

**LETTER OF AGREEMENT BY AND BETWEEN
CITY OF MODESTO
AND
MODESTO CITY EMPLOYEES ASSOCIATION**

COMPENSATORY TIME OFF – ARTICLE 12, SECTION (C)(4)

This Letter of Agreement (“Agreement”) is effective October 21, 2013, and has been jointly prepared by the designated representatives of the City of Modesto (“City”), a public agency within the meaning of Section 3501(c) of the Government Code of the State of California, and the Modesto City Employees Association (“MCEA”), a recognized employee organization within the meaning of Section 3501(b) of the Government Code of the State of California, with reference to the following facts:

WHEREAS, article 12, section (c), subdivision (4) of the current MOU¹ between MCEA and the City provides:

Overtime Compensation. Any employee authorized by the Department Director or authorized representative to work overtime shall be compensated at the overtime rate, i.e. one and one-half (1-1/2) times the employee's regular hourly rate of pay. Upon an employee's request, overtime may be compensated as compensatory time off (CTO). CTO shall be credited at one and one-half (1-1/2) times the amount of hours worked.²

Each employee hired before September 27, 2005 will be paid, as part of the last paycheck received in September, December, March and June for all compensatory time over one hundred and sixty (160) hours. Each employee hired on or after September 27, 2005 will be paid, as part of the last paycheck received in September, December, March and June for all compensatory time over one hundred (100) hours.

At the employees request payment of CTO will be included as part of a regular paycheck so long as the request is for at least ten (10) hours. Employees shall make this request to the Payroll Division of Finance at least fourteen (14) calendar days prior to payout CTO leave may be taken at the request of the employee with reasonable advance notice and with the approval of the Department Director or designee. Approval of CTO leave shall not be denied unless granting the CTO leave request would result in an undue disruption in city operations. CTO will be taken in straight time

¹ The “current MOU” means the agreement between MCEA and the City dated June 19, 2012 through September 23, 2013, which the parties are now in the process of renegotiating, the terms of which are still in full force and effect.

² Bold added for emphasis.

hours.

MCEA employees shall have the opportunity to bank overtime hours as CTO outside of their assigned home cost center. The City agrees to absorb the additional labor costs for tracking these hours outside of the payroll system as a manual work-around. The City will notify MCEA to discuss impacts of the City's ability to absorb the additional cost as a result of the work-around.

Overtime hours worked in connection to grants, capital projects or other time restricted funded activities are to be paid as cash on the paycheck following the pay period for which time was worked and therefore should not be approved for hours banked to CTO.

Prior to the promotion or reclassification of an employee, all compensation time off shall be taken or paid at the employee's then current regular rate of pay. Overtime compensation for Relief and Senior Wastewater Treatment Plant Operators assigned to the twenty-four (24) hour schedule shall be paid pursuant to 29 C.F.R. Sec. 778.114 of the Fair Labor Standards Act regulations.

And

WHEREAS, employees represented by MCEA have been able to request CTO in lieu of cash payment as compensation for overtime for nearly 20 years since November 1, 1994, when the following identical language first appeared in the MCEA MOU:

Upon an employee's request, overtime may be compensated as compensatory time off (CTO). CTO shall be credited at time and one-half.³

And

WHEREAS, in February 2012, the CTO agreement between MCEA and the City was slightly modified by agreement between MCEA and the City to allow CTO for overtime worked both within and outside of an employee's "home cost center," except where the overtime hours worked are "in connection to grants, capital projects or other time restricted funded activities;"⁴ and

WHEREAS, on April 30, 2013, Deputy Director of Public Works Gary Dejesus issued a memorandum to employees Rich Diddens, Mike Martin, Todd Martin, Fred Mullen, David Shackelford, Robert Wang, and John Yarbrough with a subject of "Electrical Branch

³ 1994-1996 MCEA MOU, art. 5, § (C), p. 5.

⁴ February 15, 2012 letter from Scott Kasper to MCEA attorney Tamiya Davis.

Overtime Compensation” resulting in the suspension of compensation for overtime in the form of Compensating Time Off; and

WHEREAS, in April or May 2013, the City changed the Overtime Slip to be filled out by employees to add a new option for supervisors to deny employees requests for overtime compensation in the form of CTO in lieu of cash payment; and

WHEREAS, City representatives did not meet and confer with MCEA representatives before imposing the above-described changes in April and May 2013 regarding CTO; and

WHEREAS, MCEA filed a grievance on May 10, 2013, challenging (i) the April 30, 2012 decision and memo by Gary Dejesus and changing of the Overtime Slip as a breach of MOU article 12, section (c), subdivision (4), and (ii) the changing of the Overtime Slip for these same reason; and

WHEREAS, in May 2012, the Public Works Department of the City began denying requests by employees in the laboratory for CTO in lieu of cash payment for the overtime they worked; and

WHEREAS, MCEA filed a second grievance on May 20, 2013, challenging the May 2012 denials of requests for CTO compensation as a breach of MOU article 12, section (C), subdivision (4); and

WHEREAS, on or about May 24, 2013, in an undated letter, the City’s Public Works Director Dennis Turner agreed to consolidate both the May 10 and May 20 grievances for hearing and denied both grievances; and

WHEREAS, the grievances were set for hearing before neutral hearing officer Chris Burdick to be held beginning October 24, 2013, and

WHEREAS, the City and MCEA have engaged in good faith settlement discussions since May 2013, resulting in this letter of understanding, which is intended to settle and resolve MCEA’s May 10 and May 20 grievances according to the terms set forth below.

NOW, THEREFORE, the City and MCEA, after meeting and conferring in good faith under section 3505 of the Government Code of California, understand and agree as follows:

1. The City shall not deny employee requests for Compensating Time Off (CTO) in lieu of cash payment as compensation for overtime, unless and only to the limited extent:
 - a. the requesting employee would exceed the 100-hour CTO accrual cap provided in the second paragraph of article 12, section (c), subdivision (4)

of the current MOU between MCEA and the City; or

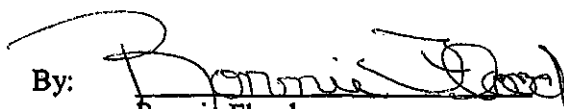
- b. the overtime hours were worked outside of the employee's home cost center and in connection to grants, capital projects or other time restricted funded activities, as provided in the fifth paragraph of article 12, section (c), subdivision (4) of the current MOU between MCEA and the City.
2. The Director of Public Works shall immediately (within 3 business days) issue a memorandum to all employees in his department represented by MCEA expressly rescinding the April 30, 2013 memorandum of Deputy Director of Public Works Gary Dejesus described above, and announcing that employee requests for overtime compensation in the form of CTO shall not be denied except in the two limited circumstances described in paragraph 1 hereinabove.
3. The City shall revert to using the former version of its Overtime Slip that was in use before April 2013, or a substantial equivalent containing no option for supervisors to deny employee requests for CTO as overtime compensation; and
4. The City shall make no future changes to policies or practices regarding CTO without first proposing them to MCEA via a good faith meeting and conferring process under the Meyers-Milias-Brown Act.
5. MCEA withdraws its May 10 and May 20 consolidated grievances by execution of this agreement, on the condition subsequent that the City fully performs hereunder.
6. MCEA will refrain from filing any unfair labor practice charge(s) with the Public Employment Relations Board concerning the April and May 2013 unilateral changes to CTO practices described above, on the condition subsequent that the City fully performs hereunder.
7. Settlement of this grievance shall not be construed as an admission of liability or fault on the part of the City or MCEA.
8. Any dispute between the City and MCEA concerning the interpretation of application of this agreement shall be resolved by binding arbitration and the parties agree to employ Christopher Burdick as the designated neutral.
9. The parties shall bear their own attorneys fees and costs associated with the grievance, settlement discussions, and preparation of this Agreement.
10. This Agreement may be executed in counterparts (each of which shall be deemed to be an original but all of which taken together shall constitute one and the same agreement) and shall become effective when one or more counterparts have been

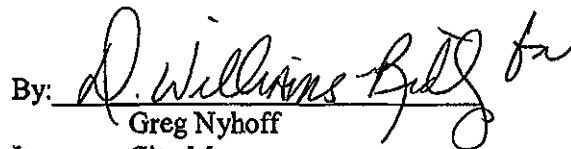
signed by each of the parties and delivered to the other party. In the event that any signature is delivered by facsimile transmission or by e-mail delivery of a ".pdf" format data file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.


IN WITNESS WHEREOF, the parties hereto have executed this Letter of Agreement on October 21, 2013.

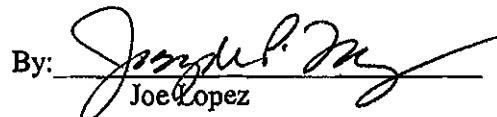
MODESTO CITY EMPLOYEES ASSN.

CITY OF MODESTO

By: 
Ronnie Flood
Its: President

By: 
Greg Nyhoff
Its: City Manager

By: 
Annette Byrne
Its: Vice President


By: 
Joe Lopez
Its: Human Resources Director


Approved as to form:

Approved as to form:

ROSE LAW, A.P.C.

SUSANA ALCALA WOOD, City Attorney

By: 
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By: 
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