

## **SIDE LETTER OF AGREEMENT BY AND BETWEEN CITY OF MILPITAS AND MILPITAS POLICE OFFICERS' ASSOCIATION**

This Letter of Agreement ("LOA") is entered into by and between the City of Milpitas ("City") and the Milpitas Police Officers' Association ("MPOA") regarding utilization of flex time in lieu of paid overtime. The terms and conditions of the LOA will remain in effect for the term of the parties' Memorandum of Understanding ("MOU") and subject to revision as part of successor MOU negotiations.

### **Use of Flex Time in lieu of paid overtime**

#### **- Definition**

Flex time is defined as an arrangement where employees may adjust their start and end times on certain days, but maintain the total required hours worked within a work period and/or pay period. With supervisor approval, employees who work beyond their regularly scheduled hours will have the option to "flex" their schedule, at a 1:1 ratio, in lieu of receiving overtime pay.

#### **- Purpose and Scope**

This policy establishes standards and procedures for the accumulation and use of "flex time" in lieu of paid overtime. The standards in this policy do not replace or supersede existing policies and procedures governing the accumulation and use of overtime provided by this Manual, City personnel rules, and/or applicable labor agreements by and between the City and designated bargaining unit representatives.

For the purpose of calculating overtime pursuant to the requirements of the Fair Labor Standards Act ("FLSA"), the City has declared a twenty-eight (28) day work period for all Department classifications eligible for the partial overtime exemption under section 207(k) of the FLSA. The work period commences at 12:01 am and ends at 11:59 pm, 28 days later. For non-exempt hourly employees, the FLSA 207(K) overtime threshold is hours actually worked in excess of one hundred seventy-one (171) in the 28-day work period.

#### **- Accumulation of Flex Time**

All hours worked beyond the employee's scheduled work hours will be considered overtime and must be approved by a supervisor pursuant to *MPM 1038.1*. However, employees may choose to utilize overtime hours worked to "flex" their workday in lieu of paid overtime. Flex time may only be accumulated in fifteen (15) minute increments, up to a maximum of four hours per shift. All overtime, including overtime that an employee elects to use as "flex time," shall be documented on an overtime sheet (blue sheet) to be filed in the watch commander's office, a copy of which shall be retained by the employee. If time is designated as "flex time" under this policy, it does not count as

hours worked when calculating overtime under the labor agreement and is instead governed by the FLSA 207(K) overtime threshold.<sup>1</sup>

- **Use of Flex Time**

Employees wishing to use Flex Time will notify their supervisor that they wish to use Flex Time. Flex time hours may only be used by the employee if approved by the employee's supervisor. The supervisor is responsible for approving the use of Flex Time within the 28-Day work period and will confirm the hours are available by checking the Flex Time file. When the hours are used, the employee and supervisor will sign off the request sheet as used, and the request sheet will be removed from the active file to a secondary file for used hours. Used request sheets will be retained for up to 2 years.

The following provides instructions of how flex time will be used during any given 28-day work period (section 207(k) of the FLSA):

1. **Use of Flex Time During City of Milpitas 14-Day Pay Period When Accumulated** -- Accumulated flex time should be used in the same pay period in which it was accumulated. The Department will make reasonable efforts to allow for the employee to use earned Flex Time during the same pay period when it is accumulated.
2. **Use of Flex Time After the City of Milpitas 14-Day Pay Period and Within the 28-Day Work Period** -- On limited occasions, an employee may not be able to use the hours in the same pay period. If this occurs, the hours may be carried to the following pay period with supervisor approval, and the Supervisor must work with the employee on a plan to use the Flex Time before the 28-Day work period. The Supervisor is required to make every effort to accommodate the employee's request to use accumulated Flex Time to avoid conversion of Flex Time to comp- or overtime.
3. **Action After 28-Day Work Period** -- Under no circumstances shall Flex Time hours be carried beyond 28-days from when it was earned. Hours that cannot be used in the 28-day window shall be taken as comp time earned or overtime earned.

FOR THE CITY OF MILPITAS:

For MPOA:

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Kelli Parmley  
Human Resources Director      Date

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David Morris  
MPOA President      Date

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Deanna Santana  
Interim City Manager      Date

<sup>1</sup> The FLSA 207(K) overtime threshold is 171-hours worked in a 28-day period. This differs from the Milpitas Police Officer's Association Memorandum of Understanding which allows overtime when an employee works any hours beyond their regularly scheduled time.