

RESPONSE TO COUNCIL QUESTIONS RE: 1/28/20 CITY COUNCIL AGENDA

Agenda Item #: 6 (20-148)

Action on Approval of First Amendment to the City Manager Employment Agreement, and a Resolution to Amend the City Manager Employment Agreement and Approve and Adopt the Updated Salary Plan that includes the Classification of City Manager

Council Question: Can you please get me copy of the original employment agreement for the above mentioned agenda item.

Staff Response: Please see attached agreement.



AGENDA REPORT

Date: August 22, 2017

To: City Manager for Council Action

From: Mayor

Subject: Approval of Employment Agreement by and between the City of Santa Clara and the Candidate for the position of City Manager.

EXECUTIVE SUMMARY

The City of Santa Clara began a recruitment process for the City Manager position, which included a nationwide search and collecting community input on the qualities of our next City Manager. The City Council interviewed a number of qualified candidates. Upon completion of this process the City Council is now recommending appointing Candidate as City Manager.

On August 1, 2017, the Mayor and City Councilmembers met during a Closed Session meeting, and recommended that the City Council appoint the Candidate to the position of City Manager at an annual salary of \$372,886.00. The Employment Agreement spells out the terms and conditions of employment, which will be circulated to all Councilmembers and available to the public. The summary below provides highlights of the wages and benefits contained within the Employment Agreement.

The Candidate will receive all the terms and conditions as outlined in the Unclassified Management Employees' Unit 9 Memorandum of Understanding (December 20, 2015 – December 16, 2017). In addition, the Candidate will receive family health/medical, dental and vision coverage and the premiums will be covered by the City. The City will purchase a standard life insurance plan of \$500,000 with the Employee's option to purchase additional life insurance through the City's plan. The City shall provide Long Term Disability Insurance and ensure the monthly maximum benefit for the City Manager will be 66.6% of Employee's salary. The City shall provide a Housing Allowance of \$3,750 monthly and an Auto Allowance of \$550 monthly. The Candidate will accrue vacation at the annual and maximum accrual rate assuming twenty-one years' of completed service as of the date the employment commences. A vacation bank of 160 hours will be provided. Additionally, a management leave bank of 200 hours will be provided, unused management leave does not carry over from year to year and 200 hours will be credited each January 1st. The Candidate can cash out 160 hours of management leave on an annual basis. A sick leave bank of 120 hours will also be provided. The City will contribute towards a 457 Deferred Compensation Plan, the annually adjusted maximum contribution limit (for 2017 is up to \$18,000), and the amount will be automatically adjusted each year to the maximum limit in accordance with the IRS Deferred Compensation laws. The City will also contribute 5% of Employee's wage to a 401(a) account and the value of the contribution will be automatically adjusted from wage increases resulting from cost of living adjustments or merit pay to maintain a 5% contribution level; and the City will provide a severance benefit not to exceed twelve (12) month's salary including family medical benefits.

Subject: Approval of Employment Agreement by and between the City of Santa Clara and the Candidate for the position of City Manager.

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ADVANTAGES AND DISADVANTAGES OF ISSUE

An approved Employment Agreement for City Manager is necessary to set forth the salary and benefits agreed upon by the parties. There are no disadvantages.

ECONOMIC/FISCAL IMPACT

The salary for this position will increase approximately \$56,110.00 per year and employer paid benefits for this position will increase approximately \$112,408 per year. The amount required for this year to balance the budget for the remaining nine months is \$126,388.00.

RECOMMENDATION

That the Council approve and authorize the Mayor to execute the Employment Agreement between the City of Santa Clara and the Candidate for City Manager which sets the salary and terms and conditions of employment pursuant to the recommendation of the Mayor and City Councilmembers; to amend the 2017/2018 budget and add \$126,388.00 to the City Manager's Office Salary and Benefits budget; and direct the Candidate to begin on a mutually agreed upon start date in October 2017.



Lisa M. Gillmor
Mayor

APPROVED AS TO CONTENT:



Elizabeth C. Brown
Director of Human Resources

Documents Related to this Report:

- 1) *Employment Agreement*

**EMPLOYMENT AGREEMENT
BY AND BETWEEN THE
CITY OF SANTA CLARA, CALIFORNIA
AND
DEANNA J. SANTANA**

This EMPLOYMENT AGREEMENT is made by and between the City of Santa Clara, California, a chartered California municipal corporation ("City") and Deanna J. Santana ("Employee") as of August 22, 2017.

RECITALS

This Agreement is entered into on the basis of the following facts, among others:

- A. City, acting with the approval of its duly elected City Council, desires to appoint and employ Deanna J. Santana as its City Manager subject to the terms and conditions set forth in this Agreement, the Santa Clara City Code and the Charter of the City of Santa Clara (the "Charter").
- B. The Charter provides, among other things, that the City Manager shall be appointed by, and serve at the pleasure of the City Council.
- C. Employee desires to be employed by the City as its City Manager, subject to the terms and conditions set forth in this Agreement, the Santa Clara City Code and the Charter.
- D. City and Employee desire to establish specific terms and conditions relating to compensation, including salary and benefits, performance evaluations and related matters.

AGREEMENT PROVISIONS

BASED UPON THE FOREGOING, CITY AND EMPLOYEE AGREE AS FOLLOWS:

- 1. Employment. City Council appoints and employs Employee as City Manager with the City of Santa Clara and Employee accepts the appointment and employment. Employee acknowledges and agrees that as City Manager, Employee serves in an at-will capacity, with no expectation of continued employment, and with no right to pre-or-post-separation due process or appeal except as otherwise required by Charter Section 806. Such appointment and employment shall be effective on 10-2, 2017.
- 2. Duties of the City Manager. Employee shall perform the duties established for the City Manager by the Charter, Santa Clara City Code, City Council and any applicable law, ordinance, resolution or regulation.
 - 2.1 Full Energy and Skill. Employee shall devote her full energy, skill, ability, and productive time to the performance of the "Duties of the City Manager" referenced herein.
 - 2.2 Conflict. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, which is actually or potentially in conflict with, inimical to, or which interferes with the performance of

the "Duties of the City Manager" described herein. Employee acknowledges that she is subject to the various conflict of interest requirements found in the California Government Code and other applicable state and local policies and regulations concerning conflicts of interest.

- 2.3 Code of Ethics and Values. Employee shall adhere to the City of Santa Clara's Code of Ethics and Values, a copy of which is attached as *Exhibit A* and incorporated herein.
- 2.4 Permission Required For Outside Activities. Employee shall not engage in any employment, activity, consulting service, or other enterprise, for compensation or otherwise, without the express, written consent of the City Council. City Council expressly acknowledges that Employee is a Board Member of ICMA-RC and that she is expressly authorized by the City Council to travel for ICMA-RC business at ICMA-RC expense and to maintain her role as a Board Member without further City Council action being required.
- 2.5 Professional Activities. During Employee's appointment as City Manager, she is expressly authorized to participate in professional activities, including but not limited to meetings, conferences and other events conducted or sponsored by any professional organizations related to the work responsibilities identified in Section 2.6, e.g., of Silicon Valley Power, the Stadium Authority, the League of California Cities, National League of Cities, ICMA, California City Management Foundation, and the Urban Land Institute provided that her ability to perform the "Duties of the City Manager" described herein is not compromised. Employee shall be paid regular salary and benefits while traveling to, attending, or participating in professional activities, and shall be entitled to expense advances in accordance with City policy applicable to other Council-appointed officers. Subject to annual appropriation and any limitations in the City travel policy attached hereto as Exhibit D (Policy Conference and Business Travel Expense Reimbursement). Employee is entitled to reimbursement for the actual costs of the following expense categories that she incurs as a result of the Professional Activities authorized in this section: membership fees, airfare, rental car (if necessary), conference fees and lodging, in accordance with the City's policy. Employee shall inform the City Council in advance of absences of more than one day related to such Professional Activities.
- 2.6 Employee shall also serve as Contract Administrator for the Sports & Open Space Authority, Executive Director for the Housing Authority, Executive Director for the Stadium Authority, Staff Chair for the Economic Development Team, Executive Director for the Bayshore North Project Enhancement Authority and Executive Director for the Successor Agency to the Redevelopment Agency.

3. Compensation. While performing the duties of City Manager, Employee shall be compensated as provided in this section.

- 3.1 Salary. Employee shall receive an annual salary of Three Hundred Seventy-two Thousand Eight Hundred Eighty-six Dollars (\$372,886), less all authorized or appropriate deductions and withholdings, payable in pro-rata increments on regular City paydays, commencing on the first day of employment. City and

Employee agree that the amount of her annual salary shall not decrease, except as part of a decrease that is applicable to either all Council-appointed officers, (the City Attorney and City Auditor) or is applicable to all City Miscellaneous Unclassified Management Employees in Unit 9. Such decrease shall be effective when approved by the City Council.

- 3.2 Adjustments. Periodically, the City Council shall meet with Employee for the express purpose of determining any appropriate salary adjustment, but the ultimate decision in regard to the timing and the amount of any adjustment is within the sole discretion of the City Council.

Although the position of City Manager is not in Unit 9, Employee shall be subject to all cost of living adjustments to salary and benefits for City Miscellaneous Unclassified Management Employees in Unit 9.

- 3.3 Regular Benefits and Allowances. Employee shall be entitled to pension benefits at CalPERS Classic 2.7% at 55. Except as otherwise specified in this Agreement, Employee will be eligible for, and shall receive, the benefits provided in the Miscellaneous Unclassified Employees Memorandum of Understanding for Unit 9, and any future amendments thereto or successor Memoranda of Understanding governing the same benefits. A copy of the Miscellaneous Unclassified Employees Unit 9 Memorandum of Understanding is attached as *Exhibit B* and incorporated herein.

- 3.4 Additional Benefits. Health/Medical, Dental and Vision. 100% of costs for health/medical, dental, and vision are to be covered by the City of Santa Clara for full family coverage, employee plus spouse and two children. Employee shall not be eligible for health *in lieu* payments.

Standard Life Insurance. City will purchase a standard life insurance plan of \$500,000. Employee agrees there will be an imputed income tax added to Employee's W-2. The Employee has the option to purchase additional life insurance through the City's plan.

Long Term Disability (LTD) Benefit. The City shall provide a Long Term Disability (LTD) benefit to Employee at a benefit coverage level of 66.7% of salary, with all other benefit coverage in accordance with the terms and conditions of the LTD benefit provided to members of Unit 9. If the LTD insurance coverage for Unit 9 members contains a maximum benefit level of less than 66.67%, City shall supplement the Unit 9 benefit Employee receives with the amount required to bring the benefit level to 66.67% of Employee's base monthly earnings on the same terms and conditions for coverage as provided in the Unit 9 coverage.

- 3.5 Monthly Housing Allowance. It is understood that as a result of taking employment with City, Employee must either refinance her existing home loan, or purchase a new residence, with financing available at market rates, which will result in an increased housing expense for Employee. The City shall provide Employee with a monthly Housing Allowance in the amount of Three Thousand Seven Hundred Fifty Dollars (\$3,750) to be used by Employee for housing no more than 20 miles from Santa Clara City Hall through the duration of

Employee's employment. Employee bears all tax-related expenses for receipt of the Housing Allowance, property tax increases, and any other related costs associated with market rate financing. Employee shall advise the City if Employee is able to receive competitive market rate financing where the total of the net post-tax value of the Housing Allowance and the value of her existing mortgage exceeds the new monthly mortgage. Upon such notification, the City and Employee will reduce the Housing Allowance accordingly. If Employee is unable to obtain new financing within the monthly Housing Allowance value, Employee will absorb all additional expenditures above the post-tax value of the housing allowance. If at any time during the term of employment, Employee alters financing in any manner such that the outcome of the Housing Allowance calculation described above is altered, then Employee will notify City, and City and Employee will reduce the Housing Allowance accordingly. In no event will any housing allowance negotiated at any time during the term of this Agreement exceed \$3,750 per month.

3.6 Vacation Accrual & Leaves. Notwithstanding Section 3.3, Employee's annual accrual and maximum accrual of vacation shall assume she has twenty-one years' of completed service as of the date she commences employment (e.g., 192 hours/year). In addition, effective the first day of employment, Employee will have (1) a vacation bank of 160 hours and (2) a management leave bank of 200 hours and (3) and a sick leave bank of 120 hours. In addition, employee shall be entitled to annual Management Leave of 200 hours. Employee shall also be allowed to exchange 160 hours of Management Leave for cash value each calendar year including 2017, subject to the IRS "Constructive Receipt" requirements.

3.7 Auto Allowance. Employee shall be entitled to an automobile allowance in the amount of \$550.00 monthly.

3.8 Deferred Compensation. Employee will participate in ICMA-RC for deferred compensation programs. The Employee shall be entitled to participate in ICMA-RC, or any other deferred compensation plan, in accordance with standard City policy for all employees, and additionally as follows:

(a) *457 Account* – The City will contribute the annually adjusted maximum contribution limit and it will be automatically adjusted each year to the maximum level. For calendar year 2017, the maximum value is \$18,000 and contribution value will be prorated to offset the contributions of current employer, but to achieve the maximum value.

(b) *401(a) Account* – The City will contribute 5% of Employee's salary as set forth in 3.1 above to a 401(a) account and the value of contribution will be automatically adjusted to comport with salary increases resulting from cost of living adjustments or performance pay to maintain a 5% contribution level.

4. Performance Appraisal. The City Council shall formally review and evaluate Employee's performance by December of each year. Such review and evaluation shall be in accordance with the specific criteria developed by the City Council in consultation with a professional facilitator to be selected by mutual collaboration between City Council and Employee which collaboration shall also establish a mutually agreed upon evaluation process.

5. Additional Expenses of Employment. City shall pay the following usual and customary employment expenses:

5.1 The costs of any fidelity or other bonds required by law for Employee.

6. Termination, Resignation and Severance Pay. Employee understands and agrees that she has no constitutionally protected property or other interest in continued employment as City Manager. Employee understands that notwithstanding any other applicable laws, resolutions and policies, she has no right to pre-or post-disciplinary due process. Employee further understands and agrees that she works at the will and pleasure of the City Council and that she may be terminated at any time, with or without cause, in accordance with Charter Section 806 except as provided in Sec. 6.1 below. Employee may terminate this agreement by voluntary resignation upon sixty (60) calendar days' written notice to the City Council in accordance with Sec. 6.5, below. In the event that the City Council terminates Employee's employment as City Manager for no reason or for any reason other than as set forth in Subsection 6.3 below and Employee agrees to sign and deliver to the City Council a general and full release of all claims with the provisions contained in Exhibit C (Severance and Release Agreement) attached hereto and any other applicable provisions as negotiated and agreed by the parties, and Employee does deliver said release, Employee shall receive severance pay in accordance with Sec. 6.2, below.

6.1 City Council shall take no action to terminate Employee's services within Ninety (90) days after the seating of a new member following any election at which one or more new members are elected to the City Council. There is no express or implied promise made to the Employee for any form of continued employment. Employee shall have no right to a termination hearing other than that provided for in Charter Section 806. City and Employee acknowledge that an excellent City Council-City Manager relationship is in the best interest of the City and accordingly each agree to use best efforts to foster City Council-City Manager communications.

6.2 If the City Council terminates Employee while employee is still willing and able to perform the duties of City Manager, the City Council agrees to pay Employee by either (a) a single lump sum payment made on the effective day of termination, of an amount calculated as follows: twelve (12) months aggregate total compensation and an amount equivalent to twelve (12) months aggregate benefits as specified in Sec. 3, supra; or (b) allow her to continue to receive her usual compensation and benefits specified in Sec. 3, supra, through payroll for twelve (12) months, whichever is preferable to the Employee. Any such payments will release City from any further obligations under this Agreement. Contemporaneously with the delivery of the lump-sum separation pay, or first installment through payroll, herein above set out, Employee agrees to execute and deliver to City the standard release of any claims against the City except those prohibited from release under California or federal law, a copy of which is attached hereto as Exhibit C.

6.3 Notwithstanding Subsection 6.2 above, City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of Subsection 6.2 if Employee is terminated pursuant to Charter Section 806 because of:

(a) Conviction of or a plea of nolo contendere to a felony or a misdemeanor involving moral turpitude;

(b) Use of non-prescription drugs or alcohol that materially affects the performance of the City Manager's duties; or

(c) Willful abandonment of duties (unexcused absence for three or more consecutive days) or repeated and protracted unexcused absences from the City Manager's office and duties.

6.4 City shall not be obligated to pay, and shall not pay, any amounts or continue any benefits under the provisions of Subsection 6.2 in the event Employee retires or voluntarily resigns in writing prior to termination without affirmative action by City to terminate, initiate termination proceedings or request Employee's resignation.

6.5 In the event Employee voluntarily and without the official request of City retires or resigns her position, Employee shall provide written notice to City at least two (2) months in advance of the Employee's final date of employment unless the parties agree otherwise. Such resignation shall not be deemed a termination that triggers payment of Severance benefits described in Subsection 6.2.

7. Miscellaneous.

7.1 Indemnity. In accordance with and to the extent provided by the California Tort Claims Act (Government Code Secs. 825, et seq.) and Government Code Secs. 995-996.5, the City shall defend and indemnify Employee against and for all losses sustained by the Employee in direct consequence of the discharge of the Employee's duties on the City's behalf for the period of the Employee's employment. This section shall be equally applicable to each City related entity as though set forth in an indemnity agreement between the Employee and that legal entity. The City hereby guarantees the performance of this indemnity obligation by the City related entity and shall indemnify and hold the Employee harmless against any failure or refusal by the City related entity to perform its obligations under this Section. Further, if the City provides funds for legal criminal defense pursuant to this subsection and the terms of the Government Code, Employee shall reimburse the City for such legal criminal defense funds if Employee is convicted of a crime involving an abuse of office or position, as provided by Government Code Secs. 53243-53243.4.

7.2 Notices. Notices given under this Agreement shall be in writing and shall be either:

(a) served personally; or

(b) sent by facsimile (provided a hard copy is mailed within one (1) business day); or

(c) delivered by first class United States mail, certified, with postage prepaid and a return receipt requested; or

(d) sent by Federal Express, or some equivalent private mail delivery service.

Notices shall be deemed received at the earlier of actual receipt or three (3) days following deposit in the United States mail, postage prepaid. Notices shall be directed to the addresses shown below, provided that a party may change such party's address for notice by giving written notice to the other party in accordance with this subsection.

For City: Attention: Mayor
 City of Santa Clara
 1500 Warburton Avenue
 Santa Clara, CA 95050

For Employee: Deanna J. Santana
 

- 7.3 Recitals/Entire Agreement/Amendment. The foregoing Recitals are true and correct and are a part of this Agreement. This Agreement constitutes the entire understanding and agreement between the parties as to those matters contained in it, and supersedes any and all prior or contemporaneous agreements, representations and understandings of the parties. This Agreement may be amended at any time by mutual agreement of the parties, but any such amendment must be in writing, dated and signed by the parties and attached hereto.
- 7.4 Applicable Law and Venue. This Agreement shall be interpreted according to the laws of the State of California. Venue of any action regarding this Agreement shall be in the Santa Clara County Superior Court.
- 7.5 Severability. In the event any portion of this Agreement is declared void, such portion shall be severed from this Agreement and the remaining provisions shall remain in effect, unless the result of such severance would be to substantially alter this Agreement or the obligations of the parties, in which case this Agreement shall be immediately terminated.
- 7.6 Waiver. Any failure of a party to insist upon strict compliance with any term, undertaking or condition of this Agreement shall not be deemed to be a waiver of such term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the parties.
- 7.7 Representation by Counsel. Employee and City acknowledge that they each did, or had the opportunity to, consult with legal counsel of their respective choices with respect to the matters that are the subject of this Agreement prior to executing it.
- 7.8 Section Headings. The headings on each of the sections and subsections of this Agreement are for the convenience of the parties only and do not limit or expand the contents or any such section or subsection.

The Parties acknowledge and accept the terms and conditions of this Employment Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent

of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

APPROVED AS TO FORM:

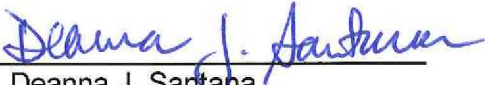

BRIAN DOYLE
Interim City Attorney

By: 
LISA M. GILLMOR
Mayor

ATTEST:


FOR ROD DIRIDON, JR.
City Clerk

1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2250
FAX: (408) 249-7846

By: 
Deanna J. Santana
Employee

Attachments incorporated by reference:

Exhibit A – City of Santa Clara's Code of Ethics and Values

Exhibit B – Miscellaneous Unclassified Employees Unit 9 Memorandum of Understanding

Exhibit C - Severance and Release Agreement

Exhibit D – Policy--Conference and Business Travel Expense Reimbursement)



Exhibit A

A handwritten signature in black ink, appearing to be "JL", located to the right of the "Exhibit A" header.



City of Santa Clara, CA Code of Ethics and Values

PREAMBLE

The proper operation of democratic government requires that decision-makers be independent, impartial, and accountable to the people they serve. The City of Santa Clara has adopted this Code of Ethics and Values to promote and maintain the highest standards of personal and professional conduct in the City's government. All elected and appointed officials, City employees, volunteers, and others who participate in the city's government are required to subscribe to this Code, understand how it applies to their specific responsibilities, and practice its eight core values in their work. Because we seek public confidence in the City's services and public trust of its decision-makers, our decisions and our work must meet the most demanding ethical standards and demonstrate the highest levels of achievement in following this code.

1. As a Representative of the City of Santa Clara, I will be *ethical*.

In practice, this value looks like:

- a.) I am trustworthy, acting with the utmost integrity and moral courage.
- b.) I am truthful, do what I say I will do, and am dependable.
- c.) I make impartial decisions, free of bribes, unlawful gifts, narrow political interests, and financial and other personal interests that impair my independence of judgment or action.
- d.) I am fair, distributing benefits and burdens according to consistent and equitable criteria.
- e.) I extend equal opportunities and due process to all parties in matters under consideration. If I engage in unilateral meetings and discussions, I do so without making voting decisions.
- f.) I show respect for persons, confidences, and information designated as "confidential."
- g.) I use my title(s) only when conducting official City business, for information purposes, or as an indication of background and expertise, carefully considering whether I am exceeding or appearing to exceed my authority.

2. As a Representative of the City of Santa Clara, I will be *professional*.

In practice, this value looks like:

- a.) I apply my knowledge and expertise to my assigned activities and to the interpersonal relationships that are part of my job in a consistent, confident, competent, and productive manner.
- b.) I approach my job and work-related relationships with a positive attitude.
- c.) I keep my professional knowledge and skills current and growing.

3. As a Representative of the City of Santa Clara, I will be *service-oriented*.

In practice, this value looks like:

- a.) I provide friendly, receptive, courteous service to everyone.
- b.) I am attuned to, and care about, the needs and issues of citizens, public officials, and city workers.
- c.) In my interactions with constituents, I am interested, engaged, and responsive.

4. As a Representative of the City of Santa Clara, I will be *fiscally responsible*

In practice, this value looks like:

- a.) I make decisions after prudent consideration of their financial impact, taking into account the long-term financial needs of the City, especially its financial stability.
- b.) I demonstrate concern for the proper use of City assets (e.g., personnel, time, property, equipment, funds) and follow established procedures.
- c.) I make good financial decisions that seek to preserve programs and services for City residents.

5. As a Representative of the City of Santa Clara, I will be *organized*.

In practice, this value looks like:

- a.) I act in an efficient manner, making decisions and recommendations based upon research and facts, taking into consideration short and long term goals.
- b.) I follow through in a responsible way, keeping others informed, and responding in a timely fashion.
- c.) I am respectful of established City processes and guidelines.

6. As a Representative of the City of Santa Clara, I will be *communicative*.

In practice, this value looks like:

- a.) I convey the City's care for and commitment to its citizens.
- b.) I communicate in various ways that I am approachable, open-minded and willing to participate in dialog.
- c.) I engage in effective two-way communication, by listening carefully, asking questions, and determining an appropriate response which adds value to conversations.

7. As a Representative of the City of Santa Clara, I will be *collaborative*.

In practice, this value looks like:

- a.) I act in a cooperative manner with groups and other individuals, working together in a spirit of tolerance and understanding.
- b.) I work towards consensus building and gain value from diverse opinions.
- c.) I accomplish the goals and responsibilities of my individual position, while respecting my role as a member of a team.
- d.) I consider the broader regional and State-wide implications of the City's decisions and issues.

8. As a Representative of the City of Santa Clara, I will be *progressive*.

In practice, this value looks like:

- a.) I exhibit a proactive, innovative approach to setting goals and conducting the City's business.
- b.) I display a style that maintains consistent standards, but is also sensitive to the need for compromise, "thinking outside the box," and improving existing paradigms when necessary.
- c.) I promote intelligent and thoughtful innovation in order to forward the City's policy agenda and City services.

Exhibit B

jm

MEMORANDUM OF UNDERSTANDING

between

CITY OF SANTA CLARA

and

**MISCELLANEOUS UNCLASSIFIED
MANAGEMENT EMPLOYEES
UNIT 9**



DECEMBER 20, 2015 – DECEMBER 16, 2017

MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT # 9
DECEMBER 20, 2015 – DECEMBER 16, 2017

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MEMORANDUM OF UNDERSTANDING
between
CITY OF SANTA CLARA
and
MISCELLANEOUS UNCLASSIFIED MANAGEMENT EMPLOYEES, UNIT # 9
DECEMBER 20, 2015 – DECEMBER 16, 2017

In accordance with the provisions of Section 18 of the City of Santa Clara Resolution #2979, entitled "Employer-Employee Relations", this Memorandum of Understanding constitutes the results of discussions between designated representatives of the City Management Staff (City) and the Miscellaneous Unclassified Management Employees of the City of Santa Clara (Unit 9) on all matters within the scope of representation. The term of this Agreement shall be from December 20, 2015 through December 16, 2017.

1. WAGE ADJUSTMENTS

Effective December 20, 2015 (and retroactive with respect to base wages for persons employed by the City when the City Council approved this MOU), a 4.5% wage increase. Effective the first full pay period of the 12/16 – 12/17 MOU year, a further 4.0% wage increase.

2. CALIFORNIA PUBLIC EMPLOYEES' RETIREMENT SYSTEM

The City has contracted with CalPERS to provide employees with the 2.7% at age 55 formula with "highest single year" effective December 17, 2006 for "Classic" or "Legacy" employees as defined by CalPERS and the Public Employees' Pension Reform Act of 2013 (PEPRA) and the 2.0% at 62 with "highest three year average" for "New Members" as defined by CalPERS and PEPRA. Classic/Legacy employees shall continue to pay the employee contribution rate and New Members shall contribute 50% of the "normal cost" of their pension formula as required and defined by CalPERS and PEPRA. The employee's CalPERS retirement contribution will continue to be treated as tax deferred.

3. APPLICATION OF MOU TO REIMBURSED SERVICES

The terms of this Memorandum of Understanding shall not apply to Unclassified Management Employees when such employees are providing their services to another agency that is reimbursing the City of Santa Clara for salary and fringe benefits of such employees. Such arrangements shall be mutually agreed upon between the employee and the City.

4. HOLIDAYS

Employees shall be provided 13 annual paid holidays (computed on the eight hour per day pay rate). Any additional permanent holidays designated by the City Council will be afforded represented employees of Unit 9. Additional permanent holidays under this section shall be defined as a holiday on which City offices are closed.

Additionally, the City will observe four additional non-permanent paid holidays on 12/28/15, 12/29/15, 12/30/15 and 12/31/15 in the 12/15 – 12/16 MOU year and on 12/27/16, 12/28/16, 12/29/16 and 12/30/16 in the 12/16 – 12/17 MOU year. These non-permanent paid holidays would be only for these MOU

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years, and this provision will sunset and expire on the last day of the 12/16 – 12/17 MOU year. Employees whose jobs require them to work on these days would receive banked paid days off instead (8 hours per holiday), which hours may be used during the applicable MOU year with the approval of the applicable supervisor/manager.

5. JOB SECURITY

Represented members will be compensated at the rate of forty (40) hours salary per year of service to a maximum of six hundred and forty (640) hours should they be terminated from employment for reasons other than cause as defined under Section 6.4 of the Civil Service Rules and Regulations.

6. VACATION ACCRUAL AND USAGE

Represented employees will be entitled to use vacation as it is earned under the following conditions:

- A. Vacation may not be taken during the first 6 months of regular employment.
- B. Vacation will be earned on a bi-weekly basis (1/26 of the yearly accrual) provided that the employee is in a paid status for at least 2/3 of the hours (53.4 hours) of that pay period.
- C. Accrued vacation time will be paid off regardless of term of employment.
- D. Annual and maximum vacation accrual rates, calculated to four decimal points for accuracy, are as follows:

COMPLETED	ANNUAL	MAXIMUM
YEARS OF SERVICE	ACCRUAL	ACCRUAL
1 through 4	80 hours	400 hours
5 through 9	120 hours	400 hours
10 through 15 years	168 hours	400 hours
16 through 20	176 hours	400 hours
21 years +	192 hours	400 hours

As a one-time exception, employees that otherwise would “lose” accrued vacation hours because their total accrued vacation hours exceeded 400 hours as of the end of the pay period which included 12/31/15 will be allowed to “carry-over” their entire balance, including accrued vacation hours in excess of 400 hours into 2016. Thereafter, the existing MOU rules regarding the year-end maximum for vacation accruals shall apply.

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- E. Employees are limited to the maximum accrual of vacation as defined. Employees may temporarily exceed the allowed maximum vacation accrual, subject to the vacation balance as of the end of the pay period which includes December 31st of each year being reduced to the maximum allowable accrual. The current vacation balance, the annual accrual and the current pay period usage are all shown on the employees' pay check stub and are the responsibility of the employee to track for compliance with this provision.

Vacation that is temporarily allowed to exceed the maximum allowable accrual and is removed from the vacation balance as of the end of the pay period, which included December 31st of each year, may be donated to the Emergency Paid Leave Fund at the direction of the employee.

- F. Vacation may be used in one-tenth (1/10th) hour increments.
- G. Employees who begin work prior to July 1st or continue to be employed after the first calendar year of employment are required to use at least one-half of the vacation accrued during the prior calendar year during the current calendar year.
- H. Subject to having a sufficient balance of accrued vacation available, an employee may, on a twice per year basis, request to be paid at his/her current hourly pay rate for a total combined maximum of 80 hours of accrued vacation.
- I. In lieu of receiving a vacation-leave cash payout at retirement, the Miscellaneous Unclassified Management Employees may vote to roll accrued vacation leave hours into the employee's VEBA account, subject to Association compliance with Federal rules associated with employee contributions of vacation leave to their VEBA accounts.

7. MEDICAL/DENTAL/VISION INSURANCE PREMIUMS

A. Medical

Effective retroactive to January 1, 2016, the City will pay toward health premiums for those employees enrolled in a City health plan an amount equal to \$200 more than the Kaiser employee rate. For employees that show proof of health care coverage, the City will provide a flat dollar cash-in-lieu benefit of \$946.86 per month. Employees covered by a City health plan whose premium amount is less than \$946.86 shall be paid the difference between the amount of their applicable premium and \$946.86.

B. Dental

Effective retroactive to January 1, 2016, the City will pay toward dental insurance premiums an amount equal to the lowest cost employee only premium amount among the dental plans offered by the City.

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C. Vision

For persons enrolled in the City's VSP vision plan as of January 1, 2016, the City will pay retroactively to January 1, 2016 toward vision insurance premiums an amount equal to the lowest cost employee only vision premium. For persons not enrolled in the City's VSP vision plan as of January 1, 2016 but who subsequently enroll, the City will pay toward vision insurance premiums an amount equal to the lowest cost employee only vision premium effective the 1st day of the second calendar month following open enrollment.

8. LONG TERM DISABILITY

The City will continue to pay the cost of a long term disability insurance program. The LTD plan will have a maximum 30 day waiting period and the maximum monthly benefit will include those offsets required by law such as, but not limited to, SDI, retirement, reduced work schedule, worker's compensation, social security, and Railroad retirement.

9. LIFE INSURANCE

The City will pay the required premium for life insurance for represented employees in the amount of \$50,000.

10. AUTOMOBILE ALLOWANCE

As an alternative to IRS mileage reimbursement or use of a City vehicle, an automobile allowance program will be available to represented employees as follows:

- A. Department Heads including Assistant City Manager, Deputy City Manager and Deputy Director Redevelopment Agency/Sports & Open Space Authority (Executive Management) shall be entitled to a base monthly automobile allowance of \$320 for use of their personal vehicles to conduct City business. Executive Management employees may be eligible to receive an additional amount up to a maximum of \$200 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- B. Assistant Department Heads and Division Managers shall be entitled to a base monthly automobile allowance of \$200 for use of their personal vehicles to conduct City business. Assistant Department Heads and Division Managers may be eligible to receive an additional amount up to a maximum of \$300 per month based on required driving while conducting City business, at the discretion of the City Manager or his/her designee.
- C. Upon request of the employee, prior to the beginning of each fiscal year, the City Manager or his/her designee will determine whether or not it is appropriate for a manager to receive an amount above the base monthly allowance. The determination will be made based on the requirements for

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use of the personal vehicles for City business and may require detailed driving information in order to grant an amount above the base monthly amount. This rate adjustment will become effective at the beginning of each fiscal year and will remain in effect for the full year unless there are unique circumstances requiring a modification.

- D. Prior to the granting of this allowance, all insurance, driver's license, and vehicle registration as required under the State of California Vehicle Code, will be provided by the represented employee, and must be valid and in force at all times employees are operating their personal vehicles on City business.
- E. Employees receiving the automobile allowance are responsible for all gasoline and maintenance costs. Employees shall also maintain their personal vehicles in a clean and presentable condition while conducting City business.
- F. A represented employee, who is currently assigned a City vehicle, may choose to continue using that assigned City vehicle in lieu of the automobile allowance.
- G. The City reserves the right to substitute an assigned City vehicle in lieu of this automobile allowance for a represented employee if it is deemed to be in the City's best interest to provide a City vehicle to conduct City business.
- H. A represented employee who is currently reimbursed for use of a personal vehicle in accordance with the IRS mileage reimbursement rate, may continue to utilize direct mileage reimbursement, in lieu of participation in this automobile allowance program.

11. MOBILE COMMUNICATION DEVICE ALLOWANCE

Mobile communication device allowance of \$80.00 per month for eligible classifications beginning in the pay period which includes April 1, 2009.

12. MERIT PAY/SALARY ADJUSTMENT SYSTEM

Merit pay adjustments as provided for in the Personnel and Salary Resolution are, and will continue to be available during the term of this MOU when and if approved by the applicable Department Head and the City Manager. The Merit Pay Adjustment system shall include the following elements:

- A. Each Unit 9 employee shall receive an annual evaluation.
- B. Annual consideration of merit pay adjustments with an affirmative decision by the applicable Department Head shall be required each year following the annual evaluation.
- C. Merit pay adjustments shall range from 0 to 5%. However, in 2016 and

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2017 only, employee is guaranteed at least 2% and, with Department Head approval, up to 5%.

- D. In 2016, employees are eligible for a merit pay adjustment based on an evaluation prepared by February 2, 2016, which date will be their merit pay anniversary each year going forward.
 - 1) Notwithstanding D. above, for employees that have been employed a full year as of February 2, 2016, they will be eligible on their actual anniversary date, which shall also be their merit pay anniversary date thereafter.
 - 2) Notwithstanding D. above, for employees that receive a merit increase between January 1, 2015 and February 2, 2016, the date of their last merit increase shall be their new merit pay anniversary date.
 - 3) If a Department Head has not completed an evaluation in time for a merit adjustment by an employee's anniversary date (February 2, 2016 for most employees), the applicable merit pay adjustment once determined shall be made retroactive to the first full pay period following the anniversary date (and to February 2, 2016 in 2016 for those persons whose anniversary date is February 2, 2016).
- E. The City shall not suspend or freeze consideration of merit pay adjustments for Unit 9 employees unless step increases are suspended or frozen for all bargaining units that utilize a step system.
- F. The City and Unit 9 may, by mutually agreement, meet to discuss potential changes to the merit pay system and/or movement toward a step pay system more like other bargaining units.

13. EMERGENCY PAID LEAVE PROGRAM

A. ADMINISTRATION

Administration of this program shall be provided by a three (3) member Emergency Paid Leave Board (Board), consisting of two (2) members of the Unit 9 Board and the City Director of Human Resources (or designee). Determination of eligibility to use the vacation established in this Emergency Paid Leave pool will be by majority vote of this board. An adverse decision of this board may be appealed to the Unit 9 Board of Directors and their determination shall be final.

B. METHOD OF DONATION

- 1) Contribution of vacation will be computed at the employee's base hourly rate of pay (excluding premium or specialty pay).

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- 2) Contribution may be made from earned vacation, CTO or cash only. Conversion of Sick Leave to Vacation for purposes of donation to this pool will be immediately credited to the pool.
- 3) In a case where it has become known that an employee has been seriously injured or has a life-threatening illness and is in need of assistance from the Emergency Paid Leave Pool, contributions from accrued Sick Leave, computed at the contributing employee's base hourly rate of pay (excluding premium or specialty pay) may be made for the benefit of that specific employee who has the need.
- 4) Employee may authorize the City to automatically convert vacation that should be accrued to the employee to the pool when the employee's vacation accrual has reached the maximum allowed.
- 5) Funds contributed to the Emergency Paid Leave Pool will be placed in an interest bearing Trust Fund. The Trust Fund will be accumulated in total dollars. No record of number of hours contributed to the Pool will be maintained. An employee making a donation to the Pool will not have a vested right to the amount donated.
- 6) Employees, appointed Council officers, and the elected City Clerk may contribute earned vacation, CTO or cash to the Emergency Paid Leave Pools of other City bargaining groups.

C. USE OF POOL

- 1) Employee must have a verified emergency need for time off to request Emergency Paid Leave from the pool. An employee's initial request to use leave from the Emergency Paid Leave Pool shall be made to the City's Director of Human Resources (or designee). The Director of Human Resources (or designee) shall make an initial determination regarding whether the employee's request to use Emergency Paid Leave is for a verified medical emergency. The Director of Human Resources (or designee) shall notify the rest of the Board of the name of the individual making the request, the date of the request and whether or not the individual's request qualified as a verified medical emergency need under this section. Medical emergencies for the employee or dependent shall be verified by a doctor's certification and shall include the anticipated duration of the medical emergency. Non-medical emergencies shall be verified by certification acceptable to the Board and shall include the anticipated duration of the emergency.
- 2) Employee must have exhausted appropriate paid leave (sick leave including eligible conversion to vacation or vacation) prior to becoming eligible to request emergency paid leave benefits from the pool.
- 3) The maximum time available from the pool (subject to the assets of the pool) will be 320 hours (four [4] pay periods) for Emergency Paid

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Leave benefits due to the illness or injury of the employee or the maximum allowable accrual of vacation for emergency needs of the family of the employee.

- 4) Emergency Paid Leave will be deducted from the pool based upon the employee's base hourly rate of pay (excluding premium or specialty pay).
- 5) Emergency Paid Leave hours will be made available for use in the pay period following approval by the Miscellaneous Unclassified Management Employees' Emergency Paid Leave Board.
- 6) Use of Emergency Paid Leave from the pool will be treated in the same manner as use of regular vacation. The employee will continue to accrue sick leave, vacation, insurance coverage and other benefits in the same manner as he/she would if using regularly credited vacation.
- 7) Emergency Paid Leave, which has been credited to the employee and has not been used when the emergency has terminated will be reinstated to the pool. Vacation, sick leave and other benefits, which have accrued to the employee, will remain in the employee's account.

14. SICK LEAVE/FAMILY SICK LEAVE/PERSONAL LEAVE

A. SICK LEAVE

- 1) Employees shall accrue ninety-six (96) hours of sick leave per year of regular City employment. Sick leave shall accrue in equal amounts each pay period. Employees shall not accrue sick leave while they are on unpaid status.
- 2) Use of sick leave will be under the same terms and conditions as are now in place. Vacation, Unclassified CTO, and Management Leave may be used to supplement sick leave with Department Head approval, as permitted and set forth in CMD 30.

B. FAMILY SICK LEAVE

- 1) Not more than forty-eight (48) hours of sick leave within one calendar year shall be granted to any employee for the care or attendance upon members of his/her immediate family, unless the use of additional leave is approved by the City Manager or designee. "Immediate family" is defined as spouse, parent, child, sibling, grandparent, grandchild, aunt, uncle, niece, nephew, first cousin, parent by marriage, step-parent, step-child, grandparent by marriage, son-in-law, daughter-in-law, sibling by marriage, foster parent, domestic partner, anyone residing with employee, or anyone dependent on the employee for care.

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C. PERSONAL LEAVE

- 1) Each calendar year, an employee is entitled to use thirty-two (32) hours of accrued sick leave as Personal Leave, provided he/she has sufficient sick leave balance available.
- 2) Personal leave is intended to provide the employee with paid time off to attend to legitimate personal business that may arise from time to time during the year. Personal Leave may be used to supplement sick leave as required.
- 3) The employee has an obligation to provide as much notice as possible so as to allow for proper scheduling by the department.
- 4) Providing that the minimal requirements of proper notification have been met, the use of Personal Leave should not be denied.
- 5) The adoption of this program does not modify the existing ability of the employee to exchange up to 96 hours of accrued sick leave for up to 48 hours of vacation, based upon two (2) hours of sick leave for one (1) hour of vacation as provided and defined in the Personnel and Salary Resolution.

15. BEREAVEMENT LEAVE

- A. The City will provide employees with a paid bereavement leave benefit to attend to the customary obligations arising from the death of a member of an employee's immediate family, as defined in this Section. Employees are eligible to receive up to forty (40) hours of bereavement leave in the event of the death of a parent, child, or sibling of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law), spouse or domestic partner; up to three (3) work days (regardless of shift assigned) of bereavement leave in the event of the death of a grandparent, grandchild, aunt or uncle of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law); and up to one (1) work day (regardless of shift assigned) of bereavement leave in the event of the death of a great-grandparent, great-grandchild, great-aunt, great uncle, niece, nephew, or first cousin of the employee, employee's spouse or employee's domestic partner (including, in each case, step, adoptive and in-law).
- B. The bereavement leave benefit is based on each death occurrence and is not charged to the Salary Adjustment Form.
- C. Up to five (5) work days of additional bereavement leave may be charged to an employee's sick leave balance with City Manager approval.
- D. At the request of the City, the employee will provide verification.

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16. VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

- A. The City established a Voluntary Employee Beneficiary Association (VEBA) trust under Internal Revenue Code Section 501(c)(9) for the purpose of providing a defined contribution post-retirement medical benefit for employees. The City previously stopped making contributions to employee VEBA accounts effective December 21, 2003 through December 26, 2009 and employee VEBA accounts remained open for other potential contributions. Effective December 27, 2009, the City began contributing \$50 per month per represented employee. Per the City's contract with VEBA, VEBA's consulting fee will be deducted from plan participant's accounts. These contributions shall be made "below the line," on the Salary Adjustment Form (i.e. excluded from calculation of salary adjustments based on total compensation adjustments) but shall be included on Bay Area ERS total compensation surveys. Specific information regarding the Plan is referenced in the Plan Document.
- B. VEBA is a tax-exempt trust account formed under Internal Revenue Code Section 501(c)(9) designed to accumulate assets to fund the future payment of qualified unreimbursed medical expenses (including specified insurance premiums). At retirement, participants may withdraw the accumulated plan benefits to pay for unreimbursed health insurance premiums, qualified long-term care insurance premiums, and other qualified unreimbursed medical expenses and will not be taxed under current state and federal law. Withdrawals cannot be made for non-medical purposes.

17. RETIREE MEDICAL REIMBURSEMENT BENEFIT

- A. The Retiree Medical Reimbursement Benefit shall provide each employee who retires from the City with at least ten (10) years of regular City service with a reimbursement for unreimbursed single retiree health insurance premium beginning with the first full month after retirement from City service and ending with the last full month before the retiree's sixty-fifth (65th) birthday. Starting in the month in which the retiree turns age sixty-five (65), the reimbursement will be for unreimbursed Medicare single retiree supplemental health insurance premium. For premiums paid in calendar year 2016 that will be reimbursed in 2017, the City will reimburse an amount up to \$333 per month, including the PEMHCA minimum, for unreimbursed single retiree health insurance premium or up to \$199 per month, including the PEMHCA minimum, for unreimbursed Medicare single retiree supplemental health insurance premium. The amount of the City reimbursement will be adjusted thereafter once each year by the percentage change from October to October in the San Francisco-Oakland-San Jose urban wage earners and clerical workers (W) consumer price index from the prior year, but in no event will be increased more than 3.5%.
- B. Beginning in 2004, the City will pre-fund this benefit with an amount to be determined by an actuary.

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- C. Each retiree will be required to submit proof of health insurance coverage to the City each year. The City will pay the reimbursement in a lump sum payment each year.

18. EMPLOYEE ASSISTANCE PROGRAM

The City will provide a confidential Employee Assistance Program for represented employees to be funded outside of the Salary Adjustment Form.

19. CHANGES TO JOB DESCRIPTIONS

Should the City propose a change of the job description, or should the City propose a new job classification and job description, of any job classification represented herein, the City Manager or designee will provide a copy of that proposed job description to Unit 9 for its review and comment back at least ten (10) work days before it is scheduled to be presented to the City Council for adoption. If the proposed compensation control point of a new classification has been established, the City Manager will also provide that proposed compensation control point to Unit 9 for its comment. For a revision of an existing job description, Unit 9 may include a request that the City Manager review the existing compensation control point for the job classification if there has been a significant change in the duties, responsibilities, or safety hazards of the job classification. The City Manager will give consideration to Unit 9 comments, but the final decision on the job description and compensation control point that is submitted to the City Council for adoption will be made by the City Manager.

20. LIMITED/ALTERNATIVE DUTY

A. ALTERNATE WORK SCHEDULE (NINE-EIGHTY SCHEDULE)

A Miscellaneous Unclassified Management employee shall be eligible to work a 9/80 alternate work schedule according to the conditions, criteria, and requirements set forth in City Manager's Directive 71. Requests to work a 9/80 schedule shall be made through or by the Department Head to the City Manager. The City Manager must approve the schedule and the City Manager or Department Head (for employees other than Department Heads) may terminate the schedule at any time.

B. JOB RELATED ILLNESS OR INJURY

Employees with a job related illness or injury, covered by Workers' Compensation, which prohibits performance of their regular duties, will be reassigned to limited or alternative duty under the following conditions:

- 1) Supervisors shall be advised of any Industrial Injury/illness as soon as practical.
- 2) Upon receipt of a Doctor's report providing work limitations, the City may identify a regular or modified assignment for which the employee

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has the required experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.

- 3) If the City is unable to identify a limited or alternative duty assignment for which the employee has the required experience and training, the employee will be reassigned to a Monday through Friday work schedule to accommodate required medical or other workers' compensation commitments.

C. NON JOB RELATED ILLNESS, INJURY OR CONDITION

Employees who have a non-job related illness, injury or condition which prohibits performance of the employee's regular duties, may request assignment to limited or alternative duty. Nothing in these provisions is intended to imply that an employee has a right to a limited/alternative duty assignment, unless expressly provided by law. Such request will be accommodated, unless no appropriate limited or alternative duty assignment is available, under the following conditions:

- 1) Identification by the City of a regular or modified assignment for which the employee has the essential experience and training. Such assignment may be on a 40 hour per week or less basis, if mutually agreed between the City and the employee.
- 2) Submission of a written release from employee's doctor, subject to review by the City doctor, which allows the employee to perform all of the duties of the contemplated assignment.
- 3) Employee may account for regular work schedule through a combination of limited or alternative duty hours and sick leave or other paid leave sufficient to maintain eligibility for regular accrual of benefits.

D. WORK WEEK

Under both limited or alternative duty assignments employees will be required to work their regularly scheduled number of hours (normally forty (40) hours) per week, unless such assignment is modified by mutual agreement between the City and the employee. It is recognized that performance of limited or alternative duty assignments will not be permitted to interfere with any medically related treatment designed to assist the employee to return to full, unrestricted duty in the earliest possible time frame.

E. TEMPORARY ASSIGNMENT

All such assignments, and their duration, are temporary assignments and are subject to periodic sixty (60) day review of the employee's continued need for limited or alternative duty, the employee's continued ability to

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perform the limited or alternative duty and the department's ability to continue the employee in the assignment. All temporary assignments shall be at the employee's regular rate of pay.

F. LAW TO PREVAIL

In the event the Americans With Disabilities Act requires modification of the provisions of this section, it is agreed that the law will prevail.

21. REDUCED WORK WEEK/VOLUNTARY TIME OFF (VTO) PROGRAM

A. EMPLOYEE PARTICIPATION

Employee participation in this plan is with the City's understanding and agreement that employee participation is temporary and participation is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not be harmed by such a plan becoming mandatory.

B. REDUCED WORK WEEK/REDUCED PAY

Employees may request a reduced work week schedule (32 hours per week instead of 40 hours per week, for example) at the same hourly rate of pay, subject to the following conditions:

- 1) With the approval of the Department Head and the City Manager, a binding work schedule as requested by the employee will be developed that may be modified only with the approval of both the City and the employee.
- 2) More than a 20% reduction of the work week in a pay period will result in proportionate reduction of accrual of sick leave and vacation.

22. INDUSTRIAL INJURY/CONTINUATION OF INSURANCE BENEFITS WHILE ON WORKERS' COMPENSATION

Workers authorized by the City's Workers' Compensation Administrator to undergo therapy or treatment due to an industrial injury, who are required to leave work, shall receive leave with pay, including reasonable travel time, providing the treatment falls within the normal working hours, is pre-scheduled and cannot be scheduled during non-work hours.

The City will continue payment toward health, dental and life insurance coverage for the employee and dependents up to the maximum amount allocated under total compensation for an employee who is disabled from work because of a work related injury if the employee is no longer in a paid status sufficient to continue the coverage afforded under the terms of the program, subject to the following conditions:

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- A. The employee may not increase the existing coverage after the date of injury except to add children born within nine months of the injury.
- B. Continuation toward payment of employee and dependent health/dental/life insurance coverage up to the maximum allocated under Total Compensation is limited to one (1) year from the date of injury. Continuation toward payment of employee health/dental/life insurance coverage up to the maximum allocated under Total Compensation may be extended if the employee continues to be on temporary disability status for a Workers' Compensation injury.
- C. The employee has supplemented his/her workers' compensation benefit with sick leave, vacation, unclassified CTO, management leave or other paid leave sufficient to qualify for payment of the health/dental/life insurance premium and is no longer entitled to any salary from the City.

23. MANAGEMENT LEAVE PROGRAM

The Management Leave Program is as follows:

- A. Effective January 1 of each year, represented employees will be credited with 120 hours of Management Leave per calendar year.
- B. New hires or employees promoted into Unit 9 between January 1 and June 30 will be credited with 120 hours of Management Leave. New hires or employees promoted into Unit 9 between July 1 and December 31 will be credited with 60 hours of Management Leave.
- C. Use of Management Leave is subject to approval by the applicable Department Head, or the City Manager or his/her designee in the case of a Department Head request, taking into account the relevant circumstances including work/Department needs, staffing limitations, conflicts, timing of request, etc.
- D. Management Leave may not be converted to cash or other paid time off.
- E. Unused Management Leave may be carried over from one calendar year to the next; however, an employee may never have more than 180 hours of "banked" management leave. (Thus, and for example, an employee that already has 180 hours of management leave on January 1 would not receive any further management leave. An employee that already has 100 hours of management leave on January 1 would "only" receive an additional 80 hours. An employee with 60 or fewer hours of banked management leave on January 1 would receive 120 hours.

24. FLEXIBLE SPENDING PLAN (INTERNAL REVENUE CODE SECTION 125)

The City will make available a Flexible Spending Plan under the Internal Revenue Code Section 125 for employees. Employees may contribute pre-tax (federal, state, FICA, Medicare) dollars for dependent care and qualified

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unreimbursed medical expenses. This Plan will follow the regulations outlined by the Internal Revenue Code. Detailed information will be available in the Summary Plan Document.

The City will pay the administrative expenses for the plan. This Plan is voluntary and participating employees will pay the monthly participation cost. The monthly participation cost will be considered pre-tax, as defined above, under Internal Revenue Code Section 106. Participating employees will be provided with an Employee Plan Summary and regular statements regarding the status of their flexible spending accounts.

25. DOMESTIC PARTNERS

The City shall make all benefit programs available to employees, dependents and domestic partners, subject to the requirements of each benefit provider.

26. PAY PERIODS

Allowances/payments or accrual rates that are an agreed upon amount per month or year but are paid for administrative purposes in incremental amounts each pay period, shall be the same total amount per year in years in which there are 27 pay periods instead of 26 pay periods. This clarification is not intended to and would not modify anyone's salary/rate of pay.

27. DECLARATION

The parties hereto have reached an understanding concerning the proposed salaries and fringe benefits described in the above paragraphs. All other matters dealing with wages, hours, fringe benefits including health and dental insurance contributions, and working conditions included in ordinances, resolutions, rules or regulations, or previous memorandums of understanding, shall remain unchanged for the term of this memorandum in the absence of agreement to the contrary.

28. NEXT MEMORANDUM OF UNDERSTANDING

Unit 9 will submit its proposals for a Memorandum of Understanding for the term commencing at the expiration of this Memorandum of Understanding no later than October 28, 2017.

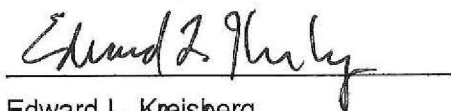
MEMORANDUM OF UNDERSTANDING – UNIT #9 (2015-2017)

FOR THE CITY OF SANTA CLARA



Elizabeth C. Brown

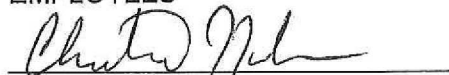
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Edward L. Kreisberg

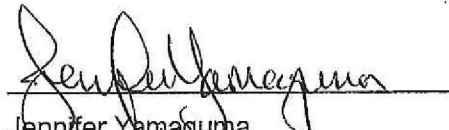
Date: 6/7/16

FOR THE CITY OF SANTA CLARA
MISCELLANEOUS UNCLASSIFIED
EMPLOYEES



Chris Jackson

Date: 6-7-2016



Jennifer Yamaguchi

Date: 6/7/16

APPROVED:



RAJEEV BATRA
Acting City Manager

6.7.16

Date

APPROVED BY THE CITY COUNCIL ON:

September 20, 2016

ATTEST:

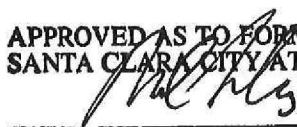


RODNEY DIRIDON, JR.
City Clerk

9-23-16

Date

APPROVED AS TO FORM:
SANTA CLARA CITY ATTORNEY'S OFFICE



MEMORANDUM OF UNDERSTANDING – UNIT #9 (2015-2017)

APPENDIX A: MOBILE COMMUNICATION DEVICE PROGRAM

APPENDIX A: PDA/SMART PHONE STIPEND INFORMATION

City Manager's Office



Interoffice Memorandum

Date: April 15, 2014

To: Unit 9 – Unclassified Miscellaneous Management Employees

From: Julio Fuentes, City Manager

Subject: Cell Phone/Smartphone Stipend Program for Unit 9 – Unclassified Miscellaneous Management Employees

Scope: This cell phone/smartphone stipend program applies to members of Unit 9– Unclassified Miscellaneous Management Employees. The stipend program is \$80 per month and was effective April 1, 2009.

Purpose: To establish policies regarding the provision and usage of City-owned cellular telephones or smartphones (devices that have voice, data and internet/web access capabilities). The City has determined that it is beneficial to have Unit 9 members accessible by phone/data communications at all times. A Unit 9 employee can choose to have a City-issued cell phone, where the City pays for the Unit 9 employee's cell phone device and service plan through City-managed contracts with cell providers, or they can choose to receive a stipend in the amount of \$80 per month, whereby the Unit 9 employee will purchase and own their own cell phone/smartphone device and pay all service provider charges, or the Unit 9 employee can choose not to participate in either of the above programs.

Summary: This policy outlines and establishes eligibility criteria for Unit 9 employees wishing to receive a monthly cell phone stipend and should be read and understood in conjunction with CMD 116-Use of City Resources and Confidential Nature of Information on City Equipment.

Cellular Telephone/Smartphone Stipend Program: Unit 9 employees may choose to receive an \$80 a month stipend to purchase, maintain, replace or repair their personal cell phone, and pay for any level of cell phone service plan from any provider the employee may select. The \$80 per month allowance is not intended to cover the full cost of any particular cell phone device and/or cell phone service plan. If a Unit 9 employee wishes to purchase a cell phone/smartphone and connect to the City's email system, they must confirm with the City's Information Technology Department that the device they wish to purchase can be connected to the City's Outlook email system. Not all cell phone devices or service programs may be compatible with the City's information technology systems. If you do not desire to connect to the City's email system, then any cell phone or service provider could be selected.

To be eligible for the monthly stipend, the Unit 9 employee must provide the Human Resources Department with an active cell phone number. It is expected that the employee will respond to work-related calls and most critical, actively monitor their phone during City emergency

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Cell Phone Stipend Program for Unit 9 – Miscellaneous Unclassified Management Employees

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situations. If a Unit 9 employee participating in the stipend program experiences a lost, stolen or damaged cell phone, it is expected that the employee will actively seek to have the device replaced or repaired in a reasonable period of time in order to remain eligible for the monthly stipend (refer to CMD 116 for additional requirements if a phone is lost or stolen). The stipend program is focused only to the Unit 9 employee's personal cell phone or smartphone, and not to other cell phones that might be included under a shared or family plan that the employee may have with a service provider.

If the Unit 9 employee changes their cell phone number for any reason, the Human Resources Department must be notified in the next work week of the new cell phone number. If an employee receiving a cell phone stipend chooses to no longer use a personal cell phone for any reason, the Human Resources Department should be notified immediately, and the stipend will be discontinued in the next applicable pay period.

The stipend is paid at a rate of \$40 per pay period (with no payment on two of twenty-six pay periods annually). A Unit 9 employee starting employment or terminating employment in the middle of any month will receive one-half of the monthly stipend (\$40). The stipend will commence in the first applicable pay period after the Unit 9 employee's request has been received, reviewed and approved by the Human Resources Department. The essential review criteria are that the employee is a member of Unit 9 Miscellaneous Management Employees' Association, and that the employee has submitted a valid cell phone number as requested. The stipend is considered income to the employee, and is subject to payroll withholding.

CMD 116: Use of City Resources/Non-Confidential Nature of Information on City

Equipment:

This CMD addresses key issues related to the ownership and usage of cell phone devices, and should always be read and understood in conjunction with this stipend policy. While it is generally the case that call records for a personally owned phone are not subject to public records requests, the law in this area can and does change. CMD 116 advises that employees adhere to City policies related to public records and email retention. The City Attorney's Office should be consulted for advice and/or resolution of public records concerns.

City-Issued Cell Phone Program: A Unit 9 employee can choose to have a City-owned cell phone issued to them in lieu of a monthly stipend. Under this program, the Information Technology Department has responsibility for the selection of cell phone devices and cell phone service providers. The City then maintains a record of an employee's cell phone number and usage information. Activity on City-owned cell phones is accessible as a public record. A Unit 9 employee cannot have a City-issued phone and a stipend. One or the other must be selected. If you currently have a City-issued cell phone and wish to participate in the stipend program, you will need to acquire a personal cell phone and service plan and then turn in your City-issued cell phone. Part of the rationale for this program is to decrease the number of City supplied/City supported cell phones through the use of a stipend program.

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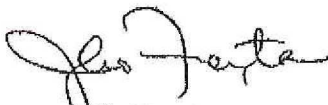
Cell Phone Stipend Program for Unit 9 – Miscellaneous Unclassified Management Employees

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Opt Out: A Unit 9 Miscellaneous Management employee can choose not to participate in either the cell phone stipend program or the City-issued cell phone program. If certain work assignments require the use of a cell phone that can be accomplished through the temporary provision of a City-issued cell phone through the duration of the assignment.

Cell Phone/Smartphone Stipend Program Enrollment: A current Unit 9 employee can initially enroll in this stipend program by emailing the Human Resources Department and requesting participation in the stipend program. You must include your 10-digit cell phone number in the email; therefore you must have a personal cell phone device and a service plan activated prior to receiving a stipend. At that time the Human Resources Department will send you a Cell Phone Stipend packet and form, which you will need to fill out and return to them. Thereafter, the Human Resources Department will present the cell phone stipend enrollment opportunity to new Unit 9 employees through employee orientation.



Julio Fuentes
City Manager



SmartPhone Android Phone Setup

Setup Process

The purpose of this Quick Reference is to assist you in setting up your Android phone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your Android phone, you may lose them if you choose to sync with Outlook's contacts and/or Calendar. Back up your Android phone so you can restore them if necessary.
3. Add your City email account to your Android phone.

Add Email Account

1. Go to Settings, and choose Accounts.
2. Choose Add Account, then Corporate Sync.
3. Complete the fields as follows (They may not appear in this exact order.)

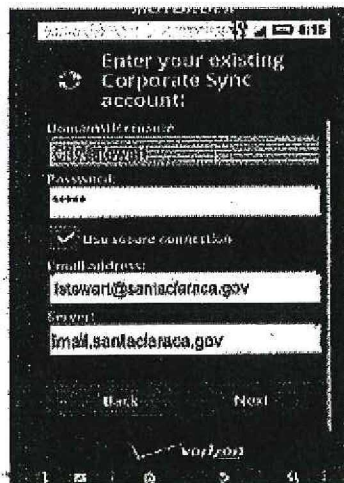
Domain\Username: City or Electric for SVP
Employees\username.

Password: Your current network password

Check Use secure connection box.

Email Address:
Your city email address.

Server: mail.santacruz.gov.



Change Passcode Options

Once you set up your City email account, you will be required to enter a 4 digit passcode. You will be required to enter this passcode to unlock your screen if your phone is unused for 5 minutes. This time can be increased up to 15 minutes.

To change the passcode,


1. Go to Settings then choose Location & Security.
3. Choose Change screen lock, then PIN.
4. Enter a new PIN.

Warning: You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.

Increase Screen Lock Timeout

To increase the screen lock timeout,

1. Go to Settings then choose Location & Security.
2. Choose Security Lock Timer.
3. Increase the time.



SmartPhone iPhone Setup

Setup Process

The purpose of this Quick Reference is to assist you in setting up your iPhone to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. If you have contact or calendar items on your iPhone, you may lose them if you choose to sync with Outlook's contacts and/or Calendar. Back up your iPhone using iTunes so you can restore them if necessary.
3. Add your City email account to your iPhone.

Add Email Account

1. Choose Settings from the iPhone menu.
2. Choose Mail, Contacts, Calendar.
3. Choose Add Account, then Microsoft Exchange.
4. Complete the fields as follows:
Email: your email address.
Domain: City or Electric for SVP Employees
Username: Your network login id.
Password: Your current network password
Description: a name that identifies this mail account. You can also set up a personal mail account such as gmail.
5. Click Next.

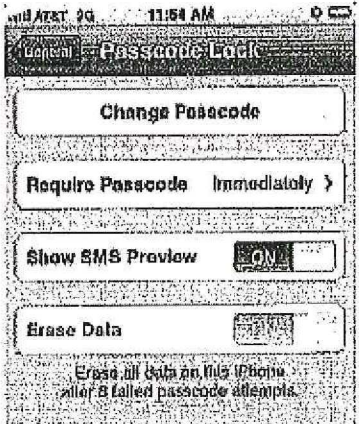
The screen to the right appears with Server field added. It should be: mail.santacruzaca.gov.

6. Choose to turn on Mail, Contacts, and/or Calendars.

Change Passcode Options


1. Choose Settings from the iPhone menu.
2. Choose General, then Passcode Lock.
3. From here you can change your passcode, change how quickly the passcode is required, and whether or not you want SMS Preview (text messaging preview) to be on.


Warning: You cannot turn off the Erase Data feature. If you have 8 failed passcode attempts, the data will be erased from your phone.



Add Email Account (continued)

7. Choose Done.
8. After you choose ON for Contacts or Calendars, you will be prompted to delete or add your local (iPhone) contacts to Outlook.
9. You will be required to enter a 4 digit Passcode. You will be prompted to enter your passcode if you leave your iPhone idle for 5 minutes.





SmartPhone Windows Mobile Setup

Setup Process

The purpose of this Quick Reference is to assist you in setting up your Windows Mobile device to receive City of Santa Clara email.

1. Complete the SmartPhone Authorization form and return to the Help Desk.
2. Set up your phone to sync with the City's Exchange Server using ActiveSync.

Setup Exchange Server

1. From the Programs menu, choose ActiveSync.
2. If it is the first time you have used your Windows Mobile phone, you will be shown the following prompt:

To sync with a desktop computer, install ActiveSync on your computer and then connect this device.

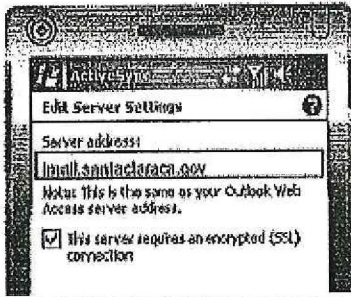
If your company supports syncing directly with its Exchange Server you can set up your device to sync with it.

Click the set up your device to sync with it link.

This will start the process for connecting your device to the City's exchange server.

Note: The City supports syncing directly with its Exchange Server. The City does NOT support syncing with a desktop computer.

If you have already synced your device to another source, choose Menu, Add Server Source.
3. In the Server address field, type `imail.santacruz.gov`.
4. Check the box for This server requires an encrypted (SSL) connection.
5. Click Next.




Setup Exchange Server (continued)

6. Complete the fields as follows:


Username: Your network login id.

Password: Your network password.

Domain: City or Electric for SVP employees.
7. Click the Save password check box.



8. Choose Next.
9. Check the boxes next to the data you would like to synchronize with your City's Outlook account.
10. Click Finish.



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ADMINISTRATIVE CODE

CMD NUMBER 115

CITY MANAGER'S DIRECTIVE-PROCEDURE

DATE: March 9, 2009

CANCELS: November 22, 2008

SUBJECT: USE OF CITY RESOURCES, AND NON-CONFIDENTIAL NATURE OF INFORMATION ON CITY EQUIPMENT

- PURPOSE:**
1. The primary purpose of this CMD is to inform all employees that City equipment and systems, and City work locations, as defined herein, are the sole property of the City, and with a few minor noted exceptions, are to be used for City business only. This policy applies to City-owned and issued devices and the use of City network or systems using City -owned and private devices, including but not limited to Smartphones.
 2. Another purpose of this CMD is to inform all City employees that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information, or files placed in or on City equipment are not private or confidential and may be reviewed to ascertain whether such communications constitute City business. As such, employees should not have any expectation of privacy or confidentiality in any of these circumstances. This CMD does not apply to the confidentiality of personnel records maintained by the Human Resources Department or the Finance Department, or the confidentiality of business and related items within the department where the employee works.

POLICY AS TO CITY-OWNED OR ISSUED DEVICES:

City equipment and systems, and City work locations, are the sole property of the City and, with minor exceptions (as noted below in Item No. 4 under Supervisor and Department Head Responsibility and Action), are to be used for City business only.

City employees are hereby informed that private or personal documents, written messages, electronic messages (including text messages, emails, etc.), materials, information or files, placed in or on City equipment are not private or confidential. Employees should not have any expectation of privacy or confidentiality in any of these circumstances.

In order to conduct City business, including responding to the needs of citizens and staff, City management and City employees, when directed, may need to access City work locations and equipment of any employee who is absent or unavailable. Access to the work locations and equipment may also be necessary

MEMORANDUM OF UNDERSTANDING – UNIT #9 (2015-2017)

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for purposes of monitoring employee work performance and conduct. Under existing provisions of the law, the City reserves the right to monitor the use of City equipment for any reason, including the right to review, audit and disclose all matters sent over or stored in City locations or equipment systems to ensure that uses are in compliance with all laws including copyright laws and City policies, including the City Code of Ethics & Values.

**POLICY AS TO PRIVATE
DEVICES:**

Only City approved and authorized Smartphone devices are permitted to access any City network or systems. The approved list of devices is maintained by Information Technology (IT) and listed on the Smartphone Access Authorization Form (form available from IT HelpDesk).

A user who connects to City networks via an authorized Smartphone device or service must ensure that all components of his/her wireless connection remain as secure as his/her network access. All Smartphones and connections to any City network or systems shall be used to conduct City business and utilized appropriately, responsibly and ethically. All authorized Smartphone device and service users shall, without exception, use secure remote access procedures. Enforcement of this provision will be by device passwords in accordance with the City's password policy.

Prior to initial use or connection to City networks or systems, authorized Smartphone devices, software and related services must be registered with IT. City employees, contractors, or "as needed" staff in possession of an authorized Smartphone device shall not make modifications of any kind to the device, its software, and/or service that may potentially compromise the integrity of City networks or systems, without the express written approval of IT. This includes, but is not limited to, split tunneling, dual homing, non-standard hardware or security configurations, etc.

Users are advised that applicable law related to public records may require the production of certain records on private devices. Users are advised to adhere to City CMD's related to public records and email retention to avoid the potential disclosure of information from their private devices, particularly those users that receive a stipend for private devices.

With respect to Public Safety Officers, it is intended that this CMD be read together with the Public Safety Officers Procedural Bill of Rights.

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DEFINITIONS:

"City equipment and systems, and City work locations" is defined herein to include, but not be limited to, the following items whether they be owned, bought, used, paid for, leased, borrowed, or given to areas and the City: Work spaces, desks, lockers, City vehicles and equipment, computer and video equipment, printers, copiers, supplies, telephones, mobile data terminals, fax machines, radios, email, text messages, other mail and electronic messaging services, voice mail, and Internet services (as assigned, including chats, newsgroups, and Internet email), or any files

"City business" includes, but is not limited to, conducting the business of the City of Santa Clara and monitoring employee work performance and conduct.

"Off-Duty time" includes employee time before and after work shift, lunch (or meal period breaks), and approved vacation/other leave time.

"Smartphone" means a mobile handheld device with advanced features like e-mail and Internet capabilities.

RESPONSIBILITY :

Department Heads &
Supervisors

ACTION

1. Authorize issuance and discourage misuse of City equipment, work locations, and Smartphone devices. Approve replacement of lost, stolen or damaged City-owned devices. Replacement costs will be charged to the user's department, which is then responsible for handling reimbursement of City funds with said user. Replacement and Maintenance costs for any personal-owned devices are the sole responsibility of the employee.
2. Understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep record of any network activity in which the employee transmits or receives any kind of file; the deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
3. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation
4. Notwithstanding statements in the CMD to the contrary, occasional use of City equipment by an employee during off-duty time, i.e., typing of a personal letter during the lunch period, or use of a telephone for urgent reasons (see CMD 78), may be granted from time to time at the discretion of and upon the

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approval of the Department Head.

5. In addition, uses by City employees, during off-duty time, of specific City equipment may also be allowed where certain fees for use of this equipment have been established (i.e., minimal copying, or use of a fax machine, etc.).
6. Managers and supervisors who are authorized to serve as officers of a professional society and/or association in accordance with CMD 49, and who have authorized use of City resources in accordance with the provisions of that CMD, should not have expectations of privacy or confidentiality of information or files placed on City equipment.

All Employees/Users

7. Become informed and comply with the policies of this CMD.
8. Do not use City equipment, work locations, or authorized access to City networks or systems improperly. Improper use includes any personal use for convenience or profit, playing of games, or use to convey derogatory, defamatory, obscene, or otherwise inappropriate actions or messages or any information unrelated to City business. Personal mail, packages, or catalogs should not be received or sent using a municipal address.
9. Employees shall take reasonable measures to safeguard City property and systems to prevent loss or damage. In the event any City-owned or issued device or privately-owned Smartphone is lost or stolen, or the occurrence of any incident or suspected incident of unauthorized access and/or disclosure of City resources, the user shall *immediately* report such to his/her supervisor and the IT Help Desk. Service will be immediately terminated. Users should immediately report to his/her supervisor and the IT Help Desk if the device is recovered. IT will work with the user to restore service as quickly as possible.
10. The provisions of this CMD also apply to employee use of non-City issued equipment and systems brought into work locations and used for City business. Employees utilizing non City-issued equipment assume responsibility for the repair or replacement of such equipment, including Smartphones.
11. Nothing in this CMD is intended to or shall be construed as affecting the duty and obligation of City employees to maintain the confidentiality of City documents and information which the employee has access to through his or her employment with the City. It is also not intended to nor shall it be construed as granting access to non-City employees to otherwise confidential City documents and information.

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12. Employees should understand that the City's security software for the Internet may record for management use the Internet address or site visited by the employee and keep a record of any network activity in which the employee transmits or receives any kind of files. Any records transmitted or received are recorded and stored in an archive file; deletion of a message or file from some electronic systems may not fully eliminate the message from the system.
13. Understand that "any writing containing information related to the conduct of the public's business, prepared, owned, used or retained by any state or local agency regardless of physical form or characteristics" (Government Code Section 6252) and under some circumstances, communications sent by email, may be subject to disclosure under the Public Records Act or litigation.
14. Employees should understand that the City's network allows Management to access employee passwords. Upon request, employees shall provide their systems passwords to their Department Head to allow access to all files and systems in the employee's absence or as required. Lockers, desks, files or other secured City equipment, systems, or work locations, may also be accessed by the City.
15. Employees shall not knowingly use City equipment or systems, or City work locations, to download or distribute pirated software or data, or to violate Penal Code Section 502, applicable Federal laws, City policies, rules and regulations, including the City's Code of Ethics & Values. Employees shall not use the City's equipment, systems or work locations to disrupt or destroy the City's program systems, nor shall they attempt to disable any security system.
16. Violation of this policy, through direct action on the part of the employee, or through carelessness or negligence, may result in formal disciplinary action, up to and including termination.
17. Unit 9 employees should understand that Smartphone devices they obtain through the assistance of an allowance program are considered personal devices and are under the ownership of the employee. All service, maintenance, and replacement costs are the responsibility of the employee.
18. IT reserves the right to terminate without notice any authorized Smartphone device, service and access to City network or system that may result in a potential security risk to City network systems, data, users, residents and/or other City assets and resources.
19. IT reserves the right to perform a remote wipe of a user's Smartphone,

IT Department:

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CMD NUMBER 116

erasing all data and contents, if there is a reasonable belief that the device has been compromised and/or poses a potential security risk to City network systems, data, users, residents and/or other City assets and resources.

20. IT will provide minimal support for privately-owned approved and authorized Smartphone devices. This support is limited to basic documentation to enable the user to connect the device to City networks and systems, and basic troubleshooting to determine if any connection problems are on the City side or outside of the City's control. All additional technical and function questions/issues shall be the responsibility of the user.

Questions regarding this CMD may be addressed to the City's Director of Human Resources.

Cross Reference:

- CMD 3 - Overnight Use of City Vehicles
- CMD 31 - Transaction of Personal Business During Working Hours
- CMD 49 - Membership in Professional Societies and Associations
- CMD 78 - Personal Use of City Telephones
- City Code of Ethics & Values (Attachment to CMD 67, Gifts & Favors to Individuals)

SEVERANCE AND RELEASE AGREEMENT

This severance agreement is made and entered into on _____, by the City of Santa Clara ("City") and Deanna J. Santana ("Ms. Santana"). The City and Ms. Santana may be referred to collectively throughout this agreement as "the Parties." The effective date of this Agreement shall be the date of the signature of the last of the Parties to sign this Agreement.

RECITALS

WHEREAS on or around October ____, 2017, Ms. Santana began her employment with the City as the City Manager;

WHEREAS on or around August 22, 2017, the City Council approved an employment agreement ("Employment Agreement") with Ms. Santana;

WHEREAS Ms. Santana holds an at-will position under the City Charter, and serves at the pleasure of the City Council;

WHEREAS Sections 1 and 6 of the Employment Agreement permits the City Council to terminate Ms. Santana's employment at any time subject to certain conditions;

WHEREAS the City Council has determined it appropriate to exercise the right under Section 6 of the Employment Agreement to terminate Ms. Santana's employment;

WHEREAS it is the intention of the parties in entering into this Agreement to amicably conclude the City Manager's employment relationship with the City effective _____ (insert date) ("Separation Date") and consistent with the terms of the Employment Agreement; and,

WHEREAS the parties enter into this Agreement in order to implement Section 6.2 of the Employment Agreement, and ensure a smooth transition of City leadership.

NOW, THEREFORE, in consideration of the promises and mutual obligations of the Parties, the sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree with each other as follows:

TERMS AND CONDITIONS

1. Incorporation of Recitals. The Recitals are incorporated herein by reference as though fully set forth herein.

2. Return of Documents. Ms. Santana agrees and represents that no later than _____ (insert date), she will return to the City all City property of which she has possession, custody or control, including, but not limited to, computer, electronic and telephonic equipment, as well as all City data and documents whether in hard copy or maintained on any electronic media.

3. Non-Disclosure of Confidential Information. The Parties acknowledge that as City Manager, Ms. Santana is the highest appointed official and an officer of the City; in that capacity she was and is responsible for, among other things, executing and enforcing all laws, policies of the City and administering the City's affairs, controlling and administering the City's financial affairs and supervising purchasing, contracting and confidential information. Consistent with her

Employment Agreement and the City Charter, Ms. Santana represents and agrees that she has not and shall not at any time or in any manner, either directly or indirectly, whether or not for compensation, use, divulge, disclose or communicate to any person, firm, corporation or any other entity in any manner whatsoever any confidential information concerning any matters affecting or relating to the business of the City except with the express written permission of the City or as required by court order or properly-issued subpoena. Such information includes but is not limited to, the identification of any of the City's licensees, sub-licensees, or any of the information concerning the business of the City, its manner of operation, its plans, or other proprietary data where such information is not publicly known and is not otherwise subject to public inspection or disclosure.

4. Defense and Indemnity. Consistent with her Employment Agreement and the City Charter, in accordance with the obligations imposed under Government Code sections 800 and 910, the City shall defend and indemnify Ms. Santana for any actions that result from work performed in the course and scope of her duties as the City Manager for the City of Santa Clara.

5. Information Regarding Employment. The City agrees that all inquiries with respect to Ms. Santana's separation will be referred to the Mayor who will provide only the following information: (a) the date of hire and date of separation; (b) that this is a mutual and amicable separation based on a mutual desire to terminate Ms. Santana's services, and provide a smooth leadership transition.

6. Personnel File Documents. No documents shall be entered into Ms. Santana's personnel file after the effective date of this agreement without both parties approving the entry of the document.

7. Release of Claims. Except for the rights and obligations created by this Agreement, Ms. Santana, on behalf of herself, her agents, representatives, attorneys, assignees, heirs, executors, administrators and successors in interest, hereby releases and forever discharges the City and all of its past, present and future Councils, agencies, divisions, and departments, as well as each of their respective former, current and future directors, department heads, supervisors, managers, employees, attorneys, elected and appointed officials, Councilmembers, City Managers, and any and all of them (all of the above collectively, the "City Released Parties"), to the extent permitted by law, from any and all liability, actions, causes of action, claims, charges, complaints, demands, grievances, obligations, losses, damages, injuries and legal responsibilities, of any type whatsoever, whether known or unknown, unforeseen, unanticipated, unsuspected or latent, which Ms. Santana ever had or held, now has or holds or hereafter can, shall or may have or hold against the City Released Parties, based on any claims or occurrences arising prior to the Effective Date of this Agreement (collectively, "Released Claims"). The Released Claims defined in the immediately preceding sentence and released herein by Ms. Santana as to the City Released Parties include, without limitation, all claims based upon, relating to or arising out of the City Manager's employment with the City, and/or the discontinuation of said employment, all claims in law, equity, contract and tort, and all claims under the California Constitution, California Civil Code, California Labor Code, California Code of Regulations, California Government Code, California Business & Professions Code, California Fair Employment and Housing Act, California Family Rights Act, the California Workers' Compensation Act, the Fair Labor Standards Act, the Equal Pay Act, National Labor Relations Act, Labor Management Relations Act, Employee Retirement Income Security Act, Title VII of the Civil Rights Act of 1964, as amended, Civil Rights Act of 1991, Americans with Disabilities Act, as amended, the Rehabilitation Act, Executive Order 11246, Family and Medical Leave Act, Sarbanes-Oxley Act of 2002, Worker Adjustment and Retraining Notification Act, the Consolidated Omnibus Budget Reconciliation Act, Age Discrimination in Employment Act

(ADEA), the Code of Federal Regulations, and all claims under any other federal, state, municipal or other governmental statute, regulation, ordinance or order.

8.1 Ms. Santana specifically and expressly waives all rights under the provisions of Section 1542 of the Civil Code of California ("Section 1542 Waiver") with respect to the Released Claims. Section 1542 Waiver provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Thus, for the purposes of making a complete settlement of the Released Claims which Ms. Santana may have or claims to have against the City Released Parties, Ms. Santana waives and releases any and all Released Claims against the City Released Parties, including Released Claims which are unknown and unsuspected as of the Effective Date of this Agreement. Ms. Santana warrants that she has read this Agreement, including the Section 1542 Waiver, and has had an opportunity to consult with counsel of her own choosing about this Agreement and specifically about the Section 1542 Waiver, and that she understands this Agreement and the Section 1542 Waiver. Ms. Santana acknowledges that she may later discover facts different from or in addition to those now known or believed to be true regarding the matters released or described in this Agreement, and even so she agrees that the releases and agreements contained in this Agreement shall remain effective in all respects notwithstanding any later discovery of any different or additional facts. Ms. Santana assumes any and all risk of any mistake in connection with the facts involved in the matters, disputes, or controversies released or described in this Agreement or with regard to any facts now known to her relating thereto. Ms. Santana agrees, to the fullest extent permitted by law, that she will not initiate or file a lawsuit or internal City proceeding to assert any Released Claims. If any such action is brought, this Agreement will constitute an Affirmative Defense thereto, and the City shall be entitled to recover reasonable costs and attorneys' fees incurred in defending against any Released Claim.

8.2. Ms. Santana acknowledges that she has not heretofore assigned or transferred to or purported to assign or transfer to any person or entity the Released Claims or any part or portion thereof, and agrees to indemnify and hold harmless the City Released Parties from and against any claim, demand, controversy, damage, debt, liability, account, reckoning, obligation, cost, expense, lien, action or cause of action (including the payment of attorneys' fees and costs actually incurred whether or not litigation commenced) based on, in connection with, or arising out of any assignment or transfer or claimed assignment or transfer thereof.

9. Non-Disparagement. Ms. Santana, on the one hand, and the City Council, on the other hand, agree not to make any disparaging remarks nor take any action, written or oral, that is intended, or would reasonably be expected, to harm the other or their respective reputations or that would reasonably be expected to lead to unwanted or unfavorable publicity for the other. "Disparaging remarks, comments or statements" are those that impugn the character, honesty, integrity, morality or business acumen or abilities of the City, its staff, its City Council, or Ms. Santana.

10. Interpretation of Agreement. Consistent with the existing Employment Agreement, in the event of a dispute between Ms. Santana and the City with respect to the interpretation of this Agreement or any alleged breach of this Agreement which cannot be settled amicably by

agreement of the parties, the dispute shall be submitted to a single arbitrator in accordance with the employment arbitration rules of the American Arbitration Association and the judgment upon the award shall be final, binding, and conclusive and may be entered in the highest court having jurisdiction. The prevailing party in any arbitration pursuant to this paragraph shall be entitled to recover its reasonable attorney's fees and costs.

11. Entire Agreement. This Agreement supersedes any and all agreements, either oral or written, between the parties with respect to the severance of Ms. Santana's employment relationship with the City. Each party to this Agreement acknowledges that no representations, inducements, promises, or agreements, orally or otherwise, have been made by any party, or anyone acting on behalf of any party, that are not contained in this Agreement. No agreement, statement or promise not contained in this Agreement shall be valid or binding.

12. Modification. Any modification of this Agreement shall be effective only if it is in writing and signing by all parties to this Agreement.

13. Severability. If any part of this Agreement is determined to be invalid, unlawful, or unenforceable, that part shall not be deemed to be part of this Agreement.

14. Legal Advice and Voluntary Execution. Each Party represents and warrants that it: (a) had the opportunity to obtain legal advice from legal counsel of its choice before entering into this Agreement, (b) has read the contents of this Agreement; (c) fully understands the terms and consequences of this Agreement; (d) enters this Agreement voluntarily; and (e) shall not deny the validity of this Agreement on the grounds that it did not have advice of counsel or did not voluntarily and knowingly enter into this Agreement and agree to each of its terms.

15. Full Execution Authority. Each Party executing this Agreement warrants and represents that it or she has full authority to bind the corresponding Party to this Agreement.

16. No Admissions. By entering into this Agreement, the City Released Parties do not admit that they have engaged in, or are now engaging in, any unlawful conduct or employment practice. It is understood and agreed that this Agreement is not an admission of liability, and that the City specifically denies liability related in any manner to Ms. Santana's employment. The Parties agree that it is their mutual intention that neither this Agreement nor any terms hereof shall be admissible in any other or future proceedings against the City, except a proceeding to enforce this Agreement.

17. Acknowledgment of Payment of Compensation/Benefits. Ms. Santana acknowledges and affirms that she has been paid and/or will receive any and all compensation to which she is entitled pursuant to the terms of her employment agreement.

18. Tax Consequences. City has made no representation about and takes no position on the tax consequences of this Agreement. A dispute regarding the tax status of this Agreement shall not affect the validity of this Agreement. Ms. Santana has had an opportunity to discuss the potential tax consequences of this Agreement with her own counsel and agrees to indemnify and hold harmless the City from any and all costs and assessments including, but not limited to delinquent taxes, penalties and/or assessments levied against the City in connection with this Agreement.

19. Older Workers' Benefits Protection Act. It is the intention of the Parties that the releases contained in this Agreement apply to all claims of any kind against the City. In order to comply with the Older Workers' Benefits Protection Act (29 U.S.C. § 626(f)) and effectuate the

release by Ms. Santana of any potential claims under the federal Age Discrimination in Employment Act, Ms. Santana agrees as follows: (i) she has carefully reviewed the foregoing Agreement, and understands the terms and conditions it contains; (ii) by entering into this Agreement she is giving up potentially valuable legal rights, and she intends to be bound by all the terms and conditions set forth herein; (iii) she is entering into this Agreement freely, knowingly, and voluntarily; (iv) she has been advised of her right to at least twenty-one (21) days to consider whether to agree to the terms and conditions set forth herein; and (v) for a seven (7) day period following his execution of this Agreement she may revoke this Agreement by delivering a written revocation to City, and this Agreement shall not become effective nor enforceable until the revocation period has expired.

THE UNDERSIGNED HAVE READ THE FOREGOING AGREEMENT AND ACCEPT AND AGREE TO THE PROVISIONS CONTAINED HEREIN, AND HEREBY EXECUTE IT, KNOWINGLY AND VOLUNTARILY AND WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Name:
Title:
City of Santa Clara
Date: _____

Deanna J. Santana

Date: _____

Approved as to Form and Legality:

Name:
City Attorney
Date: _____

Name:
Attorney for Deanna J. Santana
Date: _____



dpr

Policy

Conference and Business Travel Expense Reimbursement

These guidelines shall be used to help guide employees on allowable expenses. Prior authorization from the Department Head is required for all travel requests. Expenses for a spouse or guest are not reimbursable. These guidelines do not address all contingencies and conditions. Any exception requires City Manager approval.

Travel Request/ Expense Report	Travel arrangements shall be reserved by the most logical and least expensive method. Travel Request/Expense Reports shall be submitted to the City Auditor within ten working days of the travel return date. If an outstanding report is not submitted within ten working days of the travel return date, no future Travel Request/Expense Reports shall be processed for the individual until the outstanding travel expense claims have been completed. The Report shall include a conference agenda, training schedule, or other documentation of attendance. All applicable sections of the Report shall be completed with original itemized receipts or other payment documentation with the exception of meals and incidental expenses (see below). All loose receipts shall be taped to an 8.5 x11 sheet of paper. If a receipt is not available, the employee shall submit a Verification of Expense Form.
Registration	Registration for conferences, training, etc. shall be made far enough in advance to take advantage of early (discounted) fees and to avoid late registration fees.
Transportation	<p>Travel arrangements shall be made as far in advance as possible to obtain the best possible fares and rates. Travelers shall use whatever mode of transportation is the most logical and least expensive. If an employee elects to use a mode of transportation other than the most logical and least expensive, the City will only pay the cost of the most logical and least expensive mode. If the least expensive mode of transportation is not used, the difference between the selected mode and the least expensive mode shall be considered the employee's personal expense.</p> <p>If travel arrangements must be cancelled for any reason, travel arrangements shall be cancelled in a sufficient amount of time to prevent the City from incurring unnecessary costs when possible.</p> <p>1. Air Travel: Reservations are based on advance-purchase economy class airfare. If an employee extends travel arrangement for personal</p>

	<p>Employees shall be compensated for lodging at conference hotels. If lodging is not available at the conference hotel or if the conference is not held at a hotel, employees are expected to stay at a comparable or reasonably valued hotel. The City will pay for standard single rooms for individual employees. Any incremental cost beyond that of a standard single room shall be paid for by the employee.</p>
Meals	<p>The City will pay for an employee's meals during authorized travel, including tax and tips, up to the per diem amount established by the General Service Administration (GSA) for the destination location (available at: http://www.gsa.gov/perdiem). The City will not pay for alcoholic beverages or service/delivery charges.</p> <p>The separate amounts for breakfast, lunch and dinner are available at http://www.gsa.gov/perdiem. The City will pay for meals during partial days of travel on a pro-rated basis as follows:</p> <ul style="list-style-type: none"> • If the partial day includes travel before 8:00 am, the City will pay for the employee's breakfast. • If the partial day includes travel between 11:00 am and 1:00 pm, the City will pay for the employee's lunch. • If the partial day includes travel after 5:00 pm, the City will pay for the employee's dinner. <p>Employees requesting reimbursement for meals and tips shall submit documentation from the GSA indicating the per diem rate amount of the travel destination's zip code or city and state. Employees are not required to submit receipts. Pursuant to AB 1234, the Mayor, Council Members and Planning Commission members are legally required to submit receipts.</p> <p>The City shall not pay for meals that the employee elected to purchase from another source when the meals are included in the cost of a conference, training, or hotel stay, unless there is a reasonable explanation for doing so, such as religion, allergy, etc.</p>
Incidental Expenses	<p>The City will pay for incidental expenses in the amount established by the GSA for the destination location (available at: http://www.gsa.gov/perdiem). Incidental expenses include tips for hotel front desk bag storage, housekeeping staff and other related expenses. Receipts are not required. Pursuant to AB 1234, the Mayor, Council Members and Planning Commission members are legally required to submit receipts.</p>
Miscellaneous	<p>The City will pay for goods and/or services deemed necessary for the completion of official business, such as faxes, copier and computer</p>