

MEMORANDUM OF UNDERSTANDING

between

CITY OF SAN RAFAEL

and

WESTERN COUNCIL OF ENGINEERS

JULY 1, 2009 - JUNE 30, 2010

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Exhibit A	Salary Schedules for July 1, 2009 – June 30, 2010
Exhibit B	Classification/Compensation Summary: Benchmark Linkages

MEMORANDUM OF UNDERSTANDING
between
CITY OF SAN RAFAEL
and
WESTERN COUNCIL OF ENGINEERS

This Memorandum of Understanding is entered into pursuant to the provisions of Section 3500, et seq. of the Government Code of the State of California.

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment for the employees in said representation unit, and have freely exchanged information, opinions and proposals and have reached agreement on all matters relating to the employment conditions and employer-employee relations of such employees.

This Memorandum of Understanding shall be presented to the City Council of the City of San Rafael as the joint recommendation of the undersigned parties for salary and employee benefit adjustments for the period commencing July 1, 2009 and ending June 30, 2010.

7 GENERAL PROVISIONS

1.1 INTRODUCTION

1.1.1 Scope of Agreement

The salaries, hours, fringe benefits and working conditions set forth have been mutually agreed upon by the designated bargaining representatives of the City of San Rafael (herein-after called "CITY") and the Engineering Unit employees as represented by the Western Council of Engineers (herein-after called "WCE") and shall apply to all employees of the City working in the classifications and bargaining unit set forth herein.

1.1.2 Term of MOU

This agreement shall be in effect from July 1, 2009 through June 30, 2010.

1.2 RECOGNITION

1.2.1 Bargaining Unit

The City hereby recognizes the Western Council of Engineers as the bargaining representative for purpose of establishing salaries, hours, fringe benefits and working conditions for all employees within the WCE. (As referenced in Exhibit "A" and "B" attached).

1.2.2 Notice to Employees

Whenever a person is hired in any of the job classifications set forth herein, the City shall notify such person that the Western Council of Engineers is the recognized bargaining representative for employees in that classification.

1.3 NON-DISCRIMINATION

1.3.1 In General

The parties to this contract agree that they shall not, in any manner, discriminate against any person whatsoever because of race, color, age, religion, ancestry, national origin, sex, sexual orientation, marital status, medical condition or disability. Any employee alleging such discrimination should use the internal administrative process explained in the City Policy against

Harassment, Discrimination and Retaliation which is available on the City's Intranet website to redress the situation. Such employees shall be entitled to WCE representation but are not entitled to seek redress using the grievance procedure of this MOU.

1.3.2 *Union Discrimination*

No member, official, or representative of the WCE shall, in any way, suffer any type of discrimination in connection with continued employment, promotion, or otherwise by virtue of membership in or representation of WCE.

1.4 INSPECTION OF MEMORANDUM OF UNDERSTANDING

Both the City and the WCE agree to keep duplicate originals of this Memorandum on file in a readily accessible location available for inspection by any employee or member of the public upon request.

1.5 EXISTING LAWS, REGULATIONS & POLICIES

This agreement is subject to all applicable laws of the State of California, and ordinances, regulations, and policies of the City of San Rafael.

1.6 STRIKES & LOCKOUTS

During the term of this Memorandum, the City agrees that it will not lock out employees, and the WCE agrees that it will not agree to, encourage or approve any strike or slowdown growing out of any dispute relating to the terms of this Agreement. The WCE will take whatever lawful steps are necessary to prevent any interruption of work in violation of this Agreement, recognizing with the City that all matters of controversy within the scope of this Agreement shall be settled by established procedures set forth in the City's charter, ordinances, and regulations, as may be amended from time to time.

1.7 SEVERABILITY

If any article, paragraph or section of this Memorandum shall be held to be invalid by operation of law, or by any tribunal of competent jurisdiction, or if compliance with or any enforcement of any provision hereof be restrained by such tribunal, the remainder of this Memorandum shall not be affected thereby, and the parties shall, if possible, enter into meet-and-confer sessions for the sole purpose of arriving at a mutually satisfactory replacement for such article, paragraph or section.

1.8 PREVAILING RIGHTS

All matters within the scope of meeting and conferring which have previously been adopted through rules, regulation, ordinance or resolution, which are not specifically superseded by this Memorandum of Understanding shall remain in full force and effect throughout the term of this Agreement.

1.9 FULL UNDERSTANDING, MODIFICATION, WAIVER

1.9.1 *Understanding*

The parties jointly represent to the City Council that this Memorandum of Understanding set forth the full and entire understanding of the parties regarding the matters set forth herein.

1.9.2 *Waiver & Modification*

Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its right, and agrees that the other shall not be required to meet and confer with respect to any subject or matter covered herein, nor as to wages or fringe benefits during the period of the term of this Memorandum.

The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the term of this Agreement with respect to any subject matter within the scope of meeting and conferring by mutual agreement.

2 MMBA

2.1 UNION RIGHTS

2.1.1 Union Stewards Designation

The WCE shall, by written notice to the City Manager, designate certain of its members as WCE Officers. WCE Officers shall be permitted reasonable time for WCE activities including grievance representation. In all cases, the Officers shall secure permission from the Officer's supervisor before leaving a work assignment. Such permission shall not be unreasonably withheld.

WCE Officers for salary discussions shall be in accordance with the Meyers-Milias-Brown (MMB) Act.

2.1.2 Bulletin Boards

Authorized representatives of the WCE shall be allowed to post WCE notices on specified bulletin boards maintained on City premises.

2.2 DUES DEDUCTION

2.2.1 Collection of Dues

The City agrees to deduct dues and voluntary WCE deductions selected by members as established by the WCE, from the salaries of its members. The sums so withheld shall be remitted by the City, without delay, along with a list of employees and their respective dues and voluntary deductions. The WCE bears responsibility for allocating dues and voluntary deductions pursuant to employees' requests.

2.2.2 Dues Collection during Separation from Employment

The provisions specified above (Section 2.2.1.) shall not apply during periods of separation from the WCE by any such employee, but shall reapply to such employee commencing with the next full pay period following the return of the employee to the WCE. The term separation includes transfer out of the WCE, layoff, and leave without pay absences with a duration of more than five (5) working days.

2.2.3 Agency Shop

The parties hereto recognize that, within the Agency shop provisions of this agreement, WCE employees may opt to join the WCE or register as a fee payer during the first thirty (30) days of their employment. Neither the City nor the WCE will discriminate against any employee

because of the exercise of their statutory rights. The WCE agrees to its obligation to represent all of the employees in the unit fairly and equally, without regard to their membership in the WCE.

All employees, as a condition of employment, either be required to belong to the WCE or to pay to the WCE an amount equal to a fair share percentage of that which would be paid by an employee who decides to become a member of the WCE at the time of employment. Note: The WCE is obligated to annually inform the City of the fair share amount.

The employee's earnings must be regularly sufficient after other legal and required deductions are made to cover the amount of the dues or service fees check off authorized. When an employee is in a non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings. In the case of an employee who is in a non-pay status during only part of the pay period, and the salary is not sufficient to cover the full withholding, no deduction shall be made. In this connection, all other legal and required deductions have priority over WCE dues.

The WCE shall notify the City in writing as to the amount of such dues uniformly required of all members of the WCE.

2.2.4 Indemnification

Moneys withheld by the City shall be transmitted to the Treasurer of the WCE at the address specified. The WCE shall indemnify, defend, and hold the City harmless against any claims made, and against any suit instituted against the City on account of check off of employee organization dues or service fees. In addition, the WCE shall refund to the City any amount paid to it in error upon presentation of supporting evidence.

2.3 MANAGEMENT RIGHTS

The City reserves, retains, and is vested with, solely and exclusively, all rights of management which have not been expressly abridged by specific provision of this Memorandum of Understanding or by law to manage the City, as such rights existed prior to the execution of this Memorandum of Understanding. The sole and exclusive rights of management, as they are not abridged by this Agreement or by law, shall include, but not be limited to, the following rights:

1. To manage the City generally and to determine the issues of policy;
2. To determine the existence of facts which are the basis of the management decision;
3. To determine the necessity of any organization or any service or activity conducted by the City and expand or diminish services;
4. To determine the nature, manner, means, technology and extent of services to be provided to the public;
5. Methods of financing;
6. Types of equipment or technology to be used;
7. To determine and/or change the facilities, methods, technology, means and size of the work force by which the City operations are to be conducted;
8. To determine and change the number of locations, re-locations and types of operations, processes and materials to be used in carrying out all City functions including, but not

limited to, the right (after effects bargaining) to contract for or subcontract any work or operation of the City;

9. To assign work to and schedule employees in accordance with requirements as determined by the City, and to establish and change work schedules and assignments;
10. To relieve employees from duties for lack of work or other legitimate reasons;
11. To discharge, suspend, demote or otherwise discipline employees for proper cause in accordance with the provisions and procedures set forth in City Personnel Rules and Regulations and this MOU;
12. To determine job classifications and to reclassify employees;
13. To hire, transfer, promote and demote employees in accordance with this Memorandum of Understanding and the City's Rules and Regulations;
14. To determine policies, procedures and standards for selection, training and promotion of employees;
15. To establish and modify employee and organizational performance and productivity standards and programs including but not limited to, quality and quantity standards; and to require compliance therewith;
16. To maintain order and efficiency in its facilities and operations;
17. To establish and promulgate and/or modify rules and regulations to maintain order and safety in the City which are not in contravention with this Agreement;
18. To take any and all necessary action to carry out the mission of the City in emergencies.

The City and the Union agree and understand that if, in the exercise of any of the rights set forth above, the effect of said exercise of rights by the City impacts an area within the scope of representation as set forth in the Meyers/Milias/Brown Act, case law interpreting said acts, and/or Federal law, the City shall have the duty to meet and confer with the Union regarding the impact of its decision/exercise of rights.

2.4 COMMENCEMENT OF NEGOTIATIONS

It is mutually agreed to begin the Meet and Confer process no later than three (3) months before the expiration date of this MOU, regarding the terms and conditions applicable to successor M.O.U.s. The process will be initiated by the Union through the submittal of potential meeting dates.

3 COMPENSATION

3.1 GENERAL WAGES AND COMPENSATION

3.1.1 *Pay Dates*

City employees are paid twice per month on the 15th and the last working day of the month. When a holiday falls on a payday, the payday will be transferred to the following day of regular business unless Finance is able to complete the payroll by the previous workday. The method of the distributing payroll shall be established by the Director of Finance.

3.1.2 *General Wage Increase – FY 09/10*

During the fiscal year of July 1, 2009 through June 30, 2010, WCE agrees to a 0% salary increase.

3.1.3 *Compensation Goal & Definitions*

It is the goal of the City Council to try to achieve a total compensation package for all employees represented by the WCE in an amount equal to the following:

1. The average plus one dollar to the total compensation paid to the same or similar classifications in the following nine (9) cities: Fairfield, Vallejo, Hayward, San Leandro, Alameda, Napa, Novato, Santa Rosa and,
2. The highest total compensation paid to the same or similar classifications in the following agencies in Marin County: Marin County, Novato and the Jr. Engineering class for the Marin Municipal Water District.

Total Compensation for survey purposes shall be defined as: Top step salary (excluding longevity pay steps), educational incentive pay, holiday pay, uniform allowance, employer paid deferred compensation (except for such portion that may be part of employee cafeteria plan), employer's contribution towards employees' share of retirement, employer's retirement contribution, employer paid contributions toward insurance premiums for health, life, long term disability, dental and vision plans, and employer paid cafeteria/flexible spending accounts.

3.1.4 *Compensation Surveys*

To measure progress towards the above-stated goal, the City and WCE will jointly survey the identified benchmark position, *Assistant Engineer*, in September of the final year of the contract. However, if General Tax Revenues, as defined in Section 3.6.2 have not increased over the prior fiscal year, then the City and WCE will not complete the compensation survey, unless it is the final year of this Agreement.

Identified benchmark positions from other agencies include positions that are filled as well as those that may be unfilled, so long as the benchmark position is identified by the survey agency as being on the salary schedule and having a job class description. Other city/agency positions are established as benchmark positions in San Rafael's compensation survey based upon similar work and similar job requirements.

Survey data will include all salary and benefit increases, as defined in 'total compensation', in place or to be effective no later than September 1 of that same year, for the purpose of applying the excess General Tax Revenues, if any, described in this chapter. The City and the WCE shall review the benchmark and related survey data for accuracy and completeness.

During the year of this contract, if there are any remaining General Tax Revenues after all benchmark positions have achieved the 'total compensation' goal outlined above, then these excess General Tax Revenues can be used to provide additional salary or benefit increases. The excess General Tax Revenues are limited to 1% of total compensation as calculated by the survey results completed in the year of this contract (as outlined in Section 3.1.3). The City and WCE shall meet to review the General Tax Revenue calculations and agree on how the excess 1% General Tax Revenues, if available, are implemented. If no excess General Tax Revenues are available in any particular year (after 'total compensation' goal is reached), there is no

obligation by the City to provide for this 1% excess General Tax Revenues sharing in subsequent years (language specifically refers to no carry-over clause in this provision).

3.1.5 *Compensation Plan*

The Compensation Plan adopted by the City Council shall provide for salary schedules, rates, ranges, steps and any other special circumstances or items related to the total compensation paid employees.

Each position within the classified services shall be allocated to its appropriate class in the classification plan on the basis of duties and responsibilities. Each class shall be assigned a salary range or a rate established in the salary plan. All persons entering the classified service shall be compensated in accordance with the salary plan then in effect.

All initial employments shall be at the first step of the salary range. The City Manager or his/her designee may authorize, upon the recommendation of the Appointing Authority, a position at an appropriate higher salary when, in his/her opinion, it is necessary to obtain qualified personnel or when it appears that the education or experience of a proposed employee is substantially superior to the minimum requirements of the class and justifies a beginning salary in excess of the first step.

3.2 STEP INCREASES

3.2.1 *Entry Level Step*

All initial employment shall be at the first step of the salary range, provided that the Department Director may make an appointment to a position at an appropriate higher salary when, in his/her opinion, it is necessary to obtain qualified personnel, or when it appears that the education or experience of a proposed employee is substantially superior to the minimum requirements of the class and justifies a beginning salary in excess of the first step. City Manager approval is required for entry level appointment above Step C for any position.

3.2.2 *Consideration for Step Increases*

An employee may be considered for a salary step increase in accordance with the time interval established in the salary plan, as referenced in Exhibit "A". Unless otherwise noted, salary step increases within established salary ranges are scheduled at yearly intervals. Advancement to a higher salary step within an established salary range is granted for continued improvements and efficient and effective work by the employee in the performance of his/her duties.

3.2.3 *Merit Increases*

Accelerated merit performance step increases of five percent (5%) may be granted an employee based upon the recommendation of the Department Director and approved by the City Manager. Employees at the maximum step of their salary range may be granted a merit performance step increase of five percent (5%) above and beyond their salary range. A merit step increase may be effective for up to one (1) year. A merit step increase may be withdrawn and is not a disciplinary action and is not appealable.

3.2.4 *Anniversary Date*

Based upon job performance as measured by a Performance Evaluation, employees may receive consideration for a step increase within their salary range on their anniversary date. When an employee is promoted or reclassified to a new position, the first pay date at the new position

shall constitute the employee's new anniversary date for purposes of the annual Performance Evaluation.

3.2.5 Promotions

Employees promoted to higher-level positions shall be placed at the step in the new salary range that will provide, at a minimum, a five (5%) increase (unless that would exceed the top step in the salary range).

3.2.6 Performance Evaluations

Prior to the completion of the probationary period, a minimum of one performance evaluation report shall be reviewed with the employee, but such report and review shall not be required prior to separating an employee during the probationary period if the City, in its discretion, determines that the probationary employee has engaged in misconduct or other intentional acts which warrant separation.

Upon completion of the probationary period, a performance report shall be prepared and reviewed yearly thereafter for each employee in the Classified Service, as a means of determining whether in-grade salary increases are merited, and/or as a means of improving employee performance and communication between supervisors and subordinates.

3.3 SALARY CHANGE ON RECLASSIFICATION

If an occupied position is reclassified, the incumbent shall be affected as outlined below:

3.3.1 To a Lower Classification

When a position is re-allocated to a lower classification. The incumbent is either:

1. Transferred to a vacant position in the former classification; or
2. If the incumbent's current salary is greater than the top step of the lower classification, Y-rated at the current salary until the salary of the lower classification is at or above the Y-rate.

3.3.2 To a Different Classification with the Same Salary Range

When a position is reallocated to a different classification with the same salary range, the incumbent shall be granted the same status in the new classification, in which he/she shall be paid at the same step of the range and shall maintain the same salary rights.

3.3.3 To a Higher Classification

When a position is reclassified to a classification with a higher salary range, the incumbent is moved into the higher classification with the position, except in the circumstances prescribed below. Placement in the salary range shall be in accordance with the appropriate salary pay plan.

If the duties upon which the reclassification are based could have been assigned to any of a number of employees in that classification within the division or department, then a promotional exam is held for the reclassified position. Such an exam is a departmental only recruitment limited to employees within that classification. If the incumbent is not successful in this competitive process, she/he is assigned to the position vacated by the promotion.

3.4 SPECIFIED WAGE ADJUSTMENTS / DIFFERENTIALS

3.4.1 *Out of Class Compensation*

Employees assigned in writing by their supervisor to perform work in a higher paid classification, shall be compensated at a rate 5% greater than the employee's current base salary. Eligibility for Out-of-Class compensation requires a minimum assignment of five (5) consecutive workdays. The out-of-class increase shall be retroactive to the first day of the assignment. If the assignment extends beyond four consecutive weeks, then the employee shall be compensated at the lower step of the classification within which the duties fall if that is greater. The Department Director is required to complete a Personnel Action Report (PAR), located on the Human Resources page of the Intranet, to initiate Out-of-Class Compensation.

3.4.2 *Shift Differential Pay*

- A three percent (3%) shift differential shall be paid for all employees in these represented bargaining groups who are regularly scheduled to work fifty percent (50%) or more of their shift between the hours of 5:00 p.m. and 11:00 p.m.
- A five percent (5%) shift differential shall be paid for all employees in these represented bargaining groups who are regularly scheduled to work fifty percent (50%) or more of their shift between the hours of 11:00 p.m. and 7:00 a.m.
- Employees in job classes not identified in this section who are assigned to work the swing or graveyard shift time periods on a temporary basis and/or on an overtime basis are excluded from shift differential pay for those time periods.
- Shift differential shall not be considered an additional percentage on salary for personnel involved, but shall apply only to hours actually worked; e.g., differential does not apply to sick leave, vacation or compensatory time, but does include overtime for employees regularly assigned to the swing or graveyard shifts.

3.5 ADDITIONAL PAY

3.5.1 *Required Professional Licenses and Registration*

The City shall continue to reimburse employees for the fee charged by the State of California for any renewal fees for their professional registration(s) as a Civil or Traffic Engineer, or for any other engineering registrations which employees may hereafter receive, which are required by the employee's position. Verification of the renewal of the professional registration is required in order to receive the reimbursement.

3.5.2 *Professional Development*

For each year of this MOU, each employee shall receive reimbursement up to a maximum of two hundred twenty-five dollars (\$225.00) for professional development. The monies allocated under this section shall be job-related and/or related to an employee's potential career advancement in his/her field. It is agreed that the Professional Development Expenditure is not a substitute for the Public Works' Department's training budget.

3.5.3 *Allowable Expenses*

Reimbursement under this Section is intended to include items which related to an employee's job classification and/or which promote and enhance an employee's development of skills,

expertise and education in her/his profession. The items may include, but are not limited to the following:

- Technical and educational books;
- Subscriptions to professional journals or magazines;
- Membership dues to professional organizations which are related to current employment, including but not limited to the American Society of Civil Engineers, traffic engineering associations and water engineering issues-related associations;
- Registration, application, or examination fees for registration or certification within his/her profession, as well as for preparatory courses or materials for such a registration exam;
- Tuition, fees and books for successful completion of courses related to an employee's job or professional development. If the course is graded, reimbursement will be dependent upon at least a passing grade (C or better, Pass or Complete) in the course;

Registration fees, materials and expenses, including travel expenses, related to attendance at seminars and conferences to be job related and/or will assist the employee to prepare for career advancement, prior supervisor approval is necessary for this expense.

3.5.4 Procedures for Reimbursement

All receipts for reimbursement, whatever the aggregate value, must be submitted as soon as possible after the expense is incurred, but must, in any event, be submitted before the end of the fiscal year.

The decision as to whether expenditures under this section are eligible for reimbursement under this section will be made by the Department Director or designee. Requests for reimbursements will not be unreasonably denied. If the request for reimbursement is denied, the Department Director or designee must state, in writing, the reasons for the denial. The employee and a representative of WCE, if requested by the employee, shall meet with the Department Director or designee to discuss the reasons for the denial, and the employee will have an opportunity to state why such reimbursement is appropriate.

3.5.5 Bilingual Pay

Within the job classifications represented by the WCE, provisions are hereby established whereby an employee may receive bilingual pay for full fluency in a foreign language.

Full fluency is defined as a skill level that will allow the employee to fully assist someone else who does not speak English in coping with situations or problems by translating for, conversing with and/or reading or writing written material.

An employee can petition to his/her Department Director for this bilingual pay incentive. With the Department Director's recommendation and on review by the Human Resources Director and approval of the City Manager the employee may begin to receive this bilingual pay incentive.

Criteria for approval of the bilingual pay incentive by the City Manager includes:

- a. Certification by a recognized school of the appropriate skill level; and/or
- b. Demonstrated ability of the proficiency level on the job; and

- c. Department Director's recommendation and statement that the bilingual skill of the employee can be of value to the department and the employee in the completion of their regular work assignments.

An employee approved for the bilingual pay incentive shall receive an additional \$150.00 per month above their base salary. Part-time employees will be pro-rated for this incentive based on their FTE.

This bilingual pay incentive shall be reviewed annually and shall continue as long as the employee demonstrates (by work experience or re-testing, as determined by the City of San Rafael) the full fluency skill level; and as long as the Department Director indicates the value of this skill to the department and the employee in the completion of their regular work assignments.

Removal of the bilingual pay incentive would be considered a non-disciplinary action and as such would not be subject to any appeal/grievance procedure.

3.5.6 *Uniform Allowance*

A safety shoe allowance of \$130.00/year will be provided to members of WCE who have field assignments in or about construction sites or have related activities. Payment shall be made on the first paycheck in December.

3.6 REVENUE SHARING

3.6.1 *Conditions for Revenue Sharing*

Employees in WCE positions defined in this MOU shall receive Revenue Sharing Increases, in accordance with the schedule in Section 3.6.3, in addition to the base salary increases, if the following conditions are met:

- a. If the total compensation goal, as outlined in Section 3.1.3 has not been reached, **and**,
- b. If growth in General Tax Revenues, as defined in Section 3.6.2, have resulted in revenues being available for distribution, **and**,
- c. The "net change in General Fund Balance", as presented in the previous year's City annual audit, is positive, **and**
- d. The city's General Fund reserve contains at least 10% of the General Fund budgeted expenditures.

If the above four conditions are met, then a Revenue Sharing salary increase shall be paid prospectively, in accordance with the schedule in Section 3.6.3 and calculation in Section 3.6.2.

In no event will total compensation increases available through the revenue sharing provisions of this contract and provided for WCE employees cause the benchmark positions to exceed the stated 'total compensation' goal. All related classifications shall receive the same increases as those received by their assigned benchmark position.

3.6.2 *Revenue Definitions & Revenue Sharing Calculations*

General Tax Revenues shall be defined for this Chapter of the Memorandum of Understanding to include the following taxes: Sales Tax, Property Tax (Secured, Unsecured and Unitary), Motor Vehicle License Fees, Property Transfer Tax, Hotel Occupancy Tax, Business License Tax and Franchise Fees. No other revenue sources of the City will be included in this definition.

The City will complete the calculation of the General Tax Revenues in accordance with the schedule in Section 3.6.3. If General Tax Revenues have not increased over the prior fiscal year, then the City and WCE will not complete the compensation survey as outlined in Section 3.1.4.

If total compensation of the top step benchmark positions has not reached the stated goal, then WCE employees shall be entitled to a revenue sharing increase, subject to the conditions set forth in Section 3.6.1. However, if the increase would cause the benchmark position total compensation to exceed the stated goal, then only that percentage needed to reach the goal for the benchmark position will be applied to all related classifications.

- a. **Fiscal Year 09/10 Revenue Sharing Increase.** If General Tax Revenues of the City for fiscal year 2008-2009 exceed General Tax Revenues of the City for fiscal year 2007-2008 as adjusted by 75% of the total compensation increases provided for fiscal year 2008-2009, then the members of the WCE shall be entitled to apply 3% of one-half (1/2) of the excess of fiscal year 2008-2009 General Tax Revenues over fiscal year 2007-2008 General Tax Revenues adjusted for 75% of the total compensation increases provided to members in fiscal year 2008-2009, for a salary increase.

3.6.3 *Schedule*

- a. **September 7th- General Tax Revenues.** The City shall make known to the WCE if General Tax Revenues have grown from the prior fiscal year on September 7th of each year of this contract. If no growth in General Tax Revenues has taken place, there shall be no Revenue Sharing for that fiscal year of the contract.
- b. **November 1st - Net Change in General Fund Balance.** By November 1st of each year, the City shall make known to the WCE whether there is a positive change in the General Fund Balance. If there is not, then no Revenue Sharing shall take place for that fiscal year

January 1st – Base Monthly Pay Increases. January 1st pay period shall be the start date (for paycheck date of January 31st) for each Revenue Sharing Salary increase.

4 BENEFITS

4.1 EMPLOYEE BENEFITS COMMITTEE

Both parties agree to continue to utilize the Employee Benefits Committee for ongoing review of benefit programs, cost containment and cost savings options. The Committee shall be made up of representatives of the SEIU, SEIU-Childcare, Western Council of Engineers, PEU Local One, Police, Police Mid-Management, Fire, Fire Mid-Management, Mid-Management and Management employees.

4.2 HEALTH & WELFARE

4.2.1 *City Contribution*

Through December 31, 2009, the City's total contribution towards Health and Welfare benefits for active employees shall be \$1297 per month. This includes a health base amount of \$752 toward City offered health insurance premiums and a flexible spending benefit allowance in the amount of \$545 that may be used to pay for excessive, over the base level above, employee cost(s) to enroll in City offered group Accident, Life and Disability insurance plans. Selection of coverage must include the \$5,000 basic group life insurance and Accidental Life and Disability

program and the employee's basic health plan (unless employee can provide proof of other health insurance coverage).

4.2.2 *Full Flex Cafeteria Plan*

Effective January 1, 2010, the City shall implement a full flex cafeteria plan for active employees, in accordance with IRS Code Section 125. Active employees participating in the City's full flex cafeteria plan, shall receive a monthly flex dollar allowance to purchase benefits under the full flex cafeteria plan. The monthly flex dollar allowance effective January 1, 2010 shall be:

For employee only:	\$ 613
For employee and one dependent:	\$ 1,211
For employee and two or more dependents:	\$ 1,314

Flex dollar allowances shall increase on January 1, 2011 and on January 1 of each subsequent year by 3%.

The City shall contribute to the cost of medical coverage for each eligible employee and his/her dependents, an amount not to exceed the California Public Employees' Medical and Hospital Care Act (PEMHCA) contribution, as determined by CalPERS on an annual basis. This portion of the monthly flex dollar allowance is identified as the City's contribution towards PEMHCA. The balance of the monthly flex dollar allowance (after the PEMHCA minimum contribution) may be used in accordance with the terms of the cafeteria plan to purchase health, employee voluntary life insurance, and Healthcare and Dependent Care expenses or may be converted to taxable income. For example, in calendar year 2010, a single employee's monthly flex dollar allowance for health is \$613 of that amount \$105.00 has been designated by CalPERS as the City's monthly PEMHCA contribution. The balance of \$508 must be used to purchase other coverage as offered through the cafeteria plan or may be converted to taxable income once the appropriate health elections have been made.

If an employee has health insurance coverage through a spouse/dependent or a former employer and provides proof of other coverage to the Human Resources Department, the employee may elect to waive the City's health insurance coverage, and the employee shall receive \$150 in flex dollars in accordance with the terms of the cafeteria plan. The City reserves the right to modify at any time, the amount an employee is eligible to receive under this paragraph, if required by IRS Cafeteria Plan regulations.

Effective January 1, 2010, the City shall be responsible for paying premiums for a life insurance and Accidental Death and Dismemberment (AD&D) policy for each employee. The life and AD&D policy shall provide a \$5,000 life insurance and a \$5,000 AD&D benefit.

Effective January 1, 2010, the City shall be responsible for paying premiums for a Long Term Disability Policy for each employee that satisfies the eligibility provisions of the long term disability policy. The Long Term Disability policy shall provide for salary replacement of 66.67% of an individual's salary up to a maximum disability benefit of \$1,000 per month.

The City will contract for a vision plan and provide a flex dollar allowance for the purchase of vision benefits. The flex dollar allowance for vision benefits shall be in addition to the flex dollar allowance stated above. The allowance for vision benefits shall not exceed \$10.55 per employee

per month. Employees will be eligible to enroll qualified family members and will pay the premium for such enrollment.

4.2.3 *Pay Back Provision*

For active employees, the difference between the allotted amount (base level and Flexible Spending Account) and the cost of the City-offered Health, Accident, Life and Disability insurance plans will be paid back to the employee up to a maximum \$150/month through December 31, 2009. Pay back is pro rated for part time employees covered by this Agreement.

4.2.4 *Retirees Health Insurance*

Employees represented by WCE who retire from the Marin County Employees' Retirement Association (MCERA) within 120 days of leaving their City of San Rafael position (and who comply with the appropriate retirement provisions under the MCERA laws and regulations) are eligible to continue in the City's retiree group health insurance program offered through PEMHCA. The City's contribution towards retiree coverage shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis.

a. Longevity Payment for Employees hired on or before January 1, 2010 The City shall make a monthly longevity payment into a Retiree Healthcare Reimbursement Trust (Retiree HRA Trust) on behalf of employees hired before January 1, 2010 and who retire from the City of San Rafael as described in this Section. The City's monthly contribution to the Retiree HRA trust shall not exceed \$752 per month. The City's contribution towards a retiree's Retiree HRA Trust account shall continue for the lifetime of the retiree and retiree's spouse, in accordance with PEMHCA eligibility provisions for coverage.

b. Employees hired on or after January 1, 2010 and who meet the eligibility requirements for retiree health insurance are eligible to continue in the City's group health insurance program. The City's maximum contribution towards retiree coverage under this subsection, 4.2.4 B, shall be the PEMHCA minimum contribution as determined by CalPERS on an annual basis. The City shall not be responsible for making any contributions towards the cost of coverage of the retiree's spouse, registered domestic partner, or dependents upon the employee's retirement from the City in excess of the PEMHCA minimum contribution as required by CalPERS.

The City shall additionally make available a retiree health care trust to enable these employees (hired after January 1, 2010) to prefund retiree health care premiums while employed by the City. The retiree health care trust shall be funded by annual conversion of 50 hours of sick time in service on July 1 of each year, provided an employee has a remaining balance of 75 hours of sick leave after the conversion.

4.2.5 *Pro Rata Benefit Rules*

Employees covered by this Agreement who work less than full time but more than twenty (20) hours per week on a regular basis shall be eligible to receive: a) pro rated leave benefits; b) a pro rated share of the monthly dollar contribution made by the City to be used for enrollment in City offered group health, life, and long term disability insurance plans which the employee may be eligible for based upon the regular hours the employee works, and c) pro rated share shall be equivalent to the part time employee position's ratio of hours worked to full time equivalency.

4.2.6 *Health and Dependent Care Spending Accounts*

The City will offer as part of its Section 125 Plan, for as long as such a plan is desired by the WCE and available pursuant to the IRS Code, Health and Dependent Care Spending Accounts. The Flexible Spending Accounts offered by the City include:

- a. **Healthcare Spending Account:** Out-of-pocket medical expenses that qualify under the IRS Code effective January 1, 2003 at IRS Code limit, not to exceed \$5,000. Employees are responsible to pay the monthly administrative fee and any increase established by the third party administrator.
- b. **Dependent Care Spending Account:** Dependent care expenses that qualify under the IRS Code at the IRS Code limit (currently \$5,000 per calendar year). Employees are responsible to pay the monthly administrative fee and any increase established by the third party administrator.
- c. **Premium Only Plan:** Excess Medical premiums shall be deducted from employee's pay with pre-tax dollars as long as such deduction is allowable under the applicable IRS Code.

The City shall establish an annual enrollment period and each employee must re-enroll annually for either plan noted in a. and/or b. The City shall have the authority to implement changes to the 125 Programs to comply with changes in applicable IRS laws without having to go through the meet and confer process.

4.2.7 *Health Insurance Providers*

The City shall have the option, after meeting and consulting with WCE representatives, of either contracting with the Public Employees Retirement System (PERS) Health Benefits Division for health insurance or contracting directly with some or all of the providers of health insurance under the PERS program; provided, however, contracting directly with the providers shall not cause any material reduction in insurance benefits from those benefits available under the PERS program.

4.3 DENTAL PLAN

4.3.1 *Dental Plan*

The City will provide a dental insurance program which offers 100% coverage for diagnostic and preventative care; \$25.00 deductible on corrective care (80/20); and an 80% payment of eligible costs associated with crown and cast restoration per patient per calendar year and orthodontic coverage for eligible dependents (50/50). The dental provider will provide payments for covered services at the percentage indicated in the plan booklet up to a maximum of \$1,500 for each enrollee in each calendar year.

Dental insurance enrollment is available to part time, regular, permanent employees working at least 20 hours per week. The City's contribution towards the monthly dental insurance premium will be prorated based on the FTE level of the part time employee.

4.4 RETIREMENT CONTRIBUTION

4.4.1 *City Paid Employee Retirement (City Paid Member Contribution)*

WCE members shall pay the full share of the employee's contribution to the Marin County Retirement System.

The City of San Rafael acknowledges that, under its current practice, the employee's share of their retirement contribution is deducted with pretax dollars. This practice will continue until changed through the Meet and Confer process or until IRS regulations change.

4.4.2 *Retirement Plans*

On July 1, 2004, the City provided the Marin County Employee Retirement Association 2.7% at 55-retirement program to all miscellaneous members, as defined under the 1937 Act Government Code Section 31676, subject to Marin County Employee Retirement Association procedures and regulations and applicable 1937 Act laws that govern such plans.

4.4.3 *Member Cost of Living Rates*

Association members who are eligible to participate in the Marin County Employee Retirement Association will pay their full share of members' cost of living rates as allowed under Articles 6 and 6.8 of the 1937 Retirement Act. Miscellaneous and safety member contribution rates include both the basic and COLA portions (50% of COLA is charged to members as defined in the 1937 Act).

4.4.4 *Service Credit for Sick Leave*

Employees who retire from the City of San Rafael within 120 days of leaving City employment (excludes deferred retirements) shall receive employment service credit for retirement purposes only for all hours of accrued, unused sick leave (exclusive of any sick leave hours they are eligible to receive and they elect to receive in compensation at the time of retirement pursuant to Section 5.1.6.) Compensation for Unused Sick Leave.

Employees hired on or after July 1, 2009 are not eligible to receive employment service credit of any accrued, unused sick leave for retirement purposes.

4.4.5 *Pension Costs*

Within the time period covered by this MOU, representatives of the City and WCE will continue to meet on the subject of reducing pension costs.

4.5 STATE DISABILITY INSURANCE (SDI)

Employees will have the full premium cost for SDI coverage automatically deducted from their paycheck and no City contribution will be made toward participation in the plan.

It is incumbent upon the employee to keep the City advised of their medical status, within HIPAA guidelines, and eligibility for SDI. With this notification, SDI benefits, as determined by the State, shall be integrated with accrued sick and vacation leave in the following manner:

- a. Employee notifies supervisor of disability and need for time off. At the same time, employee files for SDI through the State Office.

- b. Supervisor verifies from leave records the employee's accrual balances and projects whether or not employee would, under normal circumstances, be placed in a leave without pay status during the time off period.
- c. Personnel Action Report (PAR) is completed by the supervisor to document request and approval of extended leave.
- d. Human Resources Department, on receipt of the PAR, contacts employee and supervisor to discuss availability of coordination of SDI with leave benefits.
- e. Employee's time off is recorded as sick leave and, if necessary, then vacation leave on time cards submitted by the supervisor to the Payroll Office.
- f. Upon receipt of the SDI checks, the employee may elect to endorse the checks over to the City of San Rafael to receive credit.
- g. Based upon the employee's hourly rate of pay, the Payroll Office computes how much used sick and/or vacation leave time the employee may buy back, and credits the employee with those hours. NOTE: The employee may not buy back more than accrued at or during the time of the disability.
- h. The Human Resources Department, after notification from Payroll, notifies the employee when they have used all accrued sick and/or vacation time and when leave without pay status (LWOP) begins. Excluding qualifying FMLA/CFRA leave, once the employee is on LWOP they would keep any SDI checks received and would be fully responsible for the monthly health, dental and life insurance premiums if they chose to remain in the group plans. FMLA/CFRA provide an exception and are referenced under Section 5.4.6.

5 LEAVES

5.1 SICK LEAVE

5.1.1 Eligibility

Sick leave with pay shall be granted to each eligible employee. Sick leave may not be used at an employee's discretion, but shall be allowed only in case of necessity and actual sickness or disability. The employee is required to notify employee's immediate supervisor or Department Director according to department Rules and Regulations at the beginning of his/her daily duties. The City has the right to request a medical verification from an employee who is absent from his/her duties for two (2) or more consecutive workdays. The verification shall be either a physician's certificate or the employee's personal affidavit verifying the employee's eligibility for sick leave.

5.1.2 Sick Leave Accrual

All eligible full time employees shall earn sick leave credits at the rate of one (1) working day per month commencing with the date of employment. Unused sick leave may be accumulated to any amount but a cap exists for payoff purposes (see Section 5.1.6.). The sick leave accrual rate is prorated for eligible part time employees.

5.1.3 Use of Sick Leave

An employee may use accrued sick leave during their probationary period. An employee eligible for sick leave with pay shall be granted such leave for the following reasons:

- 1) Personal illness or physical incapacity of the employee or illness within the immediate family. Family is defined as an employee’s spouse, registered domestic partner, unmarried children including adopted children, stepchildren, or recognized natural children who live with the employee in a regular parent-child relationship, and parents (including in-laws).
- 2) Enforced quarantine of the employee in accordance with community health regulations;
or
- 3) Medical appointments that cannot be scheduled during non-working hours.

5.1.4 *Advance of Sick Leave*

Whenever circumstances require, and with the approval of the City Manager, sick leave may be taken in advance of accrual up to a maximum determined by the City Manager, provided that any employee separated from the service who has been granted sick leave that is un-accrued at the time of such separation shall reimburse the City of all salary paid in connection with such un-accrued leave.

5.1.5 *Compensation for Unused Sick Leave*

Upon termination of employment by resignation, retirement or death, a regular employee who leaves the City service in good standing shall receive compensation for all accumulated unused sick leave based upon the following formula: a rate of three percent (3%) for each year of service (i.e., 3% times number of employment service years). The maximum number of accumulated, unused sick leave an employee may be compensated for upon termination of employment is 600 hours. See Section 5.1.5. regarding service credit option for accumulated, unused sick leave that the employee is not compensated for upon termination.

5.2 VACATION LEAVE

5.2.1 *Eligibility*

Annual vacation with pay shall be granted each eligible employee. Vacation leave accrual shall be prorated for those employees working less than full time. Employees will be permitted to use accrued vacation leave after six (6) months of employment subject to the approval of the Department Director.

5.2.2 *Rate of Accrual*

Vacation benefits shall accrue during the probationary period. Each regular full time employee (part time regular are prorated) shall accrue vacation at the following rate for continuous service. (Each service year in the chart begins on the first working day and ends on the last days of the service year.)

<i>Service Year</i>	<i>Annual Hours</i>	<i>Hours/Month</i>
<i>1-3</i>	<i>75.000</i>	<i>6.2500</i>
<i>4</i>	<i>112.500</i>	<i>9.3700</i>
<i>5</i>	<i>117.867</i>	<i>9.8222</i>
<i>6</i>	<i>123.234</i>	<i>10.2695</i>
<i>7</i>	<i>128.601</i>	<i>10.7167</i>

8	133.968	11.1640
9	139.335	11.6110
10	144.702	12.0580
11	150.000	12.5000
12	157.500	13.1250
13	165.000	13.7500
14	172.500	14.3750
15	180.000	15.0000
16+	187.500	15.6250

When an employee is on an approved leave without pay, vacation accrual is prorated based upon paid hours in the pay period.

5.2.3 Administration of Vacation Leave

The City Manager, upon the recommendation of the Department Director, may advance vacation credits to any permanent regular and permanent part-time employee.

No employee may accrue more than 250 hours. Vacation accruals will resume once the employee's accumulated vacation balance falls below the allowable cap limit.

The time at which an employee may use his/her accrued vacation leave and the amount to be taken at any one time, shall be determined by employee's Department Director with particular regard for the needs of the City but also, insofar as possible, considering the wishes of the employee.

The maximum amount of vacation leave that may be taken at any given time shall be that amount that has accrued to the employee concerned, subject to the Department Director's approval. The minimum amount of vacation that may be taken at any given time shall be one-half (1/2) hour. Vacation leave granted by the City and used by an employee shall be deducted from the employee's vacation leave bank.

In the event that one or more City holidays falls within an annual vacation leave, only those hours that the employee is regularly scheduled to work shall be charged against any employee's accrued vacation.

Upon termination, an employee shall be compensated in cash at his/her current rate of pay for any vacation accrued but not taken, up to the maximum accrual cap, provided that the employee has successfully completed his/her initial probationary period.

5.2.4 Vacation Cash-In

An employee who has taken at least ten (10) days vacation in the preceding twelve (12) months may request, in any fiscal year that accrued vacation, not to exceed seven (7) days, be converted to cash payments and the request may be granted at the discretion of the City Manager.

Employees cannot cash in more than seven (7) days of vacation in any one twelve (12) month period.

5.3 HOLIDAYS

5.3.1 Paid Holidays

All employees who are required to work on a day designated as an authorized holiday, other than a day on which an election is held throughout the state, shall be paid at the applicable rate of pay for the number of hours actually worked.

When a holiday falls on Saturday or Sunday, the Friday preceding a Saturday holiday or the Monday following a Sunday holiday shall be deemed to be a holiday in lieu of the day observed.

The following holidays will be observed:

January 1 st	New Year's Day
The third Monday in January	Martin Luther King Jr. Day
The third Monday in February	Washington's Birthday
March 31 st	Cesar Chavez Day
The last Monday in May	Memorial Day
July 4 th	Independence Day
The first Monday in September	Labor Day
November 11 th	Veteran's Day
The fourth Thursday in November	Thanksgiving Day
The fourth Friday in November	Day after Thanksgiving
December 25 th	Christmas Day

In addition to designated holidays, employees in this Unit receive two (2) floating holidays. Floating holidays not used are added to employee's vacation balance. Part-time employees will be paid for holidays on a pro-rated basis.

5.4 OTHER LEAVES

5.4.1 *Bereavement Leave*

In the event of the death of an employee's spouse, registered domestic partner, child, parent, brother, sister, in-laws, relative who lives or has lived in the home of the employee to such an extent that the relative was considered a member of the immediate family and/or another individual who has a legal familial relationship to the employee and resided in the employee's household, up to three (3) days within the State and up to five (5) days out-of-state may be granted for bereavement leave.

In those cases where the death involves an individual who had such a relationship with the employee, as defined above, the employee shall sign a simple affidavit describing the relationship and submit this to the Department Director as part of the request for bereavement leave.

5.4.2 *Jury Duty*

Employees required to report to jury duty shall be granted a leave of absence with pay from their assigned duties until released by the court, provided that the employee provides advance notice to the Appointing Authority and remits to the City all per diem service fees except mileage or subsistence allowance within thirty days from the termination of such duty.

5.4.3 *Military Leave*

Military leave shall be granted in accordance with the State of California Military and Veteran's Code as amended from time to time. All employees entitled to military leave shall give the appointing authority and the Department Director an opportunity, within the limits of military regulations, to determine when such leave shall be taken.

5.4.4 *Leave of Absence Without Pay*

Leave of absence without pay may be granted by the City Manager upon the written request of the employee. Accrued vacation leave must be exhausted prior to the granting of leave without pay.

5.4.5 *Industrial Injury Leave*

For benefits under Workers' Compensation, an employee should report any on the job injury to his/her supervisor as soon as possible, preferably within twenty-four (24) hours. The Human Resources' Department coordinates benefits for Workers' Compensation claims. For further information, see the City's Workers' Compensation policy located on the Intranet (<https://intranet.cityofsanrafael.org>).

All regular, full time employees of the City who have suffered any disability arising out of and in the course of their employment as defined by the Workers' Compensation Insurance and Safety Act of the State of California, may be entitled to compensation, as follows:

Temporary disability payments (TD) are made when a physician reports an employee is unable to perform their job duties and the City cannot accommodate any restrictions. The employee is not entitled to TD for the first 3 days of disability unless the employee is hospitalized as an in-patient, or off for more than 14 days. In this case, the employee shall be entitled to remain absent from duty with pay for these first 3 days. TD is set by State law and is based on potential wages lost (full or partial) due to the injury. It is approximately two-thirds of full salary with state-mandated minimums and maximums. The City, however, augments regular employees' disability payments to bring them to full salary for the first three (3) calendar months and to $\frac{3}{4}$ pay for the next 6 months. Compensation leave payments shall not exceed the employee's regular full pay for the first three (3) calendar months and three-fourths ($\frac{3}{4}$) of the regular full pay for the following six (6) calendar months..

All other employees shall be entitled to such compensation as may be allowed them by the Workers' Compensation Insurance and Safety Act of the State of California.

Sick Leave Usage Post Industrial Injury/Illness

The following rule applies to employees who have an accepted industrial injury/illness: Available accrued sick leave cannot be used for more than 60 calendar days after one of the following has been determined:

- The employee has reached maximum medical improvement and/or has been determined "permanent and stationary."
- The employee has been determined to be unable to return to their usual and customary occupation, with or without reasonable accommodation.

Given the above has occurred, next steps would include:

- The interactive process; attempt to locate other appropriate employment within the City

- If none available, proceed with termination process, including disability retirement application and/or Skelly process, if appropriate.

5.4.6 *Family Medical Leave*

Union members agree to adhere to the provisions of the City's Family Medical Leave Policy which is available on the City's Intranet Website.

5.4.7 *Catastrophic Leave*

Catastrophic leave shall be in accordance with City Catastrophic Leave Policy which is available on the City's Intranet website.

6 TERMS & CONDITIONS OF EMPLOYMENT

HOURS OF WORK will reflect a seven and one-half (7-1/2) hour work day. Nothing herein will prevent a Department Director, in his/her discretion, from adopting a flexible schedule or variable workweek by either meeting or conferring with the WCE or the consent of the affected employee(s).

6.1 OVERTIME

Shall mean actual time authorized and worked beyond the regular workweek or workday. A work or duty week shall be defined as seven (7) consecutive calendar days. Overtime is compensable to the nearest half-hour, and must have prior authorization and approval of the Department Director.

Each Department Director shall have the authority to designate certain job classifications for mandatory overtime in emergencies. In the event the Department Director determines that there is a staffing need during an emergency, the Department Director shall first make a reasonable effort to seek qualified volunteers to work overtime during the emergency. If the Department Director determines that there are an insufficient number of volunteers, or if time constraints prevent the soliciting of volunteers, the Department Director may order employees in the designated classifications (may vary depending on the emergency but primarily relates to job classifications in the Street Division of Public Works) to report to work in overtime status to address the emergency.

6.2 COMPENSATORY TIME POLICY

With the Department Director's approval, compensatory time, in lieu of overtime pay, may be taken subject to the following rules:

6.2.1 *Accrual Limit*

Employees may accrue up to 115 hours of compensatory time after which said employee must accept overtime pay in lieu of accruing additional compensatory time.

6.2.2 *Overtime Rate*

Employees who work overtime may be paid for it at the rate of time and one-half or may accrue compensatory time at a rate of time and one-half, subject to the limitations in Section 6.3.1. Employees who elect compensatory time must take the time off, preferably within the quarter during which it was earned, and shall not be paid for it.

6.3 STAND BY OR CALL BACK DUTY

6.3.1 *Compensation When Not Assigned to Call Back Duty*

When an employee not assigned to standby duty is called back to duty, the employee shall receive compensation for a minimum of four (4) hours.

6.4 PROBATIONARY PERIOD

6.4.1 *Purpose of Probation*

After passing an examination and accepting appointment, each employee shall serve a period of probation beginning on the date of appointment. Such period shall be for the purpose of determining the employee's ability to perform satisfactorily the duties prescribed for the position.

6.4.2 *Probationary Period*

The probationary period on original and promotional appointment shall be for one (1) year. Employees shall receive verbal feedback from their immediate supervisor throughout the probationary period.

6.4.3 *Rejection During Probation*

During the probationary period, an employee may be rejected at any time by the Appointing Authority without the right of appeal.

6.4.4 *Notification of Rejection*

On determining that a probationary employee's work is not satisfactory, the Appointing Authority shall notify the Human Resources Director of his/her intention to terminate the employee. After discussion with the Human Resources Director, the Appointing Authority shall notify employee in writing of his/her rejection.

6.4.5 *Extension of Probationary Period*

The probationary period shall not be extended except in the case of extended illness or injury or compelling personal situation during which time the employee was unable to work. In such cases, the probationary period may be extended for the length of time the ill or injured employee was unable to work.

6.4.6 *Regular Status*

Regular status shall commence with the day following the expiration date of the probationary period.

6.4.7 *Promotion of Probationary Employee*

An employee serving a probationary period may be promoted to a position in a higher position classification provided he/she is certified from the appropriate Eligible List. The employee promoted in this manner shall serve a new probationary period for the position to which employee is promoted and the new probationary period and promotional appointment shall be effective the same date.

6.4.8 *Unsuccessful Passage of Promotional Probation*

An employee who does not successfully pass his/her promotional probationary period shall be reinstated to the position in which the employee held regular status prior to his/her promotion.

Provided, however, that if the cause for not passing the promotional probationary period was sufficient grounds for dismissal, the employee shall be subject to dismissal without reinstatement to the lower position.

6.4.9 *Lateral Transfer Probation*

Voluntary transfers to another job classification, within the same salary range, shall require a six (6) month probationary period. In the event of unsuccessful passage of this period refer to Section 3.6.8.

6.5 TRANSFERS / REASSIGNMENTS

Transfers may be within the same department (intra-departmental) or between departments (inter-departmental). The requirements for each are as follows:

a. Intra-departmental transfers.

The Appointing Authority shall have the authority to transfer an employee from a position in one division of a department to a position in the same or similar classification with the same salary range, in the same division or to another division of the same department (at any time and for any duration).

b. Inter-departmental transfers.

An employee may transfer from a position in one (1) department to a position in the same or similar classification in another department, provided the consent of the two Appointing Authorities and the City Manager is obtained.

c. Voluntary Transfers.

An employee may make a written request for transfer to the Human Resources Director to a position in the same or similar classification with the same salary range. Such a transfer may be made on the recommendation of the affected Department Director(s) and the approval of the City Manager.

6.5.1 *Minimum Qualifications & Probation*

Any persons transferred to a different position shall possess the minimum qualifications for the position.

6.5.2 *Transfer Procedures*

The City Manager may authorize the transfer of an employee from one position to another of the same or comparable class of work and where the same general type of examination is given for entrance to such a position.

Transfers from one department to another department having a different jurisdiction or different function shall be done only with the consent of the Department Directors, involved, unless such a transfer is ordered by the City Manager for purpose of economy or efficiency.

Employees who have completed their initial probation may seek voluntary transfers to positions within the same job class, and/or lower level job classes as long as the employee meets the minimum qualifications for the position. Employees seeking transfer should submit a completed

application to the Human Resources Department. As vacancies occur, transfer candidates may receive consideration along with those on the eligibility list.

6.6 PERSONNEL RULES & REGULATIONS

The WCE agrees to adhere to the City's Personnel Rules and Regulations located on the City's Intranet website.

6.6.1 *Drug & Alcohol Policy*

The City and the WCE agree to the non-DOT general drug and alcohol policy. A copy is available with the City's policies and on the City's Intranet website.

6.6.2 *Confidential Nature of Personnel Records*

All personnel records and files and examination materials are confidential. The Human Resources Director shall take all necessary steps to protect the confidentiality of those materials. Disclosure of such records shall be governed by the Public Records Act, Government Code Sections 6250, et. seq. Individual employees may review their official personnel file maintained by the Human Resources Department and/or respective appointing authority. With the written consent of the employee, the authorized representative of the recognized employee organization may also review that personnel file.

6.6.3 *Confidential Nature of Medical Records*

All medical records and files are the property of the City of San Rafael. These confidential records and files are to be maintained in a file separate from the employee's personnel file in the Human Resources Department. Disclosure of such records shall be governed by the Public Records Act, Government Code, Section 6250, et. seq.

6.6.4 *Outside Employment Policy*

Outside Employment shall be in accordance with the City's Outside Employment Policy which is available on the City's Intranet website.

6.6.5 *Use of City Vehicle*

Public Works Supervisors, at the direction of the Department Director, will be allowed to take a City vehicle home in emergency conditions.

6.6.6 *Safety Policy*

The City of San Rafael is committed to providing a safe and healthy place to work. The City shall furnish safety devices and safeguards, and shall adopt and use methods and processes adequate to ensure that the work place is safe and healthy. Employees are expected to obey safety rules and make proper use of safety gear and equipment. The City's safety policies and procedures shall comply with all applicable state laws related to a safe work environment.

6.7 MISCELLANEOUS

6.7.1 *Gratuities/Solicitation of Contributions*

Gratuities and/or solicitation of contributions are not allowed. Employees should refer to the City's Personnel Rules and Regulations.

6.7.2 *Return of City Equipment*

Upon termination of employment, all tools, equipment, and other City property assigned to an employee shall be returned to the employee's supervisor before leaving City employment.

6.7.3 *Political Activity*

The political activity of City employees shall comply with pertinent provisions of State and Federal Law.

6.7.4 *Employment of Relatives*

Shall be governed by the City's Personnel Rules and Regulations.

6.7.5 *Labor / Management Meetings*

During the term of the Agreement, the City and the WCE agree that consultation meetings may contribute to improved employer-employee relations. Issues relating to the usage of volunteers and temporary/part-time/seasonal employees, promotional opportunities, and the implementation of safety programs will serve as a basis for initial agenda items to be discussed and acted upon.

The committee shall be comprised of two (2) representatives from the Western Council of Engineers and representatives from City Management as well as the WCE Executive Director and the Human Resources Director. The parties agree that committee members may change depending on the subject matter.

Meetings may be requested by either party. The party requesting the meeting shall submit a proposed agenda and the receiving party shall acknowledge and confirm the date, time and location of the requested meeting. It is intended that the subject matter will not include issues subject to Article 7.4 Grievance Procedures.

6.7.6 *Contract Orientation Work Sessions*

The City and the WCE agree that the individuals having responsibility for the enforcement of the Agreement, WCE Stewards and Department Directors/Supervisors shall participate in an Annual Contract Orientation Work Session for the purpose of obtaining a better understanding of the provisions of the contract. These work sessions shall be held on City time and facilities.

7 PROCEDURES

7.1 DEMOTION & SUSPENSION

7.1.1 *Demotion*

The Appointing Authority may demote an employee when the following occurs:

- a. The employee FAILS to perform his/her required duties.
- b. An employee requests such a demotion. No employee shall be demoted to a classification for which he/she does not possess the minimum qualifications. When the action is initiated by the Appointing Authority, written notice of demotion shall be provided to an employee at least ten (10) working days before the effective date of the demotion, and a copy shall be filed with the Human Resources Department.

Withholding a salary step increase or withdrawing a merit step increase within or above the salary range of the employee's position shall not be deemed a demotion.

Disciplinary demotion action shall be in accordance with Article 7.3, "Disciplinary Action."

7.1.2 Suspension

The Appointing Authority may suspend an employee from a position at any time for a disciplinary purpose. Intended suspension action shall be reported immediately to the Human Resources Director, and shall be taken in accordance with Article 7.3, "Disciplinary Action".

7.2 TERMINATION OF EMPLOYMENT

7.2.1 Resignation

An employee wishing to leave the City service in good standing shall file with his/her immediate supervisor, at least fourteen (14) days before leaving the service, a written resignation stating the effective date and reason for leaving. A copy of the resignation shall be forwarded to the Appointing Authority and Human Resources Department.

7.2.2 Termination - Layoff (Lack of work or funds)

The Appointing Authority may terminate an employee because of changes in duties or organization, abolishment of position, shortage of work or funds, or completion of work for which employment was made.

7.2.3 Termination - Disciplinary Action

An employee may be terminated at any time for disciplinary action, as provided in Article 7.3, "Disciplinary Action".

7.2.4 Retirement

Retirement from the City services shall, except as otherwise provided, be subject to the terms and conditions of the City's contract as amended from time to time, with the Marin County Retirement System.

7.2.5 Rejection During Probation

An employee may be terminated from their position during the probationary period of their initial appointment to the City's classified service without Right of Appeal.

7.3 DISCIPLINARY ACTION

7.3.1 Right to Discipline & Discharge

Upon completion of the designated probationary period, an employee shall be designated as a non-probationary employee and the City shall have the right to discharge or discipline any such employee for dishonesty, insubordination, drunkenness, incompetence, negligence, failure to perform work as required or to observe the Department's safety rules and regulations or for engaging during the term of this Memorandum of Understanding in strikes, individual or group slowdowns or work stoppages, or for violating or ordering the violation of the Memorandum of Understanding. The City shall use progressive disciplinary steps (i.e., reprimand, suspension, demotion, discharge) unless the violation is such as to justify termination. Disciplinary action shall mean discharge/dismissal, demotion, reduction in salary, and suspension resulting in loss of pay.

In addition, the City may discipline or discharge an employee for the following: Fraud in securing appointment; negligence of duty; violation of safety rules; unacceptable attendance

record including tardiness, overstaying lunch or break periods; possession, distribution or under the influence of alcoholic beverages, non-prescription or unauthorized narcotics or dangerous drugs during working hours; inability, unwillingness, refusal or failure to perform work as assigned, required or directed; unauthorized soliciting on City property or time; conviction of a felony or conviction of a misdemeanor involving moral turpitude; unacceptable behavior toward (mistreatment of discourteousness to) the general public or fellow employees or officers of the City; falsifying employment application materials, time reports, records, or payroll documents or other City records; misuse of City property; violation of any of the provisions of these working rules and regulations or departmental rules and regulations; disorderly conduct, participation in fights, horseplay or brawls; dishonesty or theft; establishment of a pattern of violations of any City policy or rules and regulations over an extended period of time in which a specific incident in and of itself would not warrant disciplinary action, however, the cumulative effect would warrant such action; failure to perform to an acceptable level of work quality and quantity; insubordination; other acts inimical to the public service; inability or refusal to provide medical statement on cause of illness or disability.

7.3.2 Preliminary Notice

A non-probationary employee shall receive a preliminary written notice from the employee's Supervisor of any proposed disciplinary action that involves the loss of pay. The notice must contain a specific statement of charges or grounds upon which the proposed disciplinary action is based and the date the disciplinary action will be effective.

Any known written materials, reports or documents upon which the disciplinary action is based must be attached to the notice.

Upon the receipt of the notice, the employee shall have five (5) days to appeal the matter in writing to Step 2 of the Grievance Procedure. If a written appeal is filed, no disciplinary action shall be imposed until the Department Director has conducted a hearing with the employee and employee's representative present and having heard the response of the employee. If no written appeal is filed within five (5) days, the employee shall be deemed to have waived his right to proceed to Step 4 of the Grievance Procedure.

7.3.3 Disciplinary Action and Appeal

After hearing the response of the employee, the Department Director may order that the proposed disciplinary action or modification thereof be imposed. Thereafter, the employee shall have ten (10) days to appeal this matter to the City Manager. The City Manager shall investigate the matter, conduct an informal hearing if the City Manager deems it appropriate and, within ten (10) days thereafter, respond to the allegations in writing. If this matter remains unresolved, the WCE may, by written notice to the Human Resources Director within ten (10) days after the receipt of the City Manager's response, inform the City that the WCE wishes to appeal the decision to final and binding arbitration. The parties shall attempt to agree upon an arbitrator. If no agreement is reached, they shall request a list from the State Mediation and Conciliation Service containing nine (9) names. The selection process will include a review of the arbitrator's availability for the hearing. Each party shall then alternately strike a name until only one (1) name remains, said person to be the arbitrator. The order of striking shall be determined by the flip of a coin. As used herein, the word "days" shall be deemed to mean City established working days for non-safety employees.

7.3.4 *Harassment Policy*

It is the City's intent and purpose to provide all officials, employees, applicants, and contractors with an environment that is free from any form of harassment, discrimination or retaliation. Employees shall refer to the City Policy against Harassment, Discrimination and Retaliation which is available on the City's Intranet website.

7.4 GRIEVANCE PROCEDURE

7.4.1 *Definition*

- 1) **Grievance** is a dispute, which involves the interpretation or application of any provision of this Memorandum of Understanding. All ordinances, resolutions, rules and regulations, which are not specifically covered by the provisions of this Memorandum shall not be subject to the Grievance Procedure.
- 2) **Day** shall mean any that the City Office is open for business, excluding Saturdays, Sundays and the holidays recognized by the City.
- 3) **Grievant** may be an individual employee or a group of employees or the Union on the behalf of a group of employees or the Union on its own behalf on matters involving the City and Union relationship.
- 4) **Time limits** begin with the day following the event causing the grievance or the day following receipt of a grievance decision.

7.4.2 *Procedure*

Step 1.

Within seven (7) days of when the grievant knew or should have known of the act or omission causing the grievance the grievant shall present either in writing or verbally a clear and concise statement of the grievance to the immediate supervisor.

Within five (5) days thereafter the immediate supervisor shall investigate and respond to the allegations of the grievant.

Step 2.

If the grievant is not satisfied with the resolution at Step 1 the grievant must reduce the grievance to writing and present it to the Department Director within five (5) days.

The written grievance shall contain a statement of facts about the nature of the grievance, and shall identify the specific provisions of this Memorandum of Understanding alleged to be violated, applicable times, places and names of those involved, the remedy or relief requested, and shall be signed by the grievant.

The Department Director shall confer with the grievant and within ten (10) days respond to the allegations in writing.

Step 3.

If the grievant is not satisfied with the resolution at Step 2, the grievant shall within five (5) days appeal the matter to the City Manager.

The City Manager shall investigate the matter, conduct a hearing if the City Manager deems it appropriate and within ten (10) days, thereafter, respond to the allegations in writing.

Step 4.

If the grievance remains unresolved after Step 3, the Union may, by written notice to the City Human Resources Department within ten (10) days after the receipt of the response in Step 3, notify the City that the Union wishes to appeal the grievance to final and binding arbitration. The parties shall attempt to agree upon an arbitrator. If no agreement is reached, they shall request a list from the State Conciliation Service of nine (9) names. The selection process will include a review of the arbitrator's availability for the hearing.

Each party shall then alternately strike a name until only one (1) name remains, said person to be the arbitrator. The order of striking shall be determined by the flip of a coin.

7.4.3 Arbitration

The arbitrator shall be empowered to conduct a hearing and to hear and receive evidence presented by the parties. The hearing should be held within 60 calendar days of the selection of the arbitrator. The hearing shall be informal and need not be conducted according to technical rules of evidence. Repetitious evidence may be excluded and oral evidence shall be taken only under oath. The arbitrator shall determine what evidence is relevant and pertinent, as well as any procedural matters, and he/she may call, recall and examine witnesses, as he/she deems proper.

The burden of proof shall be upon the WCE in grievance matters and upon the City in disciplinary/discharge matters.

After the conclusion of any hearing and the submission of any post hearing evidence or briefs agreed upon by the parties, the arbitrator shall render a written decision which shall be final and binding upon the City, the WCE and any employee(s) involved in the grievance or disciplinary matter.

The arbitrator shall not be empowered to add to, subtract from, or in any way modify or alter any provision of this Memorandum of Understanding. The arbitrator shall only determine whether a grievance exists in the manner alleged by the grievant and what the proper remedy, if any, shall be, or, in the case of disciplinary/discharge matters, whether the City allegations are accurate and the appropriateness of the disciplinary penalty.

The fees and expenses of the arbitrator shall be shared equally by the WCE and the City. All other expenses shall be borne by the party incurring them. The cost of the services of court reporter shall be borne by the requesting party unless there is a mutual agreement to share the cost or unless the arbitrator so requests; then the costs will be shared equally.

7.4.4 General Provisions

1. Employees who participate in the Grievance Procedure by filing a grievance or acting as a witness on the behalf of either party shall be free from discrimination by either the WCE or the City.

2. A grievant has the right to be represented at each stage of the procedure, to cross examine witnesses, and to have access to all information regarding the basis of the grievance upon which the City relies in making its determinations.
3. If a grievant, or the WCE on behalf of the grievant, fails to carry his/her grievance forward to the next level within the prescribed time period, the grievance shall be deemed withdrawn unless the parties have mutually agreed to an extension of timelines. If a supervisor or manager fails to respond with an answer within the given period of time, the grievant may appeal to the next higher level. The parties may by mutual agreement waive the steps in the procedure.
4. If a hearing is held during work hours of employee witnesses, such employees shall be released from duties, without loss of pay or benefits, to appear at the hearing. Witnesses requested by the parties shall be compelled to attend said hearings.
5. The Human Resources Department shall act as the central repository for all grievances.
6. Time limits contained herein may be extended by mutual agreement of the parties. Absence for bona fide reasons by a grievant, the WCE Executive Director or any management official involved in responding to the grievance shall automatically extend the time limits by the same number of days of absence.

7.5 POSITION RECLASSIFICATION

Reclassification of positions covered by this MOU shall be in accordance with the City's Reclassification Policy available on the City's Intranet website

7.6 FURLOUGH PROGRAM

Both the City of San Rafael and the WCE recognize the current economic condition of the State of California and the City of San Rafael. Through this recognition and in a cooperative spirit, the City of San Rafael and the WCE have worked expeditiously on the development of a Furlough Program. This Agreement does not mean the City will necessarily implement furloughs, however, in the event it is necessary to implement due to continued economic problems in the City of San Rafael, the procedures for this Furlough Program shall provide for both Voluntary Time Off (herein described as VTO) and Mandatory Time Off (herein described as MTO).

7.6.1 *Voluntary Time Off (VTO)*

The needs of the City and the respective departments (as determined by the Department Director and City Manager) will need to be considered in the actual granting of VTO. Any VTO time granted and the resulting savings will have a corresponding impact on the time needed through MTO.

1. An employee's VTO time would count in determining how many hours of MTO an employee needed to take during the fiscal year.
2. An employee selecting at least a 5% reduction of hours through the VTO would receive "float" days as described in Section 7.6.2. (4.a.).
3. Employees who take VTO at a time other than when MTO is taken by other employees will have to take vacation leave, compensatory time off or leave without pay if the MTO results in the closure of the department.

4. Employees will be allowed to exceed a 5% reduction of hours through the VTO with review of the Department Director and approval of the City Manager and such approval shall be revocable should the City determine that the impact of the absence can not be absorbed by the Department. Prior to revoking approval, the City will contact the employee and review pertinent information which would impact the employee's ability to return to work. Should the City need to remove additional VTO, such removal would be considered a non-disciplinary action and would not be subject to any appeal/grievance procedure.

7.6.2 *Mandatory Time Off (MTO)*

MTO will be taken by the employee during the MTO period when feasible in their respective department (as determined by the Department Director and City Manager) and after consultation with WCE.

1. Employees may not take paid vacation time in lieu of designated MTO time.
2. MTO time shall be considered time in pay status for the accrual of leave and eligibility for holidays. MTO time will not impact health, dental and life insurance benefits. At this time MTO time will not impact Marin County retirement calculations of average compensation or service credit as the City and employee will continue to fund the full amounts. If the Marin County Retirement Association changes its policy on this, the City will, effective the first of the month following notice from the Marin County Retirement Association, make the necessary change in the program's administration to correspond with the change in the policy.
3. MTO time shall apply toward time in service for step increases and completion of probation.
4. Other Terms and Conditions:
 - a) The MTO program shall be limited to a maximum five percent (5%) reduction in work hours/pay for the fiscal year. When the maximum MTO reduction (5%) is implemented, the involved employee shall be credited with three (3) days of float time.
 - b) Float time accrued through the MTO Program must be taken in the next fiscal year following the furlough, with supervisory approval, or the leave will be forfeited. The float days have no cash value upon termination of employment. If an employee is laid off before having the opportunity to take unused furlough induced float time, said employee would be eligible to take the unused furlough induced float time during the thirty-day layoff notice period.
 - c) Should the City of San Rafael experience a financial windfall during the fiscal year that furloughs are implemented, the City and WCE agree to re-open negotiations on this Furlough Plan.

7.7 REDUCTION IN FORCE

7.7.1 Authority

The Appointing Authority may lay off, without prejudice, any regular employee because of lack of work or funds, or organizational alterations, or for reasons of economy or organizational efficiency.

7.7.2 Notice

Regular employees designated for layoff or demotion shall be notified in writing at least thirty (30) calendar days prior to the anticipated date of termination or demotion. The employee organization shall also be notified.

7.7.3 Order of Layoff

Layoffs and/or reductions in force shall be made by classification. A classification is defined as a position or number of positions having the same title, job description and salary. For WCE represented engineering positions, the classifications will be Engineering Technician I/II, Traffic Engineering Technician I/II, Assistant Engineer, Associate Engineer, Senior Associate Engineer, Land Development Engineer, Civil Engineer, Traffic Engineer separately. Each classification stands alone for purpose of layoffs. Any layoff will be based on seniority within the classification and will be implemented in the following order: extra hire employees, probationary employees and regular employees. In effecting the preceding order, a part-time regular employee with more seniority can displace a full-time regular employee.

7.7.4 Seniority

Probationary employees will always be laid off before employees who have regular status in a classification. If two or more employees within a classification have achieved regular status, such employees will be laid off or reduced on the following basis:

- a. Seniority within the classification will be determinative. Any layoffs in these classes will be based on overall seniority in the classification, not on the basis of any working title or currently assigned duties.
- b. If the seniority of two or more employees in the affected classification or higher classification(s) is equal, departmental seniority shall be determinative.
- c. If all of the above factors are equal, the date regular status in City service is achieved shall be determinative.
- d. If all of the above are equal, date of certification for appointment shall be determinative.

7.7.5 Bumping Rights

An employee designated to be laid off may bump into a class at the same salary level, for which he or she qualifies or into the next lower classification in which such employee has previously held regular status. An employee who is bumped shall be laid off in the same manner as an employee whose position is abolished.

7.7.6 Transfer Rights

The Human Resources Director will make every effort to transfer an employee who is to be affected by a reduction in force to another vacant position for which such employee may qualify.

The length of eligibility for such transfer will be the period of notification as provided in Section 7.7.2, but no longer than the effective date of such layoff or reduction.

7.8 RE-EMPLOYMENT

7.8.1 *General Guidelines*

Individuals who have been laid off or demoted shall be offered re-appointment to the same classification in which they held status in the order of seniority in the classification. Individuals demoted in lieu of reduction in force shall be offered restoration to the highest class in which they held status and in which there is a vacancy prior to the appointment of individuals who have been laid off.

7.8.2 *Right to Re-Employment*

Each person who has been laid off or demoted in lieu of a layoff from a position the person held, shall, in writing, be offered re-appointment in the same classification should a vacancy occur in the classification within two years after the layoff or demotion. Prior to being re-employed, the employee must pass a physical exam administered by a City appointed physician and must pass the background check administered by the City.

7.8.3 *Time Limits*

Should the person not accept the re-appointment within seven (7) calendar days after the date of the offer, or should the person decline or be unable to begin work within two weeks after the date of acceptance of the offer, the person shall be considered unavailable for employment, shall forfeit the right to re-employment and be removed from the re-employment list.

7.8.4 *Availability*

Whenever a person is unavailable for re-employment, the next senior person who is eligible on the re-employment list shall be offered re-employment.

7.8.5 *Probationary Status*

Employees re-appointed under the provisions above will not be required to complete a new probationary period if they had previously held permanent status in the classification. Employees who had not completed their probationary period shall serve the remainder of the probationary period upon re-appointment.

7.8.6 *Restoration of Benefits*

Employees restored to previously held positions shall be deemed to have returned from a leave of absence for the purpose of all rights and benefits legally permissible. Time not on the payroll will not count as time worked for the purposes of seniority accrual.

7.8.7 *Layoff Procedure Notification*

Once the decision has been made to reduce the workforce per this MOU, the City will meet with the union to review and receive feedback on the procedure to be used to inform and process the lay-offs. The information gained in this meeting from the union by the City will be advisory and not binding.

WESTERN COUNCIL OF ENGINEERS

CITY OF SAN RAFAEL

Nancy Watson, Western Council of Engineers

Leslie Loomis, Human Resources Director

Diane Decicio, Senior Associate Engineer

Jim Schutz, Assistant City Manager

Janet Nibbi, Engineering Technician

Khelri'Jhovahn, HR Representative

Date

Date

MEMORANDUM OF UNDERSTANDING
between
CITY OF SAN RAFAEL
and
WESTERN COUNCIL OF ENGINEERS

List of Exhibits

- Exhibit A Salary Schedules for July 1, 2009 – June 30, 2010
- Exhibit B Classification/Compensation Summary: Benchmark Linkages