

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
MID-MANAGEMENT EMPLOYEES AND CITY OF CAPITOLA  
6/27/2021 – 6/30/2023**

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## **MIDDLE MANAGEMENT EMPLOYEES MEMORANDUM OF UNDERSTANDING**

This Memorandum of Understanding (MOU) is made and entered into between the City of Capitola (hereinafter referred to as “City”) and the Mid-Management employees. Classifications covered by this MOU are: Associate Planner, Public Works Project Manager, Senior Planner, Maintenance Superintendent, Field Supervisor, Building Official, Environmental Projects Manager, Senior Mechanic, and Senior Accountant. This MOU shall be in effect for the period beginning on June 27, 2021, and ending on June 30, 2023 and shall be effective upon ratification by the bargaining unit and approval by the Capitola City Council.

### **SECTION I. WAGE SCHEDULES/HOURLY RATES/EMPLOYEE STATUS**

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

Effective the first pay period after association ratification and Council approval of the successor MOU in accordance with the Brown Act, the salary range for each classification shall be readjusted by 2.5%.

Effective the first full pay period of July 2022, the salary range for each classification shall be readjusted by 3.0%.

#### **1. Merit Pay**

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.

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.

## 2. Service

The word "service" as used in this Memorandum of Understanding 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.

### 1. Types of Appointment: For all types of appointments refer to the personnel rules except for Acting Appointments and Equipment Operator

- a. Acting appointment may be either full-time or part-time, as established by the City Manager. An acting appointment occurs when an employee is temporarily assigned to, and performs all duties of a position other than the position he/she normally occupies or when an employee is assigned an acting appointment pending evaluation of the employee's ability to perform the duties of the position. While serving under an acting appointment, an employee will receive additional compensation as determined by the City Manager. Such pay will be no less than 5% above the employee's regular compensation. It may be up to, but ordinarily will not be more than the first step of the position occupied.
- b. 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;
  - Ten-yard Truck and Trailer (license required)
  - Sweeper
  - Bull Dozer
  - Front Loader

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

## 3. Overtime

All employees within the Mid-Management unit except for the position of Building Official, Public Works Project Manager, Environmental Projects Manager, Senior Planner and Senior Accountant which are exempt from FLSA, 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 consist 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.

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

The position of Building Official, Public Works Project Manager, Environmental Projects Manager, Senior Planner, and Senior Accountant are professional positions exempt under FLSA, and therefore not entitled to overtime compensation. An Employee filling exempt positions are entitled to ten days per year of administrative time off. Administrative leave is non-cumulative. It may not be converted to cash. One year's worth of Administrative Leave becomes available on the first day of the calendar year. The exception is persons hired mid-year, in which case administrative leave is prorated for the applicable period. (Reso. #3486)

#### 4. Effective Date of Pay Increase

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

#### 5. Signing Bonus

Contingent upon a tentative agreement by June 24, 2021, which is ratified by the membership. All employees at the time of ratification in the Mid-Management 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.

#### 6. Market Study Salary Adjustments

Effective the first pay period after association 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.

Field Supervisor- 2.0%  
 Sr. Mechanic – 2.0%  
 Building Official – 4.0%  
 Environmental Projects Manager- 6.0%

## **SECTION II: LEAVE PROVISIONS**

## 1. Vacation

### a. Vacation Accrual

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

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

### b. Accumulation

An employee may not accumulate more than, but instead each year must cash out pursuant to Section 12.d, below, all accumulated vacation in excess of 360 hours.

### c. 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.

### d. Vacation- Mandatory Cash Out Before Termination

An employee who has accumulated more than 360 hours 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 such payment shall not exceed the employee's annual vacation accrual amount. These cash out payments will be included with the paycheck for the first full pay period in May.

### e. Optional Vacation Cash Out

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

## 2. Sick Leave

### a. Sick Leave Accrual

Sick leave accrues on a pro-rated basis, based upon a 30-day month. Twelve days accrue each calendar year.

### b. Sick Leave-Family Care

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

c. Sick Leave 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

Employees may not cash out sick leave.

2. Personal Holidays

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

3. 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.

4. Holiday Schedule

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

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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.

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 added to holiday time hours and will be considered overtime if total hours worked meet the weekly overtime threshold.

#### 5. 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.

#### 6. 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.

#### 7. Accruals after Date of Separation

An employee's separation date is the last date actually worked, except that an employee who, as of the last day worked, has not used all of his/her yearly allotment of vacation may extend the separation date by the number of days necessary to reach the full yearly allotment. "Yearly allotment" means the amount of vacation that the employee was entitled to accrue in his/her last year of employment. Unless otherwise provided by state law, none of the following accrue after the date of separation: sick leave, vacation, personal holidays, holiday pay, administrative leave, Flex Plan contributions, or payment of the insurance premiums described in Section III.1 below.

### **SECTION III: BENEFITS**

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

#### 1. Flexible Spending Arrangement Contributions

The City makes a flexible spending arrangement ("Flex Plan") contribution on behalf of each qualified employee for medical, dental & vision coverage. For those employees who have selected health coverage through PERS, from the monthly contribution set forth herein, effective January 1, 2021 a \$143.00 per month contribution will be paid to PERS for what is sometimes referred to as "employer contribution". This amount is the minimum amount required by PERS, 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 after ratification	\$824.00	\$1339.00	\$ 1751.00

## 2. Opt-Out

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 of \$250.00 per month. The City reserves the option of adding additional programs to the cafeteria plan, as they may become available.

## 3. Retirement Benefits CalPERS

### a. Classic Employees:

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 PERS. This contribution shall not be reduced unless negotiated by the parties in future negotiations.

### b. PEPRA Employees:

Public Employees' Pension Reform Act (PEPRA) for Miscellaneous Employees hired by the City on or after January 1, 2013 and who do not qualify as Classic members as determined by CalPERS, are considered PEPRA Employees. CalPERS has by statute implemented 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.

## 4. Shoes, and Apparel Reimbursements:

Each calendar year the Field Supervisor shall receive: one pair of approved safety shoes, up to 5 city-logoed shirts, and up to 5 pairs of denims. Each calendar year the Maintenance Superintendent shall receive one pair of steel-toed boots, and a maximum of two pairs of pants. The Public Works Director shall determine replacement frequency and kind.

5. Physical Examinations

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

6. Insurance.

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

7. Mileage Reimbursement

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

**SECTION IV: INCENTIVE PROGRAMS**

1. Longevity Pay Incentive

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

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

2. Education Reimbursement Program

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

3. Bilingual Pay

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

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

**SECTION V: 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.

## SECTION VI: GRIEVANCE PROCEDURE

### 1. 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.

### 2. 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.

### 3. 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.

### 4. 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 Mid-Management Group 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 Mid-Management Group representative 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 Mid-Management Group representative to provide the Mid-Management Group 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.

### **SECTION VII: 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.

## **SECTION VIII: MISCELLANEOUS**

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

### **1. 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.

### **2. 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.

### **3. 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.

### **4. 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.

### **5. Emergency Call-Back Compensation**

- a. "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 to work, by his/her supervisor or as

a result of emergency circumstances, 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 work day is not on "call-back."

- b. Employees called back to work shall be treated as having worked at least three hours, even if actual time is less.
- c. Public Works: The rate of pay for Public Works Dept. employees in the Mid-Management Group during call-back hours is as follows:
  - (1) Two and one-half times the employee's hourly base rate for hours served between the hours of 10 p.m. and 6 a.m.; or
  - (2) Two times the hourly base rate for hours served during other times of the day.
- d. For all employees not covered by subsection c, call-back hours will be paid the same as overtime.
- e. Time spent traveling to and from the place of call-back work is not counted in applying the provisions of this section, or Section 8 above.
- f. 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.

8. Severability.

If any of the provision herein contained be rendered or declared invalid by reason of any State or Federal legislation, or by ruling of any court of competent jurisdiction, such invalidation of such part or portion of this Memorandum of Agreement shall not invalidate the remaining portions hereof, and they shall remain in full force and effect, insofar as such remaining portions are severable.

**CITY OF CAPITOLA**

DocuSigned by:



D05A9A7B5900485

Jamie Goldstein

City Manager

DocuSigned by:



41869C66AEB44E0

Larry Laurent

Assistant to the City Manager

**MID-MANAGEMENT EMPLOYEES**







Mark Sullivan

Robin Wood

