

CITY OF SARATOGA
MEMORANDUM OF UNDERSTANDING FOR
WAGES, EMPLOYEE BENEFITS
AND CONDITIONS OF EMPLOYMENT

I. INTRODUCTION

This Memorandum of Understanding (MOU), or "AGREEMENT", dated _____, is between the City of Saratoga through its designated representatives, hereinafter referred to as "CITY" and the Northern California Carpenters Regional Council, Carpenters Forty Six Counties Conference Board and Their Affiliated Local Unions, hereinafter referred to as "UNION."

This MOU complies with the provisions of the Meyers-Milias-Brown Act, as contained in Section 3500, et seq., of the Government Code of the State of California in that the employer-employee representatives noted herein did meet in good faith and did reach an understanding on those matters within the scope of representation.

This MOU also complies with Resolution No. 509-2 relating to employer-employee relations, and Resolution No. 489-2, establishing the procedure for meeting and conferring with recognized employee organizations.

II. GENERAL CONDITIONS

A. Total Agreement

This Agreement sets forth the full and entire understanding of the parties for the period beginning July 1, 2007, and continuing through September 30, 2011. This Agreement shall remain in effect until a new Agreement is signed by both parties. This Agreement supersedes any prior understandings, representations, agreements or promises of any kind, whether written, oral, express, or implied between the parties (including all prior Memoranda of Understanding) with respect to the subject matter of the Agreement. No verbal statement or other amendments, except an amendment mutually agreed upon between the parties and in writing attached to this Agreement designated as an amendment to this Agreement, shall supersede or vary the provisions in this Agreement. If any provision of this Agreement is adjudged to be void or unenforceable, the remainder of the Agreement shall nevertheless remain in effect.

Except as specifically provided in this Agreement, it is agreed and understood that the UNION waives its right, and agrees that the CITY shall not be required, to negotiate with respect to any subject or matter covered in this Agreement or with respect to any other matters within the scope of negotiations, during the term of this Agreement.

The waiver of any breach, term, or condition of this Agreement by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

B. City Council Approval

City Council approval of the terms of this MOU is incorporated in Resolution _____ adopted on _____ .

C. Validity of Memorandum

Should any article, section, or portion of this Agreement be held unlawful and unenforceable by any court of competent jurisdiction, the court's decision shall only apply to the specific article, section, or portion of this Agreement directly specified in the decision, and the remainder of this Agreement shall not be affected by the decision.

D. CITY Rights

The CITY reserves, retains, and is vested with any management rights not expressly granted to the UNION by this Agreement. These CITY rights include but are not limited to the right to:

1. Determine and modify the organization of City government and its constituent work units;
2. Determine the nature, standard, levels, and mode of delivery of City services;
3. Determine the methods, means, number, and kind of personnel by which City services are provided;
4. Determine the procedures and standards for selection for employment and promotions;
5. Establish employee performance standards including, but not limited to, quality standards, and to require compliance with those standards;
6. Discharge, suspend, demote, reprimand, withhold salary increases and benefits, or otherwise discipline workers in accordance with applicable laws, the Personnel Ordinance and the Personnel Rules; and
7. Relieve employees from duty because of lack of work or lack of funds, or for inability to perform the job as required, subject to the Personnel Rules and Regulations.

E. Meyers-Milias-Brown Act (MMBA)

Nothing in this Article shall relieve the CITY of its obligation to meet and confer on the impact of the exercise of those rights, which are mandatory subjects of bargaining under the Meyers-Milius-Brown Act. The MMBA is attached to this agreement for reference and incorporated by reference herein its terms.

See Exhibit B for the MMBA.

III. SALARY ADMINISTRATION

A. Salary Ranges

Salary data for each position represented by UNION is periodically collected from the following list of comparable cities:

Los Altos	Menlo Park
San Carlos	Cupertino
Los Gatos	Morgan Hill
Campbell	

The CITY will be adjusting the salary ranges administratively effective July 1, 2008 as a result of the FY 07-08 compensation study and administratively every two years thereafter according to salary survey compensation data, ensuring that the CITY pays the average of its comparable cities.

The CITY classifies all miscellaneous positions according to duties and responsibilities, and a salary range is established for each job classification.

Adjustments to Salary Range as the result of a Salary Survey and Anniversary Date: Any salary range adjustments for a classification implemented by the City will not establish a new salary anniversary date for employees serving in that classification.

Adjustments to Salary Range as the result of a Salary Survey and Retention of Step: Whenever the schedule of compensation for a classification is revised, each incumbent in a position to which the revised schedule applies shall be paid at the same step in the revised range as the step at which the employee was paid in the previous range.

See Exhibit A for FY07-08 range table.

B. 5-Step Salary Plan and Cost of Living Adjustment

For fiscal year 2007/08, salary increases will be retroactive to July 1, 2007.

Cost of Living Adjustment - For fiscal year 2007-08, each UNION member shall receive a cost-of-living adjustment of three percent (3%), retroactive to July 1, 2007. For each subsequent year of this MOU, each UNION member shall receive an annual cost-of-living adjustment of no less than one percent (1.0%) and no greater than two and one-half percent (2.5%). If the United States Bureau of Labor and Statistics Average Consumer Price Index for “All Urban Consumers (CPI-U)” for the months of December to December for the “San Francisco-Oakland-San Jose” region falls below one percent (1.0%), each UNION member shall nevertheless receive a minimum one percent (1.0%) cost-of-living adjustment; if the above Index increases above two and one-half (2.5%), each UNION member shall nevertheless receive a maximum two and one-half (2.5%) cost-of-living adjustment.

Base Salary – Employees occupying a position in a classification covered by this Memorandum shall be paid a base salary within the range established for that position’s classification.

Placement Within Range –The City will determine salary placement consistent with the personnel rules.

Progression Within Range – Salary advancement within an established salary range is customarily considered at one (1) year intervals. Each employee who is employed after July 1, 2006 will be eligible to receive a salary increase to the next higher step within the range of their assigned classification upon the individual employee’s original employment anniversary date (established anniversary date).

Each employee who was hired on or prior to July 1, 2006 will be eligible to receive a salary increase to the next higher step within the range of their assigned classification upon July 1 of each year, (as a result of the City moving from a broad range pay-for-performance system to a step system effective July 1, 2007). July 1 of each year will be the established anniversary date for each employee who was hired on or prior to July 1, 2006.

Eligibility for Progression within Range - All regular employees will be evaluated on an annual basis and will be eligible to advance in their salary range based on annual performance evaluation results.

No increase in salary shall be automatic solely upon completion of a specified period of service. All increases shall be contingent upon a satisfactory annual evaluation of the employee’s performance, and shall require recommendation of the Department Head. In the case that an employee receives a cumulative rating of less than three (3) points on the annual performance evaluation, indicating a cumulative rating less than “meets expectations”, the employee will not receive a salary increase other than an approved and budgeted cost-of-living increase. An employee who is denied an increase in salary may

discuss such denial with his/her Department head and the City Manager (or his/her designee). The decision of the City Manager (or his/her designee) shall be final.

An employee who has received a cumulative rating of three (3) points or greater during the annual employee performance evaluation will be eligible to receive a salary increase of five percent (5%) (1 step) above their existing salary as of the employee's established anniversary date, until such time as the employee reaches the top of his/her salary range, at which time the employee shall not advance beyond the top of the established range, except as provided for in Article III. SALARY ADMINISTRATION, Section D. Performance Incentive Compensation.

Promotion - Promotion is the movement of an employee from one classification to another classification having a higher salary range. At the time an employee is promoted, his or her salary shall be adjusted as follows:

If the first step in the salary range for the employee's new position is at least five percent (5%) greater than the employee's current salary range, the employee shall be moved to the first step of the new salary range.

If the first step in the salary range for the employee's new position is less than five percent (5%) greater than the employee's current salary range, the employee shall be moved to the step which would provide, at minimum, a five percent (5%) increase in salary.

If no step in the salary range for the new position would provide the employee with at least a five percent (5%) salary adjustment, the employee shall be moved to the top step of the new salary range.

NOTE: If an employee is promoted on their anniversary date, the employee shall first receive a salary increase to the next higher step within their existing salary range, following by a promotional salary adjustment as described in this section.

All promotional appointments shall be subject to a probationary period of one year. During probation supervisors may evaluate employees every three months. At six months, a written evaluation will be prepared. Upon completion of the twelve-month probationary period, a second written evaluation will be prepared. At the completion of a successful probationary period, the employee shall be granted regular employment status and may advance in his/her salary range as part of the citywide annual evaluation process.

If it is determined through employee performance evaluation that an employee subject to a promotional appointment does not pass probation, the probationary employee shall be reinstated to the position from which he or she was promoted provided that position is vacant and funded. If no vacancy exists, the employee

may ask to be placed on a re-employment list.

C. Working Out of Classification

Employees represented by UNION who are assigned by a Department Head or the City Manager for more than fifteen (15) consecutive working days in a calendar year to perform the essential functions of a position with a higher salary range than they are regularly assigned shall receive increased compensation of at least five percent (5%) higher than their regular compensation. Out of Class assignments are temporary and shall continue as authorized by a Department Head or City Manager, but not exceed one year. Upon completion of an out of class assignment, an employee will return to his/her regular job classification, salary range, and step.

D. Performance Incentive Compensation

Employees represented by UNION who have remained at the top step of the same salary range for five (5) years may be eligible for an additional step increase of five percent (5%) following receipt of a cumulative rating of three (3) points or greater during the annual employee performance evaluation. Five (5) years after meeting the criteria for the initial performance incentive compensation described above, a qualified employee --that is an employee who has remained at five percent (5%) above the top step of his/her same salary range -- may be eligible for an additional salary increase of five percent (5%) following receipt of a cumulative rating of three (3) points or greater during the annual employee performance evaluation.

E. Annual Performance Review (APR) Process

The City of Saratoga administers an Annual Performance Review (APR) Process. The APR includes a Self Evaluation prepared by the employee and a Performance Evaluation prepared by the employee's supervisor/manager. Ratings on the Performance Evaluation are tied to the following numerical scores:

<u>Score</u>	<u>Rating Description</u>
1	Unsatisfactory
2	Below Expectations
3	Meets Expectations
4	Exceeds Expectations
5	Outstanding

The employee is rated on his/her performance in up to eight (8) categories:

- | | |
|------------------|----------------------------------|
| Customer Service | Ability to Work Well with Others |
| Quality of Work | Accountability |

Initiative
Flexibility

Communication Skills
Supervision – if applicable

The employee receives a composite score based upon individual ratings received under each category.

IV. PROBATIONARY EMPLOYEE AND REGULAR EMPLOYEE

Probationary Employee An employee who is serving a probationary period. The probationary period is part of the selection process. Unless otherwise authorized by the City Manager, probation is a twelve (12) month trial period during which a determination is made as to whether or not an employee is suitable for their position. A new employee serves “at will” and can be dismissed with or without cause by the City for any legal reason during the probationary period.

Separation Without Cause At any time during the probationary period, the employment relationship may be terminated without cause and without right of appeal, grievance or hearing. The City Manager or designee must approve the termination. The probationary employee shall be notified prior to the expiration of the probationary period that he or she has been rejected for regular appointment.

Regular Appointment Requires Passing Probationary Performance Review An employee will receive a regular appointment only when he/she receives a “meets expectations” or above rating on his/her written probationary performance review, resulting in the passing of the probationary period. If the employee does not meet the expectations for the probationary period, he/she will be rejected for regular appointment.

Regular Employee An employee who: (1) is regularly scheduled to work on a continuing basis, (2) and has completed the probationary period for the position he or she holds, and (3) holds a budgeted position.

V. LAYOFF

A. Policy It is the City’s intent to avoid employee layoffs whenever possible. When, however, in the City’s judgment it is necessary to abolish a position of employment, the employee holding the position may be laid off or demoted without disciplinary action and without the right of appeal. When feasible and practicable, the City will meet with employees of the affected classification in order to determine whether or not a voluntary reduction in hours or other solution may be presented in order to avoid the pending layoff.

B. Notice Whenever possible, an employee subject to layoff will be given at least 14 calendar days’ notice prior to the effective date of the layoff. Layoff notification will be provided in the form of a “Notice of Layoff.” At the time

of notice, the employee will also be notified of any displacement rights or rights to reemployment, as described below.

C. Order of Layoff

Employees shall be laid off in the following order: (1) temporary employees, (2) part-time employees, (3) probationary employees, (4) regular employees. All employees shall be laid off in the inverse order of their seniority within their classification. Seniority is determined by length of service. "Length of service" means employment without interruption, including all days of attendance at work and authorized leaves of absence. Length of service does not include unauthorized absences or periods of suspension or layoff.

In cases where two or more employees in the classification have the same seniority determination, the following procedure will be used: Employees shall be laid off on the basis of the last evaluation rating in the classification, provided that such information has been on file at least 30 days and no more than 12 months prior to lay off. In such a case, employees shall be laid off in the following order: (1) employees with an "unsatisfactory" or "below expectation" or similar performance numerical rating, (2) employees having a "meets expectations" or similar performance numerical rating, (3) employees with an "exceeds expectations or outstanding" or similar performance numerical rating.

D. Demotion Upon request of the employee and with approval of the appointing authority, an employee subject to layoff who has not held status in a lower classification may be allowed to demote to a vacant, authorized position in the same department if he/she meets all the requirements of the lower position as determined by the appointing authority. All employees who are demoted under this paragraph will be paid at the rate of pay for the lower position.

E. Transfer The appointing authority may transfer an employee subject to layoff to a vacant, authorized position if the employee is qualified and capable of performing the essential functions of the position as determined by the appointing authority. An employee who is transferred will be paid at the rate of the position to which he or she is transferred. Any employee, who does not accept a transfer within 5 working days after a Notice of Transfer is given, will have automatically forfeited the ability to transfer. If the transfer involves a change from one department to another, both department directors must consent unless the City Manager orders the transfer for purposes of economy or efficiency.

F. Re-employment Regular employees who have received a satisfactory or better evaluation for the 12 months prior to lay off and have completed their probationary period at the time of the lay off, shall be automatically placed

on a re-employment list for one year for the classification from which they were laid off. This list will be used when a vacancy arises in the same or a lower class of position. Re-employment shall be based on seniority should more than one person in the same classification be laid off from the same department. Employees who are offered and refuse re-employment will be removed from the re-employment list. Employees re-employed in a lower class, or on a temporary basis, will continue to remain on the list for the higher position for one year.

G. Insurance Benefits Upon Layoff The City will extend medical insurance benefits for two months to an employee who has been laid off. During this two-month period, the City will continue to pay the previously established contribution for the employee's medical insurance premium.

H. Paid Time Off (PTO) Upon separation from the City service, the City agrees to pay 100% of the employee's accrued PTO at the employee's regular rate of pay at the time of separation.

VI. WORKING CONDITIONS

The CITY will continue to operate on a 9/80 work schedule to be determined by the City Manager and Directors where a full-time work week, constitutes forty (40) hours within seven consecutive 24 hour days, also defined as one hundred sixty-eight (168) hours. Employees on a 9/80 schedule are scheduled to work 8 nine hour days, 1 eight hour day, and have one day off every two weeks. An employee's workweek begins in the middle of the employee's 8 hour day and the employee's day off is on the same day of the week in the following week. For example, the standard 9/80 work schedule for most ASSOCIATION members is as follows:

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
off	9	9	9	9	4 (end)	off
					4 (start)	
					off (end)	

off	9	9	9	9	off (start)	off
off	9	9	9	9	4 (end)	off
					4 (start)	
off	9	9	9	9	off (end)	off
					off (start)	

The City Manager and Directors have discretion to require some employees to work a schedule different from the standard 9/80 schedule including a schedule that is not 9/80. Fridays when the CITY is not open for business are referenced as “off-Fridays.”

The work period (pay period) is the period encompassing two consecutive workweeks.

A holiday furlough will exist whereby the CITY operations are closed from December 24 through January 1 of every year. Employees shall utilize their available balances (annual leave, compensatory time), if applicable. Employees that utilize unpaid leave due to insufficient leave balance shall maintain regular benefit status.

**VII. OVERTIME
FAIR LABOR STANDARDS ACT AND OVERTIME**

Those employees eligible through the Fair Labor Standards Act for overtime shall receive it in the following way:

- 1) Overtime for all eligible UNION members shall be defined as any time worked beyond the standard workday or beyond the standard work week as described above. The 9/80 work schedule may not be used in any application that requires entitlement to FLSA overtime as the CITY and UNION agree to the 9/80 work schedule;
- 2) Overtime compensation shall be computed at one-and-a-half times the employee’s regular rate of pay for hours in excess of 9 hours in one day or for time worked over 40 hours in one workweek and two times for hours in excess of 13 hours in one day or 60 hours in one work week;
- 3) CITY agrees to include paid leave time taken as time worked for purposes of calculating eligibility for overtime pay for all regular non-exempt positions in the CITY service;
- 4) All overtime is to be approved in advance and in writing by the Department Head and accepted in writing by the employee. This written confirmation is to be turned in with the employee’s time sheet for each pay period.

COMPENSATORY TIME OFF IN-LIEU OF OVERTIME

Supervisor Approval Required Before Work. An employee may opt to accrue compensatory time-off ("CTO") in lieu of cash payment for overtime worked if his or her supervisor agrees prior to overtime work being performed. Employees must use CTO within 180 days of accrual unless otherwise approved by a department director(s).

Accrual Rate CTO accrues at the rate of 1.5 hours for each hour worked over 40 hours of actual work in the employee's work week.

Employee Requests to Use CTO The City will grant an employee's request to use accumulated CTO provided that: (1) the department can accommodate the use of CTO on the day requested without undue disruption; and (2) the employee makes the request no later than five days prior to the date requested. If the employee does not provide five days' notice, or if the department cannot accommodate the time off, the City will provide the employee the opportunity to cash out the CTO requested at the end of the current pay period.

City Cash Out The City reserves the right to cash out accumulated CTO at any time.

Employee Cash Out During employment, CTO is cashed out at the employee's current FLSA regular rate of pay (including all FLSA-applicable salary differentials). Employees separating from City service shall be compensated for all accrued, unused compensatory hours at the current FLSA regular rate of pay, or the average regular rate for the prior three years, whichever is higher.

VIII. CALL OUT PAY

Non-exempt employees who are called out to perform work of an emergency nature are compensated at their regular rate of pay for a minimum three hours for each occurrence at one and one-half times (1.5) the hourly rate, on weekends between 6:00 P.M. Friday (or Thursday if the next day is an "off-Friday" under the CITY's 9/80 work schedule) and 5:59 A.M. Monday, and on holidays. Employees will be compensated from the time they leave their residence until their direct return home after being released from the assignment. A second callout while responding to the first does not restart the clock.

IX. STANDBY PAY

Non-exempt employees and Maintenance Supervisors may be assigned to standby

duty as determined by the City Manager or Department Head. Anticipated events or seasons that would trigger standby duty include storms/storm season or the period of holiday work furlough. Employees assigned to standby duty must report for duty within one hour of notification and be able to perform the duties as assigned. Employees assigned to standby duty will be issued a City cell phone and must respond with a telephone call. Employees are compensated \$ 37.50 for each weeknight, defined as from the end of the work day's shift to the beginning of the next day's shift, and \$75.00/day for each weekend defined as the end of the workday Thursday or Friday to the beginning of the next workday (off-Friday, Saturday, Sunday), or holiday assigned to standby status.

X. MEAL REIMBURSEMENT

The CITY will provide a meal or reimburse the cost of a meal up to \$10 for each employee who is required to work extended overtime or who is required to work on extended emergency call out. Meal reimbursement is available if the employee works in excess of ten (10) consecutive hours during a scheduled workday or if the employee works in excess of four (4) hours during an emergency call out. Two meals will be provided if work is required in excess of eight (8) hours during an emergency call out.

XI. PRODUCTIVITY/GOALS

Employees and Management agree to cooperate and assist in improving productivity through assistance in developing:

- A. A more positive work environment.
- B. Innovative techniques for improving operational activities.
- C. Increased accuracy.
- D. Methods to maximize time usage.
- E. More effective communication with the public and other departments.

XII. EMPLOYEE BENEFITS

The City of Saratoga currently offers the benefits listed below. For a detailed description of these benefits, employees should refer to the brochures distributed by the individual plan providers.

- A. Discretionary Benefits All regular City employees, who are scheduled to work, at least 40 hours per week, are eligible for the following benefits. The City's contribution for regular part-time employees and full-time employees working less than 40 hours per week will be prorated in proportion to the

number of hours worked or accrued leave hours paid.

- B. Health Insurance The City contracts with the California Public Employees Retirement System for the PERS health benefits program which includes Kaiser and Blue Shield Health Management Organizations and preferred provider basic health plans, PERS Choice and PERS Care.

Employees may enroll in the plan of their choice; however, some plans require that an employee live within a specific geographic area.

The effective date of health coverage is the first day of the month following the employee's date of hire.

The health premium is a percentage of the premium paid by the employee. Effective July 1, 2006, the City pays 100% of the premium, unless otherwise negotiated by individual bargaining units. Health in-lieu payments are made to employees who do not elect health insurance. For employees who elect to enroll in the PERS Care plan, the City will contribute the amount equal to the Kaiser, Blue Shield, or PERS Choice plan premium, whichever is greater, dependent on the plan choice (i.e. employee only, employee & 1 dependent, or employee & 2+ dependents).

If an employee and spouse are both City employees, only one employee is allowed to carry health coverage. One employee may choose to enroll in family coverage and the other employee must waive their health plan coverage and be enrolled as a dependent.

The health in-lieu payment is not an option for married couples or domestic partners (pursuant to Family Code sections 297, et seq.) employed with the Agency.

- C. Dental Insurance The City contracts with Delta Dental, a preferred provider plan, and Delta Care, a management organization plan. The dental premiums are 100% paid by the City. Dental in-lieu payments are made to employees who do not elect dental insurance coverage.

The effective date of dental coverage is the first day of the month following the employee date of hire.

The dental in-lieu payment is not an option for married couples employed with the City.

- D. Deferred Compensation (457 Plan) The City provides employees the opportunity to contribute toward an IRS Section 457 deferred compensation plan. Employees may contribute an amount up to a federally mandated maximum per calendar year on a pre-taxed basis.

- E. Retirement Plan The City is a contracting agency of the California Public Employees Retirement System (PERS). Regular employees become members immediately upon employment and become vested after five (5) years of service. The City pays the employees' required contribution (7% of employee's compensation) in addition to the City's contribution as a contracting employer. The City through its contract with PERS provides for retirement benefits including 2% at 55 (effective September 1, 1999), one year final compensation, service credit at retirement for unused annual leave, 1959 survivor benefits (Level 3) if death occurs prior to retirement and after retirement, continuance of benefits to employee's survivor. This information is outlined in detail in the booklet "PERS Benefits for Local Miscellaneous Members". In addition, the CITY's PERS contract allows veteran employees to purchase years of military service for retirement credit.

Employees represented by UNION participate in a "Retired Employees Medical Expense Reimbursement Program" funded through a monthly deduction from each employee's paycheck in an amount equal to five percent (5%) of the employee's health insurance premium. Through the program, the CITY, from the proceeds of the employees' payroll deductions, reimburses medical expenses of retired employees represented by UNION, with at least twenty years of service to the CITY, a maximum \$200 monthly until the retired employee is eligible for Medi-Care. Employees must comply with CITY procedures and submit proof of expenses to receive reimbursement. If an employee has not worked full-time for at least ten of the twenty years of service, the \$200 maximum medical reimbursement will be pro-rated based on the employee's full time equivalency in the last ten years of service.

- F. Short Term Disability Insurance The City will pay 75% of an employee's full salary and maintain existing insurance benefits, subject to eligibility requirements, for an employee on a disability leave, for six months from the date of the qualifying injury or illness. Short term disability payments will commence only after 12 continuous working days during which the employee is totally disabled, or when all accrued paid time off is exhausted, whichever is later. Short term disability payments are reported to PERS as salary earned. An employee on disability leave is entitled to accrue paid time off within the six (6) month period after the date of injury or illness and the accrual of paid time off shall be prorated based on the number of hours of paid time off that is being utilized by the employee. Upon exhaustion of all PTO, an employee on short term disability leave shall no longer accrue paid time off. In other words, while an employee is receiving the short-term disability payment of 75% of an employee's full salary, the employee will not accrue paid time off.

- G. Long Term Disability Insurance The City provides a long term disability plan to provide an employee with income protection. The City will pay 75% of an employee's full salary and maintain existing employee benefits for the first six (6) months. Following the six (6) months, the group insurance policy will cover 66% of the employee's salary up to a maximum of \$2,000 per month. If the disability is job related, the City will maintain existing employee benefits for twelve (12) months. Benefits will be reduced for income received through social security, workers' compensation and/or California State Disability Insurance (SDI). Payments made to the disabled employee through this group policy are not reported to PERS as salary earned.

Employee's whose salaries exceed \$3,000 monthly are eligible to purchase additional long term disability insurance; however, availability of the plan is subject to the carrier's minimum requirement of ten (10) enrollees.

- H. Life Insurance and Accidental Death Insurance The CITY provides for \$50,000 of life and accidental death and dismemberment insurance for all non-management and \$100,000 of life and accidental death and dismemberment insurance for mid-management employees. UNION members designated mid-management include; Streets Supervisor and Parks Supervisor. Coverage shall begin first day of the month following date of hire and ends on the date of separation. Employees may purchase additional life insurance for themselves and/or their dependents; however, availability of additional insurance is subject to the group carrier's requirements.
- I. Employee Assistance Program Counseling services are available to employees and their immediate family. Programs include personal financial management, stress management; marital and related domestic issues, drug or alcohol dependency, and other personal and work related issues.
- J. Flexible Medical Spending Plan Under Section 125 of the Internal Revenue Code, the employee may divert, on a pre-tax basis, up to a federally prescribed maximum of salary per year into a Medical Flexible Spending Account for eligible out-of-pocket medical and dental expenses.
- K. Dependent Care Spending Plan Under Section 125 of the Internal Revenue Code, the employee may divert, on a pre-tax basis, up to a federally prescribed maximum of salary per year into a Dependent Care Flexible Spending Account for eligible out-of-pocket dependent care expenses.

Any employee who declines to accept coverage in the PERS Health Program, evidenced by signing a waiver form, shall receive a monthly Benefits Allowance of \$118.75.

Any employee who declines to accept coverage in the Delta Dental Plan, evidenced by signing a waiver form, shall receive a monthly Benefits

Allowance of \$25.

The monthly Benefits Allowance for regular part-time employees and full time employees working less than full time will be pro-rated in proportion to the number of hours worked or accrued leave hours paid.

- L. Long Term Care Employees may purchase long term care insurance through a group benefits program administered by PERS.
- M. Legislated Benefits The following benefits are mandated by law and apply to all City employees:
 - N. Workers' Compensation This insurance, paid by the City, assists employees in the event they become injured on the job or become ill due to their job.
 - O. Unemployment Insurance Compensation The State Unemployment Insurance program, paid by the City, provides employees with an income who become unemployed through no fault of their own.
 - P. Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA) A federal health insurance law that requires employers to offer employees and their family members continued participation in employer's group health insurance program, at special rates, following a "qualifying event," including going on unpaid status while on a California Family Rights Act (CFRA) or Family Medical Leave Act (FMLA) leave and termination from employment.
 - Q. Health Insurance Portability and Accountability Act (HIPPA) A federal law that limits the circumstances under which medical coverage may be excluded for pre-existing medical conditions and protects the dissemination of certain health-related information.

XIII. PAID TIME OFF (PTO)

The City provides Paid Time Off (PTO), also referred to as annual leave, benefits to regular full-time employees for the purpose of rest, relaxation, and planned interruptions from the workplace including vacation, illness, caring for children, school activities, medical/dental appointments, personal business, or emergencies. The City encourages employees to take time off in order to receive the personal replenishment value intended. All use of PTO is to be scheduled in advance and approved by a supervisor except in the case of illness or an emergency. PTO must be taken by exempt employees only in increments of (4) hours or more in a workday (29 CFR 541.710 Employees of Public Agencies). For example, where the employee leaves work for four or more hours early prior to the start of a vacation period.

Eligibility All regular full-time employees are eligible to take and/or accrue

paid time off based on their continuous length of service, measured from the date of hire. Continuous length of service is defined as service that is uninterrupted by termination of employment and subsequent rehire by the City or a break in service that has been bridged.

Paid Time Off (PTO) Accrual The amount of PTO earned each year is based on the employee’s continuous length of service. PTO hours are calculated as earned on a bi-weekly accrual schedule. All PTO hours are based on compensated work hours. Therefore, PTO accruals for regular part-time employees scheduled to work less than 40 hours per week, shall be prorated accordingly. Employees will not accrue PTO hours while on unpaid status.

Paid Time Off (PTO) Accrual Schedule for Full-Time Employees

Years of Service	Days Accrued	Hours Accrued	Maximum Annual Accrual Hours
Years 0 thru 5	22	176	600
After 5 years	27	216	600
After 10 years	32	256	600

Maximum Annual Accrual and PTO Sellback and Optional End of Fiscal Year Payout

There is a cap on the amount of PTO time an employee can accumulate. Employees may carry over up to 600 unused PTO hours from calendar year to calendar year. Any hours in excess of 600 on the books as of December 31 each year will be automatically paid out to the employee at the employee’s regular rate of pay, based on length of service at the following rates:

Service Length	% Payout
Years 0 thru 5	50%
After 5 years	75%
After 10 years	100%

Employees may be paid at the employee’s regular rate of pay, at their request, each January for their accrued leave in excess of 160 hours as of December 31, based on length of service at the rates above.

PTO Upon Termination Upon separation from City service, the City will pay 100% of the employee’s accrued paid time off at the employee’s regular rate of pay. When an employee voluntarily resigns from employment, no paid time off may be used between the time of the notice of resignation is given and the employee’s last day of work unless authorized by the City Manager.

Payout at Retirement Upon retirement from City service, an employee must use at least half of their accrued paid time off for the purpose of obtaining additional service credit under PERS. Employees may choose to use all of his/her accrued paid time off as sick leave for service credit. If an employee chooses to apply less than 100% of his/her paid time off toward PERS service credit, the City will pay 100% of the employee's accrued paid time off at the employee's regular rate of pay.

Administrative Leave Administrative Leave is compensated time off given to regular, full-time exempt employees of the City. This leave shall be taken in a manner consistent with PTO. Use of administrative leave is a privilege and is provided in recognition that City projects often require employees to devote whatever hours are necessary, irrespective of a regular scheduled workweek, to fulfill the obligations of the job.

CITY shall grant UNION members in exempt classifications, on a fiscal year basis, twenty (20) hours of administrative leave.

Administrative Leave must be taken by exempt employees only in increments of (4) hours or more in a workday (29 CFR 541.710 Employees of Public Agencies). For example, where the employee leaves work for four or more hours early to take care of personal business.

Administrative Leave cannot be carried over from year to year and must be used by June 30th of the fiscal year. Administrative Leave must be exhausted prior to using PTO.

C. Holidays

The CITY observes the following paid holidays:

- | | |
|-----------------------------------|--------------------------------------|
| (1) New Year's Day | January 1 |
| (2) Martin Luther King's Birthday | 3 rd Monday in January |
| (3) President's Day | 3 rd Monday in February |
| (4) Memorial Day | Last Monday in May |
| (5) Independence Day | July 4 |
| (6) Labor Day | 1 st Monday in September |
| (7) Columbus Day | 2 nd Monday in October |
| (8) Veteran's Day | November 11 |
| (9) Thanksgiving Day | 4 th Thursday in November |
| (10) Day after Thanksgiving | Friday after Thanksgiving |
| (11) Christmas Eve | December 24 |
| (12) Christmas Day | December 25 |
| (13) New Year's Eve | December 31 |

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If a holiday falls on a Saturday, the preceding Friday will be observed. If a holiday falls on a Sunday, the following Monday will be observed. In those years in which one of the Christmas and/or New Year's holidays falls on a weekend, the Friday preceding the weekend and the Monday following the weekend shall be observed as holidays. If a holiday falls on an off-Friday, the holiday will be observed on the preceding Thursday. In general, holidays shall be compensated as a regular day's salary.

If a holiday occurs when an employee is using annual leave, the holiday will not be charged against the employee's annual leave balance. In order to receive holiday pay, an employee must be on the payroll on the last regularly scheduled workday preceding the holiday and the first regularly scheduled work day following the holiday with two exceptions:

1. An employee on Disability Leave shall only be entitled to receive holiday pay within the six-month period after the date of injury/illness. If the employee is using annual leave when the holiday occurs, payment for the holiday shall be prorated to the amount of annual leave being used in the pay period in which the Holiday falls. If the employee is receiving Short Term Disability payments in the pay period when the holiday occurs, payment for the holiday shall be at 75% of the employee's regular rate of pay.
2. An employee on Industrial Injury Leave shall be entitled to receive full holiday pay within the six-month period after the date of injury/illness. After six months, holiday pay shall be prorated to the amount of annual leave, if any, being used by the employee.

D. Jury Duty Leave

Employees who are called for jury duty continue to receive full pay and benefits for that period of absence. An employee shall be paid the difference between his or her regular salary rate and the amount of cash pay received, except travel pay, for jury duty. The time spent on jury duty is not work time for purposes of calculating overtime compensation.

E. Military Leave

An employee in a reserve component of the armed forces of the United States is entitled to temporary military leave not to exceed 180 calendar days during any period of ordered duty for active military training. An employee who has been employed by a public entity, including prior military service, for at least one year immediately prior to the day on which the absence begins is entitled to receive full salary and benefits during the first 30 calendar days of such temporary military leave, in addition to whatever pay is received from the federal government for training. Pay for such purposes shall not exceed 30 days in any one fiscal year.

F. Industrial Injury Leave

This is leave for an on-the-job injury or illness. Beginning on the date of injury/illness, the CITY shall pay an employee's full salary for up to the first three consecutive workdays of any absence due to any one injury or illness. In the event that such leave exceeds three consecutive workdays, the employee shall be entitled to Workers Compensation benefits as

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prescribed by law. Monies paid through a third party administrator are not reported to PERS as salary earned. In addition, the employee may use annual leave to supplement Workers Compensation benefits up to his/her full salary. An employee on Industrial Injury Leave will continue to receive full CITY paid insurance benefits (medical, dental, life, and long term disability) for up to 12 months from the date of injury/illness.

In the event that an employee suffers an injury or illness on the job, whether or not medical treatment is necessary, he or she must advise the supervisor at once and fill out an employee claim form. An employee must also indicate on their time card any time off taken due to an on-the-job injury or illness, or for related follow-up medical appointments.

Upon return to work from an Industrial Injury Leave, an employee shall provide a written statement from a doctor to his/her immediate supervisor stating that a specified number of appointments are necessary for Workers Compensation approved treatment. This shall occur before the scheduling of treatment begins. Employees shall be expected to the extent possible to schedule appointments for follow-up medical treatments so as to minimize the inconvenience to fellow employees and the impact on the employee's ability to perform his/her job.

G. Leave Without Pay

It is not the policy of the CITY to grant leaves of absence under most circumstances. In cases of hardship or for other good and sufficient reasons, the City Manager may grant leaves of absence upon written request by an employee, for a period up to 90 days. The employee will not accrue any annual leave while on leave without pay and the leave period will be considered as discontinuous service. During the time an employee is on leave without pay, the CITY may discontinue paying for insurance benefits on behalf of the employee, although the employee shall have the option to continue benefits at his/her own cost.

XIV. RETIREMENT (PERS)

The City maintains a Retirement Reserve Fund on its books to ensure sufficient funds exist to provide this benefit to all current employees through age 55, (i.e. for 35 years or through the year 2034). Funds deposited into the Retirement Reserve Fund by the CITY, along with all interest accruing thereto, shall belong to the CITY and shall be commingled with the CITY's investment portfolio. In October of each year, the CITY shall review the past and projected performance of the Retirement Reserve Fund, along with actuarial data provided by PERS, to determine the amount to be deposited into the Retirement Reserve Fund on July 1. By May 1 of each year, the CITY shall report to UNION the amount of its next contribution to the Retirement Reserve Fund along with the assumption used to determine the contribution amount.

Employees who retire from the City of Saratoga and who are enrolled in a PERS-sponsored health plan at the time of separation are eligible to continue their coverage, through the "Retired Employees Medical Expense Reimbursement Program" as described in section XII.E.

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The parties agree to a scheduled reopener in 2009 for the purpose only of discussing the financial feasibility of enhancing the City's retirement package with PERS (i.e., moving from the current 2% at 55 to 2.5% at 55). The discussion will be limited to (1) PERS financial situation and whether it will become superfunded and, therefore, require a smaller contribution from the City; and (2) the City's financial situation and whether the City can afford to fund all or part of an enhanced retirement for employees. The parties will schedule a time for the reopener in 2009 within 60 days after the City receives an actuarial valuation from PERS of the cost of 2.5% at 55 and the discussions will not extend beyond 60 days of the reopening.

XV. UNIFORM AND CLOTHING ALLOWANCES

Each regular full-time Park and Street Maintenance employee shall receive an allowance of \$400 (four-hundred dollars) per fiscal year for the purchase of pants and safety boots, and for uniform cleaning. Three shirts per employee per year are purchased directly by the CITY, in colors designated by the department head. The Uniform and Clothing Allowances shall be paid on the second pay date in July. The Uniform and Clothing Allowances shall be prorated from the date of hire for a newly hired employee.

Uniform and clothing allowances are reported to PERS as salary earned.

XVI. TUITION REIMBURSEMENT

All regular employees of the CITY who have been employed continually for at least three (3) months prior to the commencement of an approved or required course are eligible for the City's tuition reimbursement program.

A. Coursework for Degree or Certificate

If the course(s) taken is/are job related or in fulfillment of the requirements for a degree or certificate, one-hundred percent (100%) reimbursement will be afforded for tuition, fees and books by the CITY up to a maximum of one thousand dollars (\$1,000) per employee per fiscal year. The Department Head and City Manager will determine job-relatedness.

B. Coursework for Professional Development

If the course(s) is/are not specifically related to the employee's current position, and does not fulfill the requirements for a degree or certificate, but does provide for professional development related to the worker's position of employment or a higher position in the City, reimbursement will be afforded for tuition, fees and books by the CITY at one-hundred percent (100%), up to a maximum five hundred dollars (\$500) per employee per fiscal year.

Reimbursement will be afforded after successful completion of the course(s) requirements. Successful completion is defined as a "C" grade or a "Pass" on a pass-fail system.

XVII. ARBITRATION AND GRIEVANCE PROCEDURE

If the Union believes that the City has violated this Agreement, such matters arising during the term of this Memorandum of Understanding ("grievances") will be resolved through this

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Grievance Procedure, which is the sole and exclusive method of doing so.

STEP (1) The Union Representative will attempt to resolve the matter with the supervisor. If the matter is not resolved the Union will file a written grievance with the City's Human Resources Representative within fifteen days after the employee or Union is aware or reasonably should be aware of the act or omission that caused the grievance. The grievance shall specify the date(s) of the alleged violation(s) and the provisions of the Agreement applicable to the dispute. A grievance not filed in writing within the above time shall be invalid, excepting any complaint relative to wages shall not be deemed invalid until thirty (30) days subsequent to origin of cause of the complaint and in no event shall an employee be deprived of actual wages due. The Company shall notify the Union of the name, address, telephone number and fax number of the City's designated Human Resources representative no later than five (5) working days after this Agreement has been ratified and no later than five (5) working days from the date the City assigns the Human Resources representative duties to a different individual

STEP (2) The City shall answer the grievance in writing within ten (10) working days after the written grievance is filed. The Company Human Resources representative and the Union will discuss the grievance during this period. If the grievance is not settled, the Union may advance it to Step 3 by giving written notice to the City Manager within five (5) working days after the City answers the grievance in writing. If the City does not timely file an answer, the grievance will automatically advance to Step 3 and the Union may deliver written notice of arbitration immediately. The City shall notify the Union of the name, address, telephone number and fax number of the City's Manager no later than five (5) working days after this Memorandum of Understanding has been ratified and no later than five (5) working days from the date the City assigns the City Manager representative duties to a different individual.

STEP (3) During the five (5) working days after a grievance advances to Step 3, the City Manager and the Union will attempt to settle it. If it is not settled during that five (5) day period, the Union may advance it to Arbitration by delivering written notice to the City Manager within ten (10) working days after the end of the five (5) working day period. In the absence of such written notice, the grievance will be settled on the basis of the City's answer.

The time limits in this Grievance Procedure may be extended by written agreement. Each party will provide the other with a current address of that party's representatives identified above.

ARBITRATION

(a) Upon filing by the Union of an appeal to arbitration as provided in Step 3 of the Grievance Procedure, the parties will promptly attempt to agree on an independent arbitrator to hear and resolve the grievance.

(b) If the parties are unable to agree on an arbitrator within five (5) working days after

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the Union delivers the notice of appeal to arbitration, either party may apply to the State Mediation and Conciliation Service for a panel of seven arbitrators who are members of the National Academy of Arbitrators. The party applying for the list will request that the list be sent by the SMCS to both parties.

(c) Upon receipt of the list, the parties will promptly select an arbitrator to hear and decide the grievance by alternately striking names from the list (coin toss for first strike) until only one remains, and s/he will be the arbitrator for the case.

(d) The arbitrator will decide the case by a written opinion following the hearing. The Arbitrator's decision will be final and binding provided that the arbitrator's decision is based on the provisions of this Agreement as written and does not add to, subtract from or ignore any provision of this Agreement. Either party may have a transcript of the hearing made, but in that event that party will pay for the transcript.

(e) The fees and expenses of the arbitrator will be paid one-half by each party. Each party's own expenses will be paid by that party.

XVIII. ALCOHOL AND DRUG ABUSE POLICY

Purpose It is the intention of this policy to eliminate substance abuse and its effects in the workplace. While the City of Saratoga has no intention of intruding into the private lives of its employees, involvement with drugs and alcohol can take its toll on job performance and employee safety. Employees must be in a condition to perform their duties safely and efficiently, in the interest of their fellow workers and the public, as well as themselves. The presence of drugs and alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective.

Employees who think they may have an alcohol or drug usage problem are urged to voluntarily seek confidential assistance from the Employee Assistance Program Counselor. While the City will be supportive of those who seek help voluntarily, the City will be equally firm in identifying and disciplining those whose continued substance abuse, even if enrolled in counseling or rehabilitation programs, results in performance problems, danger to the health and safety of others and themselves and/or violations of federal, state or City laws/policy.

Supervisors will be trained to recognize abusers and become involved in this control process. Alcohol or drug abuse will not be tolerated, and disciplinary action, up to and including termination, will be used as necessary to achieve this goal.

This policy provides guidelines for the detection and deterrence of alcohol and drug abuse. It also outlines the responsibilities of City managers and employees. To that end, the City will act to eliminate any substance abuse (alcohol, illegal drugs, prescription drugs or any other substance which could impair an employee's ability to safely and effectively perform the functions of the particular job) which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or damage to the Agency's reputation. All persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination, or in not being hired.

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In recognition of the public service responsibilities entrusted to the employees of the City, and that drug and alcohol usage can hinder a person's ability to perform duties safely and effectively, the following policy against drug and alcohol abuse is hereby adopted by the City.

Policy It is City policy that employees shall not be impaired by or have in their biological system, or be in possession, of alcohol or drugs while on City property, at work locations, or while on duty or subject to being called to duty, and that employees shall not sell or provide drugs or alcohol to any other employee or person while on duty or subject to being called to duty.

While use of validly prescribed medications and drugs does not violate this policy per se, failure by an employee to notify his/her supervisor, before beginning work, when taking medications or drugs which could foreseeably interfere with the safe and effective performance of duties, or the operation of City equipment, can result in discipline, up to and including termination. In the event there is a question regarding an employee's ability to safely and effectively perform assigned duties while using such medications or drugs, clearance from a qualified physician may be required.

The City reserves the right to search, without employee consent, all areas and property in which the City maintains control or joint control with the employee. Otherwise, the City may notify appropriate law enforcement agencies that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City.

Refusal to immediately submit to an alcohol and/or drug analysis when requested by City management or law enforcement personnel, or refusal to submit to a search of personal properties if requested by law enforcement personnel, may constitute insubordination and be grounds for discipline, up to and including termination.

Employees reasonably believed to be under the influence of alcohol or drugs shall be prevented from engaging in further work and shall be detained for a reasonable time until he or she can be safely transported from the work site.

The City is committed to providing reasonable accommodation to those employees whose drug or alcohol problem classifies them as disabled under federal and/or state law.

The City has established a voluntary Employee Assistance Program (EAP) to assist those employees who voluntarily seek help for alcohol or drug problems. The City will provide separate written notice of the availability of this program to all employees. Employees should contact their supervisors of the EAP Counselor for additional information.

Application This policy applies to all employees of and to all applicants for positions with the City. This policy applies to alcohol and drugs, including all substances, drugs or medications, whether legal or illegal, which could impair an employee's ability to effectively and safely perform the functions of the job.

Employee Responsibilities

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An employee must:

- Not report to work or be subject to duty while his or her ability to perform job duties is impaired due to on or off duty alcohol or drug use;
- Not possess or use alcohol or impairing drugs, including illegal drugs and prescription drugs without a prescription, during working hours or while subject to duty, on breaks, during meal periods or at anytime while on City property;
- Not directly or through a third party sell or provide drugs or alcohol to any person, including any employee, while either or both employees are on duty or subject to being called to duty;
- Submit immediately to an alcohol or drug test when requested by a City representative;
- Notify his or her supervisor, before beginning work, when taking any medications or drugs, prescription or non-prescription, which may interfere with the safe and effective performance of duties or operation of City equipment; and
- Provide within 24 hours of request, bona fide verification of a current valid prescription for any potentially impairing drug or medication identified when a drug screen/test is positive. The prescription must be in the employee's name.

Management Responsibilities

- Managers and supervisors are responsible for reasonable enforcement of this policy.
- Managers and supervisors may request that an employee submit to a drug and/or alcohol test when a manager or supervisor has a reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol while on the job or subject to being called.
- "Reasonable suspicion" is a belief based on objective facts sufficient to lead a reasonably prudent supervisor to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or so the employee's ability to perform his or her job safely is reduced.
- For example, any of the following, alone or in combination, may constitute reasonable suspicion depending upon the circumstances in which the behavior is observed and/or reported:
 - Slurred speech;
 - Alcohol odor on breath;
 - Unsteady walking and movement;
 - An accident involving City property, where it appears the employee's conduct is at fault;
 - Physical altercation;

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- Verbal altercation;
 - Unusual behavior;
 - Possession of alcohol or drugs;
 - Information obtained from a reliable person with personal knowledge.
- Any manager or supervisor requesting an employee to submit to a drug and/or alcohol test should document in writing the facts constituting reasonable suspicion that the employee in question is intoxicated or under the influence.
 - Any manager or supervisor encountering an employee who refuses an order to submit to a drug and/or alcohol analysis upon request shall remind the employee of the requirements and disciplinary consequences of this Policy. Where there is reasonable suspicion that the employee is then under the influence of alcohol or drugs, the manager or supervisor should arrange for the employee to be safely transported home.
 - Managers and supervisors shall not physically search the person of employees, nor shall they search the personal possession of employees without the freely given written consent of, and in the presence of, the employee.
 - Managers and supervisors shall notify their Department Head or designee when they have reasonable suspicion to believe that an employee may have illegal drugs in his or her possession or in an area not jointly or fully controlled by the City. If the Department Head or designee concurs that there is a reasonable suspicion of illegal drug possession, the Department Head shall notify the appropriate law enforcement agency.

Physical Examination and Procedure

The drug and/or alcohol test may test for any substance which could impair an employee's ability to perform effectively and safely the functions of his or her job, including, but not limited to, prescription medication, alcohol, heroin, cocaine, morphine and its derivatives, P.C.P., methadone, barbiturates, amphetamines, marijuana and other cannabinoids.

Testing shall be performed at a local medical facility selected by the City. The procedure used shall require an unbroken chain of custody from sample collection to return of the written report. A split sample (a test sample which is divided into portions for use in an independent testing of positive samples) shall be preserved to provide an independent test. If the initial test has positive results, the City shall conduct a confirmation test using a court admissible testing technique. If the confirmation test has positive results, the employee may re-test the sample at a laboratory of the employee's choice and at the employee's own expense.

Results of Drug and/or Alcohol Analysis

Pre-Employment Physical

A positive result from a drug and/or alcohol analysis may result in the applicant not being hired where the applicant's use of drugs and/or alcohol could affect requisite job standards, duties or responsibilities.

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If a drug screen is positive at the pre-employment physical, the applicant must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. If the prescription is not in the applicant's name or the applicant does not provide acceptable verification, or if the drug is one that is likely to impair the applicant's ability to perform the job duties, the applicant may not be hired.

During Employment Physical or Alcohol/Drug Tests

A positive result from a drug and/or alcohol analysis may result in disciplinary action, up to and including, termination.

If the drug screen is positive, the employee must provide, within 24 hours of the request, bona fide verification of a valid current prescription for the drug identified in the drug screen. The prescription must be in the employee's name. If the employee does not provide acceptable verification of a valid prescription, or if the prescription is not in the employee's name, or if the employee has not previously notified his or her supervisor of the same, the employee will be subject to disciplinary action, up to and including termination.

If an alcohol drug test is positive for alcohol or drugs, the City shall conduct an investigation to gather all facts. The decision to discipline, up to and including termination, will be carried out in conformance with the City's discipline procedures.

Confidentiality

Laboratory reports and test results shall not appear in an employee's general personnel file. Information of this nature will be contained in a separate confidential medical folder that will be securely kept under the control of the Human Resources Director. The reports or test results may

be disclosed to City management on a strictly need-to-know basis and to the tested employee upon request. Disclosures, without patient consent, may also occur when: (1) the information is compelled by law or by judicial or administrative process; (2) the information has been placed at issue in a formal dispute between the employee and employee; (3) the information is to be used in administering an employee benefit plan; or (4) the information is needed by medical personnel for the diagnosis or treatment of the patient who is unable to authorize disclosure.

IX. DISCIPLINE POLICY

Unless otherwise specified by a memorandum of understanding, the following constitutes the City's policy regarding disciplinary actions:

A. Policy Coverage

The following categories of persons can be terminated at-will and have no rights to any of the pre- or post-disciplinary processes or procedures in this Policy: (1) temporary employees, (2) provisional or seasonal employees, (3) probationary employees, (4) any person who serves pursuant to a contract, and (5) any person who is designated "at-will" in any City policy, document, acknowledgement, resolution or ordinance. Notwithstanding any provision in this policy, any regular employee who is exempt from the overtime provisions of the Fair Labor Standards Act (FLSA) is not subject to any disciplinary penalty which is inconsistent with his or her FLSA

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overtime-exempt status.

B. Causes for Discipline

Regular employees may be counseled, admonished, reprimanded, suspended, demoted, discharged or incur a reduction in pay for disciplinary causes including but not limited to:

1. Violation of the City's Employment Standards, Standards of Conduct or any department rule, City policy or City regulation, ordinance or resolution;
2. Absence without authorized leave;
3. Excessive absenteeism and/or tardiness as defined by the employee's department director, these Policies, or Memorandum of Understanding;
4. Use of disability leave in a manner not authorized or provided for pursuant to the disability leave policy or other policies of the City;
5. Purposefully and knowingly making any false statement, omission or misrepresentation of a material fact;
6. Providing wrong or misleading information or other fraud in securing appointment, promotion or maintaining employment;
7. Unsatisfactory job performance;
8. Inefficiency;
9. Malfeasance or misconduct, which shall be deemed to include, but shall not be limited to the following acts or omissions:
 - a. Conviction of a felony. "Conviction" shall be construed to be a determination of guilt of the accused by a court, including a plea of guilty or nolo contendere (no contest), regardless of sentence, grant of probation, or otherwise.
 - b. Damaging City property, equipment, or vehicles, or wasting City supplies through negligence or misconduct.
10. Insubordination;
11. Dishonesty;
12. Theft;
13. Disobedience;

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14. Violation of the City's or a department's confidentiality policies, or disclosure of confidential City information to any unauthorized person or entity;
15. Misuse of any City property, including, but not limited to: physical property, tools, equipment, City communication systems, or Intellectual Property;
16. Mishandling of public funds;
17. Falsifying any City record;
18. Discourteous treatment of the public or other employees;
19. Failure to cooperate with employee's supervisors or fellow employees;
20. Violation of the City's Drug-Free Workplace Policy;
21. Violation of the City's Use of City Property and Equipment Policy;
22. Violation of the City's Policy Against Harassment, Discrimination and Retaliation;
23. Violation of the City's Workplace Security Policy;
24. Unapproved outside employment or activity that violates the City's Outside Employment policy, or other enterprise that constitutes a conflict of interest with service to the City;
25. Any conduct that impairs disrupts or causes discredit to the City, the employee's City employment, to the public service, or other employee's employment;
26. Failure to comply with OSHA Safety Standards and City safety policies;
27. Failure to report to his or her supervisor any contact with criminal authorities (such as police) which may affect employment with the City;
28. Altering, falsifying, and tampering with time records, or recording time on another employee's time record; or
29. Working overtime without prior authorization.

C. Administrative Disciplinary Leave

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A department director may place an employee on an administrative disciplinary leave with pay pending a potential disciplinary action. Administrative disciplinary leave with pay is authorized: (1) when the department director believes that the employee's continued presence at the work site could have detrimental consequences for City operations, or (2) pending investigation into charges of misconduct. If the charges against the employee are substantiated by the investigation, appropriate disciplinary action may be taken in accordance with these procedures.

D. Types of Discipline

Counseling Memo A counseling memo shall be retained in the employee's personnel file, and may not be appealed under this policy.

Oral Admonishment or Reprimand An oral admonishment or reprimand shall be memorialized in writing, become part of the employee's personnel file, and may not be appealed under this policy.

Written Admonishment or Reprimand A department director may reprimand an employee by furnishing him/her with a written statement of the specific reasons for reprimand. A copy of the reprimand will be retained in the employee's personnel file, and may not be appealed. The employee has the right to have a written rebuttal attached to the reprimand in the employee's personnel file.

Suspension A department director may suspend an employee from his or her position for cause. Documents related to a suspension shall become part of the employee's personnel file. An employee subject to suspension will receive prior written notice and appeal as provided herein. FLSA-exempt employees are not subject to suspension except in work day or work week increments or for violations of major safety rules.

Demotion A department director may demote an employee from his or her position for cause. Documents related to a demotion shall become part of the employee's personnel file. An employee subject to demotion shall be entitled to the prior written notice and appeal as provided herein.

Reduction in Pay A department director may reduce an employee's pay for cause. A reduction in pay for disciplinary purposes may take one of two forms: (1) a decrease in salary to a lower step within the salary range, or (2) a decrease in salary paid to an employee for a fixed period of time. Documents related to a reduction in pay shall become part of the employee's personnel file. An employee subject to a reduction in pay shall be entitled to prior written notice and appeal as provided herein. FLSA-exempt employees are not subject to reduction in pay.

Discharge A department director may discharge an employee from his or her position for cause. Documents related to discharge shall become a part of an employee's personnel file. A discharged employee is entitled to prior written notice and appeal based upon the terms described herein.

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E. Skelly Process – Pre-Disciplinary Procedure for Suspension, Demotion, Reduction in Pay, or Discharge

Only regular, for-cause employees have the right to the conference and appeal processes outlined in this Section.

Notice of Intent to Discipline The employee will be provided a written notice of intent to discipline, copied to the City Manager that contains the following:

- a. The level of discipline intended to be imposed;
- b. The specific charges upon which the intended discipline is based;
- c. A summary of the misconduct upon which the charges are based;
- d. A copy of all written materials, reports, or documents upon which the intended discipline is based;
- e. Notice of the employee's right to respond to the department director regarding the charges within 5 calendar days from the date of the Notice, either by requesting an informal conference, or by providing a written response, or both;
- f. Notice of the employee's right to have a representative of his or her choice at the informal conference, should he or she choose to respond orally; and
- g. Notice that the failure to respond at the time specified shall constitute a waiver of the right to respond prior to the imposition of discipline.

Employee's Response and the Skelly Conference

- a. If the employee requests an informal conference to respond orally to the charge(s), the conference must be scheduled at least 7 calendar days after the date of the Notice. The conference will be an informal meeting with the department director, at which the employee has an opportunity to rebut the charges against him or her and present any mitigating circumstances. The department director will consider the employee's presentation before recommending any final disciplinary action.
- b. The employee's failure to make an oral response at the arranged conference time, or the employee's failure to cause his or her written response to be delivered by the date and time specified in the notice, constitutes a waiver of the employee's right to respond prior to the imposition of the discipline. In that case, the proposed disciplinary action will be imposed on the date specified.

Final Notice of Discipline

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- a. After considering the employee's response, or after the expiration of the employee's time to respond to the Notice of Intent, the department director shall: (1) dismiss the notice of intent and take no disciplinary action against the employee, or (2) modify the intended disciplinary action, or (3) impose the intended disciplinary action. In any event, the department director shall prepare and provide the employee with a notice, copied to the City Manager that contains the following:
- b. The level of discipline, if any, to be imposed and the effective date of the discipline;
- c. The specific charges upon which the discipline is based;
- d. A summary of the misconduct upon which the charges are based;
- e. A copy of all written materials, reports, or documents upon which the discipline is based; and
- f. A statement of the nature of the employee's right to appeal.

F. Evidentiary Appeal to the City Manager

Request for Appeal Hearing A regular, for-cause employee may appeal from a final notice of discipline in the form of suspension, demotion, reduction in pay, or termination by delivering a written answer to the charges and a request for appeal to the City Manager or designee. The written answer and request for appeal must be received no later than 10 calendar days from the date of the department director's decision.

Delegation The City Manager or designee reserves the right to delegate his or her authority to decide the appeal to an outside hearing officer to be chosen by the City Manager or designee.

Date and Time of the Appeal Hearing The City Manager will set a date for an appeal hearing within a reasonable time after receipt of a timely written answer and request for appeal. An employee who, having filed a timely written answer and request for appeal, has been notified of the time and place of the appeal hearing, and who fails to appear personally at the hearing, may be deemed to have abandoned his or her appeal. In such a case, the City Manager may dismiss the appeal.

Identification of Issues, Witnesses and Evidence No later than 10 days prior to the appeal hearing, each party will provide each other and the City Manager a statement of the issues to be decided, a list of all witnesses to be called (except rebuttal witnesses), a brief summary of the subject matter of the testimony of each witness, and a copy of all evidence (except rebuttal evidence) to be submitted at the hearing. The City will use numbers to identify its evidence; the employee shall use alphabet letters. Neither party will be permitted to call any witness during the hearing that has

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not been identified pursuant to this section, nor use any exhibit not provided pursuant to this section, unless that party can show that they could not have reasonably anticipated the need for the witness or exhibit. The City Manager will state at the beginning of the hearing his or her decision as to the precise issue(s) to be decided.

Conduct of the Appeal Hearing

- a. Subpoenas The City Council has authority, and may delegate the authority to the City Clerk, to issue subpoenas in the name of the City prior to the commencement of the hearing. Each party is responsible for serving his/her/its own subpoenas. City employees who are subpoenaed to testify during working hours will be released with pay to appear at the hearing. City employees who are subpoenaed to testify during non-working hours will be compensated for the time they actually testify unless the City agrees to a different arrangement.
- b. Continuances The City Manager may continue a scheduled hearing only upon good cause shown.
- c. Record of the Proceedings All disciplinary hearings may, at the discretion of the parties, be either recorded by a court reporter or tape recorded.
- d. The City Manager's Authority During the Hearing The City Manager has the authority to control the conduct of the hearing and to affirm, modify, or revoke the discipline.
- e. Conduct of the Hearing
 - (i) The hearing need not be conducted in accordance with technical rules relating to evidence and witnesses, but hearings shall be conducted in a manner the City Manager decides is the most conducive to determining the truth.
 - (ii) Any relevant evidence may be admitted if it is the type of evidence upon which responsible persons are accustomed to rely upon in the conduct of serious affairs, regardless of the existence of any common law or statutory rules which might make improper the admission of such evidence over objection in civil actions.
 - (iii) Hearsay evidence may be used for the purpose of supplementing or explaining any direct evidence, but over timely objection shall not be sufficient in itself to support a finding, unless such evidence would be admissible over objection in civil actions. An objection is timely if made before submission of the case.
 - (iv) All privileges recognized in civil proceedings apply.
 - (v) Irrelevant and unduly repetitious evidence may be excluded.

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- (vi) The City Manager shall determine relevancy, weight and credibility of testimony and evidence.
 - (vii) During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon the request of either party.
 - (viii) All witnesses shall be sworn in for the record prior to testifying at the hearing. The City Manager or the court reporter shall request each witness to raise his or her right hand and respond to the following: “Do you swear that the testimony that you are about to give at this hearing is the truth, the whole truth, and nothing but the truth?”
- f. Burden of Proof at the Hearing The City has the burden of proof by a preponderance of the evidence.
- g. Right to Due Process The employee shall have the following due process rights during the hearing:
 - (i) The right to be represented by legal counsel or another chosen representative, at his or her own expense;
 - (ii) The right to call and examine witnesses on his or her behalf;
 - (iii) The right to introduce evidence;
 - (iv) The right to cross-examine opposing witnesses on any matter relevant to the issues;
 - (v) The right to impeach any witness regardless of which party first called him or her to testify; and
 - (vi) The right to rebut evidence against him or her.
- h. Hearing to be Closed to the Public The hearing will be closed to the public unless the employee requests that it be open.
- i. Presentation of the Case The parties will address their remarks, evidence, and objections to the City Manager. All parties and their counsel or representatives shall not disparage the intelligence, morals, or ethics of their adversaries or of the City Manager. The City Manager may terminate argument at any time and issue a ruling regarding an objection or any other matter. The City Manager may alter the order of witnesses, limit redundant or irrelevant testimony, or directly question the witness. The hearing shall proceed in the following order unless the City Manager directs otherwise:
 - (i) The City shall be permitted to make an opening statement.

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- (ii) The employee shall be permitted to make an opening statement.
 - (iii) The City shall produce its evidence.
 - (iv) The employee shall produce his or her evidence.
 - (v) The City, followed by the employee, may offer rebuttal evidence.
 - (vi) Closing arguments of no more than 20 minutes shall be permitted at the discretion of the City Manager. The City shall have the right to argue first, the employee may argue second, and the City may reserve a portion of its argument time for rebuttal.
- j. **Written Briefs by the Parties** The City Manager or the parties may request the submission of written briefs. The City Manager will determine whether to allow written briefs, the deadline for submitting briefs, and the page limit for briefs.

Written Findings and Decision The City Manager shall render a statement of written findings and decision within 30 days after the hearing has been completed and the briefs, if any, have been submitted. The City Manager's decision is final.

Proof of Service of the Written Findings and Decision The City Manager shall send his or her final statement of written findings and decision, along with a proof of service of mailing, to each of the parties and to each of the parties' representatives. A copy shall also be distributed to the Human Resources Manager.

Statute of Limitations The City Manager's written findings and decision is final. There is no process for reconsideration. Pursuant to Code of Civil Procedure section 1094.6, the parties have 90 days from the date of the proof of service of mailing of the written findings and decision to appeal the decision to the Superior Court in and for the County of Santa Clara.

XX. SCOPE OF AGREEMENT

This MOU represents the entire and complete understanding reached between the representatives of the CITY and the representatives of the UNION for the period designated and applies to all positions represented by the UNION.

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XXI. RATIFICATION

This MOU is subject to ratification by a majority vote of the members of the UNION. City Council adoption of Resolution No. 07-_____ and ratification by the UNION will put the terms of this MOU into effect.

Representative of the
City of Saratoga:

Representatives of the
Northern California Carpenters Regional Council,
Carpenters Forty Six Counties
Conference Board and Their Affiliated
Local Unions

Dave Anderson, City Manager

Richard Torres

Date: _____

Date: _____

Richard Amaro or assigned representative

Date: _____

Shawn Gardner

Date: _____