion of 3rd</i>	<i>10 days</i>
<i>4th through completion of 7th</i>	<i>15 days</i>
<i>8th through completion of 15th</i>	<i>20 days</i>
<i>16th through completion of 20th</i>	<i>22 days</i>
<i>beginning of 21st year</i>	<i>25 days</i>

**F. Flexible Work Schedule**

Eligible unit members may work flexible work schedules (i.e. 4/10, 9/80) when feasible. It is not the intention of the City to reduce the number of hours that City services are available to the public. It is agreed that implementation of flexible work schedules shall be evaluated on a work unit basis, and will only be approved in those units where flexible work schedules can be implemented without reducing service levels and cost effectiveness.

**G. Union Representatives Time Off**

1. City shall grant Union employee board an aggregate of sixty (60) hours of paid time off from work per fiscal year for the purpose of attending Union sponsored educational and training opportunities as shown below:
  - a. Executive Board Meetings
  - b. Advisory Board Meetings
  - c. Bargaining Team Training
  - d. Steward Training
  - e. Budget Training
2. It is agreed that the employee representatives shall provide sufficient notice to their supervisors so that work schedules can be arranged to compensate for their absence.
3. The City will grant time off for "Meet and Confer" preparation and negotiations, for a time period not to exceed one hour before the respective negotiation session and one-half hour following the conclusion of same negotiation session.
4. Unless modified by mutual agreement at the onset of negotiations, time off in addition to that provided in G(3.) for any other "Meet and Confer" preparation shall be taken as leave in accordance with the City's established leave procedures and with sufficient notice to Supervisors to ensure appropriate coverage of operations.

#### **H. Advance Notice**

Except in cases of emergency as provided in Government Code § 3504.5, the City will provide 30 days written notice to the Union of any ordinance, rule, resolution, or regulation directly related to matters within the scope of representation proposed to be adopted by the City and shall give the Union the opportunity to meet with the City. As provided by Government Code § 3504, "scope of representation" as used in this section shall include all matters relating to employment conditions and employer-employee relations, including, but not limited to, wages, hours, and other terms and conditions of employment, except, however, that the scope of representation shall not include consideration of the merits, necessity, or organization of any service or activity provided by law or executive order. In cases of emergency when the City determines that an ordinance, rule, resolution, or regulation must be adopted immediately without prior notice or meeting with the Union, the City shall provide notice and opportunity to meet at the earliest practicable time following the adoption of the ordinance, rule, resolution, or regulation.

#### **I. Joint Union-Management Committee to Review City Personnel Rules and Regulations**

The parties agree that a committee comprised of three (3) management representatives and three (3) Union Stewards or alternates will be established. The committee will meet at least quarterly, or more frequently by mutual agreement. The purpose of the committee shall be communication, information sharing, and problem solving on relevant issues such as employee work environment and policies and procedures.

The parties agree that within sixty (60) days following ratification and approval of this agreement, the committee will meet to review certain job classifications to determine if the actual duties performed are consistent with or exceed the current City job specifications or if reclassification of employees is necessary. Any changes mutually agreed to by the Committee will be recommended to the City Council for review and response.

#### **J. Professional Development Incentive Program**

Employees who have successfully completed probation shall be eligible to receive a one-time professional development incentive for obtaining certificates or degrees received after the date of this M.O.U. A professional development incentive shall not be awarded if the certification or degree is a minimum requirement for their position.

The certificate must relate to the employee's current position or future lateral or promotional opportunities with the General Employees Unit, Mid-Management Association or the unrepresented units of Confidential Employees and Executive Management. Vocational Training, for purposes of this section, is defined as a minimum of 20 hours of specific training in a career field which results in a certificate of completion. The minimum twenty (20) hours shall be documented classroom time or in the case of a correspondence program identified as the average length of time required to complete the program certification as documented by the certifying

agency or institution. Only one (1) professional development incentive per calendar year can be received by an employee. If an employee receives a Ph.D., Master's degree or Bachelor's degree in a calendar year, the employee may also receive one (1) additional professional development incentive for a certificate earned in the same calendar year.

**1. Professional Certificates - \$2,500.00 Lump Sum:**

- Professional Engineer Registration
- Professional Land Surveyor Registration
- Certified Public Accountant
- Engineer-In-Training
- Land Surveyor-In-Training
- C American Institute of Certified Planners
- Paralegal Certificate
- Grade 5 Water Treatment Operator or Water Distribution Operator
- Grade 5 Waste Water Treatment Operator
- QSP
- QSD

**2. College Degrees and Certificates - \$2,500.00 Lump Sum**

- Ph.D.
- Master's Degree
- Bachelor's Degree
- Associate's Degree

**3. Technical Certificates - \$2,000.00 Lump Sum:**

- Grade 4 Water Treatment Operator or Water Distribution Operator
- Grade 3 Water Treatment Operator or Water Distribution Operator
- Grade 2 Water Treatment Operator or Water Distribution Operator
- Grade 1 Water Treatment Operator or Water Distribution Operator
- Grade 4 Waste Water Treatment Operator
- Grade 3 Waste Water Treatment Operator
- Grade 2 Waste Water Treatment Operator
- Grade 1 Waste Water Treatment Operator
- I.C.B.O. Certificates
- Public Works Inspector - NICET
- Cross Connection Control Specialist Certification
- Certified Arborist

**4. Vocational Certificates of Completion:**

**Examples:**

- A(+) Certification (Computer Hardware, Software & Networking)
- Microsoft Certified Systems Engineer
- Cisco Certified Network Associates
- Operation Of Wastewater Treatment Plants Program administered by California State University, Sacramento Regional and Continuing Education Program
- Title 29 CFR 1910.120(q) - 24 Hour Hazardous Materials (Hazmat) Technician Level III Certification

The amount of the incentive for any Vocational Certificate of Completion shall be based on the following number of hours of course work:

<u>Minimum Hours</u> <u>For Vocational Certificate</u>	<u>Amount</u>
<b>100</b>	<b>\$ 1,500.00</b>
<b>80</b>	<b>\$ 1,200.00</b>
<b>60</b>	<b>\$ 900.00</b>
<b>40</b>	<b>\$ 600.00</b>
<b>20</b>	<b>\$ 300.00</b>

**5. Technical Certificates - \$1,000.00 Lump Sum:**

- Chemical Applicator
- Licensed Tree Trimmer
- Automotive Service Technician (A.S.E.)

**6. Additional Eligibility Criteria**

Additional licenses and certificates eligible for these professional development incentive, not listed in this Article, may be reviewed and approved by the Department Head in accordance with the following criteria:

- The license or certificate submitted for consideration must directly relate to the employee's current position or future lateral or promotional opportunities in accordance with the provisions of this section J.
- The employee earning the license or certificate shall be subject to duties and assignments commensurate with the level of proficiency attained under the City's Professional Development Incentive Program.

- After the effective date of this M.O.U., all such requests for consideration for eligibility for such license and certificate incentives shall be submitted to the Department Head for review, with final approval by the City Manager at his/her sole discretion. The City Manager's determination is not subject to appeal.

The process for receiving a professional development incentive under this program shall be:

- Prior to beginning any class, program, seminar or study toward a desired certificate or degree, the employee must submit a request to his/her department head for consideration and approval of bonus award. Qualifying classes, programs, seminars or study toward a desired certificate or degree shall not be denied.
- If prior approval is not obtained, the class, program, seminar or study toward a desired certificate or degree shall not fall within the scope of this Professional Development Incentive Program.
- Upon obtaining a copy of the certificate or degree, payment will be processed for the specified incentive. Professional development incentives shall not be granted prior to receiving a copy of the degree or certificate.
- The following are not eligible for consideration under this Section:
  - Any driver's licenses
  - Certificates, licenses, or degrees required for the position the employee holds
  - Certificates, licenses, or degrees earned at the expense of the City including City sponsored training programs and consortium training programs except for approved tuition reimbursement pursuant to Section 8.10 (D) and (E) of the City of Hollister Personnel Rules & Regulations for Associate degrees, Bachelor's degrees, Master's degrees, and Ph.D. degrees.

#### **K. Flexibly Staffed Entry Level Positions**

The City shall advance employees that are in the entry level of flexibly staffed classifications (i.e. Maintenance Worker I, Support Services Assistant I, Account Technician I) to the journey level after meeting the experience requirements for the journey level classification, successfully passing a probationary period in the entry level classification and being given a satisfactory performance evaluation

#### **L. One Year Probationary Period For All Unit Members**

A mandatory one (1) year probationary period shall be in effect for all new employees hired after November 27, 2000 and for all existing employees promoting to a new classification after the same date.

**M. Reclassification and Salary Adjustment Policy**

The City and Union agree to develop a structured process for addressing individual reclassifications and resulting salary adjustments that will be consistent with the annual budget process.

**N. Christmas Eve Holiday**

The City shall provide an additional paid ½ day holiday on the afternoon (4 hours) of December 24th, known as Christmas Eve. The Christmas Eve holiday shall be observed on the afternoon of the workday proceeding the day on which the December 25th holiday, known as Christmas Day, is observed.

**O. Health Care Reform**

The City shall review, with the Union during the term of this agreement, any health care insurance, or related insurance proposals, which may assist with controlling escalating insurance costs.

**P. FLSA Audit/Administrative Leave in lieu of Overtime**

Effective upon execution of the M.O.U., The Utility Civil Engineer Position has been assigned duties that require the use of independent engineering judgment in the performance of its duties. This was not the case during previous FLSA reviews. Based upon this change in responsibility, the City has determined that the position is FLSA Exempt and both parties agree that the Utility Civil Engineer position salary shall be adjusted upon execution of the M.O.U. to be equivalent to the Associate Civil Engineer. This increase in salary will be deferred until the furloughs or any other negotiated adjustments to replace the furloughs have ended. Nothing in this provision is intended to be contrary to Fair Labor Standards Act. Consequently, the Utility Civil Engineer position shall be salaried and shall receive eighty (80) hours Administrative Leave each fiscal year.

The terms for use of Administrative Leave are as follows:

- A. Administrative Leave credit will accrue at the rate of 3.08 hours per pay period.
- B. The entire eighty (80) hours of Administrative Leave will be advanced and be available for use on July 1<sup>st</sup> of each fiscal year.
- C. Leave usage will be monitored by having each eligible employee execute a Leave Request. This request must be signed by the individual eligible employee and approved by the City Manager or Department Director. The Administrative Leave usage must be identified and recorded on the official time card for the period in which leave was taken.



- D. Residual Administrative Leave not utilized during the fiscal year may not be carried over into a subsequent year. Administrative Leave shall not be cumulative and shall not be converted into monetary compensation, except upon termination or retirement.
- E. In the event an Employee terminates during the year, unused accrued Administrative Leave shall be paid out in the same manner as unused vacation. If leave has been taken beyond that which is accrued, the Employee must pay back all excess leave taken.
- F. For eligible Employees hired during the year, leave credit will be accrued from the date of hire.

#### **Article 14. Reopener**

At the request of the Union, the current Memorandum of Understanding may be reopened on December 1<sup>st</sup>, 2012 solely to address the feasibility and possibility of a Cost of Living Allowance or a reduction to the Employee's "Pick Up" of the CalPERS Contribution as provided herein. The conditions that shall warrant any such discussions and possible consideration shall be based upon an improvement of the City's current financial situation and its ability to sustain any such proposed increases.

#### **Article 15. Maintenance of Operations**

The Union agrees that during the term of this M.O.U. and for the period of time necessary for the meet and confer process to conclude a successor M.O.U., neither the Union, nor any representative acting on its behalf, will cause, authorize, engage in, condone or sanction a strike, sick-in, work stoppage, slow down, picketing (other than informational picketing on the employees' own time), concerted or individual failure to report for duty, unauthorized absence, including compliance with a request of another unit's labor organization to engage in or honor such activities against the City, or any activity by any other euphemism known which results in less than the full and faithful performance of any duties of employment.

If the City determines that an employee has engaged in any activity above, the employee may be subject to disciplinary action up to and including discharge from City service.

#### **Article 16. Prevailing M.O.U.**

In the event of a conflict between a specific provision of this M.O.U. and a written rule, regulation, or resolution of the City or any of its divisions, the terms of the M.O.U. shall prevail and said written rule, regulation, or resolution shall be physically amended to conform to the specific provisions of this M.O.U.

**Article 17. Drug Free Workplace Policy**

The City's Drug Free Workplace Policy, City Personnel Rule 2.05, adopted by Resolution 92-116 (August 3, 1992), is incorporated by reference into this M.O.U.

**Article 18. Savings Clause**

If any article or section of this M.O.U. should be found invalid, unlawful or unenforceable by reason of any existing or subsequent enacted legislation or by judicial authority, all other articles and sections of this M.O.U. shall remain in full force and effect for the duration of this M.O.U. In the event of invalidation of any article or section, the City and the Union agree to meet within thirty (30) days for the purpose of meeting and conferring upon said article or section.

**Article 19. Term of Agreement**

The term of this M.O.U. shall commence on January 1<sup>st</sup>, 2011 and shall expire June 30, 2013, unless otherwise agreed to by both parties. It is also agreed to by both parties to initiate the meet and confer process in a timely fashion, exchanging written proposals at least thirty (30) days prior to the termination of this agreement. An extension of the term of this agreement on a month to month basis may be made by mutual agreement of the parties.

(Last Updated on 11-4-11: BIM)

**City of Hollister - SEIU, Local 521 M.O.U.: 01-01-11 -06-30-13**

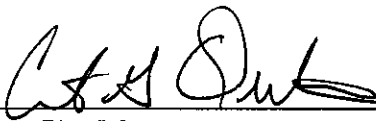
The above constitutes a full and complete agreement between the parties on all matters within the scope of representation.

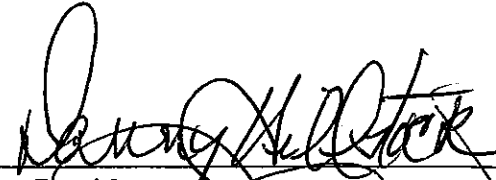
**CITY OF HOLLISTER**

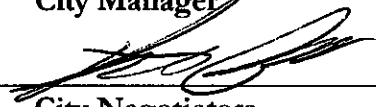
**HOLLISTER MUNICIPAL  
EMPLOYEES ASSOCIATION**

Dated 11-8-2011

Dated 11-7-2011

By   
City Manager

By   
President

By   
City Negotiators

By   
SEIU Negotiators

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_

By   
11.7.11

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**EXHIBIT [A]**

**SECTION 12. DISCIPLINARY PROCEDURE**

**Section 12.01 General**

- A. The expected standard for employees of the City shall be to render the best possible service to the public, to reflect credit upon the City service, and to serve the public interest. The tenure of every employee shall be conditioned on good behavior and satisfactory performance of duties. Disciplinary actions are intended to be corrective and progressive in nature with the objective of obtaining compliance with rules, orders, procedures, standards of conduct and expected job performance.
- B. The procedures set forth in this section shall not apply to probationary employees who are rejected during probation, or to any employee serving in a seasonal or temporary appointment. These procedures shall not apply to a reduction in force, or a reduction in pay which is part of a reclassification action or reorganization approved by the City Council.
- C. The City Manager may take disciplinary action based upon a Department Head recommendation or initiate such action based upon his/her own authority. The City Manager may delegate the responsibility to take disciplinary action to Department Head(s). As used in this section, "disciplining authority" shall mean either a Department Head or the City Manager, whoever initiates the disciplinary action; "working day" shall mean any day of the month when the City offices are officially open for business.
- D. The procedures set forth in this section shall not preclude an employee from entering into a written agreement with the City to settle a pending disciplinary matter, and further shall not preclude an employee from waiving any of the notice provisions herein provided for, as part of that written settlement agreement.

**Section 12.02 Grounds for Discipline**

An employee may be reprimanded, suspended, denied a merit increase, demoted or dismissed for any of the following reasons:

1. Furnishing false information to secure employment.
2. Incompetence, which shall mean that the employee lacks adequate ability, knowledge, motivation, or fitness to satisfactorily perform the duties which are within the scope of employment.

3. Inefficiency in performance of work which results in performance lower than that which is typically expected of the position.
4. Neglect of duty.
5. Insubordination, which shall mean refusal or failure to follow a direct, lawful order which the employee is capable of following.
6. Nonobservance of work hours.
7. Excessive absenteeism, tardiness, or absence without authorized leave.
8. Violation of city personnel rules and regulations, administrative policies and procedures, department rules and regulations, safety rules, resolutions, ordinances or codes.
9. Damage to or waste of public property, equipment or supplies, or unauthorized possession or use of public property, supplies or equipment.
10. Any conduct related to employment which impairs, disrupts or causes discredit to the employee's department or the city, including but not limited to conduct which is or would be cause for discipline under any other provisions of this section.
11. Willful failure or refusal to properly perform official duty.
12. Gross negligence in the discharge of official duty.
13. Dishonesty involving employment.
14. Any act of moral turpitude which adversely reflects on the employee's ability or fitness to perform his/her duties.
15. Soliciting or taking for personal use a fee, gift or other valuable thing in the course of the employee's work, or in connection with the contributing party's expectation or hope of receiving favorable or better treatment than that afforded other persons.
16. Disclosure of confidential information to an unauthorized source.
17. Refusal to take and subscribe to any oath or affirmation which is required by law in connection with employment by the city.
18. Falsification of time sheets or any official city records.
19. Misuse of sick leave.

20. Consuming, possessing, or being under the influence of an alcoholic beverage, while on duty.
21. Unless legally authorized, using, consuming, injecting, possessing, being under the influence of, selling or offering for sale, while on duty, any drug which can or does impair, the employee's work performance, or any controlled substance as the latter term is defined in the California Health and Safety code.
22. Discourteous or disrespectful treatment of the public, other employees, or city officials.
23. Violation of city harassment policy.
24. Persistent failure or refusal to take, complete, or follow through with appropriate and reasonable treatment or corrective measures designed to remedy an employee's condition, such as alcohol or substance abuse, when said condition results in conduct which constitutes grounds for discipline under these rules.
25. Engaging in outside employment in violation of city policies or rules.
26. Engaging in non-City business during work hours, excluding employee free time such as lunch and breaks.

### **Section 12.03 Types of Disciplinary Action**

As used in this section, "disciplinary action" shall mean any of the following and may be taken singly or in combination:

- A. **Counseling or Oral Warning.** A counseling or oral warning will not be placed in an employee's personnel file except as part of a regular or special performance evaluation report of the employee on which the employee is given an opportunity to respond. A counseling or oral warning or a performance evaluation report is not subject to the appeal process outlined below.
- B. **Written Reprimand.** A written reprimand shall be provided to an employee prior to being placed in the employee's personnel file. Such reprimands shall not be subject to the appeal process outlined below, but the employee shall have the right of rebuttal by providing a written statement which will be included in the personnel file along with the written reprimand.
- C. **Imposition of special employment conditions.** Such action shall be subject to the appeal process outlined below.
- D. **Suspension with or without pay.** Fringe benefits such as vacation and sick leave shall not accrue during a period of suspension without pay. However, health, dental and life insurance shall remain in effect during a period of suspension without pay. Such action shall be subject to the appeal process outlined below.

- E. Reduction in pay level not to exceed one (1) year. Such action shall be subject to the appeal process outlined below.
- F. Demotion. Such action shall be subject to the appeal process outlined below.
- G. Dismissal or Discharge. Such action shall be subject to the appeal process outlined below.

**Section 12.04 Notice of Intended Disciplinary Action**

- A. In cases of proposed disciplinary action, except a counseling, oral warning, or written reprimand, the proposed disciplinary action shall be served on the employee personally or by mail. The written notice of intended disciplinary action which shall include:
  - 1. The reasons for the disciplinary action, those facts alleged to be the basis for the intended action and copies of any documents or materials upon which the disciplinary action is based;
  - 2. The specific action proposed to be taken, including any time period or other conditions associated with the discipline;
  - 3. The proposed effective date of the intended disciplinary action; and
  - 4. The right of the employee to respond to the proposed disciplinary action either in writing or orally, at the option of the employee. The employee shall be advised that he/she has ten (10) working days within which to file a written response or request, in writing, an informal predisciplinary conference before the disciplining authority or his/her designee.
- B. A copy of the notice of intended disciplinary action shall be placed in the employee's personnel file.

**Section 12.05 Predisciplinary Conference**

Where an employee has requested an opportunity to respond orally, the disciplining authority or his/her designee shall cause an informal predisciplinary conference to be held to review the statement of charges and to provide the opportunity for the employee or his/her representative to answer the charges. The disciplining authority or his/her designee shall allow the parties to present any relevant evidence tending to prove or disprove the facts upon which the action is based or upon the nature and severity of the proposed disciplinary action. Failure of the employee to appear at the predisciplinary conference, if requested, shall forfeit all the employee's right to respond to the statement of charges.

**Section 12.06 Notice of Discipline or Rejection of Discipline**

- A. If the employee does not respond or upon conclusion of the predisciplinary conference, the disciplining authority or his/her designee shall, by written notice to the employee and the supervisor, affirm, reduce or abandon the proposed disciplinary action.
- B. If the decision is to affirm or reduce the proposed disciplinary action, such action shall be served on the employee personally or by mail. The written notice of disciplinary action shall include:
  - 1. The reasons for the disciplinary action, those facts alleged to be the basis for the disciplinary action and copies of any documents or materials upon which the disciplinary action is based;
  - 2. The specific action proposed to be taken, including any time period or other conditions associated with the discipline;
  - 3. The effective date of the disciplinary action; and
  - 4. The right of the employee to appeal the disciplinary action. The employee shall be advised that he/she has ten (10) working days within which to file a written appeal of the disciplinary action.
- C. A copy of the notice of disciplinary action shall be placed in the employee's personnel file.
- D. If the notice is to abandon all action, the notice of intended disciplinary action shall be removed from all personnel files.

**Section 12.07 Appeal of Disciplinary Action**

An employee who has been discharged, demoted, reduced in salary, been made subject to specific employment conditions, or suspended without pay has the right to appeal to the City Manager the disciplinary action by filing a written notice of appeal within ten (10) working days from the date of the notice of discipline. The appeal must state specifically the reason or reasons upon which it is based. Failure to file within the time allowed constitutes abandonment of appeal rights. The evidentiary appeal shall be heard by a hearing officer who will serve as the City Manager's designee.

**Section 12.08 Appeal**

- A. The Personnel Officer shall be responsible for obtaining the hearing officer from JAMS (Judicial Arbitration and Mediation Services of California). The Personnel Officer shall ask JAMS to randomly provide the name of one retired judge who shall be impartial and who shall conduct the hearing on behalf of the City Manager. The City shall pay for the services of the hearing officer.



- B. The Hearing Officer shall assume responsibility for scheduling and conducting the hearing in accordance with the provisions of Chapter 12. The hearing officer shall conduct the hearing and prepare a report that includes findings of fact and recommendation(s). The City Manager shall be bound by the findings of fact but reserves final authority on the recommendation(s) of the Hearing Officer. The decision of the City Manager shall be final unless appealed to the City Council.
  
- C. If the decision is to affirm or modify the disciplinary action, the decision shall be placed in the employee's personnel file. If the decision is to modify or reverse the disciplinary action, that action shall be implemented. If reversed, the notice of the intended disciplinary action and the notice of disciplinary action shall be removed from the employee's personnel file.

**Section 12.09 Evidentiary Appeal Hearing Procedure**

- A. The Hearing Officer shall provide the appellant and City with written notice of the date, time, and place of the hearing no less than ten (10) working days in advance of the scheduled hearing date. Any time lines contained in this section may be extended upon mutual agreement of the City and the appellant for good cause.
  
- B. The hearing shall be conducted in conformity with Sections 11512 through 11515, inclusive, of the Government Code. The hearing officer shall be deemed to be the administrative law judge in the proceeding.
  
- C. The hearing shall be closed to the public unless the appellant, prior to the commencement of the hearing, requests in writing that it be open to the public. The hearing shall be conducted in accordance with the provisions of Section 11513 of the Government Code which reads:
  - 1. Oral evidence shall be taken only on oath or affirmation.
  
  - 2. Each party shall these rights: to call and examine witnesses; to introduce exhibits; to cross-examine opposing witnesses on any matter relevant to the issues even though that matter was not covered in the direct examination; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him or her. If the appellant does not testify on appellant's own behalf, s/he may be called and examined as if under cross-examination.
  
  - 3. The hearing need not be conducted according to technical rules relating to evidence and witnesses. Any relevant evidence shall be admitted if it is the sort of evidence on which responsible persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule which might make improper the admission of such evidence over objection in civil actions. Hearsay evidence may be used for the purpose

of supplementing or explaining other evidence but shall not be sufficient in itself to support a finding unless it would be admissible over objection in a civil action. The rules of privilege shall be effective to the extent that they are otherwise required by statute to be recognized at the hearing, and irrelevant and unduly repetitious evidence shall be excluded.

- D. The appellant may be examined and may examine or cause any person to be examined under Section 776 of the Evidence Code. The appellant shall be allowed to appear personally at the hearing, and appellant shall have the right to legal counsel or lay representation of appellant's choice and sole expense at all times throughout the proceeding, and appellant shall be allowed to produce such competent evidence in his/her own defense and in rebuttal to the charges as the appellant or appellant's/her representative may wish to offer.
- E. The hearing shall be recorded by a stenographic reporter. If any transcript is ordered by the appellant or the City, the party ordering the transcript shall bear the cost of the transcription. If both the appellant and the City order transcriptions, the cost of the transcription, along with the cost of the reporter, shall be borne equally by the City and the appellant.
- F. The Hearing Officer shall have the power to subpoena and require the attendance of witnesses, and the production of books, papers, and other evidence pertinent to the hearing, and to administer oaths to witnesses. In arriving at a recommendation, the hearing officer may consider any prior disciplinary actions taken against the appellant, or any prior proceedings under this section.
- G. Unless the circumstances were beyond the control of the appellant, failure of the appellant to appear at the hearing shall be deemed a withdrawal of the appeal and the action of the department head in the notice of disciplinary action shall be final without right of appeal to the City Council. The participation of the appellant's representative at the hearing shall constitute appearance of the appellant.
- H. The City Manager shall review the hearing officer's report including the findings of fact and recommendation(s) and within thirty (30) days from the hearing officer's report issue his or her written decision affirming, reversing, or modifying the discipline which shall be final unless appealed to the City Council.
- I. An employee can appeal the City Manager's decision to the City Council by filing the written notice of appeal with the City Clerk within ten (5) working days from the date of the mailing of the City Manager's decision.
- J. Within ten (10) days after receipt of the appeal, the City Clerk shall give notice of the appeal to each member of the City Council, the City Manager, and other persons named or affected by the appeal and shall schedule a hearing before the City Council.

- K. The hearing before the City Council shall be non-evidentiary in nature and shall be limited to oral arguments from both parties or their representatives. The City Council shall be bound by the findings of fact prepared by the hearing officer. Appellant and City shall each have 20 minutes of oral argument with an additional 5 minutes of rebuttal argument. The hearing before the City Council shall be closed to the public unless prior to the hearing the appellant requests in writing that the hearing be open to the public.
- L. The City Council shall deliberate in closed session and shall issue a decision which affirms, reverses, or modifies the discipline imposed by the City Manager.
- M. If the Council's decision is to affirm or modify the disciplinary action, the decision shall be placed in the employee's personnel file. If the decision is to modify or reverse the disciplinary action, that action shall be implemented. If reversed, the notice of the intended disciplinary action and the notice of disciplinary action shall be removed from the employee's personnel file.
- N. The decision of the City Council shall be final and subject to judicial review under Code of Civil Procedure 1094.5.

**Section 12.10 Serving of Notices**

Written notices shall be served either by direct personal service on the person affected, or by mail. Mailed notices to the City Manager or his/her designee, a Department Head, an appellant and/or his/her designee, or the City Council shall be effective upon recorded deposit with the United States Postal Service.

**Section 12.11 Summary Suspension**

Prior to any disciplinary proceedings under this section, the City Manager may summarily place any City employee on an immediate suspended status with or without pay. Such suspensions shall be made only in cases where the employee's continued active duty status might, in the sole opinion of the City Manager, constitute a hazard to the employee or others, tend to bring the City service into discredit, or prolong acts or omissions of improper employee conduct. If the disciplinary action or suspension is not subsequently ordered and/or affirmed, the employee shall be reinstated in status and restored all pay and fringe benefits lost during such summary suspension.

**Section 12.12 Right to Representation**

An employee subject to a meeting, an investigation that may result in disciplinary action, a predisciplinary conference or hearing has the right, upon request, to be represented by an employee representative or an attorney retained by the employee at the employee's expense. Any employee, other than those defined as management, mid-management and confidential employees shall be permitted to represent another City employee or group of City employees.

**Section 12.13 Records Purged**

An employee's personnel file shall be purged of all documents relating to ordered disciplinary actions, except dismissal, after three (3) years from the end of such action upon the written request of the employee or former employee against whom the action was taken.

(Updated 08-25-08: RCG)

RESOLUTION NO. 2011-144

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HOLLISTER  
ADOPTING A MEMORANDUM OF UNDERSTANDING BETWEEN THE  
CITY OF HOLLISTER AND  
THE SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 521

**WHEREAS**, representatives of the City of Hollister and the Service Employees International Union, Local 521, an organization representing Hollister city employees, have met and conferred in good faith concerning subjects of bargaining; and

**WHEREAS**, understandings and agreements have been reached between the bargaining representatives; and

**WHEREAS**, both parties agree to enter into a Memorandum of Understanding for the term of January 1, 2011 through June 30, 2013;

**NOW THEREFORE BE IT RESOLVED**, that the City Council of the City of Hollister authorizes the execution of the Memorandum of Understanding between the City of Hollister and the Service Employees International Union, Local 521, for the term of a Retroactive Date of January 1, 2011 through June 30, 2013.


**PASSED AND ADOPTED** at a special meeting of the City Council of the City of Hollister, California, on the 14th day of November, 2011 by the following vote:

**AYES:** Council Members Emerson, Friend, Scattini, and Mayor Valdivia.

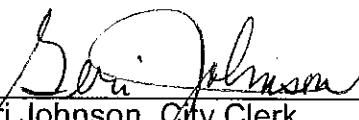
**NOES:** None.

**ABSTAINED:** None.

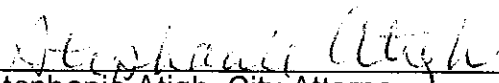
**ABSENT:** Council Member Gomez.

  
\_\_\_\_\_  
Pauline Valdivia, Mayor

**ATTEST:**

  
\_\_\_\_\_  
Geri Johnson, City Clerk

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
Stephanie Atigh, City Attorney

DUPLICATE OF ORIGINAL  
ON FILE IN THE  
OFFICE OF THE CITY CLERK  
CITY OF HOLLISTER