

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY OF COLTON
AND
SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION,
GENERAL UNIT**

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**ARTICLE I
EMPLOYER-EMPLOYEE RELATIONS**

SECTION 1: RECOGNITION

The City hereby recognizes the San Bernardino Public Employees Association (SBPEA) as the representatives of employees in the General Unit, which encompasses all full-time positions in the City of Colton in the following classifications:

| | |
|--|--|
| Account Technician I & II | GIS Technician |
| Accountant | Human Resource Technician |
| Administrative Assistant | Lead Equipment Mechanic |
| Building Inspector I & II | Library Assistant I & II |
| Buyer | Library Clerk I & II |
| Code Enforcement Officer | Literacy Program Assistant |
| Community Childcare Admin. Assistant | Maintenance Worker I, II, & III |
| Community Childcare Fiscal Clerk | Office Specialist I & II |
| Customer Services Representative I & II | Parks Maintenance Crew Leader |
| Deputy City Clerk | Payroll Technician |
| Engineering Technician I & II | Planning Assistant |
| Equipment Mechanic | Public Works Inspector |
| Environmental Conveyance Technician I, II, and In-training | Senior Customer Service Representative |
| Equipment Operator I & II | Senior Office Specialist |
| Fire Safety Specialist | Storekeeper |
| | Web Administrator/Network Technician |

SECTION 2: SCOPE OF REPRESENTATION

Scope of representation shall include all matters pertaining to wages, hours and other terms and conditions of employment.

SECTION 3: ASSOCIATION MEMBERSHIP – AGENCY SHOP

The Association shall have the sole and exclusive right to have membership dues deducted for employees covered by this Agreement by the City, upon appropriate written authorization from such employee.

Except as set forth below, employees as a condition of employment shall, within thirty (30) days, either join the Association, or pay to the Association a service fee in an amount not to exceed the standard initiation fee, periodic dues, and general assessments of the Association.

Any employee who is a member of a bona fide religion, body or sect, which has historically held conscientious objection to joining or financially supporting public employee organizations shall not be required to join or financially support the Association as a condition of employment.

Such employee shall pay an amount of money equivalent to regular Association dues to a non-religious, non-labor charitable fund, chosen by the employee, exempt from taxation under Section 501(c)(3) of the Internal Revenue Code. Proof of such payment shall be made on a monthly basis to the City as a condition of continued exemption from the requirement of financial support to the Association.

The City shall deduct, upon receipt of a duly executed form, properly signed by a member of the bargaining unit, either dues to the Association or service fees for nonmembers, as appropriate. The Association shall advise the City, in writing, of the dues amount to be deducted for each member. Any change in dues will be submitted to the City, in writing, thirty (30) days prior to the effective date of such change. The City shall, as soon as possible, notify the Association General Manager if any member of the bargaining unit revokes a dues/fees authorization.

Whenever a unit member shall be delinquent in the payment of dues or fees, the Association shall give the unit member written notice thereof and fifteen (15) days to cure the delinquency; a copy of said notice shall be forwarded to the City's Human Resources Director. In the event the unit member fails to cure said delinquency, the Association shall request, in writing, that the City initiate termination proceedings. The termination proceedings shall be governed by applicable laws and are specifically excluded from the Grievance Procedure.

A. Hold Harmless Clause

In consideration of the above noted services, the Association agrees to release, indemnify, and discharge the City from any liability or expenses, including, but not limited to, attorney's fees and reasonable costs, whatsoever as a result of any action taken pursuant to the provisions of this Article.

B. Employee's Right to Revoke Agency Shop

Nothing herein shall be construed to modify employees' rights to revoke the Agency Shop provision of this MOU pursuant to the procedures set forth in Government Code Section 3502.5(b).

SECTION 4: ASSOCIATION AND CITY PROPOSALS

Due date for Association and City proposals will be 90 days prior to the expiration of the MOU.

SECTION 5: GRIEVANCE PROCEDURE

1. Statement Of Purpose

The purpose and objectives of the grievance procedure are to:

- A. Assure fair and equitable treatment of all employees and promote harmonious relations among employees and their supervisors.
- B. Afford employees a written and simple means of obtaining consideration of their grievance by informal means at supervisory level and review of the supervisor's decisions.

C. Resolve grievances as quickly as possible and correct, if possible, the causes of grievances, thereby reducing the number of grievances and future similar complaints.

2. Definitions

A. Day - A work day unless otherwise stated. A work day is a day on which City Hall is open for business for its full normal working hours.

B. Binding Mediation - To place the findings of the Mediator under legal obligation by contract or oath.

C. Grievant - An employee in the General Unit. An Association may file a grievance on behalf of itself or its members.

D. Grievance - An alleged violation or non-compliance with the provisions of this MOU, any supplemental MOU, City of Colton's written or unwritten personnel rules and regulations.

E. Mediation - An attempt to bring about a peaceful settlement or compromise between disputants through the objective intervention of a neutral party.

F. Mediator - a negotiator who acts as a link between parties.

G. Representative - A person who, at the request of the employee or supervisor, is invited to participate in the grievance or conferences.

H. Immediate Supervisor - The person having evaluation responsibility for the Grievant.

I. Class Grievance -

1) Each employee must submit his or her grievance in writing. Individual grievances may be treated as a single grievance or as a class at the discretion of the parties.

2) Resolution of a class grievance may not be consistent among all grievants in the class grievance due to differences in circumstances or occurrences which brought about the grievance.

3) Any grievants unsatisfied with the decision at any procedural step shall retain their individual rights to appeal to the next step in the grievance procedure.

J. Answer - An answer is the response to the grievance at any of Step A through F in Part 3. All answers must be written. If an answer does not resolve the grievance to the grievant's satisfaction, the answer will inform the grievant of the next step in the grievance procedure, and the time deadline for processing.

3. Procedure

A. Informal Resolution - Within ten days after a grievant knew, or by reasonable diligence should have known, of the condition upon which a grievance may be based, the grievant shall attempt to resolve it by an informal conference with the grievant's immediate

supervisor. This step will be deemed waived if the immediate supervisor or the immediate supervisor's action is the subject of the grievance.

Every effort shall be made to resolve a grievance through discussion between the employee and the employee's immediate supervisor. It is the spirit and intent of this procedure that all grievances are settled quietly and fairly without any subsequent discrimination against employees who may seek to adjust a grievance. Every effort shall be made to find an acceptable solution at the lowest level of supervisor.

The supervisor will answer the grievance, in writing, within ten days of presentation by the employee.

- B. If the problem cannot be resolved between the employee and the immediate supervisor, the employee may within ten days from the date of receiving the written answer from his or her supervisor, request an interview with the division head, if one exists, in order to discuss the grievance. The meeting with the division head will be held within ten days of the employee submitting the request for the meeting.

The division will answer within ten days of meeting with the grievant(s).

- C. If the division head and the employee cannot reach a solution to the grievance, the employee may, within ten days from the date of receiving the answer from the division head, request in writing and be granted an interview with the Department Director. The interview will be scheduled within ten days of the employee submitting the request.

The Department Director shall render an answer within ten days of meeting with the grievant.

- D. If the Department Director and employee are unable to arrive at a satisfactory solution, the employee may, within ten days from the date of the decision by the Department Director, submit a written appeal to the City Manager. The City Manager shall schedule a meeting with the grievant within ten days of receiving the appeal. The City Manager shall meet with the grievant and review the grievance and shall answer within ten days of discussing the grievance.

4. Appeal Of City Manager's Decision

- A. If the grievant is not satisfied with the decision of the City Manager, the employee or the Association may, within ten days from the date of receiving the decision of the City Manager, submit a written request to the City Manager for the grievance to be heard by a mediator.
- B. Selection of Mediator - If the parties are unable to mutually select a mediator, the State Mediation and Conciliation Service shall be requested to a mediator.
- C. Private Hearing - Mediation hearing shall be private.

- D. Cost and Expenses - Each party shall bear equally the cost of the fees and expenses of the mediator, if any. Each party shall bear its own witness and attorney fees.

The mediator shall render a decision in writing, within 30 days of the close of the hearing or of his/her receipt of closing briefs, whichever is later. The decision of the mediator is final and binding and is not subject to any administrative or judicial review except pursuant to the Civil Code Procedure.

5. Representation

- A. An employee may request representation of his or her choice at any stage of the grievance procedure.
- B. The grievant and designated representative shall receive release time for the purpose of representing the grievant at any step. For purposes of this section, representation includes reasonable preparation and consultation.
- C. The only limit on the grievant's representation is that there may be only one other person from the bargaining unit on paid status. Representation shall not inordinately interfere with the normal course of City business.

6. Self Representation

- A. In the event a grievant elects to exercise the right to self representation, and objects to the attendance of an Association Representative and/or Business Representative, such individuals shall be excluded; provided, however, representatives of the Association will have certain rights of access to the records of the grievance proceeding. This right of access is provided in recognition of the Association's interest in effective representation of its members.
- B. Accordingly, the City of Colton shall provide the Association access to:
- 1) Information concerning the nature of the grievance.
 - 2) Any procedures utilized during the course of the grievance proceeding.
 - 3) The results of the grievance proceeding, including any discipline imposed.
- C. However, in order to recognize the personal privacy interests of employees, the City shall delete from the grievance record:
- 1) The name of the employee filing the grievance.
 - 2) The employee's social security number, address, and telephone number.
 - 3) Any other personal information protected under right of privacy.

7. Freedom From Reprisal

No grievant shall be subject to coercion, discrimination, reprisal, or disciplinary action for discussing a complaint or grievance with his or her immediate supervisor, or for the good faith filing of a grievance.

8. Time Limits

- A. Failure by a grievant to meet a deadline set in this procedure shall terminate the grievance, and the grievant shall not have a right to refile on the same set of facts, unless good cause is shown for the delay, or if the City waives the deadline.
- B. Failure by the City to meet a deadline shall give the grievant the right to proceed to the next step.
- C. Time limits in this procedure may be extended by mutual written agreement between the parties.

9. Disciplinary Action Appeal Process

The disciplinary action appeal process is to allow employees who are dissatisfied with management action to have the following forms of recourse:

- A. **WRITTEN REPRIMANDS:** An employee who receives a written reprimand may appeal such action to the City Manager. The written reprimand will include a notice of appeal rights. Such appeal shall be made in the form of a memorandum or letter to the City Manager from the authorized Association representative within three business days of receiving the reprimand. The City Manager shall have five business days to meet with the appellant and five business days to issue a written determination following such meeting.

The determination of the City Manager shall be final and binding, and shall not be subject to further appeal.

- B. **DISCIPLINE APPEAL PROCEDURE (DISCIPLINARY SUSPENSIONS, DEMOTIONS AND DISMISSALS):** The City shall comply with Administrative Policy No. 4.05.250, thus insuring that employees are afforded "due process". A permanent employee who is suspended, demoted or dismissed shall have the right to appeal to a mediator. Such appeal to be made in the form of a memorandum or letter to the City Manager from an authorized Association representative within ten business days of receiving the "Order of Disciplinary Action".

The disciplinary appeals process is as follows:

- 1) Selection of Mediator - If the parties are unable to mutually select a mediator, the State Mediation and Conciliation Service shall submit a list of persons qualified to act as mediators. Within five days following receipt of the list of mediators, the parties shall select a mediator. Unless the parties agree to another method of selecting the mediator, the parties shall alternately strike one name from the list until one name remains. The right to strike the first name is determined by lot.
- 2) Private Hearing - Discipline appeal mediation hearing shall be private unless appellant wishes the hearing to be open.
- 3) Costs and Expenses - Each party shall bear equally the cost of the fees and expenses of the mediator and court reporter, if any. Each party shall bear its own witness and attorney fees.

The mediators shall render a decision in writing within 30 days of the close of the hearing or of his/her receipt of closing briefs, whichever is later. The decision of the mediator is final and binding and is not subject to any administrative or judicial review except pursuant to the Code of Civil Procedure.

SECTION 6: CONTRACT BAR

It is understood that this MOU shall constitute a bar to any petition or request for recognition in any unit which includes classifications of employees covered by this MOU where such petition or request seeks to represent such employees at any time prior to the expiration of this MOU.

SECTION 7: MANAGEMENT RIGHTS

It is understood and agreed that the City retains all of its powers and authority to direct, manage, and control to the full extent of the law. Included in, but not limited, to those duties and powers are the rights to: determine its organization; direct the work of its employees; determine the times and hours of operation; determine the level, means, and kinds of services to be provided; establish its policies, goals, and objectives; determine staffing patterns; determine the number and kinds of personnel required; contract out work, transfer work out of the unit, maintain the efficiency of City operations, build, move, or modify facilities; establish budget procedures and determine budgetary allocation; determine the methods of raising revenue and take action on any matter in the event of an emergency. Emergency is a sudden, generally unexpected, occurrence or occasion requiring immediate action which affects City facilities or equipment or otherwise involves an Act of God or specific governmental order requiring the City to take certain action or refrain from taking certain action. In addition, the City retains the right to hire, classify, assign, evaluate, promote, discipline and terminate employees.

It is expressly agreed by both parties that the City's determination to exercise those rights described herein, shall not be subject to the meet and confer process. However, the impact of exercising said rights is subject to the meet and confer process.

It shall be the policy of the City that no employee shall be interfered with, intimidated, restrained, coerced, or discriminated against in matters of employment, appointments, promotions, or other actions requiring the application of the merit principle. The City's actions in exercising the rights described herein shall be based on merit and fitness, free of favoritism and personal and political considerations.

ARTICLE II COMPENSATION

SECTION 1: SALARY

For the 2004-05 fiscal year the City and SBPEA agree that there will be no salary increases for members of the bargaining unit. Effective July 1, 2005, July 1, 2006, and July 1, 2007, the City will provide a 3% salary increase to base salary. On or before January 1, 2008, the City and SBPEA will work jointly to complete a compensation study of comparable classifications in five (5) geographically closest jurisdictions. The City and SBPEA will meet and confer after the completion of the survey but before July 1, 2008 regarding the implementation of the survey, which will be effective on July 1, 2008.

SECTION 2: RETIREMENT

The City agrees to re-open for the limited purpose of meet and confer should any legislation pass that has the potential to enhance the PERS retirement benefit.

The City will continue to pay 4% of the 8% employees' contribution to the Public Employees Retirement System for the 2.7% @55 CalPERS plan and provide retirement benefits as currently specified under the City's contract with PERS. The City's contribution shall be deposited in the member's retirement account and the City will report the same 4% as a benefit to the employees in accord with Government Code Section 20636(c)4.

SECTION 3: PERS 4th LEVEL SURVIVOR BENEFIT

The City will provide CalPERS 4th Level Survivor benefits to all Unit employees

SECTION 4: OVERTIME

1. Rest Period

- A. An employee who works sixteen consecutive hours shall earn an eight hour rest period.
- B. An employee shall be compensated at his/her regular rate of pay for all regularly scheduled work time, which falls while that employee is off on his/her rest period.

2. Overtime Pay

All employees required to work in excess of 40 hours in a seven (7) day work period shall receive compensation at the rate of time and one-half their regular rate of pay.

The City will pay overtime worked by employees in the unit at the rate of 1.5 (time and one-half) with a \$1.00 differential for overtime worked between the hours of 10 p.m. and 4 a.m.

In determining an employees' eligibility for overtime, paid leaves of absences shall be included in the total hours worked. There shall be no pyramiding of overtime. Hours worked by an employee in any workday or workweek on which premium rates have once

been allowed shall not be used again in any other overtime calculation other than computing total actual hours worked.

Overtime shall be recorded and paid in minimum increments of 15 minutes.

3. Compensatory Time Off

In lieu of receiving overtime pay pursuant to Section 4.2 above, full-time employees may elect to accrue up to 80 hours during the fiscal year on a premium rate basis. Employees may bank up to the 80 hours accrued and may cash-out up to 40 hours per fiscal year.

All hours in excess of the maximum number accruable shall be paid at a time and one-half the regular rate of pay.

An employee may use such compensatory time within a reasonable period after making the request if the use of compensatory time does not unduly disrupt the operations of the department.

4. Overtime Authorization

All overtime requests must have the authorization of a supervisor prior to the commencement of such overtime work. Where prior written authorization is not feasible, explicit verbal authorization must be obtained. Calls for service beyond the end of duty time are considered as authorized.

An employee's failure to obtain prior approval may result in the denial of the overtime request.

5. Training And Travel Time

Training time outside normally scheduled work hours shall be compensated pursuant to the Code of Federal Regulations.

Travel time outside normally scheduled work hours shall be compensated pursuant to the Code of Federal Regulations. When feasible, the department will adjust the employee's work schedule to minimize the impact of travel and training time.

6. City Vehicle Use

Employees who are provided with a City vehicle to travel to and from their regular work site shall not be compensated in any manner, whatsoever for such travel time in the City vehicle. No employee other than those on authorized standby duty will be allowed to take a City vehicle home if the distance is greater than 15 miles one way.

This provision also applies in those situations where the radio must be left on and monitored.

City vehicles are an extension of City buildings. There is no smoking allowed in City buildings, or in City-owned vehicles (R-10-93 and AB846). The employee is also required to wear a seat belt when driving and/or riding in City-owned vehicles.

7. Call Back Pay

Call back duty occurs when a full-time employee is ordered to return to duty on a non-regularly scheduled work shift. Call back does not occur when an employee is held over from his/her prior shift or is working prior to his/her regularly scheduled shift on a preplanned basis. An employee called back to duty shall be credited with two hours in addition to actual time worked. Actual time shall be calculated from the time employee arrives at work site until completion of work. An employee will also be credited with a total of one hour at time and one-half to cover travel to and from the work site.

An employee on call back shall not be eligible for an additional call back bonus of two hours if she/he is dispatched to another call prior to returning to his/her residence.

The City and SBPEA agree to maintain the current call back language for one (1) year ending on June 30, 2005. Thereafter, the City will abide by the mandates imposed upon by the Department of Labor and/or the Fair Labor Standards Act. As such, the City and SBPEA will meet and confer to discuss any changes.

8. Standby Pay

A full-time employee on standby may leave a telephone number where he/she may be reached while on standby. An employee shall be able to respond from such phone number within 30 minutes. If another bargaining unit is granted a longer response time, the General Unit shall have the same response time. Alternatively, the City may provide a "beeper" for the employees.

Standby pay shall be earned by each full-time employee working regularly scheduled eight hour days from Friday at the end of the working day, for a period not to exceed seven days. The City shall pay an employee on standby eight hours straight time of compensatory time off. When a City recognized holiday falls during the standby week, the employee shall earn an additional eight hours straight time of compensatory time off. Such compensatory time off shall be used according to Section 3 above.

Standby pay shall be earned by each full-time employee working regularly scheduled ten hour days from Thursday at the end of the working day, for a period not to exceed seven days unless extended by a holiday. The City shall pay an employee on standby ten hours straight time of compensatory time off. When a City recognized holiday falls during the standby week, the employee shall earn an additional ten hours straight time of compensatory time off. Such compensatory time off shall be used according to Section 3 above.

The City and SBPEA agree to maintain the current standby pay language for one (1) year ending on June 30, 2005. Thereafter, the City will abide by the mandates imposed upon by the Department of Labor and/or the Fair Labor Standards Act. As such, the City and SBPEA will meet and confer to discuss any changes.

SECTION 5: ACTING PAY

Any employee assigned to work in a higher classification for a period of 39 consecutive work hours or more, shall receive compensation from the first hour at equal step of the pay range of the acting position or 5%, whichever is higher. Regularly, scheduled holidays shall be counted as “work hours” for the purpose of qualifying for acting pay only. All other leaves hours shall not count as “work hours” for the purpose of qualifying for acting pay. Administrative Policy 4.05.170 shall be followed with only the proscribed pay increase and no increase in benefits provided to an employee in acting pay status.

The City agrees that represented employees working out of class shall be properly trained prior to out-of-class assignment.

Acting appointments shall be made based on the needs of the City. Appointees shall meet the minimum qualifications for the position whenever possible. If they do not, it will be clearly noted on their Personnel Action Form (PAR) that their acting appointment does not automatically qualify them for any future recruitment to fill such position on a regular basis. Eligible employees’ experience and job knowledge shall be given major consideration before an appointment is made.

The Department Director shall post a notice on bulletin boards which employees have access to of the intent to make such an appointment at least one week prior to making an acting appointment. Employees shall advise the Department Director in writing if they are interested in being considered for such an appointment. The Department Director shall be under no obligation to interview all such employees prior to making an acting appointment; however, if interviews are held, all interested employees who meet the minimum qualifications shall be interviewed. This provision shall not apply in cases of emergency.

SECTION 6: LONGEVITY PAY

Employees who have 3½ years of City service and who have been at “E” Step for two years (5½ years minimum) and have received satisfactory performance evaluations for both years at “E” Step shall receive a one-time 2% longevity adjustment.

Any employee who is promoted, transferred, and/or demoted will retain his/her 2% longevity pay that he/she has earned in a prior position with the City.

SECTION 7: INCENTIVE PAY

The City agrees to pay an additional 5% of base pay for any certificate, license, grade or degree (generally accepted within the respective field) above or beyond that which is required as part of the minimum requirements for the job. The incentive pay must be tied to the job description and is subject to recommendation by the Department Head Director with approval by the Human Resources Manager/Director and the City Manager.

For example, the Accountant position in the City requires accounting higher education, preferably a bachelor's degree. If an Accountant had a certificate in accounting (usually 12 units) this would not qualify for the incentive pay as the education component is already inherent within the job requirements. However, if an Accounting Technician I were to receive a generally accepted accounting certificate from a college or university, the incentive pay may be considered as appropriate since an education preference is not inherent within the job requirements.

For specific information as to how the incentive pay is granted, please refer to the Administrative Policy.

SECTION 8: SPECIAL ASSIGNMENT COMPENSATION

Employees who have been given the temporary assignment involving the performance of more difficult duties and requiring a greater level of skill(s) or duties outside of their classification may be granted additional compensation.

The duration of such assignments is not intended to exceed one (1) year. This provision shall not be used to circumvent the merit system of promotion or the provisions for reclassification. The specific, temporary assignment duties must be identified in writing prior to the start of the assignment.

Compensation

Compensation shall be awarded in pay period increments

- A. Special assignment compensation shall be in the form of a specified percentage of the employee's base pay. The Human Resources Manager/Director will determine the amount in increments of one percent (1%) from a minimum of two percent (2%) up to a maximum of five (5%).
- B. The additional compensation will be computed at the specified percentage of the current base pay of the employee for each pay period. Such increases in pay shall not affect an employee's step advancement in the base range.
- C. Requests for Special Assignment Compensation may be initiated by the City or by an employee via their supervisor.

The City bears the responsibility for initiating the compensation request in a timely manner and adhering to the compensation provisions defined in this article. The employee's supervisor shall review and approve the request in advance of the date the employee begins the assignment.

A special assignment will only begin with the Human Resources Manager/Director signed approval, written description of the assignment, agreement of the amount of additional compensation, anticipated duration of assignment and signed acceptance by the employee.

SECTION 9: SOCIAL SECURITY

In the event the City and its employees are required to participate in the Federal Social Security Program, the contribution designated by law to be the responsibility of the employee shall be paid in full by the employee and the City shall not be obligated to pay or “pick up” any portion thereof.

Nothing herein shall prevent the Association from requesting the City to meet and confer on the possible “pick up” of the employees’ contribution. Upon such request by the Association, the City agrees to meet and confer with the Association.

SECTION 10: MEDICARE

Employees hired by the City on or after April 1, 1986, shall be required to pay the designated employee contribution to participate in the Medicare Program, and the City shall be under no obligation to pay or “pick up” any such contributions.

SECTION 11: BILINGUAL PAY

The City agrees to pay \$50 per month (\$25 to be paid on the first two pay periods of the month) to employees who successfully complete a bilingual examination and who have been recommended by the Department Director and approved by the City Manager.

When the skill is no longer needed or the employee is not required to use it or ceases to possess it, the Department Director shall terminate the bilingual compensation by written notice to the Human Resources Manager/Director. The Human Resources Manager/Director may also terminate the bilingual compensation if he/she makes a like determination, and shall notify the Department Director. In either case, the Department Director shall notify the employee. The bilingual pay is tied to the classification rather than the individual employee and will terminate if the employee moves to a new classification.

**ARTICLE III
FRINGE BENEFITS**

SECTION 1: HEALTH INSURANCE

Effective January 1, 2004, the city converted to a Section 125 Cafeteria Plan. Under the cafeteria plan, all participating bargaining unit employees will receive a monthly allowance of \$915 per month from which employees can chose medical, dental and/or vision insurance. In addition, supplemental insurance opportunities will be provided, in order for employees to purchase supplemental medical insurance and child care coverage through pretax dollars.

Effective January 1, 2005,(insurance benefits are provided on a calendar year basis), the City will provide members of the SBPEA bargaining unit a monthly allowance of \$990 for the purchase of medical, dental and/or vision insurance. The city will adhere to the cafeteria plan requirements for all bargaining groups. Should the monthly allowance change, the City and Association agree to meet and confer to discuss the impact of any changes.

In those instances where the employee's medical insurance premium is less than the City's monthly contribution, the difference between said cafeteria dollar amounts shall be provided in the form of bi-monthly cash disbursements (payable 24 times per year). Cash disbursements to the employee are subject to being taxed, pursuant to the appropriate tax codes.

SECTION 2: RETIREES' HEALTH INSURANCE PARTICIPATION

Members of this unit who retire (service or disability) from the City employ, may at the retiree's discretion, enroll in the City-provided health insurance plan of the employee's choice. Employees who retire after 15 but less than 20 years of City service shall be eligible for City-paid employee only medical insurance coverage, until Medicare age with dependent care available at employee's expense. Employees who retire after having served a minimum of 20 years with the City shall have their, and their spouse's premiums paid for by the City up to Medicare age. After the retiree reaches Medicare age, he/she can maintain health insurance with the City, but the retiree must pay his/her, and his/her spouse's premiums. If the retiree is ineligible for Medicare benefits, the City will continue to pay the premiums, as long as the employee remains insurable. For all other employees, all premiums required by their, and their spouse's participation in such health insurance plan shall be paid by the employee. Participation in any health insurance plan is contingent upon the health insurance carrier approving the enrollment of a retired employee or spouse.

Upon approval of this MOU by Council, employees will have the option to choose the City's revised retiree plan (using the graduated scale below) or the aforementioned language stated above.

All employees who retire with less than 15 years of service will retire with a dollar amount for medical insurance only determined by the corresponding years of service (rounded to the lowest year) and the percentage of cafeteria dollars being offered at the time of retirement, which is

based on the monthly cafeteria allowance. The revised plan is as follows:

| Years of Service | Percentage of Cafeteria Dollars | Years of Service | Percentage of Cafeteria Dollars |
|------------------|---------------------------------|------------------|---------------------------------|
| 5 | 30% | 18 | 56% |
| 6 | 32% | 19 | 58% |
| 7 | 34% | 20 | 60% |
| 8 | 36% | 21 | 62% |
| 9 | 38% | 22 | 64% |
| 10 | 40% | 23 | 66% |
| 11 | 42% | 24 | 68% |
| 12 | 44% | 25 | 70% |
| 13 | 46% | 26 | 72% |
| 14 | 48% | 27 | 74% |
| 15 | 50% | 28 | 76% |
| 15 | 50% | 29 | 78% |
| 16 | 52% | 30 | 80% |
| 17 | 54% | | |

This option being made available to the SBPEA bargaining unit employees will cease on June 30, 2009.

The City will provide the retiree's health insurance benefit described above to retirees who move outside the Health Net, Kaiser or Aetna PPO service area and enroll in a health insurance plan. Eligible retirees who move out of state will have the option of continuing enrollment in a City plan that serves their new service area. In the event that the City's plans are not available in the service area, the retiree is responsible for enrolling in a health insurance plan. The retiree will be responsible for making payments directly to the insurance company and submitting receipts for reimbursement on a monthly basis to the City; the City will limit the reimbursement amount to the rate paid by the City prior to the retiree moving out of state. Retirees must show proof of insurance and payment.

SECTION 3: TERM LIFE INSURANCE

The City shall provide a total of \$50,000 term life insurance for each represented full-time employee effective the first of the month following the date of hire.

SECTION 4: LONG TERM DISABILITY

The City shall provide to each represented full-time employee a long-term disability program. The terms of the plan shall be more fully set forth in the plan documents; however, effective November 1, 2003, it shall provide for up to five years of coverage at 66-2/3% of the first \$6,000 \$7,000 of the employee's base salary, reduced by any deductible benefits. The elimination period is defined as the first 30 calendar days of each period of total disability. The employee

may choose to supplement the disability allowance with accumulated paid leave up to a maximum of 100% of base salary including the disability allowance. However, should the employee elect to use sick leave, the equivalent dollar value shall be deducted from the disability allowance.

SECTION 5: TUITION REIMBURSEMENT

The City shall reimburse employees up to \$2,500 per employee, per fiscal year, for 100% of costs for tuition and books incurred for job-related education. The City shall budget all necessary expenses to fund tuition reimbursements for the General Unit. Such expenditure must enhance the furtherance of City or continuing educational goals. Requests for such reimbursement must be submitted after successful completion of the course(s) and must be approved first by the Human Resources Manager/Director, then by the Department-Director and City Manager. Employee initiated educational or area development shall not be considered as time actually worked for purposes of computing overtime and normally shall not occur during regular work hours. (The tuition reimbursement form will be revised to show approval order described above). Policy 4.05.310 dated April 12, 2004 shall be the procedure utilized during the term of this contract. This article shall not be construed to eliminate employer sponsored training for the maintenance of certifications required by the City or any other jurisdiction.

SECTION 6: TRAINING AND EDUCATION

When a Department Director desires to send an employee to training/education on City time and/or at City expense, such training/education opportunity shall be posted at least one week prior to the Department Director deciding who to send. Employees interested in attending shall advise the Department Director in writing of their interest in being considered. The Department Director shall be under no obligation to schedule one or more of such employees for such a course. This provision shall not apply if there is an earlier deadline to meet.

SECTION 7: UNIFORMS

When the City furnishes uniforms to employees, such uniforms shall be worn at all times during working hours.

1. Boots:

The City will furnish safety work boots/shoes to each affected employee for whom safety work boots/shoes are required, to be determined by the Department Director with questions or concerns referred to Human Resources.

The City will provide an annual allowance of \$150 to each SBPEA unit member for whom safety boots/shoes are required. Each employee that is required to wear safety boots/shoes will provide proof that the safety boots/shoes being worn meet the ANSI or other safety requirements set forth in any City policy.

The City will maintain an open Purchase Order with a City approved vendor. Each affected employee will obtain a signed Purchase Authorization Form from their supervisor to be used when purchasing their boots.

Each General Unit employee that is required to wear safety boots will be allowed to purchase a new pair of boots each July. Field crew supervisors that are required to wear safety boots will also be allowed to purchase safety boots under this procedure. The dollar amount of this benefit may be adjusted each July to meet the safety requirements.

Each Supervisor will be required to keep a log sheet to record each employee's purchase and is available on the HR Share Directory. If an employee damages their safety boots during the course of work, the City will replace the damaged boots. The employee must turn in the damaged safety boots to be entitled to a new pair. The manufacturer of the damaged boots must match the manufacturer of the original boot on the Supervisors log sheet. For purposes of this procedure, the term "damaged" also applies to boots that "wear-out" prematurely (before one year). Prematurely worn boots may be replaced as well, with the Supervisor's approval.

2. Parks/L.L.M.D. Division:

Uniforms will be provided to employees in the Parks and L.L.M.D. Division. This will be done in lieu of providing these employees a uniform allowance. All other pertinent provisions in Section 9, Uniforms, of the consolidated MOU will still apply.

3. Auto Shop Division:

Employees assigned to the Auto Shop Division will receive five uniforms per year.

4. Uniform Replacement:

The City will furnish to each affected employee three uniforms each year. The uniforms shall be replaced during the year for damage occurring in the line of duty, with approval of the Department Director. Uniforms will not be worn while off duty.

5. Color:

Streets/Parks Divisions

Shirts: International Orange

Pants: Brown

Auto Shop and Divisions

Shirts: Light Blue

Pants: Dark Blue

Building Maintenance Division

Shirts: Dark Blue

Pants: Dark Blue

Code Enforcement Division

Shirts: Uniform Blue

Pants: Uniform Blue

6. Style
Shirts - short sleeve or long sleeve option of the employee unless required by rule, ordinance or State and Federal laws.

7. Uniform Allowance
In lieu of the annual uniform allocation, affected employees may receive upon request, a uniform allowance equal to the cost for allowed uniforms as set forth in the Uniform Replacement Section above. This allowance shall be used for the purchase of new uniforms, as required, and/or approved uniform accessories as follows:
 - A. Jacket - light weight or heavy weight with City of Colton pixel.
 - B. Cap - color coordinated with uniform with City of Colton pixel.
 - C. Footwear - boot or work shoe.
 - D. T-shirts - colors as set forth in section 5 for shirts.

8. Procedure
As set forth in Administrative Policy 4.05.260.

9. Mechanic Pre-Employment Policy
The pre-employment policy for Mechanics (hired after 7/1/01) is to pay back “non-returned” uniforms at termination.

**ARTICLE IV
LEAVES**

SECTION 1: VACATION

1. Accrual

All full-time employees shall accrue vacation time in accordance with the following:

| During Years of Continuous Service | Hours of Accrual Per Month of Service | Annual Accrual | Maximum Accrual Accumulation |
|------------------------------------|---------------------------------------|----------------|------------------------------|
| 1-5 | 6-2/3 | 80 | 160 |
| 6-10 | 10 | 120 | 240 |
| 11 | 10-2/3 | 128 | 256 |
| 12 | 11-1/3 | 136 | 272 |
| 13 | 12 | 144 | 288 |
| 14 | 12-2/3 | 152 | 304 |
| 15+ | 13-1/3 | 160 | 320 |

Notwithstanding anything in this section to the contrary, employees do not accrue vacation time during the first six months of employment. Vacation time shall be deemed credited during this period with accrual effective upon employee’s monthly anniversary date. Vacation accrual may be accumulated to not more than the appropriate maximum accumulation except upon written request of the affected employee and approval of the

Personnel Officer. In this event, an employee may be permitted to exceed the maximum accumulation by an amount not in excess of his accrual for a four-month period.

Previous City employment periods, during which vacation was accrued, may be considered as continuous service for the purpose of computing vacation rate upon the written request of the appointing authority and approval of the Personnel Officer.

Vacation leave accrual ceases when maximum accrual is reached.

2. Use

It is the intent that vacation time be used in time increments sufficiently long to permit the employee an adequate period of rest. The use of vacation time in less than weekly increments is to be discouraged. In no event may vacation be taken in increments of less than one-hour nor for a period exceeding the number of accrued whole days, except upon the recommendation of the Department Director. The Personnel Officer may authorize an eligible employee to incur a negative vacation balance of up to 40 hours. Vacation shall not be taken during the first six months of service.

Vacations shall be taken at times determined by the Department Director with due regard for the wishes of the employee and for the needs of the City.

In the event one or more City holidays fall within an annual vacation leave, such holidays shall not be charged as vacation leave and the vacation leave shall be extended accordingly.

No person shall be permitted to work for compensation for the City during his/her vacation except with prior approval of the Personnel Officer.

3. Vacation Sell Back

Any employee with an accrued vacation balance in excess of one hundred twenty (120) hours, who has taken a minimum of forty (40) hours in the preceding twelve (12) month period, shall be allowed to sell back up to forty (40) hours of accrued vacation one time each year, upon request prior to June 1st of each fiscal year.

4. Accumulated Hours At Termination

No person whose employment is terminated before the completion of six calendar months of continuous service shall be entitled to any vacation or pay in lieu thereof.

An employee who terminates after six months or more of continuous employment shall be paid for all credited or accrued vacation.

SECTION 2: HOLIDAYS

1. City Observed Holidays

Each full-time unit member working regularly scheduled 8-hour days shall receive the following 8 hour holidays unless otherwise noted:

New Year's Day
Martin Luther King's Birthday
Lincoln's Birthday (to be observed as the Friday preceding Presidents' Day)
Presidents' Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day (to be observed as the second Monday in November)
Thanksgiving Day
Day after Thanksgiving
Christmas Eve (10 hours)
Christmas Day
New Year's Eve (10 hours)
16 Floating Holiday hours accrued each July 1st (8 additional Floating Holiday hours, for a total of 24 Floating Holiday hours, will be added for the 2004-05 fiscal year only).

Each full-time unit member working a 4/10 schedule shall receive the following 10-hour holidays.

New Year's Day
Martin Luther King's Birthday
Presidents' Day
Memorial Day
Independence Day
Labor Day
Columbus Day
Veterans' Day (to be observed as the second Monday in November)
Thanksgiving Day
Christmas Eve
Christmas Day
New Year's Eve
12 Floating Holiday hours accrued each July 1st (8 additional Floating Holiday hours, for a total of 20 Floating Holiday hours, will be added for the 2004-05 fiscal year only).

For 4/10 employees, if Christmas Eve, New Year's Eve, Christmas Day or New Year's Day fall on a regularly scheduled day off, 10 hours shall be added to the floating holiday bank to be used by June 30.

When one of the fixed holidays employees on a 4/10 work week have falls on Friday, the preceding Thursday shall be treated as a paid holiday. When a holiday falls on a Saturday, 10 hours shall be added to the employee's floating holiday bank. When a holiday falls on Sunday, the following Monday shall be treated as a paid holiday.

Employees working regularly scheduled 8-hour days will receive 8 hours pay when taking Christmas Eve or New Year's Eve off and 2 hours will be added to their floating holiday bank to be used the same as stated above. If Christmas Eve or New Year's Eve fall on a regularly scheduled day off, 10 hours shall be added to the floating holiday bank to be used the same as stated above.

2. Holiday Accrual Sell Back

Between January 1, 2005 – June 1, 2005, employees will be allowed to sell back 30 holiday accrued hours in excess of 10 hours.

Between January 1, 2006 – June 1, 2006, employees will be allowed to sell back 30 holiday accrued hours in excess of 10 hours.

SECTION 3: SICK LEAVE

1. Accrual

Sick leave with pay shall be granted by the appointing authority at the rate of eight hours for each calendar month of service to all full-time employees. Sick leave shall not be considered as a privilege which an employee may use at his/her discretion, but shall be allowed only in case of necessity and actual sickness or disability. Unused sick leave shall be accumulated at the rate of 96 hours a year for full-time employees. There shall be no limit on the amount which can be accumulated.

2. Sick Leave Sell Back

The City agrees to sell back 40 hours per year of sick leave at 110% of the regular rate of pay per fiscal year. Employees must have used less than 51% of accrued sick leave during the prior fiscal year. Employees must have a minimum balance of 40 hours of sick leave to be eligible for this benefit.

It is the intent of the City to have all bargaining groups adhere to one policy in regard to sick leave buyback. The City and SBPEA will meet and confer prior to June 30, 2005 to discuss revising the Sick Leave Sell Back language.

3. Sick Leave Reports

In order to receive compensation while absent on sick leave, The employee will phone within one (1) hour (60 minutes) with personal contact to the supervisor or department contact; if no response from either, voice mail will be allowed. The employee will leave a phone number where he/she can be called (in case of a medical emergency, the name of the hospital will suffice). When absence is for more than three work days, the employee shall file a physician's certificate or a personal affidavit with Human Resources stating the cause of the

absence. The Supervisor will notify Human Resources of employees who have been absent for three (3) consecutive days.

4. Family Attendance

Employees shall have the option of using sick leave for attendance to family members, or the employee may elect to take leave without pay for attendance to family members. Family members include employee's father, step father, father-in-law, mother, step mother, mother-in-law, brother, sister, wife, husband, child, step child, grandparent, grandchild or domestic partner.

5. Accumulated Hours At Termination

Except as otherwise herein stated, accumulated sick leave is lost when the employee is terminated. In no event shall employees who have not worked for the City as regular full-time salaried employees for more than five years be entitled to use sick leave to defer termination of their employment by the City nor shall they be compensated for sick leave upon such termination for any reason including but not limited to retirement. A full-time employee who is permanently disabled from performing the duties of the position shall be retired upon that fact being established. In the event such employee applies for and consents to such retirement, then upon the retirement being accomplished, the employee shall be compensated for his/her accumulated unused sick leave (if and only if he/she has five years of regular paid City service) by payment in a lump sum. That sum is determined as follows:

The number of days of sick leave accrued, multiplied by his/her gross daily earnings at the time of termination, multiplied by a percentage as follows:

| | |
|---|-----|
| If employed more than five years, but less than ten | 10% |
| If employed ten years, but less than fifteen | 25% |
| If employed fifteen years or more | 50% |

A regular salaried full-time employee who has worked for the City at least five years and has accumulated sick leave, then terminates his/her employment for any reason shall be paid as full compensation for such sick leave as computed in the above paragraph.

Full-time members who are granted a service retirement (rather than disability retirement) shall be provided a sum equal to the cash value of 75% of the employee's accumulated sick leave after 20 cumulative years of service with the City. The cash value shall be computed at the employee's hourly rate in existence at the time the monies are disbursed.

An employee, who is terminated at any time during their employment, including the probationary period, shall be paid for all credited or accrued vacation.

SECTION 4: BEREAVEMENT LEAVE

Up to 40 hours per occurrence, two occurrences each fiscal year, may be taken by full-time employees with pay as bereavement leave in the case of the death of the eligible employee's father, step father, father-in-law, mother, step mother, mother-in-law, brother, sister, wife, husband, child, step child, grandchild, grandparent or grandparent of spouse. These hours shall not be eligible to be carried forward beyond the fiscal year. The City reserves the right to require reasonable verification of the need for such leave.

SECTION 5: MEDICAL LEAVE OF ABSENCE

A medical leave of absence is defined as an approved medical leave for regular full-time employees who have exhausted accrued sick leave and requested leave of absence without pay. Employees on leave of absence without pay for more than 3 consecutive months due to an industrial injury are eligible for the benefits described below. Employees on an approved medical leave of absence shall continue to receive City paid health, dental, life and long-term disability insurance provided they remain in paid status for a minimum of 80 hours in each calendar month. Any combination of accumulated vacation, holiday, administrative leave, or compensatory time may be utilized in order to achieve the 80 hour requirement. Accrual of leave while on medical leave of absence shall be pro-rated based on the number of compensable hours paid during each pay period. Workers' compensation and disability payments may not be applied towards this 80 hour minimum.

No health credit will be paid to an employee while on medical leave of absence.

If an employee on medical leave of absence is not in paid status for at least 80 hours in any month, City contribution towards the above-mentioned benefit programs will be suspended beginning the following month for the duration of the leave of absence. In this case, the employee may continue coverage under the City sponsored programs by making the full premium payments to the Finance Department by the last working day of the month preceding the month for which coverage is desired. In no event will insurance premiums be pro-rated.

SECTION 6: INDUSTRIAL INJURY LEAVE/INSURANCE PREMIUMS

The City will pay the insurance premiums for employees on leave of absence due to industrial injury. Payment of insurance premiums will include health, dental, life and optical.

**ARTICLE V
WORKING CONDITIONS**

SECTION 1: WORK HOURS

The ability to "trade" Fridays worked will be available subject to the following conditions:

The practice of shift trading shall be voluntary on behalf of each employee involved in the trade. An employee must have supervisory approval prior to being allowed to trade shifts.

The trade must be due to the employee's desire or need to attend to a personal matter and not due to the department's operations. The employee providing the trade shall not have his/her compensable hours increased as a result of the trade; nor shall the employee receiving the trade have his/her compensable hours decreased as a result of the trade. Any hours worked beyond the normal work day will be credited to the individual actually doing the work. "Paybacks" of shift trades are the obligation of the two employees involved in the trade. Any dispute as to the paybacks is to be resolved by the involved employees, and under no circumstances will the department be obligated for any further compensation whatsoever to any of the involved employees. The department is not responsible in any manner for hours owed to employees by other employees that leave the employment of the City or are assigned other duties. If one individual fails to appear for the other (regardless of reason), the person who "traded in" will be listed as absent without leave and may be subject to disciplinary action.

SECTION 2: SHIFT CHANGE

Employees shall be given a minimum of two weeks advance notice of a shift change, except in case of emergency. Department Directors shall consider the needs of the City and the employee in making assignments.

SECTION 3: EMERGENCY MEAL PERIODS

The City agrees that employees of this unit who are required to work in other than normal tour of duty situations will have consideration given to meal periods after 4 to 5 hours of work. It is recognized that the employees will not be able to leave a bona fide emergency situation and that the final determination of this fact will be made by the supervisor in charge of the particular activity.

SECTION 4: MECHANICS' TOOLS

Full-time City employees are not required to furnish their own tools; however, if they choose to use their own tools, the City shall pay the required property tax. Employees who choose to use their own tools will not hold the City responsible for loss or damage to their tools.

SECTION 5: NEPOTISM POLICY

This policy applies to all City employees, appointed officials, and elected officials and includes any relative defined as father, father-in-law, step-father, mother, mother-in-law, step-mother, foster parent, grandparent, grandchild, brother, brother-in-law, step-brother, sister, sister-in-law, step-sister, wife, husband, child, step-child, foster child, adopted children, son-in-law, daughter-in-law, first cousin, niece, nephew, aunt, uncle, domestic partner and other relatives or employees living in the same household.

For purposes of this policy, 'immediate family' includes the applicant's or employee's spouse and any lineal descendants of the applicant or employee or of the applicant's or employee's spouse, whether natural or legally adopted.

This policy shall not affect employees employed by the City in the positions held as of the effective date of this MOU. Applicants will not be hired and employees will not be promoted into any position where the result would be that one person would:

- Be supervised by or be in the chain of command of a relative.
- Participate in making, or advising on, employment decisions concerning a relative.

For purposes of this policy, employment decisions shall be defined as those affecting hiring, promotion or discipline.

- Be employed in the same department as a relative if, for reasons of supervision, morale, safety or security, it is determined that the work involves potential conflicts of interest.
- Be in one of the following or have a member of the applicant's or the employee's immediate family in one of the following positions: City Manager, Department Director or member of the City Council.

If permanent full-time employee is denied a promotion or transfer under this policy, the employee may appeal such action to the City Manager within three (3) business days of the date the employee receives written notification of said action. Such appeal shall be submitted in writing, stating the reason(s) that the employment decision should be rescinded. The parties shall select and utilize an arbitrator. The arbitrator's decision shall be considered final and binding with no further administrative appeal rights.

SECTION 6: LAYOFF POLICY

1. General Provisions

- A. Definition - A layoff is the involuntary separation or reduction of a regular employee to a position in a lower classification without fault of the employee. Layoff applies only to full-time positions. A layoff occurs only when a position is deleted from the authorized budget or when funds are withdrawn from a previously funded position.
- B. Short-term Furlough - Furloughs for periods not to exceed 40 consecutive work hours may be made in any order for reasons approved by the City Manager. Such furloughs shall not exceed 80 hours per employee per fiscal year and every consideration will be given to seniority where appropriate. Employees who are furloughed shall be granted a leave without pay with the right to return to classification.

2. Notification

Whenever a Department Director believes that a layoff will be necessary, he/she will submit a layoff plan to the City Manager for approval. The layoff plan shall include the anticipated number, and job title(s) of employee(s) to be laid off and seniority list by classification of all affected employees. The affected employees and the employee association shall be provided with a copy of the approved layoff plan at least two weeks prior to its effective date.

3. Order Of Layoff

- A. Layoffs shall be made on the basis of seniority determined by the employee's hire date of continuous service in a full-time position. In the event of a tie in total time of continuous service between two or more employees, the order of layoff shall be determined at the discretion of the City Manager.
- B. Before any reduction in the work force of full-time employees occurs, all temporary part-time, provisional, probationary, contract or other individuals without regular status in the affected classifications shall be terminated.
- C. Probationary employees and employees in acting appointments, who have regular status in another classification, shall be returned to their former classification where they will be subject to layoff under provisions applicable to other employees in that classification.
- D. If a regular employee to be separated has regular status in a lower classification, reduction in classification (bumping) within the City shall be approved. For purposes of bumping, the number of positions filled by the least senior employees in the affected classification(s) equal to the number of positions being deleted from the classification shall be identified. Additionally, all vacant positions in the affected classification shall be made available to the affected employees. This collective group of positions shall then be subject to the bumping process.
- E. Regular employees whose positions have been deleted shall be allowed to exercise their options, based on seniority, to select either a vacant position or to bump into any one of the filled junior positions within their current classification. An employee who elects not to bump into any position within the collective group of vacant and filled junior positions, thereby retaining his/her existing classification, shall be provided the opportunity to select from those options identified in Section G of this policy.

If an employee is authorized to bump, they will occupy the position held by the least senior employee on the priority list for that classification.

If an employee accepts a lower paying or less than full-time position, the employee does not waive recall rights to the former position pursuant to Section 5 below.

- F. Reductions in classification shall only be approved when the employee has previously passed probation in the lower classification. Reductions in classification shall first be made to the next lower classification in which the employee has regular status. The employee being reduced may only replace a junior employee, or be placed in a vacant position, in the classification identified pursuant to Section D above. The junior employee being bumped will be separated or reduced in classification. If the employee does not have seniority in the classification to which he/she is first considered for reduction, reduction shall then be made to the next lower classification in which the employee has previously achieved permanent status. This procedure shall continue until all reductions in classification and the ultimate separations are completed.

An employee may bump to a lower classification within a series in which he/she has achieved permanent status. Example:

Employee "A" is hired in as a Customer Service Representative II and achieves permanent status; however never worked as a Customer Service Representative I.

Employee "A" may bump employee "B" in the lower classification of Customer Service Representative I if employee "A": has more seniority.

- G. If bumping results in an assignment which the employee considers to be undesirable, such employee may request
- 1) a voluntary demotion to any vacant position in the City; or
 - 2) a lateral transfer to a position in which they have previously held regular status and have seniority over the incumbent.
- H. If a classification title is changed due to a reclassification, the employee shall retain bumping rights to the previous classification and series.

Any of these options requires the approval of the City Manager.

4. Exception To Order Of Layoff

Whenever a Department Director believes that the best interest of the City requires the retention of an employee with special qualifications, characteristics, and fitness for the work, the Department Director may request that such employee be exempted from the bumping procedures. Such requests must be in writing and approved by the City Manager. If approved the affected employee's labor representative shall be immediately provided with a copy of the request. Generally, requests for exception to order of layoff will be limited to those employees who possess specific licenses and certificates, or other special qualification which was identified during the recruitment for that particular position.

5. Employee's Rights While On Layoff

During the twelve months following a layoff, laid-off employees shall be assured the right to reinstate into their former position.

6. Retraining

The City will make reasonable efforts to provide retraining opportunities to laid-off employees that will qualify them in classifications not related to their former classification, and will attempt to place said laid-off employees in vacant positions in the City for which they are qualified.

During the twelve-months following a layoff, laid-off employees shall be eligible to compete for in-house promotional examinations for positions for which they qualify.

SECTION 7: REASONABLE SUSPICION DRUG/ALCOHOL TESTING POLICY

1. Policy On Drug And Alcohol-Free Workplace

It is the policy of the City of Colton to foster and provide a drug and alcohol-free workplace for all employees while protecting the employees' rights and privacy. A drug and alcohol-free workplace protects the safety of the public as well as the City's valuable employee resources. In furtherance of a drug and alcohol-free workplace, the City and Association have agreed to implementation of this Reasonable Suspicion Drug and Alcohol Testing Policy (Policy).

A. COMMITMENT

The City believes that education and training of all employees in the effects and treatment of substance abuse will contribute to a safer and more efficient workplace for everyone. The City is committed to eliminating the effects of substance abuse in the workplace. All employees are prohibited from using, possessing, buying, providing or selling unlawful drugs, controlled substances or alcohol in the workplace, and are prohibited from reporting to work or being subject to work (specifically, on call, breaks, and meal periods) with prohibited drugs, controlled substances or alcohol in their systems, from being under the influence of or impaired for the performance of duty because of drugs, controlled substances or alcohol.

The substance abuse policy will be strictly enforced. Violation of its requirements will be cause for discipline, up to and including termination of employment.

The City is committed to helping employees with admitted substance abuse problems overcome those problems, and encourages use of the voluntary rehabilitation option, as described later in this Policy.

B. PURPOSE

The purpose of the substance abuse policy are:

- 1) To implement a fair and balanced approach to eliminating substance abuse and its effects on the job;
- 2) To protect the public and employees; and
- 3) To provide a strong incentive for voluntary rehabilitation.

C. RULES

Employees shall comply to the following rules:

- 1) Employees shall not report for work or be subject to work while under the influence of, impaired for the performance of duty or while they have alcohol or any drug, medication or other substance in their system, including those prescribed by a doctor or dentist, that will in any way adversely affect their alertness, coordination, reaction, response, or safety.
- 2) The manufacture, use, sale, purchase, distribution, provision or possession of an illegal drug or controlled substance by any employee in the workplace or during work time is prohibited.
- 3) No employee shall report for duty or remain on duty when his/her alcohol concentration is 0.04% or greater. However, an employee with less than this amount

of alcohol concentration may still be in violation of this policy, if the employee is under the influence of alcohol or is impaired for the performance of duty.

- D. The use or possession of alcohol while at work, including meal periods and breaks, or in the workplace or during work hours is prohibited.
- E. Employees who appear to be impaired or affected on the job by a drug, controlled substance or alcohol shall be relieved of duty and shall be required to submit to drug or alcohol testing.
- F. No employee shall report for duty while under the influence of or while impaired for duty because of a lawfully prescribed or over the counter medication. If any employee is taking medication which he/she knows or reasonably should know the medication may interfere with performance of duty, such employee shall inform the immediate supervisor. An employee lawfully under the influence of prescribed or over the counter medication is not in violation of this policy.
- G. All employees shall be subject to reasonable suspicion, return-to-duty, follow-up and post-accident drug and alcohol testing.
- H. If an employee refuses an order to submit to testing or fails to cooperate fully with testing procedures, the employee will be immediately subject to appropriate disciplinary action up to and including termination. Refusal to submit to testing or failure to cooperate fully with testing when ordered shall be treated as insubordination.

Refusal to submit to or cooperate fully with a drug or alcohol test includes but is not necessarily limited to:

- 1) failure to provide a proper and adequate sample without a valid medical reason;
 - 2) providing false information in connection with a test;
 - 3) attempting to falsify test results through tampering, adulteration or substitution;
 - 4) eating or drinking before the sample is collected when instructed not to do so;
 - 5) failure to complete required forms.
- I. Employees are encouraged to volunteer to use the services of the City's Employee Assistance Program (EAP) for any drug or alcohol use or dependence before it affects job performance. However, voluntary self-referral after notification of a required test will not eliminate the requirement to take a test. Further, an employee found to be in violation of any provision of section 1.C. of this policy shall not necessarily be relieved of possible disciplinary action by requesting to use the EAP or to seek rehabilitation.
 - J. All testing will be done on an on-duty basis and the employee will be compensated under regular established procedures.

2. Categories And Methods Of Testing

The City of Colton may conduct the following types of Drug/Alcohol tests pursuant to this Policy:

- Reasonable Suspicion

- Return-to-duty
- Follow-up
- Post-Accident

The City of Colton may conduct urine tests for illegal drugs or controlled substances and alcohol. Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities which have been approved by the National Institute on Drug Abuse (NIDA). For drug testing, an initial FDA approved immunoassay drug screen will be conducted on each specimen. For those specimens that are not negative, a confirmative Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. A positive test result above the minimum threshold established in this policy will be reviewed by the Medical Review Officer (MRO) prior to reporting the result to the Human Resources Manager.

All drug testing will be subject to a chain of custody as defined in Attachment A. Any violation of the chain of custody could affect the integrity of the sample and invalidate the test. If the test is invalidated, a new sample must be obtained.

Tests for alcohol concentration will be conducted utilizing a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT) operated by a trained, certified breath alcohol technician (BAT). If the initial test indicates an alcohol concentration of 0.02 or greater, a second test will be performed to confirm the results of the initial test. A confirmed alcohol concentration of 0.04 or greater will be considered a positive alcohol test and will result in disciplinary action for violation of this policy. All alcohol testing will be conducted according to the procedures in Attachment B.

All testing will be conducted in a manner that protects individual dignity, privacy and confidentiality throughout the testing process.

3. Employees Subject To Testing

All employees are subject to reasonable suspicion, post-accident, and follow-up drug and alcohol testing.

4. Substances For Which Testing Will Occur

Testing will include screening for the following substances: alcohol, marijuana (THC), cocaine, phencyclidine (PCP), opiates, amphetamines. Testing may be conducted for any other prohibited substance with reasonable suspicion.

A test result indicative of any level of alcohol or drug(s) shall authorize the City to address said finding as described in this Policy.

Positive test results will be reported to the Human Resources Manager/Director only after the confirmation testing.

5. Substance Testing Procedures

A. Reasonable Suspicion Testing

The City of Colton shall require a drug test for the listed drugs and substances when a supervisor has reasonable suspicion to believe that an employee has used a prohibited drug and/or is impaired or under the influence and shall require an alcohol test when the supervisor has reasonable suspicion to believe that an employee is impaired by or is under the influence of alcohol.

A determination that reasonable suspicion exists for drug and alcohol testing must be based on specific, contemporaneous, articulable observations of the employee, made by a supervisor qualified to detect the signs and symptoms of such use. The documentation of the employee's behavior/conduct shall be prepared and signed by the supervisor utilizing the Reasonable Suspicion Checklist within 24 hours of the observed behavior or before the results of the test are released, whichever is earlier. Prior to requesting an employee to submit to a drug and/or alcohol test, the observations noted by the supervisor must be confirmed by a second supervisor.

Employees must submit to tests for alcohol and/or for illegal and controlled drugs when the employee is reasonably suspected of being impaired or affected by drug or alcohol use.

- 1) Reasonable cause for testing means suspicion based on specific personal observation of two or more supervisors. The observing supervisors must be trained in the detection of drugs and alcohol. Such supervisors shall describe and document:
 - a. Specific, personal and articulable observations concerning the appearance, behavior, speech, body odors or performance of the employee; or
 - b. Violation of a safety rule, or other unsafe work incident which, after further investigation of the employee's behavior or appearance, leads the supervisors to believe that drug or alcohol use may be a contributing factor.
- 2) Suspicion is not reasonable and is not a basis for testing, unless based on first hand observation of the person reporting same. However, suspicion based on hearsay reports may be the basis for further investigation or for action to protect the safety of employees or the public, such as ordering the employee to stop work. Safety sensitive employees shall be relieved from performance of safety sensitive functions while the supervisor is completing his/her determination regarding whether a reasonable cause test is warranted.
- 3) When a supervisor suspects that an employee is impaired or affected by drug or alcohol use, the supervisor shall follow the reasonable suspicion procedure to determine whether drug and/or alcohol testing is appropriate, and, if so, to initiate the testing. The supervisor will:
 - a. order the employee to stop work;

- b. order the employee to submit to a urine drug and/or alcohol test after approval of the Department Director or designee; and,
- c. inform the employee that a positive test will result in the employee being evaluated for disciplinary action.

A supervisor will then transport the employee to the collection site and will arrange for the employee's transport home.

B. Return to Duty Testing

Employees who violate this Policy and are accepted into Return-to-Duty and Follow-up status must have a negative drug and/or alcohol test. Employees who return to duty are subject to follow-up testing and/or rehabilitation programs.

C. Follow-up Testing

Follow-up testing shall be as follows:

- 1) Following completion of return-to-duty testing, employees will be subject to periodic, accounted and unaccounted drug and alcohol testing as part of the return to work or aftercare plan.
- 2) Any employee who tests positive on a breath alcohol test and/or drug test and is permitted to return to work will be required to comply with return to work conditions, as established by the City's Substance Abuse Professional (SAP), which shall include the requirement to submit to and pass, announced and unannounced drug and alcohol testing. The frequency and duration of follow-up drug and/or alcohol tests shall be determined by the SAP. There shall be a minimum of six (6) unannounced tests in the first twelve (12) months following the return to duty.
- 3) Any employee whose tests results show any amount of drugs or alcohol during the return to work and follow-up testing will be subject to discipline up to and including termination.

D. Post-Accident Testing

Employees involved in a serious traffic accident while on duty are subject to drug testing. A serious traffic accident is defined as follows:

- If there is a fatality.
- If the accident results in bodily injury to a person who immediately receives medical treatment away from the accident site and the driver receives a citation under State or Local law for a moving violation.
- If one of the vehicles is towed from the scene and the driver receives a citation under State or Local law for a moving traffic violation.

6. Rehabilitation Program

- A. The SAP may recommend an appropriate treatment or rehabilitation program for an employee as a condition for returning to work after having violated this Policy.

- B. The employee shall be placed in a medically supervised Rehabilitation Program, which may include in-patient hospital, residential care, day treatment or out-patient care, provided by a City approved Rehabilitation Facility.
- C. If the Rehabilitation Program provider certifies that the employee has successfully completed the Rehabilitation Program, during which time the employee will be subject to announced and unannounced periodic drug and/or alcohol tests, the terms and conditions of the aftercare program will be determined on an individual case-by-case basis, and the employee will be required to sign a Return to Work agreement acknowledging that he or she will abide by those terms and conditions.
- D. The Return to Work Agreement will stipulate that the employee will be subject to announced and unannounced drug and alcohol tests the frequency and duration of which will be determined by the SAP.
- E. If recommended by the SAP, the employee will be permitted to return to work in his/her classification during the aftercare or during any other outpatient program, providing the employee tested negative for drugs and alcohol in a Return to Work test.
- F. The employee must successfully adhere to the terms and conditions of the rehabilitation and aftercare programs. If the employee violates the terms and conditions of the rehabilitation or aftercare program, the employee will be subject to appropriate disciplinary action up to and including termination.

7. Disciplinary Action

The City may take appropriate disciplinary action, subject to all prescribed appeal rights, against any employee who violates any rules listed in this Policy.

8. Management/Supervisory Responsibilities

Managers and supervisors shall be responsible to:

- A. Be fully conversant with the policies and procedures set forth herein;
- B. Ensure that his or her employees are properly trained in the policies and procedures, and in the dangers of substance abuse;
- C. Be knowledgeable about the City's Employee Assistance Plan for substance abuse;
- D. Be aware of substance abuse indicators, and encourage employees who are suspected of substance abuse to refer themselves voluntarily to the SAP;
- E. Conduct investigations promptly and properly when he or she suspects that an employee may be impaired or affected by drug or alcohol use;
- F. Initiate investigations promptly and properly when he or she suspects the presence or use of drugs, controlled substances or alcohol in the workplace or during work time, including meal periods or breaks. Steps to initiate an investigation may include arranging

for the confiscation of any unauthorized drugs, alcohol, or related paraphernalia in the workplace or on City property or premises.

- G. When a supervisor suspects an employee is impaired or affected by drugs, controlled substances or alcohol use, follow the reasonable cause procedure to determine whether drug and/or alcohol testing is appropriate and if so, initiate testing after reporting to and securing approval of the Department Director or the Department Director's designee.
- H. The Department Director will be responsible for ensuring that all supervisors receive training in the implementation of this Policy, including drug recognition.

9. Substance Abuse Professional

A Substance Abuse Professional (SAP) means a non-City employee who is a licensed physician (medical doctor or Doctor of Osteopathy), or a licensed or certified psychologist, social worker, employee assistance professional, or addiction counselor (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission), with knowledge of and clinical experience in the diagnosis and treatment of alcohol and drug related disorders.

10. Medical Review Officer

- A. Only a qualified Medical Review Officer (MRO) will receive laboratory results generated by pre-employment, reasonable cause, return to duty or follow-up testing.
- B. When a confirmed positive test is reported from the testing laboratory, it is the responsibility of the MRO to:
 - 1) Review the individual's medical history, including any medical records and biomedical information provided.
 - 2) Contact the employee and afford the employee an opportunity to discuss the test results with him/her within five days of notification of the results.
 - 3) Determine whether there is a legitimate medical explanation for the result, including legally prescribed medication.
- C. The MRO shall not convey test results to the City until the MRO has made a definite decision that the test result was positive or negative.
- D. The MRO may request the laboratory to analyze the original sample again in order to verify the accuracy of the test result to the MRO. The MRO may terminate processing, if he determines that the test result was caused by the appropriate use of medication or factors other than the employee's use of the substance found.

11. Employee Status

An employee to be tested for "critical incident" or reasonable suspicion drug and/or alcohol tests shall be transported to and from the testing site by a supervisor. He/she may be accompanied by an Association representative, provided this does not cause any undue delay (one hour). An employee shall be driven home by another employee or a supervisor at the conclusion of the test, or other arrangements may be made by the supervisor. The tested

employee shall not be allowed to drive home unless a breath alcohol only test was conducted and was negative.

An employee shall be considered “on duty” until the conclusion of the drug or alcohol test and return to the work site. The tested employee shall then be placed on paid administrative leave until a determination is made by the MRO and reported to the City regarding the results of drug or alcohol tests. Negative tests shall result in the employee being “made whole.”

12. Retests

A pre-employment candidate who does not pass a pre-employment drug test may request that the original urine split sample be analyzed again by a laboratory of his/her choosing at the candidate’s expense. This option does not apply in breath alcohol testing.

An employee who does not pass a drug test, may request that the original urine sample split be reanalyzed by a different NIDA approve laboratory/facility at the employee’s expense.

13. Confidentiality

The City shall not release information pertaining to an individual employee that is contained in City and/or department drug/alcohol records without express written authorization of the tested individual except when (1) required by law, such as a court ordered subpoena, or (2) in connection with a City disciplinary, grievance, arbitration, lawsuit or other proceeding initiated by or on behalf of the individual and arising from the results of a drug or alcohol test.

Urine samples may not be used for any purpose other than as described in this Policy.

14. Training

A. The City will develop and conduct training sessions and materials for all employees concerning this Policy, the SAP, and the personal safety and work effects of drug and alcohol use through the Drug and Alcohol-Free Workplace Awareness Program.

B. Every supervisor will receive at least a four-hour Drug and Alcohol Awareness Training.

15. Right Of Association Participation

This Policy was developed and implemented by the City after review and approval by the Association. At any time, the Association, upon request, will have the right to inspect and observe any aspect of the drug testing program with the exception of individual test results. The Association may inspect individual test results if the release of this information is authorized by the employee involved.

16. Severability

If any court should hold any part of this Policy invalid, such decision shall not invalidate any other part of this Policy.

17. Revisions To The Policy

This Policy is subject to revision if mutually agreed upon by the Association and the City.

**ARTICLE VI
SAFETY REVIEW COMMITTEE**

The City agrees to the formation of a joint Labor/Management committee to review safety concerns in all areas involving employees in this unit. The committee will be comprised of two members appointed by Labor, two members appointed by management. The committee shall meet at least quarterly beginning in January 2005 and each group shall ensure that at least one representative attends each meeting. The Human Resources Manager/Director will be responsible for assigning staff to lead the committee.

**ARTICLE VII
BENEFITS REVIEW COMMITTEE**

The City agrees to the formation of a joint Labor/Management committee to review possible improvements in all areas of health, dental, life, disability, and vision benefits currently or potentially available to employees in this unit. The committee will be comprised of two members appointed by Labor and two members appointed by management.. The committee shall meet at least quarterly beginning in January 2005 and each group shall ensure that at least one representative attends each meeting. The Human Resources Manager/Director will be responsible for ~~the~~ assigning staff to lead the committee.

**ARTICLE VIII
GENERAL PROVISIONS**

SECTION 1: CLASSIFICATION STUDIES

The City agrees to conduct classification studies at any time provided that such requests cannot be made more than once a year unless there is a promotion or transfer.

- A. An employee or Department Director shall submit a completed 'Request for Classification Study form' to Human Resources ~~Division~~ and it will be date stamped upon receipt.
- B. The Human Resources Manager/Director will review the form.
 - 1) If the Human Resources Manager/Director determines a classification study is not warranted the employee may file an appeal with the City Manager within 5 working days of receipt of the denial.
 - 2) If the reasons for the request appear to be justified, the Position Classification Questionnaire will be sent to the employee.
- C. The employee will complete page 1 through 8 of the Questionnaire and forward it to his/her immediate supervisor within 10 working days.
- D. The immediate supervisor will complete Section II of the Questionnaire, complete number 12 on page 11, sign, and forward the Questionnaire to the Human Resources Manager/Director within 10 working days.

- E. The Human Resources Manager/Director will review the completed Questionnaire and submit a recommendation to the City Manager. The City Manager may choose to have a consultant perform the classification study in lieu of Human Resources. The employee association will be informed of the City Manager's choice of consultant prior to that selection becoming final. If any employee association has concerns over the consultant selected, the Human Resources Manager/Director shall meet with representatives of that association to discuss those concerns.

- F. The consultant and/or Human Resources Manager/Director will submit a recommendation to the City Manager. The Human Resources Manager/Director will notify the employee of the City Manager's approval or denial of the request for reclassification within 2 ½ months after initial receipt of the request. If the reclassification is denied the employee may appeal to the City Manager for a hearing within five (5) working days.

The reclassification shall take effect the first full pay period of the fifth (5th) month after the classification is received. (see Administrative Policy 4.05.330 for further details)

SECTION 2: SAVINGS CLAUSE

Should any provision of this MOU be held invalid by a court of competent jurisdiction, then the remaining provisions shall remain in full force and effect.

SECTION 3: CONCLUSIVENESS OF MEMORANDUM OF UNDERSTANDING

The parties acknowledge that during the negotiations which resulted in this MOU, each had the right and opportunity to make demands and proposals with respect to subjects within the scope of representation. The understandings arrived at after the exercise of that right are set forth in this MOU and constitute the complete and total contract between the City and the SBPEA with respect to wages, hours, and other terms and conditions of employment.. Accordingly, all wages, hours, and terms and conditions of employment in this MOU and in the consolidated MOU shall remain in full force and effect for the term of this MOU, provided, however, that the parties may, upon mutual agreement, re-negotiate any part or provisions of this MOU during its term. All practices enjoyed by the employees at the present time, which are not included in, or specifically changed by or contradictory to this MOU are subject to meet and confer prior to implementing any proposed change.

Any prior or existing Memoranda of Understanding between the parties regarding matters within the scope of representation are hereby superseded and terminated in their entirety.

SECTION 4: TERM OF AGREEMENT

The agreement will last for a three year period beginning July 1, 2004 and ending midnight, June 30, 2009.

SECTION 5: COUNCIL ADOPTION

If this MOU is acceptable to the City Council, then the City Council shall adopt the MOU by appropriate action at the first scheduled meeting following the signing of this MOU.

FOR THE CITY OF COLTON:

FOR SBPEA:

Anthony Arroyo, City Representative

Bob Blough, Labor Representative

DATE

DATE

FOR THE BARGAINING TEAM:

Carmen Jimenez
Senior Customer Service Representative

DATE