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Tentative Agreement September 22, 2016

Section Numbers to be finalized with final MOU

SECTION 5: AGENCY SHOP

Except as provided otherwise herein, the provisions of this Section shall apply to all employees of the City in all classifications represented by the CEA when on paid status, except those mutually designated classifications and mutually designated employees who are employed for no more than 995 hours per fiscal year. The provisions of this Section shall not apply to individual employees who have been properly and finally determined to be management or confidential employees.

For the term of this Agreement, all current and future employees of the City as described above, except as set forth below, shall, as a condition of continued employment, become and remain a member of the CEA or, in lieu thereof, shall pay a service fee to the CEA. The service fee payment shall be established annually by the CEA.

5.1 Employee Rights

5.1.1 The City and the CEA 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.

5.1.2 Accordingly, membership in the CEA shall not be compulsory. An employee has the right to choose, either; to become a member of the CEA; or, to pay to the CEA a fee for representation services; or, to refrain from either of the above courses of action upon the grounds set forth in Section 5.6 below.

5.2 Employee Selection

5.2.1 Any regular employee, must, within thirty (30) days of their employment with the City, submit to the City either a signed authorization to deduct dues as a member of the CEA; or, sign and deliver to the City a written assignment authorizing deduction of the properly established agency fee as defined in Section 5.3.1 below, subject to the conditions set forth in Section 4.5 of this MOU. Upon receipt of the duly completed authorization, the City will deduct from the pay of the employee and pay to the CEA the normal and regular monthly fee. If the employee is granted an exception from these fees based on a religious exception as explained in Section 5.6 below, the employee must designate a charity from Section 5.6.2 to which the appropriate amount will be paid through payroll deduction.

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- 5.2.2 If a person fails to make any of the designations set forth above within the thirty (30) day period, they will be given notice by the City that the Agency Fee deduction will be made beginning with the first full pay period following the expiration of the thirty (30) day period. The City and the CEA agree that the Agency Fee shall be paid in exchange for representation services necessarily performed by the CEA in its capacity as exclusive bargaining agent and in conformance with its duty of fair representation of said employee who is not a member of the CEA.
- 5.2.3 Any regular employee who makes a designation to pay the Agency Fee within the above thirty (30) day period may at any time thereafter join the CEA and provide to the City a signed authorization to deduct dues as a member of the CEA in lieu of the Agency Fee.
- 5.2.4 During the last thirty (30) days of this Memorandum of Understanding between the City of Cupertino and Cupertino Employee Association, any employee who is a member of the CEA, may, by written notice to the Human Resources Director or designee and the CEA, resign such membership and change their status to the Agency Fee or exempt category in accordance with the provisions of this article.
- 5.2.5 The CEA specifically agrees that the provisions of Section 5.7 of this Section apply to any claims against the City or any of its agents or employees regarding the payroll deduction of Agency Fee.
- 5.3 Definition of Agency Fee
- 5.3.1 The Agency Fee collected from non-member bargaining unit employees pursuant to Section 5.2.1 of this Memorandum of Understanding shall be limited to the CEA's (local, state, and national) annual costs for representing such employees. Such amount shall be those amounts for full-time employees as are certified to the Human Resources Director or designee, from time-to-time by the designated officer of the CEA as the Agency Fee. The City shall remit dues and fees to the CEA's designee each month along with an excel spreadsheet containing the names of each unit employee, their classification, and the amount of their dues or fees for the month.
- 5.3.2 The CEA certifies that this "representation fee" includes only those costs actually incurred by the CEA in representing employees, who are not also members of the CEA, in matters specifically and directly connected with the enforcement of this Memorandum of Understanding, the adjustment of grievances, and litigation pertaining thereto. The CEA further certifies that this "representation fee" excludes all other costs, fees, and adjustments including, but not limited to: CEA fines, back dues, initiation fees, or any other charge required as a condition of CEA membership; any and all amounts which may be used, directly or indirectly, for political or ideological activities.

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The CEA specifically agrees that the provisions of Section 5.7 of this Section apply to any claims against the City or any of its agents or employees regarding the appropriateness of the amount of any "representation fee" set forth in this Section.

5.4 Exceptions

The provisions of Section 5 shall not apply to non-benefited part-time employees.

5.5 Financial Reporting

5.5.1 The CEA shall submit to the City a detailed written financial report of its financial transaction in the form of a balance sheet and operating statement certified as to accuracy by the CEA's Executive Secretary. Each year such reports shall be verified and submitted in writing to the City's Human Resources Director by the Union within 60 days of July 1.

5.5.2 The CEA will provide a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker not chosen by the CEA and will make provision for an escrow account to hold amounts reasonably in dispute while challenges are pending.

5.6 Employees Exempted from Obligation to pay the CEA

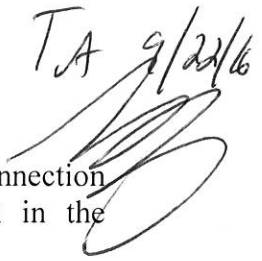
5.6.1 Any employee shall be exempted from the requirements of Section 5.2 above if such employee is a member of a bona fide religion, body or sect who has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to CEA membership. Such employee shall, upon presentation of membership and historical objection satisfactorily to the City and the CEA, pay the required service fee to a recognized non-profit charity.

5.6.2 Such exempt employee shall, as outlined in Section 5.6.1 above, as an alternative to payment of an Agency Fee to the CEA pay an equal amount equivalent to such Agency Fee to any charity jointly agreed upon by the City and the CEA. Such charities cannot be affiliated in any manner with the CEA, nor can such charity be related to an established religious organization.

5.7 Hold Harmless

The CEA shall hold the City harmless and shall fully and promptly reimburse the City for any reasonable legal fees, court costs, or other litigation expenses incurred responding to or

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defending against any claims against the City or any of its agents, or employees, in connection with the interpretation, application, administration or enforcement of any section in the Memorandum of Understanding pertaining to Agency Fees.

5.8 Recission of Agency Fee Provisions

Pursuant to Government Code Section 3502.5, this Agency fee agreement may be rescinded in its entirety by a majority of vote of all the employees in the unit covered by this Agreement in accordance with the MMBA.

5.9 Administrative Processing of CEA Agency Fees

CEA shall provide the City with a thirty day advance written notice of any changes in the annual agency fees deduction amounts. CEA, which has affiliated with IFPTE Local 21, AFL-CIO shall provide the City with Agency Fee instructions regarding Agency fees to be remitted to IFPTE Local 21.