

**MEMORANDUM OF UNDERSTANDING
BETWEEN
ASSOCIATION OF CAPITOLA EMPLOYEES
AND CITY OF CAPITOLA
PERIOD 6/27/2021 to 6/30/2024
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ASSOCIATION OF CAPITOLA EMPLOYEES MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding (MOU) is made and entered into between the City of Capitola (hereinafter referred to as “City”) and Laborers International of North American (LIUNA) Local 792 (herein referred to as “the union”) for the Association of Capitola Employees (ACE) for and on behalf of its members identified. This agreement shall cover the period from June 27, 2021, through June 30, 2024, and shall be effective upon ratification by the bargaining unit and approval by the Capitola City Council.

I. UNION RECOGNITION

1. Pursuant to the Meyers-Milias-Brown Act and the City’s Employer-Employee Relations Resolution, the Union, affiliated with Laborer’s International Union of North America, Local 792, is hereby recognized as the Recognized Employee Organization of the General Government Employees and Association of Capitola Employees bargaining unit as defined in California Government Code Section 3501(b). Classifications in the bargaining unit are listed in Section I.12 below. Pursuant to language in the Employee-Employer Relations Ordinance, this list can be amended from time to time.
2. The parties hereto recognize that membership in the Union is not compulsory, that employees have the right to join, not join, maintain, or drop their membership in the Union.
3. The City shall make available payroll deductions for unit members for regular Union dues pursuant to an appropriate authorization form signed by the employee or the provisions of this Section. Those funds shall be remitted to the Union on a monthly basis. An employee’s earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues or service fee. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full dues, no deduction shall be made. In addition, all other legal and required deductions have priority over Union dues.
4. Pursuant to California Government Code Section 3502 individual employees shall have the right to represent themselves and to present grievances and discipline appeals to the City and to have such grievances and appeals adjusted without representation by the Union up to but not including arbitration, provided that the adjustment shall not be inconsistent with this Memorandum of Understanding and further provided that the Union shall be given an opportunity to be present at such adjustment.
5. The Union shall indemnify, defend and hold the City, its employees, officials, representatives and agents harmless against any claims made, and against any suit instituted against the City on account of payroll deductions made pursuant to this

Section for dues. In addition, the Union shall refund to the City any amount paid to it in error upon presentation of supporting evidence.

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

Parking Enforcement Officer, Assistant Planner, Receptionist, Police Records Clerk, Records Coordinator, Records Management Clerk, Recreation Assistant, Recreation Coordinator Recreation Facility Custodian, Recreation Receptionist.

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

II. WAGES

A. Wage Schedule and Wage Increases:

The wage schedule attached to this Memorandum of Understanding sets forth the base pay, subject to such adjustments (such as longevity pay) as are specifically set forth in this MOU. Letters "A" to "E" have been used to designate the respective pay steps for each position. The rates contained in the wage schedule are base salary rates and do not include overtime or benefits.

- a. Effective the first pay period after union ratification of the MOU and Council approval of the successor MOU in accordance with the Brown Act, the salary range for each classification in this Unit shall be readjusted by 2.75%.
- b. Effective the first full pay period of July 2022, the salary range for each classification in this Unit shall be readjusted by 3%.
- c. Effective the first full pay period of July 2023, the salary range for each classification in this Unit shall be readjusted by 3%.
- d. Market Study Salary Adjustments
Effective the first pay period after union ratification of the MOU and Council approval of the successor MOU in accordance with the Brown Act the following classifications shall receive Market Study Salary adjustments as listed below.

1.25% - Accounts Clerk, Account Technician, Accountant 1, Administrative Assistant I/II, Assistant Planner, Police Records Technician.

2.5% - Maintenance Worker I, II, III, Receptionist

3.5% - Building Inspector I and II, Deputy City Clerk, Development Services Technician, Parking Enforcement Officer, Recreation Assistant, Recreation Coordinator, Recreation Facility Custodian, Recreation Receptionist

B. Conversion To Hourly Rate:

Whenever it is necessary to compute an hourly pay rate in order to apply any provision of this MOU, that will be done by multiplying any monthly rate by 12 in order to derive an annual rate, and dividing the annual rate by 2080 (or proportionate number of hours for part time positions, e.g., 1040 for a half-time position).

C. Service:

The word "service" as used in this MOU means continuous full-time service in the position in which the employee is being considered for salary advancement, service in a higher position, or service in a position allocated to the same salary schedule and having generally similar duties and requirements. A lapse of service of any employee for a period of time longer than thirty days by reason of resignation or discharge shall serve to eliminate the accumulated length of service time of such employee, and any such employee re-entering the service of the City shall be considered as a new employee, unless another standard is established by the personnel rules, in which case that standard shall apply.

D. Types of Appointment

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

1. Acting Appointments

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

2. Work Out of Class

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

3. Acting Supervisors Pay

If an employee is designated by the Department Head or the Department Head's designee to perform Supervisory duties outside of their job descriptions, then that employee shall receive a 10% increase to his or her salary for all such hours worked.

4. Equipment Operators Pay

If an employee is designated by the Department Head or the Department Head's designee to perform the duties of an Equipment Operator on the following equipment;

- Five-yard and above size truck and trailer (license required).
- Sweeper
- Bull Dozer
- Large Front Loader

then that employee shall receive a 5% increase to salary for all such hours worked.

E. Public Works Employees, Shift Changes Shift Differential

1. Shift Changes: In order to provide necessary services, the hours of Public Works employees may be adjusted from time to time. However, when a change in a schedule occurs within the given two-week pay period, all non-overtime hours worked outside of the pre-adjustment work schedule shall be additionally compensated at a rate equal to 5% of base wage rate.
2. Shift Differential: Employees who are required to report to work two or more hours before the employee's regular time to begin work, shall receive a 5% increase to salary for all such hours worked prior to regular work hours.

Employees who are required to report to work ~~two~~ four or more hours before the employee's regular time to begin work, shall receive a 7% increase to salary for all such hours worked prior to regular work hours.

F. Emergency Call Back Compensation

1. "Call back" refers to a situation where an employee has completed his/her regular work day without knowing that he/she would be called back (by his/her superior or as a result of emergency circumstances) to work during hours of the day not occurring during the employee's regular workday. An employee who is required to come to work not more than one hour early, but is not thereafter released from work before the start of the regular workday is not on "call back".
2. Employees called back to work shall be treated as having worked at least three hours, even if actual time is less.
3. Public Works: The rate of pay for Public Works department employees covered by this agreement call back hours is as follows
 - i. Two and a half times the employee's hourly base rate for hours served between the hours of 10pm and 6 am; or

- ii. Two times hourly base rate for hours served during other times of the day.
 - 4. For all employees not covered by subsection, call back hours will be paid the same as overtime.
 - 5. Time spent traveling to and from the place of call back work is not counted in applying the provisions of this section, or XXIX. E.
 - 6. Units of time that are both call back and overtime will receive the most favorable of the two treatments, but no single unit of time will be treated as both call back and overtime.
- G. Parking Enforcement Officers:
Parking enforcement officers shall receive a minimum of 4 hours pay for court appearances that are not scheduled as part of their regular workday.
- H. License and Certificate Reimbursement:
The City will reimburse employees for the cost of specialized licenses and certificates required to perform their job.
- I. Signing Bonus:
Contingent upon a tentative agreement by June 24, 2021. All employees at the time of ratification in the ACE bargaining unit shall receive a one-time \$1500 signing bonus, minus applicable taxes. The one-time signing bonus shall be paid the first full pay period after ratification by the Capitola City Council.

III. OVERTIME

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

"Hours worked" shall not include sick leave, vacation, or compensated leave time off not scheduled in advance by at least ten working days. "Hours Worked" shall also not include workers compensation time off unless immediate treatment is required on the date of injury for the injury incurred, in which case overtime is allowed providing the overtime accrued is an extension of the workday and the hours worked for the week exceed 40 hours.

IV. MERIT PAY AND EFFECTIVE DATE OF INCREASES

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

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

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

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

V. VACATION

A. Accrual

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

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

B. Accumulation

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

C. Scheduling

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

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

D. Vacation Cash Out Upon Termination

Upon termination, an employee shall be paid for all accumulated vacation to the separation date, at a rate equal to 100% of his/her current hourly pay rate. Alternatively, an employee may individually contractually establish, in writing, with the City Manager, mutually agreeable provisions regarding the timing and terms of the cash payout.

E. Mandatory Cash Out Before Termination

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

F. Optional Vacation Cash Out

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

VI. SICK LEAVE

A. Sick Leave Accrual

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

B. Sick Leave-Family Care

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

C. Sick Leave While on Vacation

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

D. Sick Leave Cash Out

Sick Leave may not be cashed out.

VII. HOLIDAYS

A. Schedule

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

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

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

Holiday time will be for the regularly scheduled shift time. For example, if the regularly scheduled shift is 8.5 hours, employee will receive 8.5 hours of holiday time. If the regularly scheduled shift is 6 hours, employee will receive 6 hours of holiday time.

In addition, offices located at the Community Center or at City Hall will be closed for one week during the Christmas holidays during which employees affected by the closure will be permitted to use vacation, personal holidays or sick leave in order not to lose compensation. All other City offices and programs shall remain open during this period.

B. Personal Holidays

All regular positions are entitled to three (3) personal holidays per calendar year. Unused Personal Holidays are not shall be used by the employee no later than December 31st of each year and are non-cumulative.

C. Holiday Hours Bank

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

D. Public Works Holidays

Public Works employees may be required to work holidays. Employees who work on any holidays will use holiday time on the holiday and it will count as hours worked. Actual hours worked will be in addition and will be considered overtime if hours meet the weekly overtime threshold. The City reserves the right to change Public Works Employees' hours in order to cover Holidays in accordance with Section II F. 1 of this MOU.

VIII. BEREAVEMENT LEAVE

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

IX. JURY DUTY

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

X. LEAVE OF ABSENCE WITHOUT PAY

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

XI. ACCRUALS AFTER DATE OF SEPARATION

An employee's separation date is the last date actually worked, except that an employee who, as of the last day worked, has not used all of his/her yearly allotment of vacation may extend the separation date by the number of days necessary to reach the full yearly allotment. "Yearly allotment" means the amount of vacation that the employee was entitled to accrue in his/her last year of employment. Unless otherwise provided by state law, none of the following accrue after the date of separation: sick leave, vacation, personal holidays, holiday pay, administrative leave, Flex Plan contributions, or payment of the insurance premiums described in Section XIII.A. below.

XII. BENEFITS FOR PART-TIME EMPLOYEES

Sick leave benefits are described in Section VI above.

XIII. FLEXIBLE SPENDING ARRANGEMENT CONTRIBUTIONS

- A. The City makes a flexible spending arrangement (“Flex Plan”) contribution on behalf of each qualified employee for medical, dental & vision coverage. For those employees who have selected health coverage through CalPERS, from the monthly contribution set forth herein, effective January 1, 2021, a \$143.00 per month contribution will be paid to CalPERS for what is sometimes referred to as “employer contribution”. This amount is the minimum amount required by CalPERS, recognizing that state law may increase this minimum from time to time requiring compliance by City. The City’s maximum contribution below is inclusive of the required PEMCHA minimum.

Effective Dates	Employee Only	Employee +1	Employee +2
First full pay period after ratification	\$849.00	\$1,300.00	\$1,550.00
First full pay period in July 2022	\$874.00	\$1,350.00	\$1,625.00
First full pay period in July 2023	\$899.00	\$1,400.00	\$1,675.00

- E. Employees who can verify to the City’s satisfaction that: they have equivalent group health coverage for medical (including dental & vision), which will remain in effect until the next enrollment date will be eligible for a cash payment based on the following schedule. Current employee is defined as an employee hired prior to July 1, 2018; and receiving the Cash in Lieu at that time. Current employees who choose health coverage, will no longer be eligible for the current employee cash payment amount.

Effective Dates	Current Employee	New Employee
First full pay period after ratification.	\$773.00	\$250.00

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

XIV. RETIREMENT BENEFITS

A. CalPERS

The City participates in the California Public Employees’ Retirement System (CalPERS) operated by the State of California. Benefits provided are detailed in separate publications, depending upon the plan. The City provides 2.5% at 55 Retirement Plan for non-sworn employees, with the single-highest year option. Contributions will be reported in accordance with the current CalPERS contract, i.e.: the employee portion (8%) plus any amount above the cap is reported to CalPERS as paid by the employee.

In 2007, the City implemented a cost-sharing benefit that consists of the City paying 8% of the normal member’s contributions as Employer Paid Member

Contributions (EPMC), with additional cost sharing contributions not to exceed a total of 16.259% through June 30, 2019. The City agrees to report the value of the Employer Paid Member Contributions as salary for retirement benefit plan purposes.

Beginning July 1, 2018, all classic employees shall contribute 13.392% of their reportable salary to CalPERS. This contribution shall not be reduced unless negotiated by the parties in future negotiations.

Public Employees' Pension Reform Act for Miscellaneous Employees hired by the City on or after January 1, 2013 and do not qualify as Classic members as determined by CalPERS: For new miscellaneous employees hired by the City of Capitola on or after January 1, 2013 and who do not qualify as classic members as defined by CalPERS, CalPERS has by statute implement a 2.0% @ 62 pension formula, based on a three-year average compensation. Employees in this category shall pay 50% of the normal cost rate as determined by CalPERS.

B. LIUNA National Industrial Pension

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

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

XV. PHYSICAL EXAMINATIONS

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

XVI. LIFE INSURANCE

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

XVII. MILEAGE REIMBURSEMENT

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

XVIII. UNIFORMS

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

XIX. SHOES, APPAREL AND EQUIPMENT REIMBURSEMENTS

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

XX. INCENTIVE PROGRAMS

A. Longevity Pay Incentive

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

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

B. Education Reimbursement Program

The City will reimburse employees for tuition upon the completion of courses approved in advance by the City Manager up to a maximum of \$1000.00 per calendar year for classes completed in that same calendar year. Textbook reimbursement for courses approved in advance by the City Manager shall be at 100%.

C. Bilingual Pay

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

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

XXI. PERSONNEL EVALUATIONS

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

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

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

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

XXII. LUNCH AND REST PERIODS

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

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

Rest periods shall be considered compensable work time.

XXIII. EMERGENCY MEALS

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

XXIV. LIGHT DUTY ASSIGNMENT

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

XXV. PROBATIONARY PERIOD

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

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

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

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

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

XXVI. GRIEVANCE PROCEDURE

A. Definition of a Grievance:

A grievance is defined as an allegation presented in writing by an employee or group of employees that the City has failed to provide a condition of employment,

which is established by law, Memorandum of Understanding, by written City or departmental rules, provided that the enjoyment of both such right is not made subject to the discretion of the Department Head or the City by the terms of law, Memorandum of Understanding, or by written City or departmental rules and, provided further, that the conditions of employment which are the subject matter within the scope of representation as defined in California Government Code Section 3504. Notwithstanding the above, excluded from this grievance procedure are employee evaluations, and any other matter that is assigned its own appeal procedure such as discipline and an alleged violation of the harassment policy.

B. Right to Representation:

An employee having a grievance shall have the right to consult with and be assisted by a representative of his/her own choice throughout the grievance process. In those cases, in which an employee elects to represent him/herself or arranges for other representation, the Union shall have the right to participate in the grievance procedure to the extent necessary to protect the interest of its members in negotiated conditions of employment.

C. Limitations on Money Damages:

In no event shall any grievance include a claim for money relief for more than the twenty-one-day period plus such reasonable discovery period, unless otherwise provided by law.

D. Procedure:

Failure of the employee to timely file a grievance and/or comply with the time limits at any step of this grievance procedure shall constitute an abandonment of the grievance. Failure of the employer to respond within the time limits at any step of this grievance procedure shall result in an automatic advancement of the grievance to the next step. The parties may mutually agree to extend the time permitted under any of the steps

Step 1

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

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

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

Step 2

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

Step 3

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

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

Step 4

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

XXVII. LAYOFFS

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

XXVIII. SAFETY

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

XXIX. MISCELLANEOUS

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

A. Legal Defense

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

B. Use of Employer Facilities

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

C. Bargaining Time

A reasonable number of Employee members of the entity representing the bargaining unit shall be allowed time to absent themselves from duties for a reasonable period without loss of pay, for the purpose of participating in contract negotiations. They shall be extended the same privilege to participate in any meetings mutually called by the parties during the term of this agreement for review of grievances and contract compliance questions.

D. Required Meetings

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

E. Disciplinary Appeal

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

F. Personnel Rules

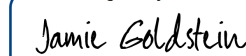
The City retains the right to amend and create personnel rules, provided they are not in conflict with specific provisions of this MOU. Where appropriate, City will meet and confer with applicable employee group or groups (Government Code Section 3300 and following), before amending or creating new personnel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

G. Fair Labor Standards Act

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

CITY OF CAPITOLA

DocuSigned by:



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Jamie Goldstein

City Manager

DocuSigned by:



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Larry Laurent

Assistant to the City Manager

ASSOCIATION OF CAPITOLA EMPLOYEES

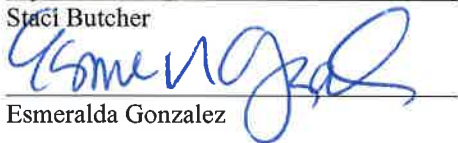


Ryan Heron, UPEC, Local 792

Labor Representative



Staci Butcher



Esmeralda Gonzalez



Thomas Gonzales



Sean Sesanto