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**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN**  
**TOWN OF TIBURON**  
**and**  
**SERVICE EMPLOYEES INTERNATIONAL UNION, SEIU 949**

**PREAMBLE**

This Memorandum of Understanding is entered into pursuant to the Meyers-Milias-Brown Act, by and between the Town Manager of the TOWN OF TIBURON “the Town” and the Service Employees International Union, SEIU 949 “the Union” on the 2<sup>nd</sup> day of November, 2005

The parties have met and conferred in good faith regarding wages, hours and other terms and conditions of employment of the represented employees of the Town of Tiburon and have exchanged freely information, opinions, and proposals and have endeavored to reach agreement on all matters relating to the employment conditions and Employer-employee relations of such employees.

The Memorandum of Understanding shall be presented to the Town Council as the joint recommendations of the undersigned for salaries, fringe benefits and working conditions of all represented employees of the Town of Tiburon.

This Memorandum of Understanding and following agreements shall not become effective until approved by the Tiburon Town Council and SEIU 949.

**Section 1. RECOGNITION**

- 1.1 **Union Representation:** The employment classifications represented by the Union include: Administrative Aide, Building Inspector, Building Permits Clerk, Building Technician, Planning Secretary, Office Assistant III, Public Works Foreman, and Maintenance Worker I and II.
- 1.2 **Dues Deduction:** The Town shall, in a single payroll deduction made bi-monthly, deduct the amount of Union Dues or fees as specified by the Union and authorized by each affected employee in accordance with rules and regulations to implement the Employer-Employee Relations Resolution. Said deductions are to be made without fee charged to the Union. The Union agrees to hold the Town harmless from any liability arising from such deduction.

## **Section 2. UNION REPRESENTED EMPLOYEE RIGHTS**

- 2.1 The Union's right to represent its members before the Town Council or advisory boards or commissions or the Town Manager or his/her designee with regard to wages, hours, and working conditions or other matters within the scope of representation.
- 2.2 The right to be given reasonable written notice of any proposed ordinance, rule, resolution, or regulation, or amendment hereto, relating to matters within the scope of representation.
- 2.3 Reasonable access to employee work locations for officers of the Union and the officially designated representatives for the purpose of processing grievances or contacting members of the Union concerning business within the scope of representation. Access shall be restricted so as not to interfere with the normal operations of the Town or established safety or security requirements.
- 2.4 Employees represented by the Union shall be free to participate in Union activities without interference, intimidation, or discrimination, in accordance with State law and Town Policies, rules, and regulations.

## **Section 3. MANAGEMENT RIGHTS**

The rights of the Town include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set standards of service; determine the procedures and standards of selection for employment and promotion; train and direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or for other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means and personnel by which governmental operations are to be conducted; determine the content of job classifications; take all necessary actions to carry out its mission in emergencies; exercise complete control and discretion over its organization and the technology of performing its work; and to make rules and regulations for its employees consistent with this Memorandum of Understanding.

The Town maintains the right to use qualified volunteers or reserves in the Town service, provided such use does not adversely affect wages, hours, and other terms and conditions of employment. Use of said individuals shall be in accordance with State law and regulations.

Nothing contained within this Article is intended to, in any way, supersede or infringe upon the rights of the recognized employee organization as provided under State and Federal law, including, but not limited to, California State Government Code Sections 3500 through 3510, inclusive.

#### **Section 4. NO DISCRIMINATION**

- 4.1 Employment by the Town shall be based upon merit, qualifications and ability. There will be no unlawful discrimination in hiring, promotion, advancement, termination or any other personnel action based on an individual's race, religion, color, national origin, ancestry, physical or mental disability, medical condition, marital status, veteran's status, sexual orientation, age or sex. There shall be no discrimination against any disabled individual solely based on such disability, unless that disability prevents the individual from meeting the minimum standards established for the employment position the applicant seeks.
- 4.2 No member, official, or representative of the Union shall, in any way, suffer any type of discrimination in connection with continued employment, promotion, or otherwise by virtue of membership in or representation of Union.

#### **Section 5. SCOPE OF AGREEMENT**

- 5.1 Term: This Agreement shall be in effect from November 2, 2005 through June 30, 2008.
- 5.2 Procedure for Meet and Confer: The Town, through its representatives, shall meet and confer in good faith with representatives of the Union regarding matters within the scope of representation. These matters include employee wages, hours, and other terms and conditions of employment, in accordance with the provisions of the Meyers-Milias-Brown Act.

#### **Section 6. EMPLOYEE REPRESENTATIVES**

- 6.1 The Union may by written notice to the Town Manager, designate a member of the unit as an Employee Representative. The Employee Representative shall be permitted reasonable time during regular work hours for Union activities. Total employee time shall not exceed the equivalent of one hour per week, or a total of fifty-two (52) hours during the fiscal year. The Employee Representative shall secure permission from his/her Supervisor before leaving a work assignment for pertinent Union responsibilities. Such permission shall not be unreasonably withheld.
- 6.2 Employee Representatives may investigate and process formal grievances by employees.
- 6.3 The Union may request that the Town meet and develop a format for Management-Labor meetings and a Memorandum of Understanding orientation meeting.

## **Section 7. CAFETERIA BENEFITS PLAN**

The Town currently pays the cost of group dental, life, long term disability, medical and hospital insurance program coverage of up to Five Hundred and twenty-five dollars \$525 per regular full-time represented employee. If the full sum specified is not used for the group insurance cost of a given employee, then that amount shall be deposited into the Town's Deferred Compensation Plan in the employee's name. Any part-time employee shall receive a prorated amount of this monthly allowance based on their full-time equivalence.

- (a) Effective January 1, 2006 the Town agrees to pay the cost of group dental, life, long term disability, medical and hospital insurance program coverage of up to Seven Hundred and twenty-five dollars \$725 per regular full-time represented employee. If the full sum specified is not used for the group insurance cost of a given employee, then that amount shall be deposited into the Town's Deferred Compensation Plan in the employee's name. Any part-time employee shall receive a prorated amount of this monthly allowance based on their full-time equivalence.
- (b) Effective January 1, 2007 the Town agrees to pay the cost of group dental, life, long term disability, medical and hospital insurance program coverage of up to Seven Hundred and seventy-five dollars \$775 per regular full-time represented employee. If the full sum specified is not used for the group insurance cost of a given employee, then that amount shall be deposited into the Town's Deferred Compensation Plan in the employee's name. Any part-time employee shall receive a prorated amount of this monthly allowance based on their full-time equivalence.
- (c) Effective January 1, 2008 the Town agrees to pay the cost of group dental, life, long term disability, medical and hospital insurance program coverage of up to Eight Hundred and twenty-five dollars \$825 per regular full-time represented employee. If the full sum specified is not used for the group insurance cost of a given employee, then that amount shall be deposited into the Town's Deferred Compensation Plan in the employee's name. Any part-time employee shall receive a prorated amount of this monthly allowance based on their full-time equivalence.

- 7.1 Medical/Hospital Insurance: The Town of Tiburon offers its employees and their dependents medical/hospital insurance coverage. A full-time employee may choose from the plans offered through the Public Employees Retirement System Health Benefits Division for medical/hospital insurance coverage. If the full sum specified is exceeded for group insurance cost of a given employee and dependents, then that employee shall pay the balance of the monthly cost via payroll deduction. Such insurance is mandatory for all full-time employees unless they can demonstrate compliance with other coverage.

- 7.2 Dental Insurance: The Town of Tiburon offers its full-time employees and their dependents the Delta Dental plan. Such insurance is mandatory for all full-time employees and their dependents, unless they can demonstrate compliance with other coverage.
- 7.3 Life Insurance: The Town of Tiburon offers its full-time employees a \$15,000 life insurance policy. Such insurance is mandatory for all full-time employees.
- 7.4 Disability Insurance: The Town of Tiburon offers its full-time employees long term disability insurance. Such insurance is optional.
- 7.5 Long Term Care: The Town of Tiburon offers its full-time employees a long term care policy. Participation is optional.
- 7.6 IRS 125 Plan: The Town of Tiburon offers its employees the ability to participate in its IRS 125 Plan. Participation is optional.

7.7 FMLA & ADA:

FMLA

FMLA shall be administered pursuant to applicable federal and state law.

ADA

ADA shall be administered pursuant to applicable federal and state law.

- 7.8 Change in Employee Benefits Plans: From time to time, at its option, the Town intends to evaluate the hospital-medical, dental, life, and long-term disability insurance plans currently available to employees to determine if similar or better coverage may be available at a lower cost to the Town. The Town may substitute new insurance carriers or arrange for self-insurance provided that the overall coverage is equal to or superior to the present coverage and provided that the Town meets with the Union to confer on any new plan before it is implemented.

**Section 8. RETIREMENT PROGRAM**

- 8.1 Scope of Benefits: The Town of Tiburon provides the two percent (2%) @ Age 55 Cal-PERS retirement formula for full-time personnel covered under this Memorandum of Understanding.

The Town contributes its employer required amount of retirement benefit as stipulated each year by Cal-PERS, as well as seven percent (7%) of all full-time employee's monthly retirement contributions.

The Town provides the single highest year retirement calculation for full-time employees covered under this Memorandum of Understanding.

Within six months of ratification of this agreement, the Town agrees to schedule an employee meeting within the Town with the CalPERS representative to explain the retirement plan to the employees.

The Town provides the following additional CalPERS benefit to employees covered under this Memorandum of Understanding.

1. Death Benefits - \$600
2. Unused Sick Leave Service Credit
3. 1959 4<sup>th</sup> Level Survivors Benefits

It is a priority to the Town to remain competitive in its compensation. As such, it is important to enhance retirement benefits for its employees, when appropriate. During the meet and confer process for the succeeding agreement, the Town will meet and confer on enhancing the retirement formula for represented employees.

8.2 Paid Medical at Retirement: The Town of Tiburon will make contributions toward a retired employee's medical insurance plan based on the following conditions:

1. The employee must retire directly from employment from the Town of Tiburon and apply to PERS for retirement benefits.
2. The retiree's medical allowance is fixed and capped at the Kaiser employee rate which is in effect at the time of the employee's retirement.
3. The Town's contribution rate is based on the following formula:
  - a. Fifty percent (50%) of the Kaiser employee rate at fifteen (15) years of consecutive service.
  - b. Seventy five percent (75%) of the Kaiser employee rate at twenty (20) years of consecutive service.
  - c. One hundred percent (100%) of the Kaiser employee rate at twenty-five (25) years of service.

## **Section 9. HOLIDAYS**

In accordance with Government Code and the Town Personnel Rules and Regulations, the following holidays shall be observed by the Town:

<u>HOLIDAY</u>	<u>DATE OBSERVED</u>
Independence Day	July 4
Labor Day	1 <sup>st</sup> Monday in September
Veteran's Day	November 11
Thanksgiving	4 <sup>th</sup> Thursday in November
Day After Thanksgiving	4 <sup>th</sup> Friday of November
Christmas Eve	December 24
Christmas	December 25
New Year's Eve	December 31
New Year's Day	January 1
Martin Luther King Day	3 <sup>rd</sup> Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Memorial Day	Last Monday of May

## **Section 10. SICK LEAVE**

- 10.1 Use of Sick Leave: Sick leave may be taken for absences from duty made necessary by:
1. Personal illness, caused by factors which are not within the employee's immediate control.
  2. Injury not incurred in line of duty, except where traceable to employment other than the Town.
  3. Medical, dental or eye examination or treatment for which appointment cannot be made outside of working hours.
  4. Death of a close relative, or any member of the employee's household, where such leave is approved by the Department Head.
  5. Hospitalization of a close relative, or any member of the employee's household, where such leave is approved by the Department Head.
  6. Care of a close relative, or any member of the employee's household who is ill or injured, though not hospitalized, where such leave is approved by the Department Head.

10.2 Sick Leave Accumulation: Sick leave with pay shall be granted to all full-time employees except as hereinafter provided. An employee shall accumulate one (1) sick leave day per month from date of hire until terminated, or on leave without pay.

Employees who are absent without pay for any reason more than ten (10) working days during a calendar month, shall not accumulate sick leave for that month.

10.3 Holidays During Sick Leave: Holidays and regular days off occurring while an employee is on sick or special leave shall not be charged against such employee's sick leave credits.

10.4 Payment for Unused Sick Leave: An employee may receive payment of 50% of the value of their unused sick leave up to a maximum of 60 days if the following conditions are met:

1. The employee files for service retirement from the Town, and
2. The employee voluntarily separates from the Town and has at least fifteen (15) years of service with the Town.

10.5 Termination of Sick Leave: Sick leave shall automatically terminate on the date of retirement or on the date upon which an ordinary disability allowance under the retirement system becomes effective.

10.6 Sick Leave Notification and Proof of Illness: In order to receive compensation while on sick leave, the employee shall notify his/her immediate superior, prior to or at the time set for beginning his/her daily duties or as may be specified by the Department Head, of the reasons for requiring such. Failure to notify the immediate supervisor may be grounds for denial of such leave with pay.

10.7 Proof of Illness: In any request for sick leave with pay for three (3) or more calendar days, the Department Head may require a statement in writing signed by a licensed physician, or the submission of other sustaining evidence that the employee is incapacitated and unable to perform his/her duties. The Town has the right to determine by reasonable means the validity of any sick leave used by any employee at the time.

## **Section 11. LEAVE WITH PAY**

The following conditions provide for leave with pay:

11.1 Military Service: Military leave shall be granted in accordance with State and Federal law.

- 11.2 Jury Duty: All employees occupying authorized regular positions shall be allowed paid leave for jury duty upon presentation of jury notice to the Department Head or Town Manager. The employee shall receive full pay for the time served on the jury. Monies received from the courts by the employee for jury duty will be deposited with the Town, with the exception of mileage reimbursement.
- 11.3 Vacation Leave: All regular employees occupying a position shown in the Annual Salary Program shall become eligible for vacation leave with pay as shown in Section 12 below.

## **Section 12. VACATION**

- 12.1 Vacation Leave Accrual: Vacation leave with pay shall be credited to all employees at the following rates:
1. First five years service - 1 day per month, or 12 working days per year.
  2. Second five years service - 1-1/2 days per month, or 18 working days per year.
  3. Third five years service - 1-2/3 days per month or 20 working days per year.

The yearly vacation leave shall be pro-rated and credited to each employee's account monthly.

- 12.2 Payment for Unused Vacation Time: When an employee terminates, fractional periods of vacation shall be calculated and credited to the employee's account. Compensation will be at the employee's daily rate of pay.
- 12.3 Vacation Cash-Out Incentive: Each full-time employee represented by this Memorandum of Understanding shall become eligible for vacation cash-out after the usage of ten (10) days of vacation leave in a calendar year. Vacation cash-out pay will be issued in December of each year and eligible employees can receive the following:

Employees with five (5) years of service may cash-out up to two (2) days of accrued vacation per calendar year.

Employees with ten (10) years of service may cash out up to four (4) days of accrued vacation per calendar year.

Employees with fifteen (15) years of service may cash-out up to ten (10) days of accrued vacation per calendar year.

- 12.4 Vacation Leave Accumulation: Vacation leave for employees with less than five (5) years service may accumulate up to twenty (20) days and employees with more than five (5) years service may accumulate up to thirty (30) days. Employees who are on leave or suspension without pay for more than ten (10) working days in any calendar month shall not accumulate vacation leave for that month.
- 12.5 Sickness During Vacation Leave: Sickness occurring during vacation leave, upon doctor's certification, will be considered sick leave and will not be charged against the employee's vacation leave.
- 12.6 Vacation Leave Scheduling: Requests for vacation leave shall be submitted in advance by the employee in writing to the Department Head, who shall approve the time employees may take their vacation.

### **Section 13. FURLOUGH**

Each year, by November 1<sup>st</sup>, the Town Manager or his/her designee shall notify the Union as to whether employees of the Town shall be allowed to take a furlough between the Christmas Eve and New Year's Day holiday observances. The exact terms of the furlough will also be disclosed at that time. The Union will notify the Town Manager by November 10<sup>th</sup> of its desire to participate in any potential furlough.

### **Section 14. SALARY**

Effective the first full pay period after ratification of this agreement, the monthly salary range for all *classification* should be increased by 2.5% and shall be as follows:

POSITION	Step A	Step B	Step C	Step D	Step E
Administrative Aide	2945	3100	3263	3435	3616
Building Inspector	4929	5188	5462	5749	6052
Building Permit Clerk	3386	3564	3752	3950	4157
Building Permit Tech.	3750	3948	4155	4374	4604
Maintenance Worker I	3153	3319	3494	3678	3871
Maintenance Worker II	3393	3571	3759	3957	4166
Office Assistant III	2945	3100	3263	3435	3616
Planning Secretary	2945	3100	3263	3435	3616
Public Works Foreman	4093	4308	4535	4774	5025

### Equity Adjustments:

Effective July 1, 2006, an across the board wage increase based on the Consumer Price Index, SF-Bay Area All Urban Wage Earners, April 2005 to April 2006. The minimum increase will be one percent (1%) and the maximum increase will be three percent (3%).

Effective July 1, 2007 an across the board wage increase based on the Consumer Price Index, SF-Bay Area All Urban Wage Earners, April 2006 to April 2007. The minimum increase will be one percent (1%) and the maximum increase will be three percent (3%).

- 14.1 Advancement of Salary: The following criteria shall apply to advancement within salary ranges of individual employees who are on a step plan:
1. Step A shall be the minimum hiring rate.
  2. Step B: Employees shall be eligible for advancement to Step B, or the next highest step upon completion of twelve (12) months employment.
  3. Additional Steps: Employees shall be eligible for advancement to the next step upon completion of one (1) year at the previous step. The Department Head is responsible for determining that there has been satisfactory growth in the service value of the employee, and final approval is determined by the Town Manager.

The Town Manager may increase an employee's salary range on the basis of merit within the range set forth. The Town Manager may also designate the salary rate or step at which an employee is appointed.

### **Section 15. OVERTIME**

- 15.1 Definition: Authorized time worked in excess of forty (40) hours in one (1) week as defined by the Town and consistent with FLSA shall constitute overtime. Time paid for but not worked such as paid sick leave and paid holidays shall be included in the computation of said forty (40) hour workweek.
- 15.2 Policy: It is the policy of the Town to keep overtime at a minimum consistent with the efficient operation of the Town. Overtime must be authorized in advance by the Department Head and must be in compliance with the overtime policy as set forth in the Town's Personnel Rules and Regulations.
- 15.3 Overtime Pay: Overtime shall be paid at the rate of pay of time and one-half (1-1/2) the base hourly salary.

- 15.4 Compensatory Time: Each employee may elect to convert ten (10) overtime hours per year to compensating time off. The maximum compensation time hours credited to the employee shall not exceed thirty-five (35) hours at any time. The use of these hours shall be by mutual agreement of the employee and the Employer.
- 15.5 Stand-by Pay: The Town seeks clarification of stand-by pay for Public Works employees. Within six months of ratification of this agreement, a subsequent side letter will be agreed upon.

### **Section 16. TUITION REIMBURSEMENT PROGRAM**

Each full-time employee represented by this Memorandum of Understanding, a tuition reimbursement program shall be offered. The Town will reimburse costs equivalent to the cost of tuition, books and fees at California State University rates. To qualify for reimbursement, employees must submit certified transcripts with evidence of a grade of "C" or better from an accredited college or university and submit bona fide receipts.

### **Section 17. NOTICE TO EMPLOYEES**

Employees shall receive ten (10) working days notice whenever the Town makes a change in the work schedules.

### **Section 18. UNIFORMS FURNISHED AND MAINTAINED**

- 18.1 The Town will supply and launder an adequate supply of uniforms for those employees required to wear them.
- 18.2 The Town will supply adequate rainwear and rain boots for those employees required to wear them in the line of duty.
- 18.3 The Town will pay up to One hundred Fifty Dollars (\$150.00) per fiscal year for work boots for those employees required to wear them in the line of duty. Replacement shall be on an as-needed basis, as determined by the Town, but replacement shall not be unreasonably withheld.
- 18.4 The Town will reimburse maintenance workers for the cost of safety lenses to their prescription glasses.
- 18.5 The Town requires that uniformed (Public Works) employees wear Town provided uniforms, including pants, shirts, hats, belts and shoes or boots.

## **Section 19. HEALTH AND SAFETY**

Safety equipment is supplied by the Town to its personnel. All employees shall possess and have immediately available for their use those items of safety equipment, issued and which are described by Town Regulations. Furthermore, the Town agrees to provide and maintain a safe and healthy work environment.

## **Section 20. SENIORITY**

### 20.1 Department Seniority:

1. Employees shall be placed on the Town seniority list in accordance with their most recent date of hire.
2. When two (2) or more employees are assigned to the payroll on the same date, seniority shall be given in accordance with their relative standing on the respective eligibility list.

### 20.2 Classification of Seniority:

1. Employees shall be placed on a classification seniority list in accordance with their most recent date of appointment to the specific classification.
2. When two (2) or more employees are appointed or promoted to the same classification on the same date, seniority shall be based upon their relative standing on the respective eligibility list.

## **Section 21. LAYOFF AND RE-EMPLOYMENT**

- 21.1 Notice of Layoff: The Town Manager shall give at least three (3) weeks' advanced written notice to employees to be laid off. Such notice shall also be furnished to the Union.
- 21.2 Order of Layoff: Layoffs shall be determined by job classification in reverse order of seniority, as determined by the length of continuous service with the Town in full-time, non-probationary status. Layoffs and leaves of absence without pay shall be bridged in computing the employee's length of continuous service.
- 21.3 Bumping Rights: An employee who has achieved full-time, non-probationary status at the time of layoff may displace the least senior employee in the lower classification, provided that the employee to be laid off has greater seniority than the least senior employee in the lower classification and further provided that the employee to be laid off had previously held permanent status in that lower classification.

- 21.4 Re-employment: An employee who has achieved full-time, non-probationary status at the time of layoff shall have his/her name placed on a re-employment list, which shall be maintained for a minimum of twenty-four (24) months from the time of layoff. Former employees on the re-employment list shall be called first by seniority to fill openings in the classification from which the employees were laid off before other candidates are hired to fill those openings. Employees bumped as a result of a layoff shall be allowed to return to openings in the position from which they were bumped by seniority at the salary for the position to which the employee returns. Employees restored to previously held positions shall be deemed to have returned from a leave of absence for the purpose of all rights and benefits legally permissible.

## **Section 22. DISCIPLINARY ACTION**

The following procedure shall be adhered to for non-emergency suspensions, discharges and disciplinary actions of employees:

### 22.1 Disciplinary Procedure:

1. The concerned employee shall be given written notice of the proposed action within seventy-two (72) hours of the incident resulting in disciplinary action. Such written notice shall include a statement of the reasons why the disciplinary action is being proposed and shall include a copy of the charges being considered by the Town management in addition to a statement of employee rights appropriate to the preliminary notice.
2. The employee shall be shown the documents or materials upon which the disciplinary action is based; and if practical, he or she shall be supplied with a copy of those documents.
3. After being given a reasonable opportunity to review the documents and materials set forth in paragraphs 1 and 2 above, the employee shall, within ten (10) days, be given the right to respond, either orally or in writing (at the option of the employee), to the authority initially imposing discipline.
4. No discipline shall be imposed, other than emergency suspensions prior to the conclusion of the opportunity to respond; any discipline then imposed shall be effective after that time.

- 22.2 Suspension: The Department Head may suspend an employee without pay from his/her position at any time for cause, not to exceed three (3) working days in one (1) fiscal year. Such suspensions shall be reported immediately to the Town Manager. The Town Manager may suspend an employee at any time for cause for a period not to exceed thirty (30) working days in a fiscal year.

- 22.3 Demotion: The Town Manager may demote an employee whose ability to perform the required duties of his/her position fall below standard or for disciplinary purposes. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications.
- 22.4 Reduction in Salary: The appointing authority may, within the minimum and maximum salary range for the position, reduce or decrease the salary level of an employee whose ability to perform the required duties of his/her position falls below standard, or for disciplinary purposes.
- 22.5 Discharge: An employee in the career service may be discharged for cause at any time by the Town Manager. Any employee who has been discharged shall receive a written statement of the reasons for such action at the time of discharge.
- 22.6 Cause for Discipline: Disciplinary action may be taken for causes listed in Section 19572 of the Government Code or for any of the following:
1. Unauthorized absence.
  2. Being under a controlled substance while on duty.
  3. Neglect of duty.
  4. Negligence or willful damage to public property or waste of public supplies or equipment.
  5. Violation of any lawful regulation or order made and given by a line supervisor.
  6. Willful violation of any of the provisions of the Ordinance of the Town, these rules, or other promulgated by the Town Manager as Administrative Orders.
- 22.7 Appeal: A regular employee may, within ten (10) calendar days after the effective date of demotion, discharge, reduction in pay, or suspension, file a written appeal with the Town Manager. The Town Manager may conduct an investigation of the appeal he/she deems appropriate and make a finding within fifteen (15) calendar days. If the employee is dissatisfied with such finding, within ten (10) calendar days the employee may file a written appeal with the Town Council. The Town Council shall hold a hearing within thirty (30) calendar days thereafter. The Town Council shall render its decision on the appeal within fifteen (15) calendar days following the hearing and shall notify the employee and Town Manager in writing of its decision.

### **Section 23. GRIEVANCE PROCEDURES**

- 23.1 Definition: A grievance shall be defined as any claimed violation, misinterpretation, inequitable application or non-compliance with provisions of a collective bargaining agreement, or resolutions, rules, regulations, or existing practices affecting the status or working conditions of Town employees.

- 23.2 Right to File and Representation: A grievance may be filed by an employee on the employee's own behalf, or jointly by any group of employees, or by an employee organization.

An aggrieved employee may be represented by any person or organization of the employee's choice at any stage of the proceedings. A representative of an organization certified to represent a majority of employees in the representation unit, in which the aggrieved employee is included, is entitled to be present at all meetings, conferences and hearings.

The Town shall act as a central repository for all grievance records.

Any time limit may be extended only by mutual agreement of the parties in writing.

- 23.3 Informal Grievance Procedure: Within five (5) working days of the event precipitating the grievance, the grievant shall present the grievance informally for the disposition by the employee's immediate supervisor, or at any appropriate level of authority. Presentation of an informal grievance shall be prerequisite to the instituting of a formal grievance.

- 23.4 Formal Grievance Procedure: If the grievant believes that the grievance has not been redressed through the informal grievance procedure within five (5) working days from the date the grievant informally presented the event precipitation the grievance to his/her immediate supervisor, he/she may initiate a formal grievance within five (5) working days thereafter. A formal grievance can only be initiated by completing and filing a memorandum with the Department Head. The memo shall contain:

1. Name(s) of grievant
2. Official Job Title(s) and Classification(s)
3. Department(s)
4. Home Mailing Address(es)
5. A clear statement of the nature of the grievance (citing applicable ordinances, rules or regulations, or contract language)
6. The date upon which the event precipitating the grievance occurred
7. A proposed solution to the grievance
8. The date of execution of the grievance form
9. The signature of the grievant(s)
10. The name of the organization or individual, if any, followed by the signature of the representative.

Step 1 – Within ten (10) working days after a formal grievance is filed, the Department Head shall investigate the grievance and confer with the grievant in an attempt to resolve the grievance and make a decision in writing.

Step 2 – (a) If the grievance is not resolved to the satisfaction of the grievant in Step 1, he/she may, within not more than five (5) working days from his/her receipt of the Department Head's decision, request consideration of the grievance of the Town Manager by notifying the Town Manager. (b) Within ten (10) working days after such notification, the Town Manager shall investigate the grievance, confer with the employee affected and their representatives to the extent the Town Manager deems necessary, and render a decision in writing to the grievant. If the decision does not resolve the grievance to the satisfaction of the grievant, the grievant may proceed to Step 3.

Step 3 – If the grievance is not resolved in Step 1 or Step 2, a final appeal may be filed, in writing, with the Town Council, not more than five (5) working days from the employee's receipt of the Town Manager's decision. The Town Council shall, within thirty (30) days of receiving the grievance, hear and decide upon the grievance. The Town Council's decision is final and binding in all respects.

No employee shall, as a direct or proximate result of such grievance, suffer dismissal from the service of the Town, transfer, demotion, reduction in salary, or other disciplinary action.

#### **Section 24. PERSONNEL FILES**

An employee or employee's representative, on presentation of written authorization from the employee, shall have access to the employee's personnel file. The Town shall furnish copies of all performance evaluation reports and letters of reprimand or warning to the employee prior to placement of such documents into the employee's personnel file. The employee shall be required to acknowledge the receipt of any document entered into the employee's personnel file without prejudice to subsequent arguments concerning the contents of such documents.

#### **Section 25. AGENCY SHOP/FAIR SHARE FEE**

- 25.1 The Service Employees International Union, SEIU 949 is the Union representing the Town's employee's listed in Section 1.1 of this Memorandum of Understanding. It is recognized that SEIU 949 owes equal responsibilities to all employees in the representation unit and has a duty to provide fair and equal representation to all employees in all classes in the unit whether or not they are members of SEIU 949.
- 25.2 All employees in the bargaining units represented by SEIU 949, shall become members of SEIU 949 or pay a fair share fee beginning the first pay period after July 1, 1986, and until termination of the contract.

- 25.3 All new employees hired in the bargaining unit on or after July 1, 1986, shall, beginning within the first thirty (30) days after such hire date and until the termination of the contract, either:
1. Become a member of SEIU 949 and pay dues; or
  2. Pay to SEIU 949 a fair share fee.
- 25.4 During the term of this agreement, a fair share fee for services rendered by the Union shall be a percentage of the regular membership dues in accordance with the Government Code. Each employee shall have provided to him/her without prejudice the full representational services of the Union. Payments shall be made biweekly by payroll deduction.
- The appropriateness of the amount of the fair share service fee of non-members shall be reviewed by the Town at the beginning of the year. The parties agree that the fair share service fee is reasonable and appropriate.
- 25.5 The provisions specified above shall not apply during period of separation from the representation unit by any such employee but shall reapply to such employee commencing with the next full pay period following the return of the employee to the representation unit. The term separation includes transfer out of the unit, layoff, and leave of absence with a duration of more than five (5) working days.
- 25.6 Temporary and extra hire employees are excluded from the Agency fee contract provisions.
- 25.7 Annually, SEIU 949 shall file with the Town an acceptable SEIU 949 financial statement prepared and certified by a Certified Public Accountant. Such reports shall be made available to employees in the represented unit by SEIU 949 and the Town.
- 25.8 SEIU 949 shall provide advance written notice of the amount of the pending fair share service fee to the Town.
- 25.9 The parties agree that a failure of an obligated employee hired after July 1, 1986, in a bargaining unit to pay a fair share fee shall be grounds for the Union to file an action against the employee in Small Claims Court subject to the following procedures:
1. SEIU 949 shall notify the employee (and provide a copy to the Town) of non-compliance by certified mail, return receipt requested. Said notice shall detail the non-compliance by explaining that the employee is delinquent in not tendering a fair share service fee, specifying the amount of the delinquency, and warning the employee that unless such fees are tendered within thirty (30) calendar days, SEIU 949 will file an action in Small Claims Court.
  2. If the employee fails to comply, SEIU 949 may file an action in Small Claims Court.

3. The Town shall not incur any costs due to Small Claims Court appearances by Town staff.

25.10

SEIU 949 shall defend, indemnify and hold the Town harmless against any and all claims, demands, suits, orders, judgments or other forms of liability that shall arise out of or by reason of, action taken or not taken by the Town under this article. This includes not only the Town's attorney fees and costs but the cost of management preparation time as well. The Town shall notify SEIU 949 of such costs on a case by case basis.

- 25.11 The authorization for payroll deductions shall specifically require the employee to agree to hold the Town harmless from all claims, demands, suits or other forms of liability that may arise against the Town for or on account of any deduction made from the wages of such employee.

25.12

1. An election to implement the provisions of this Section shall not prohibit or restrict an election to rescind this provision as provided by Section 3502.5 of Government Code as follows: An Agency Shop provision in a Memorandum of Understanding which is in effect may be rescinded by a majority vote of all the employees in the unit covered by such Memorandum of Understanding, provided that: (1) a request for such a vote is supported by a petition containing the signatures of at least thirty (30) percent of the employees in the unit; (2) such vote is by secret ballot; (3) such vote may be taken anytime during the term of such Memorandum of Understanding, but in no event shall there be more than one (1) vote taken during such term.
2. All employees holding probationary or regular status in classifications included in the unit, on the last day of the pay period thirty (30) days prior to the holding of the election, shall be eligible to vote in a certification or a decertification election.
3. The ballot shall reflect a choice with the following wording:
  - a. I vote in favor of agency shop/fair share fee;
  - b. I vote against agency shop/fair share fee.

- 25.13 Religious Exemption: Rather than pay dues or a fair share/agency fee, an employee may opt to pay a fee to a charity under the following criteria:

1. Execute a written declaration with proof that the employee is and has been a member of a bona fide religious, body, or sect which holds a conscientious objection to joining or financially supporting any public employee organization as a condition of employment, and said employee shares that belief; and

2. Pay a sum equal to the agency fee to a non-religious, non-labor charitable fund chosen by the employee from those charities listed within United Way or CHAD. The employee shall furnish written proof to the Town and SEIU 949 that his/her contribution has been made either on a biweekly payroll deduction basis or as one (1) annual payment made within thirty (30) days of the beginning of each new contract year.

25.14 This agency shop/fair share fee provision expires at the end of this contract period.

### **Section 26. FULL UNDERSTANDING. MODIFICATION. WAIVER**

- 26.1 The parties jointly represent to the Town Council that this Memorandum of Understanding sets forth the full and entire understanding of the parties regarding the matters set forth herein.
- 26.2 Except as specifically otherwise provided herein, it is agreed and understood that each party hereto voluntarily and unqualifiedly waives its rights and agrees that the other shall not be required to meet and confer with respect to any subject or matter covered herein, nor as to wages or fringe benefits during the period *of the term of this Memorandum*. The foregoing shall not preclude the parties hereto from meeting and conferring at any time during the period *of this Agreement* with respect to any subject matter within the scope *of the meeting and conferring for a proposed Memorandum of Understanding* between the parties to be effective on or after November 2, 2005.

**SIGNATURE PAGE**

**MARIN ASSOCIATION OF PUBLIC EMPLOYEES, SEIU, LOCAL 949**

\_\_\_\_\_  
Romney Fennell, Town of Tiburon  
Shop Steward, SEIU 949

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Denis Williams, Town of Tiburon  
Shop Steward, SEIU 949

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Jim Firth, Union Representative  
SEIU 949

\_\_\_\_\_  
DATE

**TOWN OF TIBURON**

\_\_\_\_\_  
Alex D. McIntyre, Town Manager  
Town of Tiburon

\_\_\_\_\_  
DATE

\_\_\_\_\_  
Heidi Bigall, Director of Admin. Services  
Town of Tiburon

\_\_\_\_\_  
DATE

APPROVED AS TO FORM:

\_\_\_\_\_  
Ann R. Danforth, Town Attorney  
Town of Tiburon

\_\_\_\_\_  
DATE