

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

**LOCAL 521**

**SERVICE EMPLOYEES INTERNATIONAL  
UNION,**

**TEMPORARY EMPLOYEES UNIT**

**AND**

**THE CITY OF MENLO PARK**



**October 26, 2008 to October 22, 2011**

## **PREAMBLE**

This Memorandum of Understanding is entered into by and between Service Employees International Union, **Local 521, CTW-CLC** (hereafter referred to as “Union”) and the City of Menlo Park (hereinafter referred to as “City”). This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act (Government Code Sections 3500-3510) and has been jointly prepared by the parties.

## **ARTICLE 1: RECOGNITION**

The Union is recognized as the exclusive bargaining unit for temporary City workers who are regularly assigned to work at least two hundred eight (208) hours per year, with the following exceptions:

- City Council members;
- Police reserves and other temporary staff assigned to public safety function;
- All classifications which are contained in other bargaining units; and
- Independent contractors

Position titles are contained in Article 5 of this Agreement, however, other classifications that may be created by the City and contain temporary workers eligible for inclusion in this unit, shall be considered as if it were contained in Article 5.

### **Listing of Workers**

On a biweekly basis, the City shall provide the Union with a listing of all temporary workers on the City’s payroll, except for those classifications specifically excluded above. Such listing shall include the temporary worker’s department, rate of pay, position title, number of hours worked during the pay period, and cumulative hours worked for the fiscal year.

## **ARTICLE 2: UNION SECURITY**

### **Agency Shop**

Duty of Fair Representation. The Union has the duty to provide fair and non-discriminatory representation to all workers covered by this Memorandum of Understanding, regardless of whether they are members of the Union.

Implementation. Effective upon ratification of this Agreement, all unit members, as a condition of initial and continued employment, for the duration of this Agreement, shall

either (a) become a member of the Union, (b) pay a service fee to the Union in lieu of membership, or (c) claim religious exemption as a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting public employee organizations, as provided in Section 3502.5(c) of the Government Code.

When a person is hired in any of the covered job classifications, the City shall notify that person that the Union is the recognized bargaining representative for the worker's representation unit, that the Union and the City have entered into an Agency shop agreement requiring payment listed above as a condition of employment, provide an enrollment card (furnished by the Union) and give the worker a current copy of the Memorandum of Understanding.

Workers shall be free to become a member of the Union or to refrain from becoming a member of the Union. Workers who voluntarily become Union members shall maintain their membership in the Union for the duration of this Memorandum of Understanding, provided, however, that workers may resign Union membership during the first five business days of September of any year, by notifying the Union and the Personnel Division in writing by registered mail, postmarked within the withdrawal period.

If an individual employee becomes delinquent in paying fees required under this Section due to a clerical error or the fact that the employee was not paid by the City during the pay period, the City shall not be responsible for paying such fees. However, once the City has been notified of the error, the City will make the correction within that pay period. In cases where a worker is not paid for a portion of the pay period and their salary is insufficient to cover part or all of the withholding of union dues or service fees, or their statutory withholding obligations exceed the withholding of union dues or service fees, there shall be no withholding. All legal, statutory and required deductions shall have priority over fees.

Each regular pay period, the City shall provide the Union with a list of the names, addresses, classifications, and membership status of all unit workers except those who file written notice with the Personnel Division objecting to the release of addresses, in which case information will be transmitted without address. Once a month, the City shall supply the Union with a list of representation unit new hires, terminations and retirements that occurred during the previous month.

The Union shall indemnify and hold the City, its officers and employees, harmless from any and all claims of any nature whatsoever, and against any claim or suit instituted against or involving the City arising from the execution of the City's obligations contained in this Article or from the use of the monies remitted to the Union, including the costs of defending against such actions or claims.

Dues Deduction. The City will deduct Union membership dues, agency fees, insurance fees, and any other mutually agreed upon payroll deduction from the biweekly pay of the worker, effective with the first pay period the worker is employed, subject to the

provisions contained in Section 2.1.2. The worker must authorize deduction of membership dues in writing on an enrollment card acceptable to the City and the Union. In cases where an enrollment card has not been returned, the mandatory service fee shall be deducted from the biweekly pay of the worker. The City shall remit the deducted dues and other fees to the Union as soon as possible after deduction.

In cases where, for whatever reason, (e.g., the City being enjoined from collecting dues or service fees), a worker is delinquent in the payment of such dues or service fees, the Union shall utilize the judicial process to compel payment.

Establishment of Service Fee. The Union shall demonstrate to the City that it has complied with applicable law by (a) having disseminated to the bargaining unit adequate information about its expenditures for the preceding fiscal year, including information regarding its “chargeable” and “nonchargeable” activities in the prior fiscal year, broken down in adequate and reasonable detail between the chargeable and nonchargeable activities; (b) having established a full, fair and prompt procedure whereby objecting nonmembers are able to challenge allegedly objectionable expenditures; and (c) having established a procedure for escrowing the amount reasonably in dispute in connection with any challenge by an objecting non-member.

Religious Exemption. Any worker occupying a position covered by this Memorandum of Understanding, who is a member of a bona fide religion, body or sect that has historically held conscientious objections to joining or financially supporting a public employee organization will, upon presentation of a written declaration to the Union and the City of active membership, notarized by an official representative of such religion, body or sect, be permitted to make a charitable contribution to one of the charities available through payroll deduction, equal to the service fee in lieu of Union membership or service fee payment.

The Union will have thirty days after receipt of a declaration of religious exemption to challenge any exemption that the City grants. If challenged, the deduction to the charity of the employee’s choice will commence but will be held in escrow pending resolution of the challenge. Charitable contributions will be by regular payroll deduction only. For purposes of this Section, charitable deduction means a contribution to a non-religious, non-labor charitable organization available through the City’s United Way or Combined Health Agencies payroll deduction slot, exempt from taxation under Section 501 of the IRS Code.

Financial Reports. The Union shall comply with Government Code §3502.5(d), which addresses the financial reporting requirements to agencies with negotiated agency shop provisions.

## **Changes in Benefits, Working Conditions or Other Terms and Conditions of Employment**

Except in cases of emergency, the Union shall be informed sufficiently in advance in writing by Management before any proposed changes not covered by this Memorandum of Understanding are made in benefits, working conditions, or other terms and conditions of employment which require the meet and confer or meet and consult process.

### **COPE Checkoff**

C.O.P.E. Checkoff. All workers who choose to do so may request an additional deduction from their paychecks to be forwarded to the Union and accounted for in a separate notation. Such additional deduction shall be used for political campaign purposes and shall be totally voluntary. The deduction is predicated on the worker having sufficient earnings to support the deduction.

### **Bulletin Board Usage**

The Union may utilize existing bulletin board space reserved for Union use. The board may be used for the following subjects:

- Information on Union elections, reports, newsletters and notices;
- Reports of official business of the Union, including reports of committees or the governing boards thereof;
- Scheduled membership benefits, programs and promotions;
- Any other written material pertaining to the official business of the Union, the Santa Clara County or San Mateo County Central Labor Council or Committee on Political Education (COPE).

## **ARTICLE 3: REPRESENTATION**

Five Union representatives, designated annually by the Union, who are temporary City employees and members of the bargaining unit shall be allowed a reasonable amount of time off without loss of pay for formal negotiations purposes. Preparation time for negotiations shall not be on release time without the approval of the Personnel Director.

It is agreed that, as long as there is no disruption of work, one of the five designated Union representatives shall be allowed a reasonable amount of time off without loss of pay to act in representing a unit worker or workers on a formal grievance. The Union agrees that the representative shall give advance notification to his or her supervisor

before leaving the work location except in those cases involving emergencies where advance notice cannot be given. Release time is subject to the legitimate scheduling needs of the Department.

**ARTICLE 4: PERSONNEL ACTIONS**

**Personnel Files**

Any official personnel records maintained concerning members of the bargaining unit shall be kept in the Personnel Division. A worker is entitled to review his or her personnel file upon written request or may authorize, in writing, review by his or her Union representatives, with the exception of information obtained confidentially in response to reference inquiries. Upon written request by the worker, a worker or the Union shall be allowed copies of materials in a worker’s personnel file relating to a grievance.

**ARTICLE 5: PAY RATES AND PRACTICES**

**Pay Rates**

Except as noted below, the pay range for temporary workers shall be set at the rates specified in the Memorandum of Understanding for permanent SEIU workers, Appendix B, where the low limit of the range is placed at step A, and the high limit of the range is placed at step E. There are no steps associated with the temporary range.

<i>Position Title</i>	<i>SEIU Range</i>
Imaging Technician	32.0
Office Assistant I	29.5
Office Assistant II	32.0
Office Assistant III	34.0
Secretary	36.0
Police City Service Officer	34.5
Police Records Personnel	35.0
Police Communications Officer	41.5
Recreation Aide	17.0
Recreation Leader I	20.5
Recreation Leader II	23.5
Recreation Leader III	26.5
Teacher’s Aide	25.0
Teacher Title 22	31.5

Library Page	17.5
Library Clerk	24.5
Library Assistant	32.5
Librarian	36.0

The following hourly rates shall apply to the temporary classifications listed below, and shall be adjusted by the same percentage and adjustment date specified in the Memorandum of Understanding for permanent SEIU workers:

<i>Position Title</i>	<i>Low Limit</i>	<i>High Limit</i>
Maintenance Worker	15.00	18.00

The following classifications shall be adjusted annually according to market conditions:

Officials and Referees            \$20.00 – \$23.00 per game

The listing contained in Appendix “A” of this Agreement provides detail and eligibility requirements relating to the Recreation Leader classifications.

**Overall Wage Adjustment**

Effective October 26, 2008, subject to City Council approval of this Agreement, all workers working within the ranges specified above will receive a one-time adjustment to their hourly rate of 2.00%.

All workers working within the ranges specified above will receive a wage adjustment corresponding to the designated time and percentage specified in the Memorandum of Understanding for permanent SEIU workers.

**Bilingual Differential**

Workers who are assigned to job duties requiring bilingual skills are eligible to receive eighty-one cents (\$0.81) per hour for the use of bilingual skills in job duties arising during the normal course of work. The bilingual differential shall not apply to overtime hours.

Eligibility for the bilingual differential shall be determined by the Personnel Director on the basis of a proficiency test developed and administered by the City.

Bilingual skills shall not be a condition of employment except for workers who are hired specifically with that requirement.

The City retains the right to discontinue the bilingual differential for any individual worker when bilingual services are no longer required, provided that the City gives the Union ten (10) working days notice prior to such revocation, in order to allow the opportunity for the parties to meet and confer.

No worker shall be required to use bilingual skills who is not compensated under this section.

### **Night and Weekend Differential**

Workers in the Library assigned to work hours between 5:00 P.M. and 8:00 A.M. weekdays or between Friday from 5:00 P.M. to Monday 8:00 A.M. shall be compensated for night and weekend differential at five percent (5%) above the worker's hourly rate for those hours.

Workers in the Police Department assigned to swing, midnight, relief or day shift on the weekend shall be compensated for night and weekend differential at five percent (5%) above the worker's hourly rate. Overtime hours shall not be used to qualify for weekend or night shift differential for those hours.

## **ARTICLE 6: HOURS AND OVERTIME**

### **Regular Work Week**

The regular work week begins Sunday at midnight and ends on Saturday at 11:59 P.M.

### **Lunch Periods**

All workers who work six (6) hours per day or more, except per diem Communications Officers, shall observe an unpaid lunch period of not less than thirty (30) minutes nor more than sixty (60) minutes. Lunch periods shall be scheduled according to the needs of the Department and with the approval of the supervisor.

### **Rest Periods**

One (1) fifteen (15) minute rest break with pay shall be provided to members of the bargaining unit for each four (4) hours of service. Rest periods and lunch periods may not be aggregated and used to extend the lunch period or shorten the work day unless prior approval is obtained from the Personnel Officer.

### **Overtime**

Overtime is defined as any time worked in excess of forty (40) paid hours in any work week.

In the event that a worker is required to work a full time schedule for a limited period which involves a flexible schedule, the overtime definition is as follows:

- On a 4/10 work schedule, overtime is any time worked in excess of forty (40) hours in a work week.
- On a twelve hour work schedule, overtime is any time worked in excess of eighty (80) hours in a pay period.

Overtime may be assigned on a required basis or requested by the worker and approved by the supervisor. Overtime shall be compensated at the rate of one and one-half (1.5) times the worker's regular rate of pay.

### **Work Schedule**

The City may modify any worker's schedules to meet its operational needs, but shall notify the Union prior to making such changes.

## **ARTICLE 7: UNIFORMS**

The City will provide uniforms to any member of the bargaining unit required to wear one.

## **ARTICLE 8: PAID TIME OFF AND LEAVE PROVISION**

In order to be eligible for benefits under this Article, a worker must work six hundred hours in a full year, beginning with the date the employee started working for the City. Once the eligibility requirement has been met, the employee will receive a lump sum credit of paid time off at the end of each subsequent calendar quarter at the rate of .02 hours per hour worked during that quarter. All accrued time must be used within the calendar year in which it was credited, and there will be no payout of accrued time upon termination.

Paid time off may be used for time off approved in advance, or for sick leave.

Beginning with the first pay period in January 2009, all accrued paid time off will appear on employee pay stubs, and accrued each pay period.

## **ARTICLE 9: GRIEVANCE PROCEDURE**

A grievance is defined as an alleged violation, misinterpretation or misapplication of any provision of this Memorandum of Understanding, or an appeal from a disciplinary action involving suspension against a member of this bargaining unit.

## **General Provisions**

Every effort will be made by the parties to settle grievances at the lowest possible level.

No party to a grievance shall take any reprisals against the other party to the grievance because the party participated in an orderly manner in the grievance procedure.

Failure of the member of the bargaining unit bringing a grievance against the City to adhere to the time deadlines contained herein shall mean that the grievance is settled. The grievant and the City may extend any time deadline by mutual agreement.

Every effort will be made to schedule meetings for the processing of the grievance at times that will not interfere with the regular workday of the participants.

An individual of the party's choice may represent either the City or the grievant at any step of the grievance procedure.

## **Procedure**

Grievances will be processed in accordance with the following procedure:

### **Level I – Informal resolution**

Any member of the bargaining unit who believes he or she has a grievance as defined herein shall present the grievance orally to the immediate supervisor within ten (10) working days after grievant knew, or reasonably should have known, of the circumstances which form the basis for the grievance. Failure to do so will render the grievance null and void. The immediate supervisor shall hold discussions and attempt to resolve the matter within ten (10) working days after the presentation of the grievance. It is the intent of this informal meeting that at least one (1) personal conference be held between the aggrieved unit member and the immediate supervisor.

### **Level II – Formal Written Grievance**

If the grievance is not settled during the informal conference and the grievant wishes to pursue the matter, the grievant shall present the grievance in writing on the appropriate form to the immediate supervisor within ten (10) working days after the informal conference. The written information shall include the specific grounds of the grievance, a listing of the provisions which are alleged to have been violated, a listing as to why the immediate supervisor's response is unacceptable, and a listing of specific actions requested by the grievant which will remedy the grievance.

The immediate supervisor shall communicate the decision to the grievant in writing within ten (10) working days after receiving the grievance. If the immediate supervisor does not respond within the time limits, the grievant may elevate the grievance to the next level.

With the concurrence of the City, a worker may choose to file the formal grievance at Level III.

#### Level III – Appeal to the Department Head

If the grievant is not satisfied with the decision at Level II, the grievant may, within ten (10) working days of the receipt of the decision at Level II appeal the decision to the department head. This statement shall include a copy of the original grievance and appeal, and a clear, concise statement of the reasons for the appeal.

The department head shall communicate the decision to the grievant in writing within ten (10) working days after receiving the grievance. If the immediate supervisor does not respond within the time limits, the grievant may elevate the grievance to the next level.

#### Level IV – Appeal to the City Manager

If the grievant is not satisfied with the decision at Level III, the grievant may, within ten (10) days of the receipt of the decision at level III, appeal the decision to the City Manager. The statement shall include a copy of the original grievance, all decisions rendered and a clear and concise statement of the reasons for the appeal.

The City Manager shall respond to the grievance in writing within ten (10) days of the receipt of the written appeal. The decision of the City Manager shall be final and shall render the grievance settled.

### **ARTICLE 10: EFFECT ON EXISTING PRACTICES**

#### **Changes in Personnel Rules and Department Regulations**

During the term of this Memorandum of Understanding, the parties hereto will meet and confer regarding changes proposed by the City in the City's Personnel Rules and Department Rules and Regulations.

#### **Effect of Agreement**

This Agreement completely supersedes any prior agreements between the parties. It also supersedes any conflicting provision in the City's Personnel Rules.

#### **Existing Practices**

Existing practices and/or benefits which are not referenced in this Memorandum and which are subject to the meet and confer process shall continue without change unless modified subject to the meet and confer process.

## **Waiver Clause**

Except as provided under “Existing Practices”, the workers waive their right to meet and confer during the term of this Agreement on any matter raised during the meeting and conferring which preceded this Agreement. This section shall not be subject to the grievance procedure.

## **ARTICLE 11: MANAGEMENT RIGHTS**

The City hereby retains and reserves unto itself, without limitation, all powers, rights, authority, duties and responsibilities conferred upon and vested in it by the laws of the Constitution of the United States and the Constitution of the State of California, including, but not limiting the generality of the foregoing, the right:

To set standards and levels of service;

To determine the procedures and standards of selection for employment and promotions;

To assign workers, including bargaining unit members, to do station maintenance, repair, painting and similar work;

To direct its workers in the manner it deems appropriate;

To determine the methods and means to relieve its workers from duty because of lack of funds or other lawful reasons;

To determine the methods, means and numbers and kinds of personnel by which City operations are to be conducted, including the right to contract or subcontract any work;

To determine methods of financing;

To determine size and composition of the work force and allocate and assign work by which the City operations are to be conducted;

To determine and change the number of locations, relocations and types of operations, processes and materials to be used in carrying out all City functions;

To make all decisions relating to merit, necessity or organization of City services;

To discipline workers in accordance with applicable law;

To establish performance standards including, but not limited to, quality and standards, and to require compliance therewith;

To take necessary actions to carry out its mission in emergencies;

To exercise complete control and discretion over its organization and the technology of performing its work; and

To take any and all steps necessary to discharge the City's responsibilities to provide for the safety of the public it serves and to provide employees with a safe working environment.

The exercise by the City through its Council and management representatives of its rights hereunder shall not in any way, directly or indirectly, be subject to any grievance procedure nor subject to meeting and conferring.

## **ARTICLE 12: DISCIPLINARY ACTION**

The City and Union agree that temporary employees have "at will" employment status and that either the employee or the City is entitled to end the employment relationship at any time, with or without cause.

An employee who has been terminated may request that the City give a statement of the reasons for termination. Such request shall be in writing and shall be delivered to the City's Personnel Office within ten (10) working days of the employees' termination. Within ten (10) working days after receiving the request, the City shall provide a statement for reasons for the termination. The employee may request a meeting with the Department Head to allow the worker to provide explanatory or mitigating information. The worker may be assisted by a representative at this meeting. The Department Head shall consider any information provided by the worker and shall determine whether to reinstate the worker. The department head shall have the final decision in all temporary employee employment matters. Termination shall not be subject to the grievance procedure and there shall be no appeal.

## **ARTICLE 13: SAFETY**

It is the City's intention to provide the safest possible equipment and working conditions to the workforce of the City of Menlo Park. Toward that end, the City is committed to making the necessary expenditures to purchase this equipment.

Any member of the unit is welcome to participate in safety issues, to attend the Safety committee and to submit suggestions for a safe work environment.

## **ARTICLE 14: NONDISCRIMINATION**

The City agrees that there shall be no discrimination against any worker in regard to any of the terms and conditions of employment on account of that worker's race, religion, national origin, cohabitation, political activities, age, disability, sex, sexual orientation, Union membership or legitimate Union activities under this Agreement.

**ARTICLE 15: SEPARABILITY**

If any provision of this Agreement shall be declared void or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, except that either party to the Agreement may request the other party to meet and confer in regard to amending the Agreement to replace the provisions declared void or unenforceable. However, there will be no obligation on either party to agree on a replacement provision.

**ARTICLE 16: TERM OF AGREEMENT**

This Agreement shall remain in full force and effect up to and including October 22, 2011 and thereafter shall continue in effect year by year unless one of the parties notifies the other in writing no earlier than April 1 of any year, and no later than April 30 of any year, of its request to modify, amend or terminate the Agreement. If the parties enter into subsequent meeting and conferring regarding a successor agreement, the terms and conditions of this Agreement shall remain in effect until a successor agreement is reached, or until meeting and conferring is concluded.

The term of this Agreement shall be effective upon the adoption of this Agreement by the City Council except as otherwise provided by specific sections of this Agreement.

Dated: \_\_\_\_\_

City of Menlo Park

**SEIU, Local 521, CTW-CLC**

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## APPENDIX “A”

### Community Services Department Staff Positions

#### Recreation Aides

Cashiers  
Scorekeepers

#### Recreation Leader I – entry level positions requiring no experience

Substitute teacher aides (w/no units)	After school leaders (w/no units)
Teen leaders	Field prep workers
Customer service assistants	Special event assistants
Gymnastics instructors	Summer camp assistants
Sports camp assistants	Facility attendants
Nutrition workers	Lifeguards (w/lifeguard training)
Swim Instructors (w/Water Safety Instruction)	

#### Recreation Leader II – positions requiring at least 1 year of experience and certifications in related field

- Drivers (with Class B certification)
- Sports Camp leaders (CPR and First Aid)
- Lifeguards (w/lifeguard training)
- Gymnastics Instructors (w/CPR, First Aid and USAG Professional Development Program)
- After school leaders (w/alternative educational requirements)
- Sports Officials (CPR and First Aid)
- Swim instructors (w/WSI)
- Assistant Pool Manager (Head lifeguard or Assistant Pool Manager experience – WSI preferred)

#### Recreation Leader III – positions that require at least 3 years of experience and specialized skills or advanced certifications in related field

- Substitute teachers (with 6 ECE units)
- Sports Camp leaders (CPR and First Aid)
- Lifeguard (w/lifeguard training)
- Gymnastics Instructors (Recreation Leader II requirements and Safety Certification and one of the following certifications: Professional Development Program II, Kinder Accreditation for Teachers or Movement Education and Learning Development)
- Sports officials (CPR and First Aid)
- Swim instructors (w/WSI)
- Assistant pool managers (Head lifeguard or Assistant Pool Manager experience – WSI preferred)