



**MEMORANDUM OF UNDERSTANDING**

**Between**

**CITY OF CORNING**

**and**

**OPERATING ENGINEERS UNION LOCAL NO. 3**

**of the**

**INTERNATIONAL UNION OF OPERATING  
ENGINEERS AFL-CIO**

**for**

**MISCELLANEOUS UNIT**

**Effective: January 1, 2017 - December 31, 2019**

**Ratified February 23, 2017**  
**Approved by City Council: March 14, 2017**

**THIS MEMORANDUM OF UNDERSTANDING** is made and entered into between **OPERATING ENGINEERS LOCAL UNION NO. 3**, of the International Union of Operating Engineers, AFL-CIO, hereinafter referred to as "Union", and the designated representatives of the **CITY OF CORNING**, hereinafter referred to as the "City", pursuant to the provisions of the Meyers-Milius-Brown Act (Government Code Sections 3500, et seq.). This Memorandum of Understanding supersedes and replaces all previous Memorandum of Understanding between the parties.

## **ARTICLE 1 GENERAL PROVISIONS - DEFINITIONS**

1.1 A. **Employer:** The term "Employer", as used herein, shall refer to the City of Corning.

B. **Union:** The term "Union", as used herein, shall refer to the Operating Engineers Local No. 3 of the International Union of Operating Engineers, AFL-CIO.

C. **Employee:** The term "Employee", as used herein, shall mean all Employees of the Miscellaneous Unit as Employee Relations Policy of the City of Corning.

D. **Employee Anniversary Date:** The term "employment anniversary date", as used herein, shall mean the anniversary date of the employee's employment with the City.

E. **Step Anniversary Date:** The term "step anniversary date", as used herein, shall mean the date upon which an employee has finished serving the requisite amount of time in order to be eligible for a salary step increase. A new time period for such requisite service shall commence upon the occurrence of any of the following events: promotion; reclassification; implementation of a Memorandum of Understanding provision or Side Letter of Understanding specifying a movement into a new step or an increase in the rate paid for the step currently held by the employee.

## **ARTICLE 2 RECOGNITION**

2.1 The Employer hereby recognizes the Union as the only Organization entitled to meet and confer on matters within the scope of representation.

## **ARTICLE 3 HIRING PROVISIONS**

3.1 No Employee covered by this Memorandum of Understanding shall be discriminated against by the Employer, or by the Union, by reason of race, color, religion, sex, age or national origin.

3.2 The Employer shall not discharge, or otherwise discriminate against any Employee by reason of Union activities not interfering with the proper performance of his work.

## **ARTICLE 4 CHECK OFF**

4.1 The Employer agrees to deduct from the wages of its Employees, initiation fees and dues, and to transmit the monies so deducted to the Financial Secretary of the Union. An Employee desiring to have such deduction or deductions made shall sign a proper assignment form authorizing such deductions.

4.2 The employer agrees to deduct from the wages of its Employees, Operating Engineers Local Union No. 3 Credit Union deductions, and to transmit the monies so deducted to the Credit Union. An Employee desiring to have such a deduction or deductions made shall sign a proper assignment form authorizing such deduction.

4.3 Such deductions shall not be made more often than once per month.

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## **ARTICLE 5 MANAGEMENT RIGHTS**

5.1 The Employer retains the exclusive right to manage the City. All the rights, powers, functions and authority of the Employer which it had prior to the time the Union became certified as representative of the Employees of the Employer and which are not limited or modified by specific provisions of the Memorandum are retained by the Employer. The Employer specifically retains the right to manage and supervise its Employees as follows:

- (A) To hire, promote, transfer, assign, classify positions, retain employees, and to suspend, demote, discharge or take other disciplinary action against employees.
- (B) To lay-off or demote Employees from duties because of lack of work, lack of funds, in the interest of economy, or other legitimate reasons.
- (C) To determine the policies, standards, procedures, methods, means and personnel by which City operations are to be conducted.
- (D) To take whatever actions may be necessary to carry out the City in situations of emergency.
- (E) To limit or prohibit the right of Employees in certain positions or classes of positions from forming, joining, or participating in employee organizations as provided in the California Government Code, and designating such employees in the current Schedule of Department and Authorized Positions adopted by resolution.
- (F) Nothing in this policy shall be construed to interfere with the City's right to manage its operations in the most economical and efficient manner consistent with the best interests of all City citizens, taxpayers, and employees.

## **ARTICLE 6 UNION RIGHTS**

6.1 The Union recognizes its obligation to cooperate with the Employer to assure maximum service of the highest quality and efficiency to the citizens of the City of Corning consistent with its obligations to the Employees it represents.

6.2 Employer and Union affirm the principle that harmonious employer-employee relations are to be promoted and furthered. When a person is hired in any of the covered job classifications, the City shall notify that person that the Union is the certified representative for the Employees and shall notify the Union of such hiring.

6.3 The Employer shall provide the Union space to erect a bulletin board in each area where Employees covered by this Memorandum are assigned.

6.4 Business representatives of the Union shall have reasonable access to Employees, provided such access does not interfere with City business. Department heads and first-line supervisors will be notified by the Employer of the provisions of this Section. Solicitation for membership shall not be conducted during working time.

6.5 Business representatives of the Union shall have access to any Employee or Employees presenting a grievance; and Employees have the right to have the Union business representative represent the Employee at all stages of disciplinary action.

6.6 The Union may select one (1) Employee as Union Steward.

6.7 In addition to his regularly assigned work, the Union Steward shall be permitted reasonable time during working hours to notify the business representative of any violations of this Memorandum. Employees are authorized to contact their Union Steward during working hours to report a grievance or violation of this Memorandum.

**ARTICLE 7  
PEACEFUL PERFORMANCE**

7.1 The parties to this Memorandum of Understanding recognize and acknowledge that the services performed by the City Employees covered by this Memorandum of Understanding are essential to the public health, safety and general welfare of the residents of the City of Corning. The Union agrees that under no circumstances will the Union recommend, encourage, cause or permit its members to initiate, participate in, nor will any member of the bargaining unit take part in, any strike, sit-down, stay-in, sick-out, slow-down or picketing (hereinafter collectively referred to as work-stoppage), in any office or department of the City, nor to curtail any work or restrict any production, or interfere with any operation of the City. In the event of any such work stoppage by any member of the bargaining unit, the City shall not be required to negotiate on the merits of any dispute, which may have given rise to such work stoppage until said work stoppage has ceased.

7.2 In the event of any work stoppage during the term of this Memorandum of Understanding, whether by the Union or by any member of the bargaining unit, the Union, by its officers, shall immediately declare in writing and publicize that such action is illegal and unauthorized, and further direct its members in writing to cease the said conduct and resume work. Copies of such written notice shall be served upon the City. If in the event of any work stoppage, the Union promptly and in good faith, performs the obligations of this paragraph, and providing the Union has not otherwise authorized, permitted or encouraged such work stoppage, the Union shall not be liable for any damages caused by the violation of this provision. However, the City shall have the right to discipline, including discharge, any employee who instigates, participates in, or gives leadership to, any work stoppage activity herein prohibited, and the City shall also have the right to seek full legal redress including damages, as against any such employee.

**ARTICLE 8  
PAYMENTS**

8.1 This Memorandum is intended to cover all aspects of wages, hours, and working conditions for Employees covered herein; therefore, nothing in this Memorandum shall prevent the Employer from modifying any fringe benefits or benefit plans not specifically provided for in this Memorandum such as retirement plans, salary continuation plans, etc., subject to meet and confer.

8.2 If an Employee covered by this Memorandum is permanently assigned work of a substantially new or different nature so as to constitute a new job classification, the Employer and the Union shall determine the wage rate through the established procedures.

8.3 Employees will be paid bi-weekly, no later than five (5) days following the end of the preceding payroll period. If the fifth day is a holiday, Employees will be paid on the preceding day.

**ARTICLE 9  
PREVAILING RIGHTS**

9.1 This Memorandum of Understanding contains all of the covenants, stipulations and provisions agreed upon by the parties. It is understood that all items relating to Employees' wages, hours, and other terms and conditions of employment not covered in this Memorandum of Understanding shall remain the same, except as specifically mentioned in this Memorandum of Understanding; therefore, for the life of this Memorandum of Understanding, neither party shall be compelled to bargain with the other concerning any mandatory bargaining issues, whether specifically bargained about prior to the execution of this Memorandum of Understanding or which may have been omitted in the bargaining which led up to the execution of this Memorandum of Understanding, except by mutual agreement of the parties or as specifically mentioned in this Memorandum of Understanding.

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**ARTICLE 10  
CLASSIFICATIONS AND WAGES**

10.1 For the period of this agreement, Employees will be paid in accordance with the monthly salary schedule and effective dates as shown in Exhibit "A". Employees will be eligible for step increases on their step anniversary date. Employees may advance to the next step in the pay schedule after satisfactory completion of the required time in the lower step. The time required between step A and B shall be (6) six months. Advancement from step B to C, C to D and D to E shall be (12) twelve months between each step.

**1. Wage Increase:**

**a.) Wages: Article 10, Section 10.1(A) and Retirement: Article 21**

The City agrees to increase the base wages of all members of the bargaining unit by three and one-half percent (3 ½ %) effective the start of the first pay period in 2017 following City Council ratification of the Memorandum of Understanding (MOU). The City further agrees to utilize IRS Code 414(h)2, making these payments with pre-taxed dollars.

**b.) A one and a half (1.5%) increase to base wages for all members of the Bargaining Unit effective the first pay period in July 2017;**

**c.) A one and a half (1.5%) increase to base wages for all members of the Bargaining Unit effective the first pay period in July 2018; and**

**d.) A one and a half (1.5%) increase to base wages for all members of the Bargaining Unit effective the first pay period in July 2019.**

10.2 At the time of employment placement in Step 1 through 5 of the salary range within each classification shall be determined by the City. The Employees agree to abide by the City's decision.

10.3 Employees will be eligible for LONGEVITY INCENTIVE PAY under the following conditions:

(A) Qualifying employees will receive a longevity incentive pay increase to be added to their base rate **effective the first pay period in 2017 following the City Council ratification of the MOU as follows:**

**1. 3% after 10 years, effective first pay period after anniversary date.**

**2. 6% after 15 years, effective first pay period after anniversary date, (not compounded with the 3%).**

**ARTICLE 11  
OUT OF CLASSIFICATION PAY**

11.1 A Public Works field employee who is assigned, by the Director of Public Works and with prior approval by the City Manager, to work out of Classification in a higher level Class for one (1) hour or more shall be paid at Step 1 of higher Salary rate of the assigned Classification, or 5% above the Employee's permanent pay step rate whichever is higher.

(A) When assigned by the Director of Public Works and with prior approval by the City Manager, to work out of Classification as an Equipment Operator, a Maintenance Worker shall be paid for the operation of the following equipment: Backhoe, Loader, Motor Grader, Roller, Tree Pruning Tower, Paving Machine.

(B) When a Maintenance Worker is assigned by the Director of Public Works and with prior approval by the City Manager, to work out of Classification as a "Journey Level Carpenter", the Employee shall be paid 5% above the Employee's permanent pay step rate.

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11.2 Upon the recommendation of the Director of Public Works and prior approval by the City Manager, an Employee in the Classification of Public Works Maintenance Worker, Equipment Operator, and Equipment Mechanic/Maintenance Worker shall receive Specialty Pay in accordance with the following:

- (A) For holding a valid State of California Water Treatment Operator Grade I Certificate, the Employee shall receive Specialty Pay of 2 1/2% above their current pay step rate.
- (B) For holding a valid State of California Water Treatment Operator Grade II Certificate, the Employee shall receive Specialty Pay of 5% above their current pay step rate. This rate is not to be compounded for those employees holding a Water Treatment Operator Grade I Certificate. The maximum premium pay for both certificates is 5%.
- (C) For holding a valid State of California Certified Distribution Operator D-2 Certificate the Employee shall receive Specialty Pay of 5% above their current pay step rate.

**11.3 Effective the start of the first pay period in 2017 following City Council ratification of the MOU, an employee who is assigned the temporary duties of a superior position by the City Manager and/or his/her designee shall receive premium pay of five percent (5%) above his/her present salary for the length of such service.**

11.4 Bi-lingual Pay: Shall receive an additional 2.5% pay for a total of 5% of base pay for up to three employees for the incidental duties related to the assignment effective the first pay period in 2016 following City Council approval of the Memorandum of Understanding (MOU) under the following conditions:

- (A) An employee must be certified as bi-lingual and assigned the duties by the City Manager.
- (B) The City Manager will establish standards for qualifying employees and for an ongoing review of skills. The City Manager will require that employees demonstrate the ability to converse in Spanish sufficient to serve the needs of the City.
- (C) The City Manager shall terminate the assignment if the ongoing use of the bi-lingual skills are no longer required and/or the employee fails to perform the duties at a skill level which meets the established standards.

## **ARTICLE 12 HEALTH AND WELFARE INSURANCE**

12.1 All Employees and their eligible dependents may participate in the Operating Engineers Public Employees' Health and Welfare Plan, with the City contributing to the cost of such plan up to **\$1,284.91** per month towards the rate. The employee shall pay any remaining costs of insurance.

Future increases shall be divided equally between the City and the employee.

12.2 Employees who are not members of the Union are required to pay a service fee in the same amount as the monthly Union dues in order to participate in the Union's Health and Welfare Plan.

12.3 The City shall provide life insurance in the amount of one hundred thousand dollars (\$100,000) effective the first pay period in 2016 following City Council approval of the Memorandum of Understanding (MOU) and will continue to pay the life and disability insurance premiums.

12.4 The City shall have the option of replacing the Operating Engineers Public Employees Health and Welfare Plan with a plan of the City's choosing. If the City exercises this option, the City shall maintain coverage that is comparable and substantially equivalent to that provided currently under the present plan.

12.5 A Health Plan Review Committee, consisting of one employee from each bargaining unit, will be established and coordinated by the City Manager, to review alternate health plans. A non-binding Committee Report will be made to the City and the Union. The committee will study both the health plan and the short-term disability and "cafeteria" plans.

Upon receipt of the committee's report, the City or the Union, upon the request of either, will meet and confer on the recommendations of the committee.

### **ARTICLE 13 WORKDAY AND WORKWEEK**

13.1 The regular workday shall be eight (8) hours, exclusive of mealtime. The regular workweek shall not exceed forty (40) hours per week on duty. Workweeks shall be scheduled by the Employer to provide for five (5) consecutive days on duty and two (2) consecutive days off duty. All time worked in excess of the regular workday or workweek shall be considered overtime. The City shall have the right to assign employees to five (5) consecutive days on duty, which includes Saturday and/or Sunday, provided that those days are part of the five (5) consecutive days on duty.

### **ARTICLE 14 OVERTIME**

14.1 Overtime shall be compensated therefore at the rate of time and one-half the Employee's regular pay rate, which will be paid in the same manner as other wages.

14.2 The Employee shall, on termination of employment, be entitled to be paid all accumulated overtime, together with the Employee's normal wage.

14.3 All cash payments for overtime worked will be made on the regular salary check in the next succeeding pay period in which it was earned. The only exception is holiday pay. (See Article 19)

14.4 Compensatory Time in Lieu of Overtime (CTO): Effective January 4, 2015, members of the bargaining unit may accrue up to a maximum of one hundred seventy five (175) hours annually upon the Department Head's discretionary authority. CTO time may be carried into the following year, but at no time can it exceed one hundred seventy five hours (175) hours. Management shall approve when employees can take time off taking into consideration the desire of the employees and the operational needs of the department. The Department Head and employees may mutually agree to pay out any or all CTO time. All unused CTO shall be paid upon termination. All CTO in excess of one hundred fifty (150) hours shall be paid.

### **ARTICLE 15 STAND-BY COMPENSATION**

15.1 When the Employer requires an Employee to remain available for call back at any time, the Employee shall receive stand-by pay.

15.2 When an Employee is required to stand-by, he/she shall be compensated for such stand-by time at the rate of two (2) hours of straight-time compensation by cash for each accumulated eight (8) hours of stand-by.

15.3 The City reserves the right to close the Corporation Yard or any other facility if the City determines, in its sole discretion, that the facility need not be open. The Union acknowledges that Employees do not have the right or privilege to stand-by at non-public City facilities without the express consent of the City.

## **ARTICLE 16 CALLBACK COMPENSATION**

16.1 When the Employer, due to an emergency, requires an Employee to return to work other than his regularly scheduled workday, the Employee shall be entitled to call-back compensation.

16.2 Effective December 1, 2012 the Employer will compensate the Employee a minimum of three (3) hours of overtime compensation irrespective of the actual time worked when an Employee is called back to perform an emergency task. In the event the task exceeds three (3) hours duration, the total overtime compensation shall be for the hours actually worked.

## **ARTICLE 17 SICK LEAVE**

17.1 Sick leave is available to an employee to use in case of illness, bodily injury, exposure to a contagious disease, medical or dental appointment or attendance upon seriously ill member of employee's immediate family, as defined by these rules. An employee may take paid sick leave after the first month of employment. Every effort by the employee shall be made to schedule appointments during non-work hours.

17.2 Sick leave with pay shall be granted to all employees. Sick leave shall be earned at the rate of eight (8) hours per calendar month of service, not to exceed a total maximum accumulation of one thousand nine hundred twenty (1920) hours. No sick leave shall be earned once the maximum accrual is reached.

17.3 The City agrees to pay fifty percent (50%) of Employee's unused accumulated sick leave upon retirement or death. Upon reduction in force, the City shall pay twenty-five percent (25%) of Employee's unused accumulated sick leave.

17.4 Employees who have less than thirty-six (36) days of sick leave accumulated may, in lieu of taking vacation, bank said vacation time under sick leave.

17.5 Family Leave shall be administered in accordance with applicable State and Federal law.

**17.6 Bereavement Leave:** In the event of a death in the immediate family, the Employee may take off up to four (4) days. The immediate family shall be defined as husband, wife, child, mother, father, brother, sister, grandparents and grandchildren. **Effective the start of the first pay period in 2017 following City Council ratification of the Memorandum of Understanding (MOU) the City agrees to not charge Bereavement Leave to Sick Leave.**

17.7 When an employee is off work as a result of a valid on-the-job injury sustained in the service of the City, the employee is entitled to use their accrued Sick Leave during the period of disability to make up the difference between their regular pay and the Workers Compensation Temporary Disability Payments. The City shall pay only that amount necessary to make up the difference between the employee's monthly rate and the amount payable to the employee as temporary disability payments from the Worker's Compensation Insurance Plan of the City. To take advantage of this benefit, the employee must forward their Temporary disability check to the City.

17.8 The City may require verification of the necessity for sick leave. Such verification may be in the form of a written statement from a doctor or a personal affidavit from the Employee. The City reserves the right to specify which of the two verification procedures will be required in any particular situation. If the City requires verification from a physician, the City shall pay for the cost of such verification to the extent such cost is not reimburse by the Employee's health insurance.

17.9 If the City determines that an Employee has abused the provisions of the sick leave policy, the Employee shall be subject to disciplinary action.

17.10 Sick Leave Conversion Upon Retirement: Effective July 1, 2008, in lieu of a cash-out of sick leave, an employee, upon retirement under PERS, may choose as an option to convert a percentage of the dollar value of the sick leave at the employee's current hourly base rate of pay as of the date of retirement, to pay the pre-paid health insurance premium up for a period of time up to age 65 according to the following conversion plan:

<u>Employee's years of Service with City</u>	<u>Percentage value of employee's accrued Sick Leave</u>
Through 15 years	50%
16 through 19 years	70%
20 or more years	80%

(A) Following is the procedure to account for the percentage value of converted sick leave. At the written request of the retiring employee, the City Staff will compute the dollar value of the accrued sick leave according to the percentages shown above and maintain an accounting in the employee's name deducting the amount of monthly City health insurance premium for the "balance".

(B) The value of sick leave does not accrue in a cash fund for each employee, therefore no actual funds are held in trust. The City simply agrees to pay the retiree's premium for a period of time until the balance value of the conversion is depleted.

(C) Should a retired employee want to stop their insurance premium payments under the Section, the employee must notify the City Manager in writing, giving the date payments should end, and City Staff will do an accounting of the actual dollar amount paid out. Should this amount still be less than the fifty percent (50%) value provided for in the sick leave payoff provisions of this MOU, Section 17.3 the balance will be paid to the employee.

(D) Should a retired employee die prior to fully using this benefit, any dependents covered under the health insurance may, if permitted to continue insurance coverage by the insurance carrier, receive the continuation of this benefit until fully expended. The benefit shall have no cash value to the employee's estate nor can the City accept any claim for payoff by heirs.

(E) Employees not choosing to remain in the City's offered health plan may use the benefits set out in these sections, to be applied to the cost of a private health plan. The retired employee will be reimbursed, on a quarter year basis, such amounts as provided in these sections, upon submission of a written claim and proof of a paid premium by the retired employee. The form, manner of claim, and proof will be as prescribed by the City.

**ARTICLE 18  
UNIFORM ALLOWANCE**

18.1 The City agrees to furnish, at no cost to the Employees, necessary foul weather gear and safety items required and determined by the City. During the term of the MOU, the City will work with Bargaining Unit Members to obtain new safety reflective water proof pants and jackets, and to obtain rubber boots with steel toes and shanks, effective the first pay period in 2016 occurring after the City Council approves the Memorandum of Understanding.

18.2 Effective the start of the pay period beginning July 6, 2014, the City agrees to furnish Public Works Crew Members:

- a. The City will provide five (5) long or short sleeve shirts each year;
- b. The City will reimburse employees for the purchase of three (3) pair of dark blue jeans each year. The City will reimburse up to thirty (\$30) dollars per pair upon proof of purchase. All employees must participate in the purchase of said dark blue jeans.
- c. Should any City provided clothing be damaged on the job, the City agrees to replace it at no expense to the employee. Shirts or pants that are damaged on the job refer to those that are ripped or torn and cannot be mended.
- d. The City agrees to provide two (2) coveralls per week to each employee desiring coveralls. Soiled coveralls are exchanged for laundered coveralls.
- e. The City agrees to provide rubber boots and gloves.

18.3 For Public Works Crewmembers, **effective the start of the first pay period in 2017 following City Council ratification of the Memorandum of Understanding (MOU) the City agrees to increase the Boot Allowance for field Staff to \$225 per year** towards safety field boots subject to verification that the boots purchased meet CAL OSHA Standards (the boots must meet American National Standards Institute [ANSI] Z41-PT99 or American Society for Testing & Materials [ASTM] F24113-05). The allowance will be paid during January of each year.

18.4 Effective the start of the pay period beginning July 6, 2014, all Community Service Officers shall be issued the following clothing items at the time of employment and maintained at this level by the City:

- a. Five (5) shirts.
- b. Five (5) pair of uniform pants.
- c. **Effective the start of the first pay period in 2017 following City Council ratification of the (MOU) the City agrees to provide Boot Allowance for Community Service Officers in the amount of \$225 per year.**

The employer agrees to replace, at no cost to the Employee, any item of uniform clothing damaged in the line of duty. The City will also allow, effective January 2014, \$150 per year allowance for the purchase of shoes/boots meeting the standards prescribed by the Police Chief.

## ARTICLE 19 HOLIDAYS AND HOLIDAY PAY

19.1 **The City agrees to add the Martin Luther King, Jr. birthday as a paid holiday effective January 15, 2018.** The employees shall receive the following **eleven** scheduled holidays off with pay:

- (1) New Year's Day
- (2) **Martin Luther King Jr. Day**
- (3) President's Day
- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Veterans Day
- (8) Thanksgiving Day
- (9) Post Thanksgiving Day
- (10) Christmas Eve Day
- (11) Christmas Day

Effective July 1, 1994, in addition to the scheduled Holidays above, each employee shall be credited with 14 hours of floating Holidays on January 1 and July 1 of each year. Floating Holidays shall be taken in the calendar year credited, at a time and manner mutually agreed to by the employee and the Department Head.

(A) Employees accrue 14 hours of Floating Holiday on January 1<sup>st</sup> and July 1<sup>st</sup> giving each employee 28 hours per calendar year to be used before December 31<sup>st</sup> of that year or they lose these hours.

(B) To receive Floating Holiday hours a new employee must be hired within the first quarter in which the accrual takes place. The employee must have a hire date before April 1<sup>st</sup> to receive 14 hours for January 1<sup>st</sup> or the hire date must be before October 1<sup>st</sup> to receive 14 hours for July 1<sup>st</sup>.

19.2 An Employee who is regularly scheduled to work on a holiday shall be granted a day off at a time mutually agreeable to the Employee and the Employer.

19.3 An Employee who is called back to work on a holiday, which is also his day off, shall be granted a day off at a time mutually agreeable to the Employer and the Employee, plus time and one-half for the actual hours worked. This Section shall be applied in addition to Article 14.

19.4 If a holiday falls on an Employee's day off, the Employer shall compensate the Employee by either eight (8) hours compensatory time off, or eight (8) hours straight-time pay, at the Employee's option.

19.5 Veterans Day (November 11<sup>th</sup>) will be celebrated on the nearest Monday or Friday which will create a three-day weekend. The Christmas Eve Holiday will be celebrated either on Christmas Eve or the day after Christmas; whichever will create a four-day weekend.

## **ARTICLE 20**

### **457 DEFERRED COMPENSATION PLAN**

**Effective the first pay period in 2017 following City Council ratification of the Memorandum of Understanding (MOU), the City will match employee's contributions to their 457 Deferred Compensation Plan up to \$60 per month. The City match is only available for one (1) Deferred Compensation Plan even if employees are enrolled in more than one (1) Plan. Employees must commit to maintain their 457 contribution for one full year.**

## **ARTICLE 21**

### **RETIREMENT**

21.1 The City provides retirement benefits under a Contract with the Public Employees Retirement System (PERS). Employees hired prior to February 19, 2012 have the 2%@55 formula with single highest year salary (Tier I).

- a.) **Bargaining Unit Members agree to pick up an additional three and one-half percent (3½%) of the employee share of the CalPERS pension payment for a total of seven percent (7%) of retirement costs effective the start of the first pay period in 2017 following City Council ratification of the Memorandum of Understanding (MOU).**
- b.) **The City further agrees to utilize IRS Code 414(h)2, making these payments with pre-taxed dollars.**

The City and the Miscellaneous Unit agreed to implement the following changes (Tier 2) for new hires following approval by the City Council which occurred on April 24, 2012.)

21.2 For PERS Miscellaneous Members the 2% @ 60 formula with three (3) years average salary.

21.3 New Miscellaneous Unit Tier 2 employees hired after April 24, 2012 will be responsible for the following:

- a.) The City and the City of Corning Miscellaneous Bargaining Unit Members agree to the deferral of PERS EPMC pickup of an additional one and one half percent (1.5%) effective the first pay period in July 2016. The total employee share of retirement pickup would then be 7% of the 7% employee's share of retirement costs.

21.4 Employees hired on or after January 1, 2013, who are not eligible for reciprocity or are not current CalPERS members without a break in service greater than six (6) months, shall participate in legislatively mandated CalPERS contributions and retirement benefit formula plans established by AB340, the "Public Employees' Pension Reform Act of 2013". This legislation is administered/interpreted by the California Public Employees Retirement System (CalPERS). New employee members shall have the following retirement benefit formula and contribution rate:

- a. For PERS Miscellaneous members 2%@62, 3 year final compensation as defined by PERS.
- b. Member contribution rate is 6.25%.
- c. The member contribution rate is expected to remain unchanged until July 1, 2015.

The current Miscellaneous Member contribution rate is 6.25% CalPERS may change this rate following actuarial review during the term of the MOU.

## **ARTICLE 22 VACATION**

22.1 Employees shall earn vacation according to the following:

- (A) Effective March 1, 2013, Employees shall earn vacation with pay at the rate of one hundred twenty (120) hours per year after one (1) year and during the first seven (7) years of employment;
- (B) Effective March 1, 2013, Employees shall earn vacation with pay at the rate of one hundred sixty (160) hours per year after completion of seven (7) years of City employment;
- (C) Effective March 1, 2013, Employees shall earn vacation with pay at the rate of two hundred (200) per year after fifteen (15) years of City employment;
- (D) The maximum number of vacation hours employees may carry over or have in a vacation account at the start of each new calendar year is one hundred fifty (150) hours; and
- (E) Employees who have more than one hundred fifty (150) hours in their vacation account will have the excess vacation time paid off at the close of each calendar year.

22.2 The Employee shall have the option of converting up to fifty percent (50%) of unpaid accumulated vacation to cash payment in lieu of taking vacation. The Employee may exercise the payoff option only one (1) time per fiscal year with five (5) working days notice to payroll.

## **ARTICLE 23 PROBATION PERIOD AND EVALUATION**

23.1 All Employee evaluations should be made by the Employee's immediate supervisor or the Employee's Department Head when possible. In the event the immediate supervisor or Department Head is unable to complete the evaluation, the City Manager may complete the evaluation. The City reserves the right to conduct formal evaluation summaries every six (6) months. Nothing contained herein should be construed to limit the right of the City to continually monitor and assess Employee performance and provide feedback to the Employee regarding the Employee's performance.

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23.2 All new, promoted, and reclassified Employees are on probation for six (6) months. Current City Employees accepting a promotion to a higher classification retain the right to return to their former classification if the City determines they are unable to satisfy the requirements of the new classification.

## **ARTICLE 24 LAY-OFF POLICY**

24.1 The City may lay off Employees whenever it becomes necessary because of lack of work or funds, or whenever it is deemed advisable in the interests of economy to reduce the force in a department or office.

24.2 Persons shall be laid off in the following order:

- (A) All extra help, temporary and provisional Employees in the same department and within the same job classification shall be laid off before any regular Employee is laid off.
- (B) When it becomes necessary to reduce the force in any department or office by lay-off of regular Employees, seniority shall be the determining factor. In the case where seniority is equal, ability shall govern.

The determination of ability shall be the exclusive responsibility of the Department Head, provided that in making such determination, consideration shall be given to skill, efficiency, knowledge, physical fitness, training and attitude toward fellow Employees.

24.3 Seniority shall be measured from the Employee's initial appointment to City service, but shall not include any period during which such Employee was on leave without pay, or not actually in City employment because of the Employee's voluntary termination, lay-off or other cause; provided that, for any Employee who is re-employed after being discharged, seniority shall be measured from the date of the most recent appointment.

24.4 The City shall send written notice by certified mail, postage prepaid, return receipt requested, and correctly addressed to the last known mailing address of the Employee as found in the Employee's personnel file. In lieu of the above, the City may serve notice by personal service. Notice of lay-off shall be made at least thirty (30) days prior to the effective date of the action.

24.5 In lieu of being laid off, a regular Employee may elect demotion and displacement in the same department to a classification previously held by said Employee with substantially the same or lower salary step and/or to a classification in which said Employee meets the minimum qualifications. Demotion and displacement rights to specify classifications shall be applicable only within the department and subject to lay-off list provisions in this Article based on seniority and ability. Employees wishing demotion and displacement in lieu of lay-off must notify the City Manager in writing of this election no later than seven (7) calendar days after receiving notice of layoff.

## **ARTICLE 25 SPECIAL PROVISIONS**

25.1 The City no longer requires the Public Works Employees to maintain a Commercial Driver's License and has already stopped the practice of paying for the required Medical Physical Examinations needed for any renewals.

The City does not currently require random drug testing of employees in the Miscellaneous Bargaining Unit.

The City will maintain the right to conduct drug testing if there is a reasonable suspicion that an employee is impaired by drugs while performing his/her assignments, which it will do to ensure its worksites be "drug free" for the safety of the City's employees and the public.

**THE CITY OF CORNING IS AN EQUAL OPPORTUNITY PROVIDER AND EMPLOYER**

**ARTICLE 26  
SAVINGS CLAUSE**

26.1 If any Article section, subsection, paragraph, sentence, clause or phrase of this Memorandum of Understanding shall, for any reason, be held to be invalid or unconstitutional, such invalidity or unconstitutionality shall not affect the validity or constitutionality of the remaining portion of the Memorandum, it being expressly provided that this Memorandum and each Article section, subsection, paragraph, sentence, clause or phrase hereof would have been adopted irrespective of the fact that any one or more Articles, sections, subsections, paragraphs, sentences, clauses or phrases shall be declared invalid or unconstitutional.

**ARTICLE 27  
TERM OF AGREEMENT**

27.1 This Memorandum of Understanding shall be effective January 1, 2017, upon adoption by the City Council of the City of Corning and shall remain in effect until December 31, 2019.

27.2 This Memorandum of Understanding may be extended by mutual agreement of the parties if additional time is required to consummate a new Memorandum.

**IN WITNESS WHEREOF, the parties hereto have executed this Memorandum of Understanding this 14 day of March, 2017.**

**CITY OF CORNING**

**OPERATING ENGINEERS LOCAL  
UNION NO. 3 AFL-CIO**

\_\_\_\_\_  
**Kristina Miller  
City Manager**

\_\_\_\_\_  
**Art Frolli  
OE-3 Business Representative**

\_\_\_\_\_  
**William May  
Chief Negotiator**

\_\_\_\_\_  
**Troy Grootveld  
Employee Representative**

\_\_\_\_\_  
**Lisa M. Linnet  
City Clerk**