

MEMORANDUM OF UNDERSTANDING
BETWEEN THE CITY OF COLTON AND
SAN BERNARDINO PUBLIC EMPLOYEES ASSOCIATION
MID-MANAGER EMPLOYEES 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 Mid-Management Unit, which encompasses all full-time positions in the City of Colton in the following classifications:

#### RECOGNIZED POSITION LIST

<b>Position-Title</b>	<b>Status</b>
Accounting Manager	Exempt
Administrative Analyst I & II	Exempt
Assistant Director of Utility Services – Electric	Exempt
Assistant Finance Director	Exempt
Assistant Public Works Director	Exempt
Associate Engineer	Exempt
Associate Planner	Exempt
Business License Officer	Exempt
Chief Deputy City Clerk	Exempt
Community Childcare Manager	Exempt
Community Childcare Assistant Site Supervisor	Non-exempt
Community Childcare Site Supervisor	Non-exempt
Economic Development Project Manager I & II	Exempt
Electric Utility System Designer	Exempt
Electrical Systems Engineer/GIS Project Manager	Exempt
Energy Services Specialist	Exempt
Engineering Assistant	Exempt
Engineering Manager	Exempt
Equipment Maintenance Manager	Exempt
Executive Assistant	Exempt
Executive Assistant to Police Chief	Exempt
Family Services Supervisor	Non-exempt
Information Technology Coordinator	Exempt
Information Technology Manager	Exempt
Library Administrative Coordinator	Exempt
Literacy Coordinator/Branch Supervisor	Exempt
Maintenance Supervisor	Non-exempt
Planning Manager	Exempt
Principal Librarian	Exempt
Production Supervisor	Non-exempt
Purchasing & Customer Service Manager	Exempt
Recreation Services Manager	Exempt
Redevelopment Manager	Exempt
Senior Accountant	Exempt
Senior Economic Development Project Manager	Exempt
Senior Energy Services Specialist	Exempt

Senior Planner	Exempt
Senior Utilities Financial Analyst	Exempt
Sub-Station Superintendent	Non-exempt
Trans/Dist. Superintendent	Non-exempt
Utilities Business Systems Analyst	Exempt
Utilities Financial Analyst	Exempt
Utilities Plans Examiner	Exempt
Warehouse Supervisor	Non-exempt
Wastewater Utility Manager	Exempt
Wastewater Utility Supervisor	Non-exempt
Water Utilities Manager	Exempt
Water Utility Supervisor	Non-exempt

**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**

All employee members of SBPEA shall remain as members in good standing of said Association for the duration of this Memorandum of Understanding (MOU), except as set forth below. During the period of January 1 through January 15 of each year, any Association member, who has been a member at least one year, may voluntarily withdraw from Association Membership.

**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 Arbitration - To place the findings of the Arbitrator under legal obligation by contract or oath.
- C. Grievant - An employee in the Mid Management 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. Arbitration – Method of resolving disputes between an employer and employee organization by submitting the dispute to a neutral third-party..
- F. Arbitrator - a person chosen to arbitrate a dispute between parties as opposed to a court of law..
- 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 supervision.

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 Arbitrator.

- B. Selection of Arbitrator - If the parties are unable to mutually select a Arbitrator, the State Arbitration and Conciliation Service shall be requested to a Arbitrator.

- C. Private Hearing - Arbitration hearing shall be private.

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

The Arbitrator 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 Arbitrator 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 Arbitrator. 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 Arbitrator - If the parties are unable to mutually select a Arbitrator, the State Arbitration and Conciliation Service shall submit a list of persons qualified to act as Arbitrators. Within five days following receipt of the list of Arbitrators, the parties shall select a Arbitrator. Unless the parties agree to another method of selecting the Arbitrator, 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 Arbitration 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 Arbitrator and court reporter, if any. Each party shall bear its own witness and attorney fees.

The Arbitrators 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 Arbitrator 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**

All employees in the above-represented classifications shall receive a base salary as set forth in the Pay and Classification Plan for the City of Colton.

No salary increases are scheduled during the term of this agreement.

### **SECTION 2: RETIREMENT**

The City shall provide retirement benefits through the Public Employee Retirement System (PERS) as follows:

- A. Each employee shall pay the full "8%" employee/member portion of the required PERS retirement contributions.
- B. Upon agreement with or imposition through impasse on other City bargaining units representing miscellaneous members, the City will amend its contract with PERS to implement a 2.5% at 55 retirement formula as part of a two-tier system.

All bargaining unit employees hired after the effective date of this amended PERS contract will have the retirement formula of 2.5% at 55. Bargaining unit employees hired prior to the effective date of this amended PERS contract will continue with the 2.7% at 55 formula.

To the extent permitted by PERS, any bargaining unit employee under the 2.7% at 55 formula that is laid off and subsequently rehired or reinstated within one year of that layoff shall also be reinstated to the 2.7% at 55 formula. Any such bargaining unit member that is rehired or reinstated after one year of a layoff shall return under the 2.5% at 55 formula.

- C. If before July 1, 2012, the City approves or adopts a MOU with any bargaining unit of the City that does not include the requirement that each employee pay his or her full employee/member PERS retirement contribution (e.g., 8% for miscellaneous members; 9% for safety members), the City shall immediately, on a prospective basis, begin paying "4%" of the employee/member contribution.

**SECTION 3: PERS 4<sup>th</sup> LEVEL SURVIVOR BENEFIT**

The City will provide CalPERS 4<sup>th</sup> Level Survivor benefits to all Mid-Manager Unit employees.

**SECTION 4: OVERTIME**

The following classifications are designated as non-exempt: Community Childcare Site Supervisor and Assistant Site Supervisor, Family Services Supervisor, Maintenance Supervisor, Production Supervisor, Recreation Services Supervisor, Sub-Station Superintendent, Trans/Dist. Superintendent, Warehouse Supervisor, Wastewater Utility Supervisor, and Water Utility Supervisor.

All employees required to perform in excess of 40 hours in a seven-day cycle shall receive compensation at the rate of one and one-half (1½) time his/her regular rate of pay. The following titles shall receive compensation at the rate of double time: Sub-Station Superintendent and Trans/Dist. Superintendent.

The City agrees to provide a minimum of two (2) hours work time for each employee if they physically report for scheduled overtime and that overtime is thereafter canceled for any reason.

In determining an employee's eligibility for overtime regular rate, paid leaves of absences shall be included in the total hours worked.

There shall be no pyramiding of overtime or other premiums. 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.

Planned overtime shall be divided as equitably as possible among available and qualified personnel and within each classification. Management reserves the right to make the final determination in all overtime scheduling.

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 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.

#### **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 Request (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: BILINGUAL PAY POLICY**

The City agrees to pay \$25 per pay period to employees who successfully complete a bilingual examination and who have been recommended by the Department Director and approved by the Management Services Director. The bilingual pay is tied to the classification rather than the individual employee and will terminate if the employee moves to a new classification.

#### **SECTION 7: SPECIAL ASSIGNMENT COMPENSATION**

Employees who have been given the temporary assignment involving the performance of more difficult duties and requiring a greater level of skills(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.

Special Assignment Compensation shall be awarded in pay period increments and in the form of a specified percentage of the employee's base pay. The Human Resources Manager will determine the amount in increments of one percent (1%) from a minimum of two percent (2%) up to a maximum of five percent (5%).

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.

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 obtain review and approval of the request in advance of the date the employee begins the assignment.

A special assignment will only begin with the Human Resources Manager's 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 8: LONGEVITY PAY**

The City eliminated longevity pay as of July 1, 2003.

#### **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: PROMOTIONS**

Bargaining unit employees promoted pursuant to a promotional examination, as defined by Rule VI, Section 2 of the City's Personnel System Rules and Regulations (Resolution No. R-15-00), to a higher class within the General or Mid-Management bargaining units shall be placed at a step in the new position's pay range that is at least ten percent (10%) higher than their salary or wage in the prior position.

This provision guaranteeing a minimum 10% increase shall only apply to promotions that have been finalized after March 1, 2011, and on or before December 31, 2013. In other words, there shall be no guaranteed minimum 10% increase for promotions finalized after December 31, 2013. Employee promotions finalized after December 31, 2013, will entitle the employee to receive a minimum of five percent (5%) base salary increase or the beginning of the position classification range, whichever is greater.

## **ARTICLE III: FRINGE BENEFITS**

All employee benefits (i.e. floating holiday, bereavement leave, and tuition reimbursement) will be changed to fiscal year renewal from calendar year, with no adverse impact to employee.

### **SECTION 1: HEALTH INSURANCE**

The City participates in a Section 125 Cafeteria Plan. Under the cafeteria plan, all participating bargaining unit employees will receive a monthly allowance of \$990 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.

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**

Mid-manager employees who retire with either a service or disability retirement from City employment may, at the retiree's discretion, choose to enroll in any available City-provided health insurance plan. Employees who retire shall be eligible for City-paid medical insurance coverage until eligible for Medicare based on the formula set forth below. Upon becoming eligible for Medicare (in your own right or through a current, former, or deceased spouse), the employee may maintain medical insurance with the City by paying one hundred percent (100%) of his/her premium and any related spouse or dependent\* premium. If the retiree is ineligible for Medicare benefits (proof of Medicare ineligibility will be required from the Social Security Administration), the City will continue to pay the premiums under the formula set forth below,

provided the employee remains eligible for coverage under the City-provided health insurance plan. The retiree is responsible for any portion of the health care premium (including any applicable spouse or dependent coverage) not covered by this formula. Participation in any health insurance plan, whether at the City's or the employee's expense is subject to any rules and conditions imposed by the carrier as well as contingent upon as well as contingent upon the carrier's approving the enrollment of the retiree and any applicable spouse or dependent. Further, the retiree, spouse or dependent shall be financially responsible for complying with any carrier-imposed rule or condition. Retirees shall receive premium dollars based on the following:

Years of Service with Colton	Percentage of Cafeteria Dollars	Years of Service with Colton	Percentage of Cafeteria Dollars
5	40%	18	66%
6	42%	19	68%
7	44%	20	70%
8	46%	21	72%
9	48%	22	74%
10	50%	23	76%
11	52%	24	78%
12	54%	25	80%
13	56%	26	82%
14	58%	27	84%
15	60%	28	86%
16	62%	29	88%
17	64%	30	90%

The retiree may use the allotted dollar amount to purchase medical insurance for himself or herself and their legal dependents. The percentage is based on the monthly Cafeteria Plan allowance for active city employees. The dollar amount may fluctuate in future years based on the Cafeteria Plan allowance determined by City Council. However, the dollar amount will never go below the amount the employee will receive when he/she retires.

In the event the retiree and/or dependent premiums exceed the allowance amount per the above schedule/formula, the retiree shall be billed for and must pay the excess/difference on a monthly basis. If the retiree fails to remit payment within 60 days after the billing date, enrollment in the city's plan shall be permanently cancelled for the retiree and any related dependents.

In the event the retiree moves out of state to an area where the city's health insurance carriers do not provide coverage, the retiree must show proof of health insurance coverage and payment of monthly premiums before reimbursement, subject to the aforementioned formula limits.

If the premium cost is less than the amount allocated by the formula, the retiree does not receive the difference. Additionally, there is no opt-out money paid to the retiree.

In the event that the city reduces the cafeteria plan allowance, retirees will not receive an amount of premium dollars that is less than their allowance at the time of the reduction.

The retiree will provide the city with all documentation required for any qualifying event, in a timely manner, but never beyond thirty (30) days of said event.

\*Dependents are defined as spouse, domestic partner, and/or any qualified legal dependent.

### **SECTION 3: TERM LIFE INSURANCE**

The City shall provide a total of \$50,000 term life insurance for each represented full-time employee.

### **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 the first of the month following City Council adoption of this MOU, it shall provide for up to five years of coverage at 66-2/3% of the first \$6,000 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**

#### **ALL NON-PROBATIONARY EMPLOYEES:**

The City agrees to reimburse employees up to \$2,500 per employee, per fiscal year, so long as funds are available, for 100% of costs for tuition and books incurred for job-related education. 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, then by the Department Director and Management Services Director. 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.

For additional requirements see City Administrative Policy 4.05.310.

### **SECTION 6: UNIFORMS**

When the City furnishes uniforms to employees, such uniforms shall be worn at all times during working hours. Supervisors are not required to wear a uniform when engaged in duties away from their regular work crew or when acting on behalf of their Superintendent.

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.

For procedure see Administrative Policy 4.05.260.

Safety work boots/shoes will be provided by the City to those employees for whom safety work boots/shoes are required, to be determined by the Department Director or Human Resources Manager.

## **SECTION 7: WELLNESS PROGRAM**

Workplace wellness programs are recognized for their value in improving health and well-being of their employees. Investing in a citywide wellness program is recognized by management as a way to improve overall employee morale as well as reduce employee turnover and overall health care costs.

The goal of the City's wellness program is to bring awareness of the possible unhealthy habits and lifestyles of City employees, and most importantly to promote healthier behaviors.

By executing a workplace wellness program in the City of Colton, the city's intent is to create a more energetic, positive and productive workplace that provides meaningful gains for the overall health of the city.

The Wellness program is voluntary and each employee will coordinate a wellness screening, which will include a physical. In addition to the annual physical, the wellness program may include any of the programs mentioned below; coordination with the employees own physician or health plan is required. The information received by Human Resources will adhere to the Health Insurance Portability and Accountability Act language (i.e., the HR office will receive only the patient's name and a doctor's note stating that the employee did complete the physical).

In addition to the annual physical, wellness programs can include:

- Smoking cessation
- Weight Management
- Stress Management
- Health Screenings
- Nutritional Education

## **ARTICLE IV: LEAVES**

### **SECTION 1: ADMINISTRATIVE LEAVE**

All classifications represented within this unit with "Exempt" designation, are exempt from overtime and shall receive 80 hours (with the availability of 40 hours pay in lieu of time off buy back once per fiscal year) of administrative leave per fiscal year pursuant to Administrative Policy No. 4.05.140 in lieu of any overtime compensation. For those non-exempt employees in the unit, 40 hours of vacation or compensation time shall be available for buy back.

**SECTION 2: TIME BANK**

Each unit member shall be credited with a 20 hour time bank to be used as paid time off on the first pay period of the fiscal year. These hours must be used within the fiscal year credited and cannot be cashed out upon termination of employment. If an employee has not used all hours by the end of the fiscal year, then the employee will only be credited in the next fiscal year with the number of hours that will bring the total number of hours in the time bank to 20. In other words, the total number of hours in the time bank shall never exceed 20 hours. In addition, the City retains the right at its discretion to require employees to take time off and use these “time bank” hours.

**SECTION 3: 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 Human Resources Manager.

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 service.

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. 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 4: 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 1<sup>st</sup>.

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  
20 Floating Holiday hours accrued each July 1<sup>st</sup>.

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.

## **SECTION 5: 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. 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 BUY BACK**

The City agrees to buy 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.

### **3. SICK LEAVE REPORTS**

In order to receive compensation while absent on sick leave, the employee shall notify his/her immediate superior or the Department Director prior to or within four hours after the time set for beginning his/her daily duties, or as otherwise specified by the Department Director. When absence is for more than three work days, the employee shall file a physician's certificate or a personal affidavit with the Personnel Officer, stating the cause of the absence.

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, but less than twenty	50%
If employed twenty years or more	75%

A regular salaried employee who 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.

**SECTION 6: 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, brother-in-law, sister, sister-in-law, wife, husband, domestic partner, 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 7: 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, vision, 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 Human Resources Division 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 8: INDUSTRIAL INJURY LEAVE/INSURANCE PREMIUMS**

The City will pay the insurance premiums for full-time 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**

All unit members shall work a modified schedule effective July 1, 2011. The start time of each respective employee shall be one half hour later than currently required. End time shall remain unchanged. For purposes of overtime, the work week shall remain 40 hours (e.g., the first 2 hours of overtime in any work week shall be paid at straight time). For employees in exempt classifications, the work week shall be redefined as 38 hours and the stated salary amounts for each classification shall be prorated accordingly. However, the hourly pay rates for these exempt employees that are used for calculating the "cash out" value of various benefits and that are reported to PERS will not be affected.

#### **SECTION 2: WORK SCHEDULE**

Should the city opt to change the Monday—Thursday work schedule, both the City and SBPEA (Mid-Manager Unit) shall meet and confer before implementation of any proposed change.

#### **SECTION 3: 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, domestic partner, child, step-child, foster child, adopted children, son-in-law, daughter-in-law, first cousin, niece, nephew, aunt, uncle 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:

1. Be supervised by or be in the chain of command of a relative.
2. 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.
3. 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.
4. 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 a 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 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 4: LAYOFF POLICY**

The Association agrees to meet and confer with the City if layoffs are anticipated at any time during the terms of the agreement.

##### **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 (G.) of this policy.

If an employee accepts a lower paying or less than full-time position, s/he 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 (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 require the approval of the City Manager.

#### 4. EXCEPTION TO ORDER OF LAYOFF

Whenever a Department Director believes that the best interest of the service 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 5: 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 employee 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, subsection 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 Director.

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 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.

- B. 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.

#### C. 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.

#### D. 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.

#### E. 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:

- 1) A traffic collision in which great bodily injury occurs or where there are other articulable facts which indicate that the employee was driving while under the influence of a prohibited substance.
- 2) "Great bodily injury" is defined as any injury in which death or extended hospitalization are significant possibilities. The supervisor will make the determination on when/if testing will occur with the above circumstances.

### 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 position 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. RETEST

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 employee will receive at least a three hour orientation program.

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

## 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.

## **SECTION 6: RECLASSIFICATION**

Positions, the duties of which have changed materially so as to necessitate reclassification, shall be allocated by the Personnel Officer to a more appropriate class, whether new or already

created, in the same manner as originally classified and allocated. Reclassifications shall not be used for the purpose of avoiding restrictions surrounding demotions and promotions.

## **SECTION 7: 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 the Human Resources Division and it will be date stamped upon receipt.
- B. The Human Resources Manager will review the form.
  - 1) If the Human Resources Manager 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 within 10 working days.
- E. The Human Resources Manager 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 the Human Resource Division. 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 shall meet with representatives of that association to discuss those concerns.
- F. The consultant and/or Human Resource Manager will submit a recommendation to the City Manager. The Human Resource Manager 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 (5<sup>th</sup>) month after the classification is received (see Administrative Policy 4.05.330 for further details).

## **SECTION 8: CITY VEHICLE USE**

Employees who are provided with a City vehicle to travel to and from work 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.

## **ARTICLE VI: GENERAL PROVISIONS**

### **SECTION 1: 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 2: TERM OF AGREEMENT**

The term of this agreement is 42 months beginning July 1, 2010 and ending December 31, 2013.

### **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.

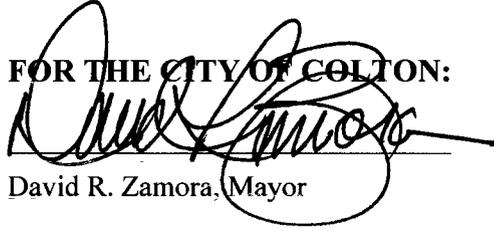
Any prior or existing Memoranda of Understanding between the parties regarding matters within the scope of representation are hereby superseded and terminated in their entirety. Moreover, all "side letter" agreements between the parties that have been entered into prior to the adoption of this MOU by the City Council shall automatically expire on the date this MOU is adopted. Any increases in compensation and/or benefits that were delayed, postponed, or provided by those side letter agreements are hereby waived.

Notwithstanding the above, the parties agree to reopen the meet and confer process over the Grievance Procedure and the Layoff Policy upon request by either party. Any request to reopen the meet and confer process on either of these two items must be made by April 4, 2011.

**SECTION 4: 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:**

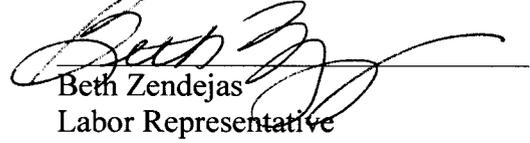


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David R. Zamora, Mayor

3-2-2011  
Date

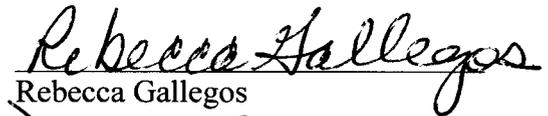
**FOR SBPEA:**



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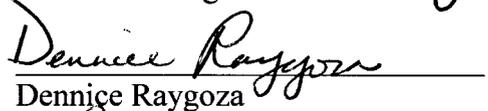
Beth Zendejas  
Labor Representative

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Date



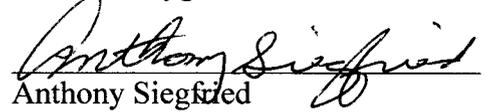
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Rebecca Gallegos



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Dennice Raygoza



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Anthony Siegfried