

RESOLUTION NO. 22-101

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF CUPERTINO  
AMENDING THE CITY OF CUPERTINO AND OPERATING ENGINEERS  
LOCAL NO. 3 UNION AFL-CIO MEMORANDUM OF UNDERSTANDING**



WHEREAS, the City Council desires to amend the City of Cupertino and Operating Engineers Local No. 3 Union AFL-CIO Memorandum Of Understanding.

NOW, THEREFORE, BE IT RESOLVED that the City of Cupertino and Operating Engineers Local No. 3 Union AFL-CIO Memorandum of Understanding be amended which is incorporated in this resolution by this reference and attached as Exhibit A.

PASSED AND ADOPTED at a regular meeting of the City Council of the City of Cupertino this 16<sup>th</sup> day of August 2022 by the following vote:

Vote            Members of the City Council

AYES:           Paul, Chao, Moore, Wei, Willey  
NOES:           None  
ABSENT:        None  
ABSTAIN:       None

<p>SIGNED:</p>  _____ Darcy Paul, Mayor City of Cupertino	<p><u>8/28/2022</u> _____ Date</p>
<p>ATTEST:</p>  _____ Kirsten Squarcia, City Clerk	<p><u>8/30/22</u> _____ Date</p>

# MEMORANDUM OF UNDERSTANDING

City of Cupertino

And

Operating Engineers Local No. 3 Union, AFL-CIO

July 1, 2022 - June 30, 2025

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# MEMORANDUM OF UNDERSTANDING

Between

CITY OF CUPERTINO

And

OPERATING ENGINEERS LOCAL UNION NO. 3, AFL-CIO

## Recital:

The City and the Membership represented by Operating Engineers Local Union 3 (OE3) wish to formalize a relationship which will survive differences in interests, endure changes in leadership, and extend beyond legal and contractual requirements based on the following principals:

In our relationship, we understand and accept that a high degree of trust is essential. Therefore, we will focus on developing and maintaining trust.

We will promote and expand communications between the parties and recognize active listening as a major component of communications. We will avoid sending ambiguous or mixed messages. We will always consult before deciding on matters which may have a major impact on the other party.

## Term of Agreement:

This is a three (3) year agreement, entered into the 1st day of July, **2022** between the City of Cupertino, hereinafter referred to as "City", and the Operating Engineers Local Union No. 3, AFL-CIO, hereinafter referred to as "Union", sets forth the agreement resulting from the meet and confer bargaining process between the two parties concerning the wages, hours, and other terms and conditions of employment for the employees of the Public Works Unit of the City, for which the Union is the recognized sole and exclusive representative. This agreement represents the full entire and integrated agreement between the City and the Union and supersedes all prior representations and agreements, whether written or oral.

## General Provisions

### SECTION 1: DEFINITIONS

1.1 City – the City of Cupertino, a municipal corporation

1.2 Union – the Operating Engineers Local Union No. 3

1.3 Employee – All employees whose positions are contained in the Public Works Unit recognized pursuant to Section 2.52.470 of the Cupertino Municipal Code.

## SECTION 2: UNION RECOGNITION

Pursuant to Section 2.52.480 of the City Code and applicable State law, the Union is recognized by the City as the exclusive representative of the employees within the Public Works Unit consisting of the following classifications as well as any new classifications which may be appropriate for this unit as determined by the Administrative Services Director:

- Lead Equipment Mechanic
- Equipment Mechanic
- Maintenance Worker I
- Maintenance Worker II
- Maintenance Lead
- Street Lighting Worker

2.1 The City shall promptly notify the Union of its decision to implement any and all new classifications pertaining to work of a nature performed by employees in the bargaining unit.

## SECTION 3: NO-DISCRIMINATION

In accordance with the City of Cupertino Equal Opportunity in Employment Policy, Part II, OTHER Citywide Policies, Section 1. EQUAL OPPORTUNITY IN EMPLOYMENT, City of Cupertino Administrative Rules and Regulations of the Personnel Code, the City will afford equal employment opportunity to all qualified employees, applicants and unpaid interns as to all terms and conditions of employment, including compensation, hiring, training, promotion, transfer, discipline, and termination, without regard to race, color, sex (including gender, gender identity, gender expression, transgender, pregnancy and breastfeeding), sexual orientation (including heterosexuality, homosexuality, and bisexuality), national origin, ancestry, citizenship status, uniformed service member status, marital status, age, medical condition, genetic information or characteristics, disability, Association activity, or any other basis protected by law.

## SECTION 4: REPRESENTATION RIGHTS

4.1 The City and Union shall not interfere with, intimidate, restrain, coerce or discriminate against employees of the City because of their exercise of representation under Section 3502 of the Government Code.

4.2 Business Representatives of the Union may have reasonable access to any employee or employees presenting a grievance and employees have the right to have the Union Business Representative represent him or her at all stages of disciplinary action.

4.3 The Union, as a recognized employee organization, may select not more than two employee members of the organization to attend scheduled meetings with City representatives on subjects within the scope of representation during regular work hours without loss of compensation. For contract negotiations, the Union may select not more than six employee

members to attend bargaining sessions. Where circumstances warrant, Human Resources may approve the attendance of additional employee representatives without loss of compensation, at either labor negotiations or Labor Management Committee meetings. The Union shall submit the names of the employee representatives to Human Resources in advance of such meetings.

In addition to his/her regularly assigned work, the Union Steward shall be permitted reasonable time during working hours to notify the Business Representative through the most rapid means appropriate and available of any alleged violations of this Memorandum. Employees are authorized to contact their Union Steward during working hours to report an alleged grievance or violation of this Memorandum.

The Union may designate a reasonable number of employees to represent other employees in disciplinary or grievance matters and to investigate matters within the scope of representation. The Union shall provide written notice to the City of the designated stewards and shall notify the City of any changes to the list. Stewards shall conduct their representation activities on their own time and on the employee's own time unless it is an emergency situation, which would still require approval from the appropriate supervisor or manager in order to leave the job site. Time off without loss of compensation shall be allowed for management-approved meetings. Unless authorized, only one steward shall be released on work time to attend such meetings for any one grievance, discipline, or representation matter.

Membership meetings, organizing activities, membership campaigns, or dues collecting by the Union or their representatives on City premises or at work locations/sites during regular hours of work shall not be permitted. Representatives of the Union shall be granted reasonable access to employee work locations to investigate matters relating to employer-employee relations, unless such access to given work locations would constitute a safety hazard or would interfere with the operations of the City. Representatives of the Union shall not enter a work location without first advising the department head or the Human Resources office.

4.5 The City and the Union desire to work towards a good working environment which includes productivity and respect for each individual regardless of classification or representation.

## SECTION 5: UNION RIGHTS

5.1 The City and the Union recognize the right of employees to form, join, and participate in lawful activities of employee organizations and the equal, alternative right of employees to refuse to form, join, and participate in employee organizations. Neither party shall discriminate against an employee in the exercise of these alternative rights.

Accordingly, membership in the Union shall not be compulsory.

The Union shall provide the City with a thirty-day advance written notice of any changes in the annual deduction amounts for Union Dues. The Union, Operating Engineers Local #3, shall provide the City with instructions regarding dues deductions to be remitted to, Operating Engineers Local #3.

Upon certification by the Union that an employee has signed a deduction authorization, the City will deduct the appropriate dues from the employee's pay, as established and as many be changed from time to time by the Union, and remit such dues to the Union. Employee requests to cancel or change deductions must be directed to the Union rather than to the City. An employee wishing to cancel or change deductions must mail a written revocation to the Union in accordance with the terms of the authorization form, or absent any such terms, by mailing a written revocation to the Union that is postmarked during the thirty (30) day period immediately prior to the annual anniversary date on which the employee signed the original authorization form. Deductions will continue unless and until the City is notified by the Union of any requested changes.

The Union shall indemnify and hold the City harmless from any and all claims, demands, suits, or any other action arising from the maintenance of dues deductions or from complying with any demand for termination hereunder, provided that the City promptly provide notice to the Union of any claim, demand, suit, or other action for which it is seeking indemnification.

The Union shall certify to the City of Cupertino that it has received and will maintain an authorization, signed by each individual employee from whose salary or wages a deduction or reduction is to be made. The Union will maintain individual employee authorizations, and shall not be required, to provide a copy of an individual authorization to the City unless a dispute arises about the existence or terms of the authorization. The Union shall indemnify the City for any claims made by an employee for deductions made in reliance on that certification.

## SECTION 6: CITY RIGHTS

The rights of the City include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of services; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology of performing its work.

The City shall have the right to furlough employees subject to meet and confer with the Union regarding the impact of the decision to furlough.



The City shall give forty-five (45) days prior written notice to the Union of the intent and anticipated impact or proposed contracts for work now being done or new work that could be done by job classifications represented by the Union.

## SECTION 7: PERMANENT TRANSFERS

Employees shall be notified in writing of any permanent transfer from one division to another ten (10) working days prior to the effective date.

## SECTION 8: NOTIFICATION OF PROPOSED CHANGE

City agrees to serve written notice upon the Union of any intent to change or alter any ordinance, rule, resolution or regulation affecting the recognized employee organization on matters within scope of representation. Upon receipt of the written notification of intended change, the parties will meet at a date not less than fifteen (15) days following receipt of intent. After notification, the parties may mutually agree that the Meet and Confer provisions are satisfied by the written notice.

In cases of emergencies when the City determines that an ordinance, rule, resolution or regulation must be adopted immediately without prior notice of meeting with the Union, the City shall provide such notice and opportunity to meet at the earliest practical time following the adoption of such ordinance, rule, and resolution regulation consistent with the agreement.

## SECTION 9: HOURS OF WORK: OVERTIME

### 9.1 Hours of Work Defined

Hours worked shall include all time not under the control of the employee whether such hours are worked in the City's work place, or in some other place where the employee is carrying out the duties of the City.

The normal work week shall be 40 hours in seven days with two consecutive days off. Alternate Work Schedules (AWS) may be considered, including 9/80 and 4/10, but must be approved in advance by the Department Head. The City reserves the right to re-evaluate such approvals if the Alternate Work Schedule results in an undue burden to the City.

### 9.2 Schedules

It will be a management responsibility to schedule the hours of work for each employee covered by this agreement. Except in unforeseen circumstances, changes in an employee's hours of work will be made after ten (10) working days prior notice.

Volunteers will be sought for any change in regular work hours. If there are no volunteers, the regular employee with the least seniority will be assigned for a maximum of twelve months. The city will attempt to make four-month assignments when possible.

Non-emergency work will not be scheduled for a weekend when either Friday or Monday is a recognized holiday. (See Section 14.1 - recognition of Saturday and Sunday holidays.)

### 9.3 Rest Periods

Each employee shall be granted a rest period of fifteen minutes during each work period of more than three hours duration. Employees may not combine lunch and break times unless with prior departmental approval as a result of operational needs. Break times should be taken at the worksite assigned or in the event there is no restroom facilities is available then to the closest location where a city restroom facilities is available. No wage deduction shall be made nor time off charged against employees taking authorized rest periods, nor shall any rights or overtime be accrued for rest periods not taken.

#### 9.3.1 Clean Up Period

At the end of each work period, up to 20 minutes paid clean up time will be provided to employees. Longer periods, when approved by the Supervisor, will be allowed depending on the work activities of the work period.

### 9.4 Overtime

Overtime shall be defined as any work in excess of Section 9.1 above. Holidays and paid time off shall count toward the accumulation of the work week.

Overtime work for the City by an employee shall be authorized in advance by the Department Head or their designee. In the event of unforeseen circumstances, overtime shall be approved after the work is completed.

### 9.5 Payment of Overtime

All approved overtime work performed by employees shall be paid at the rate of one and one-half (1 1/2) times the normal rate of pay. Work performed on regularly scheduled days off, City Holidays or during an employee's scheduled vacation shall be considered to be overtime and paid accordingly.

#### 9.5.1 Meal Periods

A paid meal period and a \$12 meal allowance shall be provided when an employee works more than three consecutive hours immediately following the end of a regular workday. In addition, after four additional consecutive hours of overtime work, a paid meal period and a \$12 meal allowance shall be provided. A meal period shall be 40 minutes.

#### 9.6 Compensatory Time Off

At the employee's discretion, compensatory time (CTO) may be granted for overtime worked at the rate of time and one-half for each hour worked in lieu of compensation in cash. Employees, who have previously earned CTO, shall be allowed to schedule CTO at the employee's discretion provided (1) that prior supervisory approval has been obtained and (2) the request is made in writing.

CTO may be accrued for up to 80 hours per calendar year. Any CTO earned exceeding 80 hours will be paid at the rate of time and one-half. An employee may carry over the unused balance into the next calendar year. Any unused carryover balance will be automatically paid out at the end of the calendar year.

An employee may exercise his/her option twice each calendar year to convert any/or all accumulated compensatory time to cash.

#### 9.7 Leave Accruals

An employee shall not accrue vacation or sick leave credits during a pay period if off without pay for more than 40 hours during said pay period.

### SECTION 10: COMPENSATION FOR SERVICES

#### 10.1 Salary Range

- a. Monthly salary ranges as listed on Exhibit A will apply for each classification effective at the beginning of the pay period in which July 1 occurs unless otherwise noted below.

5.4 Effective the first full pay period after July 1, 2022, a 5.0% salary increase will be added to the salary range of each classification in this bargaining unit.

The parties further agree to reopen wage negotiations for FY23-24 and FY24-25 upon the California Department of Tax and Fee Administration's (CDTFA) completion of the sales tax review, but in no event later than March 1, 2023. The union may propose changes to salary steps, deferred compensation and special skills compensation as part of the wage reopener discussion.

- a. Differentials as listed in Section, *10.8 Special Skills Compensation*, will apply for each classification working in the Weekend Work Furlough Program.

## *10.2 Bilingual Pay Differential*

An employee who speaks another language other than English while performing their assigned duties involving contact with members of the community and who passes the required language proficiency test(s), will be eligible to receive a 7.5% bilingual pay differential only for the work time during which the employee uses bilingual skills. For payroll reporting purposes, the 7.5% bilingual pay differential will be recorded with a 15 minute minimum.

In order to be eligible for Bilingual Pay, the Department Head must certify that the employee has a need to use his/her bilingual skills in communicating with members of the community.

## *10.3 Acting Pay/Out-of-Class*

### *10.3.1 Acting Pay*

Temporary assignment, approved in advance by the Department Head, to a classification in a higher pay grade not defined by this agreement, shall be compensated at the Step 1 rate of the higher classification, or at a rate five percent greater than that of the regular position, but not more than the maximum step of the higher class, whichever is greater, for the number of hours so assigned. In order to qualify for Acting Pay, an employee shall work a minimum of eight (8) hours per day in the temporary position.

An employee may receive acting pay for working in a higher classification where a vacancy does not exist, in the case of an incumbent being on vacation or leave of absence, or due to the employee being asked to perform higher level work on any other temporary basis. Acting pay is not included for purposes of calculating CalPERS compensation.

### *10.3.2 Out-of-Class*

An employee may be assigned to work out of class in a higher classification when there is a vacant position for which a recruitment is being, or will be, conducted. Out-of-class assignments may not exceed 960 hours in a fiscal year. Compensation for work performed in an out-of-class capacity is included for purposes of calculating CalPERS compensation, however, this is at the discretion of CalPERS and future changes to CalPERS regulations would supersede the language of this section.

The higher rate of pay shall be used in computing overtime when authorized overtime is worked in a non-exempt, out of class or acting work assignment. When a non-exempt employee is working out of class or acting in an exempt position for 20 hours or more in a work week, the employee will be ineligible to receive overtime pay for any and all hours worked in the exempt classification during that work week.

All requests for out of class pay or acting pay must be approved by the Director of Administrative Services or his/her designee. No increase in the wage rates shall apply in instances of Maintenance Worker I positions temporarily assigned to positions of Maintenance Worker II classification.

#### 10.4 Standby Compensation

Employees who are required to be available during their off-shift hours for possible recall for emergency service shall be compensated \$300.00 per 128 hours so assigned during the term of this agreement.

Minimum manning and skill qualifications for standby assignment shall be determined by the City. Assignment of such standby duty shall be rotated on an equal basis among all qualified employees who reside in an area that provides a response time of 30 minutes or less.

#### 10.5 Callback Pay

If any employee is called or required to report for assigned emergency or other duties during the period of the close of the regular work day and the start of the next following work day, compensation shall be paid at one and one-half (1 1/2) times the normal rate of the period the employee is required to be available at the work station, and for travel time in connection therewith to and from the employee's customary residence at one and one-half (1 1/2) times. Under such circumstances a minimum payment will be made equivalent to two hours at one and one-half (1 1/2) times the normal rate of pay.

#### 10.6 Mileage Reimbursement

Employees who are required to use their personal vehicles for City Business shall be reimbursed for such use at the rate established by the IRS.

#### 10.7 Probationary Period/Salary Advancement

The probationary period shall be twelve months of paid employment. Employees will advance to the next step of the salary range upon successful completion of the probationary period. Advancement to subsequent salary steps will be based on merit (satisfactory evaluation) and are scheduled annually thereafter.

#### 10.8 Special Skills Compensation

A wide variety of work, requiring specialized skills, is completed by employees of the Service Yard. Position classifications require experience and certification commensurate to the skills required in each separate Division. The following establishes certification, experience and additional compensation for eligible employees. Certifications not listed

here, but required of the job specifications, are considered incidental and not eligible for special skill compensation.

Special Skills Title	Job related Certification Needed	Experience Needed	% Over Base Salary
Environmental Compliance – Stormwater	<p>Certified Erosion, Sediment, and Storm Water Inspector in training (CESSWI-IT) certificate (full stature CESSWI desired) as issued by the Envirocert International.</p> <p>Current primary employee assigned these special skills as of June 30, 2013 is grandfathered in. All other Employees shall have one year from the initial appointment to obtain the CESSWI-IT certificate while performing this special skill.</p>	2 yrs @ MWII	7.5%
Environmental Compliance -Materials	<p>Attainment of:</p> <p>Hazwoper Operations Level</p> <p>California underground Storage Tank System Operator</p> <p>Title 22 Hazardous Waste Management/DOT training.</p> <p>Certification of achievement in Environmental Compliance &amp; Pollution Prevention with a minimum of 26 units completed desired</p>	2 yrs @ MWII	7.5%
Concrete/Asphalt	Certified Public Infrastructure Inspector certificate as issued by the American Public Works Association desired	2 yrs @ MWII	7.5%

	<p>Current primary employee assigned these special skills as of June 30, 2013 is grandfathered in.</p> <p>All other employees shall have one year from the initial appointment to obtain the Certified Public Infrastructure certificate while performing this special skill.</p>		
Welding	American Welding Society Certificate or equivalent certificate.		7.5%
Spraying	Qualified Applicator Certificate categories B, C or F		7.5%
Class B License	CA Class B Driver's License		7.5%
Back Flow	Backflow Prevention Assembly Tester Certificate as issued by the American Water Works Association		7.5%
Weekend Work Furlough Program	<p>Administrative Crew Leader</p> <p>Assistant Crew Leader</p> <p>WWFP – Responsible</p> <p>“Meal periods are paid for the Administrative Crew Leader and Assistant Crew Leader.”</p>		<p>10%</p> <p>7.5%</p> <p>5.0%</p>

Eligible employees receive compensation incentive pay for only actual hours worked. To be eligible for special skill pay, experience and certificates must be current, with written documentation on file with the Human Resources Department. Special skill compensation shall be determined and approved in advance by the Supervisor in writing.

10.9 Licenses/Certification Pay

Any employee who possesses a commercial driver's license with and remains current on the State DOT Drug Program will receive an additional Seventy-five (\$75) dollars per pay period additional compensation above and beyond all other certification pay.

#### 10.10 Deferred Compensation

City will contribute the amount of \$15.00 per bargaining unit member per pay period, effective the first full pay period following adoption of the MOU by the City Council.

#### 10.11 Weekend Work Furlough Program

Purpose: To provide a public service for local government through the availability of individuals in a sentencing alternative program, to perform clean-up type duties for all divisions.

Affected Employees:

1. All permanent employees hired on or after January 1, 2006 and assigned to the Trees/ROW Division may be required to participate in the Weekend Work Furlough Program (WWFP or "Program") and will be required to maintain their annual training provided by the County Sheriff.
2. Participation by employees in all other Divisions will be on a voluntary basis.
3. Employees that volunteer for training in the Program may be required to participate in the Program and shall maintain their annual training.
4. Employees shall be notified in writing of a schedule change and/or a regular assignment to the WWFP Program ten (10) working days' prior to the effective date.
5. When an assignment in WWFP becomes vacant, any OE3 member is able to request for a transfer to work WWFP.

#### 10.12 Flexible Staffing – Maintenance Worker I/II

An employee shall be eligible to advance from Maintenance Worker I (MWI) to Maintenance Worker II (MWII) after three years of better than satisfactory service as a Maintenance Worker I with the City of Cupertino or the equivalent, with the recommendation of the Department Head and when all MWII job specification requirements are met.



## SECTION 11: PUBLIC EMPLOYEES RETIREMENT CONTRIBUTION

### A. Employees hired on or before December 29, 2012 Only.

For employees hired by the City of Cupertino on or before December 29, 2012, the City has contracted with CalPERS for a 2.7% @55 retirement formula.

Effective in the first full pay period in July 2017, each employee shall pay the full 8.0% of applicable salary of the employee's contribution towards CalPERS.

### B. For Employees hired by the City of Cupertino on December 30, 2012 or on December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations Only

For employees hired by the City of Cupertino on December 30, 2012 or on December 31, 2012 or a current CalPERS employee who qualifies as a classic member under CalPERS Regulations only the City has contracted with CalPERS for a 2.0% @ 60 retirement formula based on a three year average compensation.

Effective the first full pay period after Union ratification and adoption of this MOU by the City Council, the City shall not pay the employee's contribution rate to the California Public Employees Retirement System (CalPERS) and each employee shall pay the full 7% of applicable salary of the employee's contribution towards CalPERS.

### C. For new employees hired by the City of Cupertino on or after January 1, 2013 and do not qualify as Classic members Only.

For new employees hired by the City of Cupertino on or after January 1, 2013 and who do not qualify as classic members as defined by CalPERS, CalPERS has by statute implemented a 2% @ 62 formula, based on a three year average compensation. Employees in this category shall pay 50% of the normal cost rate as determined by CalPERS.

## SECTION 12: HEALTH AND WELFARE BENEFITS

The City agrees to make available a plan of comprehensive health and welfare benefits for eligible employees, as well as those provided by the Operating Engineers Health and

Welfare Trust Fund for Northern California. Any such benefits program must have the continued approval of the Board of Administration, Public Employees Retirement System. For each participating employee, the City shall contribute toward premium cost the following amount per month during the term of this agreement.

January 1, 2022	City Max Health Contribution	City Max Dental Contribution	City Total Max Contribution
Employee	<b>935.88</b>	126.78	1,062.66
Employee +1	<b>1,591.01</b>	126.78	1,717.79
Employee +2	<b>2,068.31</b>	126.78	2,195.09

Required contribution amounts exceeding the premium contribution of the City are the responsibility of the employee. The City will no longer pay medical insurance cash back (excess of the monthly premium less the cost of the medical coverage) for any employees.

Effective July 1, 2010, employees that retire or resign from service with the City of Cupertino and who are not eligible for retiree medical benefits, as defined in the summary of benefits, can continue on the Cupertino medical and dental plans provided that they pay the premiums in full.

Dental Coverage: Effective the first month after OE3 ratification and Council adoption of MOU, dental coverage is capped at \$2,500.00 per dependent per annual plan year for the term of this contract.

## SECTION 13: INSURANCE

### 13.1 Long Term Disability

The City shall provide Long Term Disability (LTD) insurance for employees. LTD income protection coverage shall be up to \$7,000 of covered monthly salary. Employees may use sick leave and/or vacation leave to supplement lost salary during the 60 day elimination period.

### 13.2 Life Insurance

The City shall provide life insurance and accidental death and dismemberment coverage for each employee in the amount of five times the annual salary to a maximum benefit of \$250,000. Employees may be eligible to purchase additional life insurance subject to the provisions of the insurance policy.

### 13.3 Vision Care Insurance

The City provides Vision Care Insurance for employees and their dependents at a cost of \$19.16 monthly.

## SECTION 14: PAID ABSENCES

### 14.1 Fixed Holidays

The City provides the following fixed paid holidays for eligible employees covered by this agreement:

- |                                |                    |
|--------------------------------|--------------------|
| 1. New Year's Day              | 11. Christmas Eve  |
| 2. Martin Luther King Day      | 12. Christmas Day  |
| 3. Presidents' Day             | 13. New Year's Eve |
| 4. Memorial Day                |                    |
| 5. Juneteenth                  |                    |
| 6. Independence Day            |                    |
| 7. Labor Day                   |                    |
| 8. Veteran's Day               |                    |
| 9. Thanksgiving Day            |                    |
| 10. Day Following Thanksgiving |                    |

When a holiday falls on a Sunday, the following Monday shall be observed as the non-work day. When a holiday falls on a Saturday, the previous Friday shall be observed as the non-work day.

Nothing contained herein shall preclude the right of the Department Head, with the approval of the appointing authority, to reschedule work assignments or hours of work to meet emergency situations and other administrative necessities caused by the observance of a holiday or non-work day or period; provided, however, that all such affected employees are duly compensated for said rescheduled work assignments.

#### 14.1.1 Holiday Pay

In order for an employee to receive his/her regular pay for a holiday or designated non-work day, work must be performed on the regular scheduled day before and the regular scheduled day after the holiday or designated non-work day. Employees on vacation, injury leave, approved short term leave of absence, with or without pay, or who submit satisfactory evidence of personal illness shall be considered as working their regular schedule for pay purposes.

#### 14.2 Floating Holiday Leave

In addition to the foregoing paid holidays, eligible employees shall earn 20 hours of holiday leave per year that may be used in increments of not less than one (1) hour. Floating holiday leave shall be earned at a rate of .77 hours per paid period. Floating holiday leave may be accumulated up to 40 hours. Holiday leave shall be taken at the discretion of the employee subject to prior supervisory approval.

#### 14.3 Vacations

All employees, other than those holding temporary status, whose work assignment is of a recurring nature of not less than a normal work week shall accrue vacation credits during the calendar year. Accrued vacation may be taken with prior supervisory approval.

Upon termination of employment, unused vacation may not be used to extend final employment date beyond the annual rate of vacation being earned.

Represented employees may convert, on a twice per calendar year basis, unused vacation time for payment subject to the following conditions:

1. The employee must have accrued vacation of at least 120 hours.
2. Any payments made for unused vacation will be subject to all appropriate taxes.
3. Minimum exchange will be 8 hours; maximum exchange will be 80 hours.
4. All changes are irrevocable.

##### 14.3.1 Vacation Accrual Rate

Benefited full-time employees accrue vacation in accordance with the following schedule. Benefited employees who work less than a full-time work schedule accrue vacation in accordance with the following schedule on a pro-rated basis.

Service Time

Annual Accruals    Maximum Accrual

0 - 3 Years	80 Hours	160 Hours
4 - 9 Years	120 Hours	240 Hours
10 – 14 Years	160 Hours	272 Hours
15 – 19 Years	176 Hours	320 Hours
20 + Years	192 Hours	352 Hours

An employee may accrue no more vacation credit than what is listed above.

*14.3.2* Full vacation leave shall be taken at one time by any one employee whenever possible.

Vacation requests must be approved by employee supervisor in advance in writing. The time during the calendar year at which an employee shall take his/her vacation shall be determined with due regard for the wishes of the employee and particular regard for the needs of the service. Vacation leave of less than the full amount earned may be taken with the approval of the Supervisor.

*14.3.3* On termination of employment or on receiving a leave of absence of more than three (3) months, an employee who has completed 12 months of continuous service with the City shall be entitled to receive compensation for all earned but unused vacation accrued at the time of termination or at the start of said leave of absence.

*14.3.4* The accrual of vacation credits for those employees whose normal work week is of not less than one-half (1/2) time shall be prorated according to the time of the recurring work assignment as to the normal work week.

*14.4* Sick Leave

All full time employees hired before October 17, 2012, (other than those holding temporary status), shall earn eight (8) hours per month sick leave time without limit on accumulation. All employees hired on or after October 17, 2012 shall earn eight (8) hours per month sick leave time, but may accrue no more than 240 hours of sick leave time.

Those regular employees working less than full time (at least 20 hours per week) shall earn a prorated amount of sick leave based on their regular hours worked in relation to 40 hours. Employees absent without pay for any reason for more than forty (40) hours during a calendar month shall not earn sick leave benefits for that month. Sick leave may be utilized due to the employee's personal illness, pregnancy disability or sickness or injury to the immediate family as defined below.

With proper notice and supervisory approval, except in a case of bon-a-fide injury or illness and/or unforeseen emergency, sick leave shall be taken in periods of no less than one-half (1/2) hour increments.

The employee's immediate family consists of any of the following: Children, step-children, spouse/domestic partner, parents, mother-in-law, father-in-law, siblings, grandchildren and grandparents who because of illness cannot care for themselves, and for medical emergencies. Employees shall, whenever possible, make appointments for medical, dental and similar purposes during non-work hours. If this is not possible, sick leave may be used for these purposes.

An employee hired on or after October 17, 2012 may borrow up to 40 hours of sick leave, subject to Department Head approval for sick time related to an industrial disability. The employee will be required to repay this advance either in sick or vacation leave hours or dollars, at the employee's option, upon returning to work as defined in the sick leave advance policy. If an employee separates employment prior to repayment of the full balance due, the amount due will be deducted from their final pay.

#### 14.5 Sick Leave Verification

A Department Head or supervisor may require employees to furnish reasonable acceptable evidence, including a doctor's certificate, to substantiate a request for sick leave if the sick leave exceeds three (3) consecutive workdays. A supervisor may also require a doctor's certificate or other form of verification where leave abuse is suspected.

If it appears that an employee is abusing sick leave or is using sick leave excessively, the employee will be counseled that the continued use of sick leave may result in a requirement to furnish a medical certificate for each such subsequent absence for sick leave regardless of duration. Continued abuse of leave or excessive use of sick leave may constitute grounds for discipline up to and including dismissal.

#### 14.6 Personal Leave

The City shall allow accumulated sick leave to be used for conducting personal business which cannot be conducted outside regular working hours or for family medical emergencies.

#### 14.7 Bereavement Leave

Employees shall be granted paid bereavement leave of up to 24 hours upon the death of a close relative. Close relatives are defined as mother, father, sister, brother, wife, husband, domestic partner, child, step-child, grandparent, grandchildren, mother-in-law, father-in-law, step father, step mother, step brother and step sister. Additional bereavement leave of

up to 16 hours will be granted for travel out-of-state or over 200 miles. An employee may request bereavement leave for the death of an individual not listed above and whom they have a close and significant relation with and/or hours greater than 24, but not more than 40, which Human Resources can grant at their discretion. A denial under this section shall not be subject to the grievance procedure.

#### 14.8 Military Leave

Military leave shall be granted in accordance with the provisions of state law. All employees entitled to military leave shall give their supervisor an opportunity, within the limits of military requirements, to determine when such leave shall be taken.

#### 14.9 Pregnancy Disability Leave:

An employee disabled by pregnancy is eligible for up to four months of unpaid pregnancy disability leave (PDL) as defined by law. This leave is to be used when the employee is disabled due to pregnancy or child birth or related medical condition, including but not limited to, morning sickness, pregnancy complications and prenatal appointments. Accrued sick leave may be used during the leave, and the employee has the option to use accrued vacation, floating holidays and/or compensatory time in order to receive pay during the leave. If the employee is also eligible for leave under the Federal Family Medical Leave Act (FMLA), (employee must be employed by the City for at least one year and have worked at least 1250 hours during the year preceding the leave), the leave the employee takes for pregnancy disability will be run concurrently with the employee's entitlement to up to 12 weeks of FMLA leave. Employees otherwise eligible for health insurance benefits (medical, dental and vision) will continue to receive such benefits during the period of the PDL leave up to four months as defined by law per 12 month period.

After PDL and FMLA leave, if applicable, expires and if the employee is on unpaid status or the employee has less than 20 hours per week on their timesheet, the employee may elect to continue and enroll in COBRA benefits at employee's expense.

The employee will be accruing sick leave, floating holiday and vacation leave during the period of time, if any, and the employee is on paid status. Any time the employee's hours adjust to less than 40 hours per week, of paid status, the employee's accrual rates (sick leave, vacation leave, floating holiday) will be prorated and be adjusted accordingly. Sick leave, floating holiday and vacation leave do not continue to accrue during any period the employee is on unpaid status.

Under the California Family Rights Act (CFRA) eligible employees are entitled up to 12 additional weeks of leave to bond with the baby. To be eligible for the CFRA bonding leave, employee must be employed by the City for at least one year and have worked at least 1250 hours during the year preceding the leave. The leave is unpaid, but the employee may use floating holiday, compensatory time and vacation leave in order to receive pay during the leave. The employee may use sick leave for a baby's illness or doctor's

appointment when applicable to receive pay during the leave. Bonding leave must be used within one year of the birth of the baby.

An employee who plans to take PDL must give reasonable notice (not less than 4 weeks if anticipated or as soon as possible if the leave is unforeseen) before the date employee expects to take the leave. As with all other employees returning from medical leave, employees returning from PDL leave of at least 3 days are required to provide a doctor's note clearing them to return to work. If an employee requires reasonable accommodations as a result of pregnancy, employee should consult with Human Resources. Employees disabled by pregnancy and employees on leave to bond with a baby may be eligible for benefits under State Disability Insurance. Additional information is available at [www.edd.ca.gov/Disabililty](http://www.edd.ca.gov/Disabililty) and from Human Resources.

#### 14.10 Adoption Leave

Upon request, a leave of absence without pay for up to four (4) work weeks will be granted to adoptive parents. Such leave must be used within one year of the adoption. The city will pay health and welfare benefits for the duration of the leave at the same rate as prior to the leave, consistent with the contributions as provided for under the existing MOU.

If the employee is eligible for FMLA/CFRA (employed by the city for at least one year and worked at least 1250 hours during the year preceding the leave), employee may be eligible for up to 12 work weeks total (the above four (4) work weeks plus an additional eight (8) work weeks) for bonding with the adopted child during the first year after adoption. The employee may be eligible for health benefits during the twelve (12) work week period at the same rate as prior to the leave as provided for under the existing MOU.

During adoption leave, accrued vacation may be used by the employee at his or her option in order to receive pay during the leave. Sick leave may only be used during the leave in the event of illness or medical appointments of the adoptive child during the leave.

#### 14.11 Absence Notification

An employee is expected not to be absent from work for any reason, other than personal illness, without making prior arrangements with their supervisor. Unless prior arrangements are made, an employee who, for any reason, fails to report for work must notify their supervisor by telephone, text, or email of their reason for being absent no later than 15 minutes prior to their scheduled start time.

If the absence, whether for personal illness or otherwise, is to continue beyond the first day, the employee must notify the supervisor on a daily basis unless otherwise arranged with his/her supervisor. In proper cases, exceptions will be made.

Any unauthorized absence of an employee from duty shall be deemed to be an absence without pay and will be grounds for disciplinary action up to and including dismissal by the Department Head. In the absence of such disciplinary action, any employee who



absents herself/himself for three (3) days or more without authorized leave shall be deemed to have resigned. Such absence may be covered, however, by the Department Head by a following grant of leave with or without pay when extenuating circumstances are found to have existed.

#### 14.12 Catastrophic Leave

The City's catastrophic leave committee will establish a definition of catastrophic or life-threatening illness. This committee will evaluate each individual case when it is submitted to qualify to receive financial assistance. The only limitation is that the employee must be the one facing the illness. The committee has the right to ask the applicant to submit further documentation from the treating physician to determine the applicant's eligibility for catastrophic leave hours.

Vacation hours and compensatory time off (CTO) hours are the only leave of absence credits which may be donated in any pay period. A leave of absence transfer drive will be held whenever necessary to provide for a minimum catastrophic leave bank balance of 40 hours. Upon retirement or resignation, an employee can contribute up to 10 hours of sick leave provided that the employee has a minimum of 320 hours of sick leave, which has previously become vested.

All benefited employees with the City will be eligible to receive assistance. An employee does not have to be a contributor to be eligible. An employee or their representative must complete a prescribed application form together with supporting medical documentation to the Personnel Officer when applying for funds.

A recipient must have used all of their available leave hours before he/she is eligible. The maximum amount is two months (LTD becomes available at this time).

#### 14.13 Family Medical Leave Act/California Family Rights Act

The City of Cupertino shall comply with the leave provisions of the Family Medical Leave Act and the California Family Rights Act for employees who qualify for leave under these laws.

### SECTION 15: SICK LEAVE CONVERSION

*15.1* Sick Leave is not vested under California statutory law.

*15.2* At the time of termination, the value of non-vested hours is converted to an incentive compensation bank equal to the employee's base hourly rate.

*15.3* If upon retirement an employee has a minimum of 320 non-vested hours, payment shall be made for up to eighty-five percent (85%) of the value of the incentive compensation bank.

15.4 If upon resignation an employee has a minimum of 320 non-vested hours, payment shall be made for up to seventy percent (70%) of the value of the incentive compensation bank.

15.4. a. Employees shall have the option of cashing out sick leave in accordance with Section 15 - Sick Leave Conversion. Any employee who is retiring will have the option of applying any remaining sick leave to service credit. If an employee is resigning, he/she will not have the option of applying sick leave hours to service credit.

15.5 Represented employees will have the option, subject to approval, of converting sick leave to vacation leave on a two-to-one basis only if the employee's remaining sick leave balance is 40 hours or more. The maximum allowable exchange will be 96 hours of sick time for 48 hours of vacation leave per calendar year. Minimum exchange will be eight hours sick leave for four hours of vacation. An employee may convert sick leave in excess of 320 hours to vacation leave on a one-to-one basis to a maximum of 48 hours and a minimum of four hours.

As a condition of converting sick leave to vacation, all employees will be required to use at least one-half (1/2) of vacation accrued during the previous twelve (12) months.

Such conversions, either to exchange sick leave for vacation or vice versa, shall be subject to the following conditions:

- a. All requests to exchange sick leave for vacation time shall be submitted in writing to the Department Head at least 14 calendar days in advance of intended vacation utilization.
- b. The granting of such exchange and subsequent use will be at the discretion of the Department Head.
- c. If twelve (12) months have elapsed since approval of the exchange of sick leave for vacation, and the employee has not been permitted the use of the converted vacation time, (after submitting at least one written request for utilization) the employee will have the right to re-convert the vacation time to sick leave in reverse ratio to the original exchange. This exchange will be allowed only for previously converted sick time to vacation and will not be permitted for regularly accrued vacation time.

Regularly accrued vacation time will not be eligible for this re- conversion to sick leave and any regularly accrued vacation time accrued in excess of the maximum allowable will be disallowed and not subject to utilization by the employee.

NOTE: As used in this document, "reverse ratio" is intended to mean that the ration of sick leave to vacation will revert to the original ratio at the time the initial exchange was implemented.

## SECTION 16: SAFETY EQUIPMENT

The City will pay for actual cost of Safety Shoes up to \$400 from City approved vendor list. City will be billed directly from vendor, and any overages would be covered by the employee.

The City shall retain the right to establish minimum safety and quality standards for the steel toed safety shoes, clothing and safety equipment to be used while performing assigned tasks.

The city will provide to the employee the following: hard hat, safety glasses, ear protection, gloves, chain saw slip-on foot protection for employees who operate chain saws, orange safety tee shirts and/or uniform shirts (11), sweatshirts, safety jacket (1 jacket every other year), and rain boots.

The city will continue to provide and launder shirts or overalls, which shall be worn while carrying out the duties of the city.

It is the responsibility of the employee to have the required clothing and/or safety equipment needed for the tasks assigned. If an employee should be at work without the required clothing and/or safety equipment, that employee will not be paid until he/she is at the worksite with the required clothing and/or safety equipment.

Hard hats must be worn when work performed by an employee is equal to, or above his/her eye level.

Steel toed safety shoes must be worn at all times during the workday.

For new employees, the safety and equipment allowance will be prorated from the date of employment through the end of the fiscal year in which appointed (June 30).

The City will pay for prescription safety glasses for those employees needing such protection.

The parties agree to discuss the safety equipment requirements during the first year of this contract at the regular Labor Management meetings in an effort to arrive at a mutually agreeable list of equipment purchases and maintenance.

## SECTION 17: CITY SPONSORED RECREATION AND WELLNESS PROGRAMS

All bargaining unit employees shall have the privilege of enrollment in City sponsored recreation programs at the City residents' fee structure and in preference to non-residents wishing to enroll. Each calendar year, employees and family members on the employee's dental plan are eligible to receive up to \$500 per employee in Rec Bucks toward recreation services in accordance with the City's Recreation Buck Policy and a free, employee only annual Cupertino Sports Center membership. Part-time benefited employees will have the annual amount of Recreation Bucks prorated based on number of hours worked. Recreation Bucks are a taxable benefit under IRS Code. They must be used by the employee within the calendar year and are non-transferrable.

City employees are eligible to participate in the City's wellness program as provided for in the City's Administrative Rules and Regulations.

## SECTION 18: TRAINING AND TUITION REIMBURSEMENT

It is the intent of the City to recognize the value of training to its employees and to adopt a training policy which will encourage employees to avail themselves of educational opportunities that will advance their knowledge and interests in the direction of their career with the City and by doing so to improve the Municipal Service.

Employees who wish to seek reimbursement from the City for City job related training program costs shall provide a written request for reimbursement to their immediate supervisor. The request shall include the type of program, sponsoring organization or institution, meeting times and costs for such program.

A copy of the supervisor's and superintendent's recommendation to the Department Head shall also be provided to the employee. The employee will initial supervisor's comments and the superintendent's recommendation prior to going to the Department Head for approval or denial.

Once a training program has been approved, any employee covered by this agreement will be eligible for reimbursement of up to \$2,500.00 per calendar year for tuition and books for training and education.

No employee shall receive any reimbursement until they have provided satisfactory proof of successful completion of the coursework with a grade of "C" or above, or "Pass" in the case of a Pass/Fail course. Such proof of completion shall be provided within 30 days of the conclusion of the course.

Education reimbursement is a taxable benefit under IRS Code. Education reimbursement will be applied to the calendar year in which the course is passed and satisfactory proof of completion is submitted.

Mandatory or annual coursework, attendance at conferences and training required to maintain job specific certifications or proficiencies are not included in the Education Reimbursement Program.

#### 18.1 Service Center Safety/Training Committee

The City and the Union agree to form a committee to jointly develop a safety/training program. The committee shall meet monthly and will be responsible for the review, discussion, and recommendations of all matters concerning safety and health, including but not limited to accident investigations, safety surveys, job site inspections, safety audits, training and emergency response roles. The committee shall work to problem solve and formulate recommendations to the appropriate divisions within the Service Center. Minutes of the meetings shall be taken and will be distributed to all Service Center employees and posted in a conspicuous location(s). The City shall have two members and the Union shall have one member, to be elected by the membership, from each Service Center division.

The City and the Union are committed to a safe working environment, and in pursuit of this shared commitment both sides agree to look at the benefits of implementing a Safety Recognition Program. This effort shall be assumed by the Service Center Safety/Training Committee. Any agreement shall be by consensus between City and Union.

#### 18.2 Labor/Management Committee

The parties agree that regular meetings to explore mutual concerns will be beneficial to the relationship between the City and the Union. To promote a problem-solving approach, the parties agree that decision making shall be cooperative.

Consequently the parties agree to meet monthly to discuss any issue concerning the rights of either party or the relationship between the City and the Union or the City and employees the Union represents. The purpose of the meetings is to exchange information and to solve problems or issues. If the issue is not resolved, it may be placed on the agenda for the next quarterly labor management meeting. The parties may mutually agree to meet less than monthly.

The parties agree that such meetings shall not be negotiations and therefore the results of the meetings shall not be binding on the parties. These meetings are not to act as a substitute for the roles and responsibilities of either a shop steward or other job classifications. The Union shall elect one representative from each division and management may have an equal number of participants on the committee.

## SECTION 19: STRETCH ASSIGNMENTS

## 1.0 Purpose

The City of Cupertino is committed to the professional growth and development of its employees. To further that endeavor, the City has a Succession Development program to prepare current employees for future promotional opportunities within the City. To gain the necessary experience to obtain those much needed job skills, the City believes in the concept of "learning by doing" or "on the job training" which can occur through "stretch assignments."

A Stretch Assignment is a project or task beyond their current knowledge or skills level in order to "stretch" employees developmentally. A Stretch Assignment can also be working in an advanced position in a limited capacity. It is a way to expand an employee's skills and competencies.

*[A Stretch Assignment differs from Working Out of Class (WOOC) in that WOOC requires the employee to meet the minimum qualifications of the position. There must be either a vacant budgeted position or a temporary vacancy due to vacation, sick leave, or leave of absence. The person already has the knowledge, skills, education or training needed to perform all the duties and responsibilities of the job].*

The assignment may be a limited term of three to six months but may be extended under specific circumstances, as agreed upon by the employee and supervisor, and approved by the Superintendent. It is not to be used as a solution to fill a vacancy or understaffing. Stretch assignments receive no additional compensation because they are considered training opportunities, unless all conditions of Working out of Class apply. A stretch assignment is completely voluntary and can be terminated by either the employee or supervisor at any time. Should either side wish to terminate the assignment, they shall consult with each other and explain the reason(s) for terminating the assignment.

Stretch Assignments is intended to be a pilot program for 12 (twelve) months after adoption of this agreement. At the completion of the 12 (twelve) month pilot program period, City and OE3 Representatives will meet to discuss converting the pilot program to a permanent status program.

## 2.0 Procedure

1) Selection Process: Employees may self-identify at any time their desire to have a stretch assignment to their supervisor. A supervisor may also select an employee to participate in a stretch assignment if the employee agrees to an opportunity that the supervisor has identified. Supervisors may identify employees for stretch assignments when discussing future goals during the annual performance evaluation process or in one-on-one conversations. It is up to the Supervisor and the Superintendent to determine if there is a stretch assignment available, if the employee has the capacity to take on additional assignments, the operational needs of the department would not be compromised, and it coincides with the employee's professional goals.

- There may be no more than one stretch assignment per Division at any one time.
- The Public Works Divisions shall be defined as:

- Grounds
  - Trees and R/W
  - Streets
  - Fleet and Facilities
  - If there is more than one employee in one Division interested in a stretch assignment at one time, the following criteria may be considered for assignment:
    - Time elapsed between Stretch Assignments (Employees that have not had a previous Stretch Assignments shall be considered before those who have)
    - Interview with Supervisor and Lead staff
    - Previous Evaluation Rating
    - Seniority
- 2) The Assignment: The assignment should be suited to the employee's skill set and those that the employee desires to develop. It might be to exchange tasks with a coworker at the same level to gain greater breadth of experience or tasks that would normally be associated with a more advanced position. A stretch assignment could also include training in another Public Works Division or City Department, with agreement by both supervisors and both department Directors. The employee and Supervisor shall identify specific competencies to be developed. The assignment will be mutually agreed upon as well as the desired outcomes.
    - a. Stretch Assignment in an Advanced Position: When the assignment is in a more advanced position, the employee shall not be expected to perform more than a limited number of duties. This is an opportunity for the employee to gain the skills not associated with their current position.
  - 3) Workload: When performing a stretch assignment, expectations about the employee's current workload will need to be considered. Mutual agreement as to how the employee will modify or incorporate the stretch assignment into their current work must be made.
  - 4) Approval: The - Supervisor will fill in the Stretch Assignment form and return it to the Superintendent for approval.
  - 5) Feedback: The employee will receive appropriate training at the beginning of the assignment to allow him/her to learn the task sufficiently to pursue further practice independently, with limited supervision. The supervisor should provide coaching and mentoring to the employee during the assignment. Periodic feedback should occur throughout the stretch assignment. Upon conclusion of the assignment, the supervisor will use the form attached to provide the employee with feedback on the assignment. The feedback will only be placed in the employees personnel file upon the employee's request.

## SECTION 20: PERFORMANCE EVALUATIONS

The purpose of performance evaluations is to have formal communication between supervisor and employee regarding job performance. It is a value to both parties to have this process be meaningful and fair.

In the event that an employee's performance appears to need improvement, the supervisor should immediately acknowledge the problems in informal or documented oral counseling sessions in a confidential setting. It is not in either the City's or the employee's interest to have the feedback delayed until the time of the annual performance evaluation.

Annual performance evaluations will occur no later than 30 days after the due date as set by Human Resources. Division Maintenance Worker III(s) should provide input in conjunction with the employee evaluation process.

## SECTION 21: WORKERS' COMPENSATION BENEFITS

Any employee sustaining an injury arising out of, or in the course of, the performance of his/her job and who cannot work at the duties and responsibilities normally assigned to that job is entitled to receive Workers' Compensation as prescribed by state law.

### 21.1 Use of Sick Leave to Supplement Workers' Compensation Payments

Any employee entitled to receive Workers' Compensation payments may elect to supplement such payments with an amount not to exceed that which is the employee's weekly earnings or weekly earning capacity by use of sick leave payments to the extent that such sick leave has been accrued to the employee's account. Sick leave hours used will subsequently be credited to the employee's account by dividing the employee's base hourly rate into the amount that the employee would have received in Workers' Compensation injury pay.

## SECTION 22: DISCIPLINARY ACTION

The City has a policy of progressive discipline. When the need for discipline arises, the minimum disciplinary action will be taken commensurate with the seriousness of the offense which has resulted in such discipline. The severity of the discipline will increase if corrective action is not taken.

The first and/or most modest step of progressive discipline in the case of minor breaches of the rules, regulations or policy is a verbal warning by the supervisor in charge. If the breach continues, or the offense is more than minor, in the judgment of the supervisor, the employee shall be notified through the issuance of an infraction notice. Such infraction notices shall remain in the supervisor's file and be destroyed after twelve months.



Should the offense, in the judgment of the supervisor, be so serious or be of a continuous nature, the supervisor shall recommend more serious reprimand measures or disciplinary action to the Superintendent. These measures would include, but not be limited to, written reprimands, suspensions and termination.

Written reprimands shall be destroyed after three (3) years if requested in writing by the employee and provided the offense has not re-occurred.

When the disciplinary action recommended by the supervisor, and with the concurrence of the Superintendent, would impact "property rights" of the employee as defined by the courts of California, it shall be referred to the Director of Public Works.

A written notice from the Director of Public Works to the employee and the Union at least ten (10) working days prior to any action, shall state the proposed disciplinary action. The notice shall also contain:

- a. effective date and time of the proposed action
- b. the alleged reason for the proposed action
- c. the acts or omission which support the allegation
- d. the materials upon which the allegation(s) are based and access to any other related items
- e. a "Skelly" pre-disciplinary statement as to the rights of the employee to respond either orally or in writing to the Director of Public Works prior to the effective date of the proposed action; and the employee's right of appeal
- f. a statement that the action will become final if the employee fails to respond to the notice within the specified time

It is understood that an employee's request for a Skelly meeting will postpone the effective date of action until the Skelly has been heard and the City has responded to issues raised in the Skelly meeting. In this case the effective date will be ten (10) working days from the Director's response.

## SECTION 23: LAYOFF PROCEDURE

The appointing authority may layoff employees for lack of funds, lack of work or for other similar and just cause. The appointing authority will identify the classification(s) subject to layoff. For purposes of this Section, Maintenance Worker I and Maintenance Worker II shall be considered the same classification. Part-time employees shall be released from City service prior to any layoff of regular, full-time employees in the same classification.

Employees in a classification(s) identified for layoff shall be laid off in reverse order of seniority, based on the date of the appointment to the classification. If an employee

separates from City employment for a period of more than 30 days, the time off from City employment shall be deducted from an employee's length of service for the purpose of determining seniority.

Employees being laid off shall be entitled to placement in a lower classification; provided (a) the employee was previously employed with regular status having completed the probationary period in that lower classification and (b) the employee has more total seniority with the City than an individual in the lower classification. Any employee being displaced by an employee opting to be placed in a lower classification shall be entitled to placement in the lower classification, subject to conditions (a) and (b) listed in this section.

The City will provide a 30 day notice to any employees identified for layoff. Such notice will include the employee's rights to placement in a lower classification pursuant to this section. Medical, dental, vision, and life insurance continue through the end of the month in which the layoff is effective. In addition, the employee will be provided with an opportunity to elect to enroll in COBRA medical, dental, and/or vision coverage at the time of layoff and at employee expense.

The names of the employees affected by layoff shall be placed on a recall list for a period of two years in the reverse order of layoff and shall have the first opportunity for reinstatement. Failure to respond within ten (10) business days to a written notice of such opportunity for reinstatement shall cause that name to be removed from the recall list. Such notice shall be sent by certified or registered mail to the address of the employee on file with the City. The affected employees shall be responsible for updating the City of any change in address during the time they are on the recall list.

#### SECTION 24: REINSTATEMENT

With the approval of the appointing authority, a regular or probationary employee who has resigned with a good record or been recalled from a layoff action may be reinstated within twenty-four months of the effective date of resignation to a vacant position in the same or comparable classification they previously occupied. Upon reinstatement, the employee, for all purposes, shall be considered as though they had received an original appointment.

#### SECTION 25: GRIEVANCE PROCEDURE

Definition and Procedure: a grievance is a dispute or difference of opinion raised by an employee against the City involving the meaning, interpretation or application of the express provisions of this Agreement or the Rules on Conditions of Employment or existing work rules. A grievance shall be processed in the following manner:

Step 1: Any employee who has a grievance shall submit it designated as a grievance to the employee's immediate supervisor within ten (10) business days of the occurrence of the dispute, who is designated for this purpose by the City.

The supervisor shall give the employee an oral answer within ten (10) business days after such presentation.

Step 2: If the grievance is not settled in Step 1 and the employee wishes to advance the grievance to Step 2 of the grievance procedure, it shall be referred in writing to the employee's next highest supervisor within ten (10) business days after the supervisor's oral answer, or answer due in Step 1, and shall be signed by both the aggrieved employee and the Union Representative or Union Business Agent. The written grievance shall contain a complete statement of the facts, the provisions or provisions of this Agreement or work rules which the City is alleged to have violated and the relief requested. The supervisor or other person designated for this purpose shall discuss the grievance within ten (10) business days with the employee and the Union Representative at a time mutually agreeable to the parties. If no settlement is reached, the supervisor or other person designated for this purpose shall provide the employee a written answer within ten (10)\_business days following their meeting.

Step 3: If the grievance is not settled in Step 2 and the employee wishes to appeal the grievance to Step 3 of the grievance procedure, it shall be referred in writing to the employee's Department Head within ten (10) business days after the supervisor's answer in Step 2 and shall be signed by both the aggrieved employee and the Union Representative or Union Business Agent. The Department Head shall discuss the grievance within ten (10) business days with the employee and the Union Steward at a time mutually agreeable to the parties. If no settlement is reached, the Department Head shall give the City's written answer to the employee within ten (10) business days following their meeting.

Step 4: If the grievance is not settled in Step 3 and the employee wishes to appeal the grievance to Step 4 of the grievance procedure, the Union may refer the grievance to advisory mediation as described below within fourteen (14) business days after the decision is provided at the third step.

- 1) The parties shall attempt to agree upon an advisory arbitrator within seven (7) business days after receipt of the notice of referral. In the event that parties are unable to agree upon an advisory arbitrator within said seven (7) business day period, the parties shall immediately jointly request the State Mediation and Conciliation Service to submit a panel of five (5) advisory arbitrators. Each party retains the right to reject one panel in its entirety and request that a new panel be submitted. Both the Union and the City shall have the right to strike two (2) names from the panel. The person remaining shall be the advisory arbitrator.
- 2) The advisory arbitrator shall be notified of his/her selection and shall be requested to set a time and place for the hearing, subject to the availability of Union and City representatives.

- 3) The City or the Union shall have the right to request the arbitrator to require the presence of witnesses or documents. The City and the Union retain the right to employ legal counsel.
- 4) The advisory arbitrator shall submit his/her recommendation in writing within thirty (30) calendar days following the close of the hearing or the submission of briefs by the parties, whichever is later.
- 5) More than one grievance may be submitted to the same advisory arbitrator if both parties mutually agree in writing.
- 6) The fees and expenses of the advisory arbitrator and the cost of a written transcript shall be divided equally between the City and the Union; provided, however, that each party shall be responsible for compensating its own representatives and witnesses.

Limitations on Authority of Advisory Arbitrator: The advisory arbitrator shall have no right to amend, modify, nullify, ignore, add to, or subtract from the provisions of this Agreement. The advisory arbitrator shall consider and decide only the question of fact as to whether there has been a violation, misinterpretation, or misapplication of the specific provisions of this Agreement. The advisory arbitrator shall be empowered to determine the issue raised by the grievance as submitted in writing at the Second Step. The advisory arbitrator shall have no authority to make a recommendation on any issue not so submitted or raised. The advisory arbitrator shall be without power to make recommendations contrary to or inconsistent with, in any way, applicable laws or rules and regulations of administrative bodies that have the force and effect of law. The advisory arbitrator shall not in any way limit or interfere with the powers, duties and responsibilities of the City under law and applicable court decisions. The recommendation shall be advisory only.

## SECTION 26: IMPASSE PROCEDURE

The following procedures, shall apply in the event the parties are unable to resolve and impasse satisfactorily:

### 26.1 Impasse

- A. Impasse procedures may be invoked only after the possibility of settlement by direct discussion has been exhausted.

Any party may initiate the impasse procedure by filing, with the other party (or parties) affected, a written declaration of impasse. Once a party has initiated the impasse procedure, the parties shall comply with the requirements of California Government Code sections 3505.2, 3505.4, 3505.5, 3505.7, as well as any other applicable sections of the California Government Code and applicable PERB regulations.

B. The fees and expenses, if any, of mediators or of any other impasse procedure, shall be payable accordance with the California Government Code sections 3505.2, 3505.5, and any applicable regulations.

#### SECTION 27: SEPARABILITY

In the event any provisions of this agreement is finally held to be illegal by a court of competent jurisdiction or void as being in contravention of any law, rule or regulation of any government agency having jurisdiction over the subject set forth, then the remainder of the agreement shall continue in full force and effect unless the parts so found to be void are held inseparable from the remaining portion of the agreement.

#### SECTION 28: RATIFICATION

Nothing contained in this agreement shall be binding upon either the City or the Union following signing of this agreement by the parties until it has been ratified by the Union's membership and presented and approved by the City Council of the City.

#### SECTION 29: REOPENER

During the term of this Agreement, upon request by the City or OE3, the City and Union will meet and confer over proposed revisions to the City's Administrative Rules and Regulations to the extent that the proposed revisions fall within the statutory scope of bargaining.

#### SECTION 30: TERM

This agreement shall be effective commencing the first full pay period after Union ratification and adoption by the City Council ending at 11:59 p.m. on June 30, 2025.

SECTION 31: COMPENSATION SURVEY

Management and OE3 agree to a compensation survey database structure which identifies specific benchmark classifications for job families, classifications within the job families of each benchmark classification, survey agencies and survey classification matches. The City will provide OE3 representatives notice of the survey and an opportunity to meet with the City in advance of the commencement of the survey to allow the parties to discuss survey methodology. Survey Cities include:

- |                  |                 |
|------------------|-----------------|
| 1. Campbell      | 8. Palo Alto    |
| 2. Los Altos     | 9. San Mateo    |
| 3. Los Gatos     | 10. Santa Clara |
| 4. Menlo Park    | 11. Saratoga    |
| 5. Milpitas      | 12. Sunnyvale   |
| 6. Morgan Hill   | 13.             |
| 7. Mountain View | 14.             |

The survey data is intended to provide a source of information concerning how the compensation paid to employees in bargaining unit job classifications compares to that paid by other public employers. The City will update the survey database and send a copy to OE3 six weeks before expiration of this agreement. This survey data will be considered in successor agreement negotiations.

## **EXHIBIT A: HOURLY SALARY RANGES**

Salary Effective First Full Pay Period in July 2022, , retroactive to the first full pay period of July 2022

<b>Classification</b>	<b>Step 1</b>	<b>Step 2</b>	<b>Step 3</b>	<b>Step 4</b>	<b>Step 5</b>
EQUIPMENT MECHANIC	\$41.97	\$44.07	\$46.27	\$48.58	\$51.01
LEAD EQUIPMENT MECHANIC	\$46.27	\$48.58	\$51.01	\$53.56	\$56.24
MAINTENANCE WORKER I	\$31.14	\$32.70	\$34.34	\$36.06	\$37.86
MAINTENANCE WORKER II	\$36.06	\$37.86	\$39.76	\$41.74	\$43.85
MAINTENANCE WORKER III	\$41.74	\$43.85	\$46.04	\$48.36	\$50.78
STREET LIGHT WORKER	\$42.15	\$44.26	\$46.47	\$48.79	\$51.23

CITY OF CUPERTINO



Christopher Boucher



Kristina Alfaro

*vanessa guerra*

Vanessa Guerra

*Pamela Wu*

Dianne Thompson Pamela Wu



Anna Tang-Sam

*Christopher D. Jensen*

City Attorney, Approved as to form

10/20/22

OPERATING ENGINEERS, LOCAL 3

*Michael Moore*

Michael Moore

*Kevin Greene*

Kevin Greene

*Sean Filbeck*

Sean Filbeck

*Andrew Schmitt*

Andrew Schmitt



Adrian Sanchez

*Michael Kimball*

Michael Kimball

10/13/22



# Operating Engineers, Local 3



NEGOTIATIONS 2022

# Correspondence

## TENTATIVE SIDE LETTER AGREEMENT BETWEEN THE CITY OF CUPERTINO AND OPERATING ENGINEERS, LOCAL 3 RE: MEDICAL AND DENTAL INSURANCE REOPENER

DATE: July 18, 2022 TIME: AM / PM

The City of Cupertino and Operating Engineers, Local 3 agree to reopen negotiations related to City/employee cost share for medical and dental insurance as specified under Section 12 of the Memorandum of Understanding for FY23-24 and FY24-25 upon the California Department of Tax and Fee Administration's (CDTFA) completion of the sales tax review, but in no event later than March 1, 2023.

Unless otherwise stated, the provisions of this Side Letter Agreement supersede any inconsistent or conflicting provisions of the parties' Memorandum of Understanding, effective July 1, 2022 – June 30, 2025 ("MOU"). All other provisions of the parties' MOU shall otherwise remain in full force and effect.

This side letter shall automatically sunset upon the expiration of the 2022 – 2025 MOU.

Tentatively agreed to on this 18th day of July, 2022, by the parties' authorized representatives, subject to OE3 membership ratification and City Council's approval.

**For the City**

**For the Union**

DocuSigned by  
*Kristina Alfaro* 8/2/2022  
6118334B135CF87453...  
Kristina Alfaro Date  
Director of Administrative Services

DocuSigned by:  
*Michael Moore* 8/2/2022  
38507A3F5B9AE474...  
Michael Moore Date  
Business Representative

# Operating Engineers, Local 3



NEGOTIATIONS 2022

## Correspondence

DocuSigned by:  
*Vanessa Guerra* 8/2/2022  
429A45E4932348A...  
Vanessa Guerra Date  
Human Resources Manager

DocuSigned by:  
*Kevin Greene* 8/3/2022  
5D23F6113DA1472...  
Kevin Greene Date

DocuSigned by:  
*Christopher Boucher* 8/2/2022  
5514A803211841A...  
Christopher Boucher Date  
Labor & Employment Counsel

# Operating Engineers, Local 3



NEGOTIATIONS 2022

# Correspondence

## TENTATIVE SIDE LETTER AGREEMENT BETWEEN THE CITY OF CUPERTINO AND OPERATING ENGINEERS, LOCAL 3 RE: COVID-19 EMPLOYEE RECOGNITION COMPENSATION

DATE: July 18, 2022 TIME: AM / PM

In recognition of employees' contributions throughout the COVID-19 pandemic, the City will pay all bargaining unit members, employed with the City on date of payment, a one-time, non-pensionable lump sum off-salary schedule payment of \$3,800, which shall be subject to all applicable payroll tax and withholding. The parties agree that this one-time payment shall not be PERSable (i.e. counted towards base salary or final compensation for CalPERS retirement calculation).

Unless otherwise stated, the provisions of this Side Letter Agreement supersede any inconsistent or conflicting provisions of the parties' Memorandum of Understanding, effective July 1, 2022 – June 30, 2025 ("MOU"). All other provisions of the parties' MOU shall otherwise remain in full force and effect.

This side letter shall automatically sunset upon the expiration of the 2022 – 2025 MOU.

Tentatively agreed to on this 18th day of July, 2022, by the parties' authorized representatives, subject to OE3 membership ratification and City Council's approval.

**For the City**

**For the Union**

DocuSigned by:  
*Kristina Alfaro* 8/2/2022  
608304E195CF04533...  
\_\_\_\_\_  
Kristina Alfaro Date  
Director of Administrative Services

DocuSigned by:  
*Michael Moore* 8/2/2022  
38507A3FBBAE474  
\_\_\_\_\_  
Michael Moore Date  
Business Representative

# Operating Engineers, Local 3



NEGOTIATIONS 2022

# Correspondence

DocuSigned by:  
Vanessa Guerra 8/2/2022  
429A45E4932348A...  
Vanessa Guerra      Date  
Human Resources Manager

DocuSigned by:  
Kevin Greene 8/3/2022  
5D23F6119DA1472...  
Kevin Greene      Date

DocuSigned by:  
Christopher Boucher 8/2/2022  
5514A803211841A...  
Christopher Boucher      Date  
Labor & Employment Counsel


# OE3 2022-07-18 Side Ltr Agmt - Healthcare


Final Audit Report


2022-10-20


Created:	2022-10-06
By:	Janet Liang (janetl@cupertino.org)
Status:	Signed
Transaction ID:	CBJCHBCAABAA_qlooFsLHZtxglWYT7iAw1-TMsit1FmE

## "OE3 2022-07-18 Side Ltr Agmt - Healthcare" History


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2022-08-03 - 2:07:27 PM GMT


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2022-08-03 - 2:07:27 PM GMT


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2022-10-06 - 10:18:39 PM GMT


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2022-10-06 - 10:21:20 PM GMT


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2022-10-06 - 11:27:38 PM GMT


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Signature Date: 2022-10-07 - 2:26:45 AM GMT - Time Source: server

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2022-10-07 - 2:26:48 AM GMT

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2022-10-13 - 7:57:27 PM GMT

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2022-10-13 - 7:58:43 PM GMT

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Signature Date: 2022-10-13 - 7:58:45 PM GMT - Time Source: server

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2022-10-13 - 7:58:50 PM GMT



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2022-10-17 - 8:20:58 PM GMT

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2022-10-19 - 12:51:05 PM GMT

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2022-10-19 - 12:52:54 PM GMT

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2022-10-19 - 2:09:00 PM GMT

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2022-10-19 - 2:11:51 PM GMT

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2022-10-19 - 3:15:39 PM GMT

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2022-10-20 - 9:30:05 PM GMT

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SignatureDate: 2022-10-20 - 9:59:01 PM GMT - TimeSource: server

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2022-10-20 - 10:33:58 PM GMT

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2022-10-20 - 10:34:13 PM GMT

 Document e-signed by Christopher D. Jensen (christopherj@cupertino.org)

SignatureDate: 2022-10-20 - 10:34:15 PM GMT - TimeSource: server

 Agreement completed.

2022-10-20 - 10:34:15 PM GMT

