

# **MEMORANDUM OF UNDERSTANDING**

**BETWEEN**



**CITY OF GUSTINE  
&  
GUSTINE PUBLIC  
WORKS ASSOCIATION**

Effective:

July 1, 2006 through June 30, 2009

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## **ARTICLE I RECOGNITION**

The City of Gustine (hereinafter the "City") recognizes the City of Gustine Public Works Employees' Union, Operating Engineer's Local Union #3 (hereinafter "Union") in all matters concerning wages, hours and working conditions. This Memorandum of Understanding (MOU) is all encompassing and supersedes all previous Memoranda of Understanding entered into between the City and the Union.

It is agreed that this Memorandum of Understanding (MOU) was negotiated pursuant to Chapter 10 (Section 3500 et. Seq.) of Division 4, Title 1 of the Government Code and pursuant to Resolution No. 2001-1807 Employer – Employee Relations Resolution of the City of Gustine.

The Union recognizes the City Manager and/or designee as the exclusive representative of the City for purposes of executing this MOU.

The City and the Union agree to make a good faith effort to ensure that all rules, polices and procedures are uniformly and consistently applied through City service.

## **ARTICLE II ADMINISTRATION**

### **SECTION 1 – PAYROLL AUTOMATIC DEPOSIT**

1.1 The City shall, at the employee's request, automatically deposit an employee's net salary with a bank, credit union, or other financial institution selected by the employee, provided that said institution has the ability to accept such deposits. Deposit shall be made to the institution on scheduled City paydays.

## **ARTICLE III EMPLOYEE PERFORMANCE**

### **SECTION 1 – PERFORMANCE EVALUATION**

- 1.1 A written performance evaluation shall be completed within thirty (30) days prior to the employee's anniversary date.
- 1.2 The performance evaluation shall be in a format approved by the City Manager and shall be forwarded to the Personnel Officer signed by the employee, the employee's supervisor and City Manager.
- 1.3 Each employee's performance evaluation shall be discussed with the employee.

### **SECTION 2 – PROBATIONARY STATUS**

- 2.1 Initial Appointments – Initial appointment to a position shall be subject to a probationary period of six (6) months. The probationary period may be extended by the department head, upon approval of the City Manager, for a period not to exceed six (6) months, should the City Manager find that conditions warrant such an extension.

- 2.2 During the probationary period, the employee may be terminated at any time, without cause and without the right of appeal. Written notice of release shall be furnished by the Personnel Officer.
- 2.3 Promotional Appointments – A promotional appointment shall be tentative and subject to a probationary period of six (6) months. The probationary period may be extended for a period of three (3) months, should the City Manager find that conditions warrant such an extension.
- 2.4 During the promotional probationary period, or any extension thereof, the employee may be reduced to previous position in the promotional-appointed position by the City Manager without cause, notice of hearing or appeal. The City Manager or the employee's immediate supervisor prior to the expiration of the probationary period, or any extension thereof, shall serve notice of such action upon the employee.

## **ARTICLE IV COMPENSATION**

### **SECTION 1 – SALARY**

The City agrees to adjust the salary ranges assigned to Union members by 8% on July 1, 2006; by 5% on July 1, 2007 and by 5% on July 1, 2008.

### **SECTION 2 – SALARY ADVANCEMENT**

- 2.1 Salary advancement shall mean a pay rate increase given an employee, contingent upon an overall rating of Meets Job Requirements or better on an annual performance evaluation, within the pay range established for the employee's classification. An employee's step increase shall be effective on the employee's merit date. If a department director has not submitted a signed performance evaluation by the employee's merit date, a step increase shall automatically be processed by the City's Personnel Officer.
- 2.2 The City shall retain the flexibility to hire employees with exceptional skills, experience or qualifications at a pay rate above Step A.
- 2.3 The City's pay range for full time employees consists of five (5) merit steps, A through E. The first step (A) shall require at least six (6) months performance at the designated step before eligibility for a merit increase. The last four (4) steps (B through E) shall require at least twelve months performance at the designated step before eligibility for a merit increase to the final step (E).

### **SECTION 3 – ACTING DUTY PAY**

- 3.1 The City Manager may appoint an employee to acting duty status to perform the duties of a higher classification that is a vacant or newly created classification.
- 3.2 An employee may serve in acting duty status only until such time as the City Manager makes a regular appointment to the classification or until such time as the incumbent employee returns to work.
- 3.3 An acting duty appointment may be effective for a period of thirty (30) days. The City Manager may extend an acting duty appointment.

- 3.4 An employee appointed to acting duty status shall be paid a pay rate not less than the minimum pay rate in the pay range for the acting duty classification and such acting duty pay rate shall be at least five percent (5%) more than the employee's prevailing pay rate immediately prior to acquiring acting duty status.
- 3.5 An employee shall not be paid more than the maximum pay rate in the pay range for the acting duty classification.
- 3.6 While serving in acting duty status, the employee shall continue to be eligible to receive any pay adjustments or advancements granted to the employee's permanent classification.
- 3.7 An employee appointed to acting duty status shall receive acting duty pay immediately upon assuming the acting duty position, provided the duration of the assignment is at least a scheduled work shift.
- 3.8 An employee has the right to refuse any acting duty assignment in writing, with justification, as determined by the Personnel Officer.
- 3.9 An employee appointed to acting duty status can discontinue the acting duty assignment by notifying his/her immediate supervisor in writing one (1) week in advance of the employee's intention to return to regular status.
- 3.10 An employee may be removed from acting duty status after serving in the acting assignment for one (1) workweek, at any time, at the discretion of the City Manager.

#### **SECTION 4 – MILEAGE REIMBURSEMENT**

The City shall reimburse employees for use of their personal automobile for official City business at the prevailing IRS rate. Employees may use personal vehicles for official City business **only** with the expressed approval of a supervisor, and only when proof of a valid California's driver's license and required insurance are on file with the City's Personnel Officer.

#### **SECTION 5 – COURT SERVICE COMPENSATION**

- 5.1 Employees summoned to court to (a) perform jury service, or (b) to provide testimony when called on behalf of the City, or (c) as directed by the department head, City Manager or City Attorney shall be paid their prevailing pay rate for such court service.
- 5.2 Pay for jury duty shall be limited to ten (10) working days in any one calendar year.
- 5.3 Compensation for court service (jury duty) received by the employee, shall be remitted to the City.

#### **SECTION 6 – OVERTIME COMPENSATION**

- 6.1 Employees are eligible to receive overtime in either paid or compensatory form, but no employee shall work overtime unless authorized in advance to do so by the department manager, department head, City Manager or designee.
- 6.2 Workday defined: For purposes of determining overtime, a workday is the twenty four hour period consisting of the eight (8) hours preceding the work shift and sixteen (16) hours after the start of the work shift. As an example, if a scheduled work shift is 8:00 a.m. to 5:00 p.m., the workday is midnight to 11:59 p.m. Overtime shall not be paid for hours worked during any scheduled work shift.

- 6.3 Employees shall received overtime paid at one and one-half (1 ½) times their prevailing pay rate; or compensatory leave time, credited at one and one half (1 ½) hours, for the overtime work performed as follows:
- i. Work performed in excess of eight (8) hours in a workday in a five (5) day workweek.
  - ii. Work performed in excess of forty (40) hours in a workweek.
  - iii. Work performed on the first or second regular day off (RDO).
- 6.4 For purposes of determining an employee's eligibility for overtime compensation, only actual hours worked shall be considered toward overtime calculation.
- 6.5 Employees required to return to the work site after a normal shift has been completed shall be paid a minimum of two (2) hours overtime.

#### **SECTION 7– CALL BACK / STANDBY PAY**

- 7.1 Employees “called back” to work due to an emergency, or to complete a critical work assignment shall be paid a minimum of two (2) hours overtime, paid at one and one-half (1 ½) times their prevailing rate.
- 7.2 Employees required by virtue of their position or assigned responsibilities, to be available on an “on-call” basis during non-work hours on Saturday, Sunday and/or holidays shall be compensated a minimum of four (4) hours overtime, per day, paid at one and one half (1 ½) times their prevailing rate.

#### **SECTION 8 – HOLIDAY COMPENSATION**

- 8.1 Full time employees shall be allowed time off with pay at the employee's straight time hourly rate for any holiday provided in this MOU, unless required to report to work by the department head in order to maintain city services. Employees required to work shall be paid according to Section 8.2 below.
- 8.2 Employees required to work on a holiday shall receive either paid time, calculated at one and one-half (1 ½) times their prevailing pay rate, or compensatory leave time, credited at one and one-half (1 ½) hours, for each hour worked on the holiday.

#### **SECTION 9– LONGEVITY PAY**

- 9.1 City agrees to pay employees longevity pay based on the following rates:
- a. 2.5% for 11-14 years service;
  - b. 5% for 15-19 years service;
  - c. 7.5% for 20 years service or more.

#### **SECTION 10 – ALLOWANCE FOR UNIFORMS**

- 10.1 The City shall provide uniforms for employees under this MOU.
- 10.2 Cleaning, maintenance and replacement of said uniforms shall be at the City's expense.
- 10.3 Uniforms shall include City approved shirt, pants and an all weather jacket.

## **SECTION 11 – ALLOWANCE FOR SAFETY SHOES**

- 11.1 Employees are required to wear safety shoes during the course of their employment.
- 11.2 Employees shall receive \$150 each fiscal year, to purchase safety shoes as approved by the City.
- 11.3 Employees shall receive that allowance no later than September 1 of each fiscal year.
- 11.4 Employees are solely responsible to ensure safety shoes are purchased on a timely basis, and are worn *daily* during the course of work.

## **ARTICLE V BENEFITS**

### **SECTION 1 – HEALTH INSURANCE**

- 1.1 The City shall provide employees with health insurance for each full-time employee and eligible dependents by its elected carrier Operating Engineer's Health and Welfare Trust.
- 1.2 Effective July 1, 2006 the City shall pay 90% of the health premium charged the City by its elected plan carrier. The employee shall pay 10% of the premium.
- 1.3 Spouse, including domestic partner as defined by law, and dependent coverage shall continue to be available as provided through the City's plan. An employee's spouse, including domestic partner as defined by law, dependent children under age twenty-three (23) who have never been married, as well as children over age twenty-three (23) who have never been married and are incapable of supporting themselves due to physical or mental disabilities existing prior to obtaining age twenty-three (23), are currently eligible to be enrolled. This Section shall be in effect for the duration of this MOU.
- 1.4 Employees in the Union may opt to convert to an HSA Medical Insurance Model effective January 1, 2007 pursuant to city insurance procedures.

### **SECTION 2 – EMPLOYEES' ASSISTANCE PROGRAM (EAP)**

The City shall offer Employees' Assistance Program in categories to include marriage, family/relationship problems, alcohol / drug abuse, legal matters, financial and credit problems, child care consultation and elder care. Services shall be provided as defined in the EAP pamphlet on file with the City's Personnel Officer.

### **SECTION 3– PUBLIC EMPLOYEE'S RETIREMENT (P.E.R.S.)**

- 3.1 The City shall enroll employees in the 2.5% at 55 Plan including but not limited to the following specified optional public agency contract provisions:
  - i. A lump sum death benefit of \$500;
  - ii. Final compensation calculated as an average of the last, consecutive 36 months of salary;
  - iii. Retirement COLA maximum of 2%.
- 3.2 The City shall pay the employee's share of the retirement plan to PERS.

**SECTION 4 – DEFERRED COMPENSATION**

The City shall offer deferred compensation programs to employees in this Union as a voluntary employee election.

**ARTICLE VI  
LEAVES**

**SECTION 1 – ANNUAL LEAVE DEFINED**

The City shall provide employees with annual leave subject to the following conditions:

- 1.1 Annual leave shall be defined as the periods of approved absence with pay from regularly scheduled work.
- 1.2 Unless the employee’s use of annual leave interferes with departmental operations, the department director shall permit employees to use annual leave at the employee’s discretion.
- 1.3 Employees shall be credited with annual leave at the following rates:

*a. Vacation*

Vacation shall be accrued based upon years of service and according to the following schedule:

Years of Service	Vacation
0-4	10 days
5-10	15 days
11-15	17 days
16-20	19 days
21-25	21 days
25 +	25 days

Maximum vacation accrual shall be 360 hours (9 weeks.) Vacation accrued in excess of the 360 hours must be used within 90 days of such accrual or forfeited. Exceptions to this rule may be approved, in writing, by the City Manager, upon recommendation of the department head. If, at the end of this period, an employee is still unable to use vacation accruals due to departmental staffing needs, the City shall pay all hours in excess of 360 at the employee’s base rate.

If an employee does not request vacation during the six-month period following the accumulation of 360 hours, and is unable to justify the failure to request vacation, the employee shall not continue to accrue hours and shall not be paid for the accumulated hours in excess of 360. The decision will be made by the City Manager.

*b. Sick Leave*

All full time employees shall receive 10 sick leave days per year, accrued at 3.3 hours per payroll period. Upon employee's anniversary date, unused sick leave shall be credited as follows:

- i. A maximum of forty hours may be converted to vacation leave provided that a minimum of forty hours is retained as sick leave at all times.
- ii. Maximum sick leave accrual shall be 1,440 hours (180 days.)

*c. Floating Holidays*

- i. Employees shall be credited with three floating holidays (24 hours) on July 1 of each year.
- ii. Floating holidays shall not be accrued and must be taken within the fiscal year or forfeited.
- iii. Unused floating holidays are forfeited upon termination.

- 1.4 Employees shall not accrue vacation or sick leave during any leave of absence exceeding 86.67 work hours in any calendar month.
- 1.5 Employees may use annual leave only after successfully completing probation.
- 1.6 Employees shall not use less than one (1) hour of annual leave at any one time.
- 1.7 Upon termination of employment, the employee shall be compensated for any unused vacation leave. The value of this unused vacation leave shall be calculated at the employee's existing pay rate on the date of the employee's separation from City service.

**SECTION 2 – SICK LEAVE TERMS AND CONDITIONS**

- 2.1 Employees may not use sick leave at their discretion. Sick leave may be used **only** in cases of actual personal sickness, quarantine, sickness in the immediate family where the employee must provide care to the family member.
- 2.2 Employees may use sick leave for medical, dental and optical appointments.
- 2.3 When an employee uses sick leave, the Personnel Officer may require the employee to present, upon return to work, a personal certification and/or doctor's verification indicating that the employee is capable to return to work. In administering this Section, the City shall, at all times, respect, to the maximum extent possible, the privacy of the employee. When an employee uses sick leave in excess of three (3) consecutive workdays, the employee shall present, upon return to work, a medical certification signed by a physician or licensed medical practitioner verifying the employee's illness.
- 2.4 When an employee wishes to use accrued sick leave, the employee shall notify his/her supervisor before, or within one (1) hour after the time set for beginning the work period, of the intended absence due to sickness, unless the employee is incapacitated and physically unable to provide the required notification. An employee on sick leave shall regularly inform his/her supervisor of their physical condition.

### **SECTION 3 – COMPENSATORY LEAVE TERMS AND CONDITIONS**

- 3.1 Reasonable requests for use of compensatory leave shall not be denied. Employees shall not use less than one (1) hour of compensatory leave at any one time. Employees may use compensatory leave in conjunction with other authorized paid leave with approval of the department director. The City shall not require an employee to use compensatory time within the same period in which it was earned.
- 3.2 An employee shall not accrue more than eighty (80) hours of compensatory leave. An employee may carry to the next calendar year a maximum of eighty (80) hours of compensatory leave. Exceptions to this policy may be approved by the City Manager, upon recommendation of the department head.
- 3.3 When an employee separates from the City service for any reason, the employee shall be compensated for any accrued compensatory leave at the employee's rate of pay at the date of separation.

### **SECTION 4 – HOLIDAY LEAVE**

- 4.1 The City shall provide employees with the following holidays with pay subject to Subsections 4.2 through 4.3 of this Section:
- i. January 1 (New Year's Day);
  - ii. The third Monday in January (Dr. Martin Luther King, Jr.);
  - iii. The third Monday in February (President's Day);
  - iv. The last Monday in May (Memorial Day);
  - v. July 4 (Independence Day);
  - vi. The first Monday in September (Labor Day);
  - vii. November 11 (Veteran's Day);
  - viii. Thanksgiving Day;
  - ix. Day after Thanksgiving;
  - x. December 25 (Christmas).
  - xi. Every day proclaimed by the President, Governor or Mayor of this City as a public holiday.
- 4.2 When any day granted as a holiday falls on a Saturday or Sunday, the following Monday shall be considered the holiday. In order to be paid for a holiday, the employee must work the scheduled work period immediately before and after the holiday, unless the employee is absent from the scheduled work period immediately before and after as a result of authorized paid leave.
- 4.3 In the event that the Mayor or the City Council declares a portion of the day before Christmas (December 24<sup>th</sup>) or a portion of the day before New Year's Day (December 31<sup>st</sup>) to be a holiday, the employee must use such additional holiday leave when granted. Such leave cannot be accrued. Employees absent on other paid leave when such additional holiday leave is granted shall not receive compensatory leave or additional pay because of the absence. However, employees absent on other paid leave when such additional holiday leave is granted, shall be reimbursed time credit to vacation or compensatory floating holiday, as applicable.

### **SECTION 5 – BEREAVEMENT LEAVE**

- 5.1 Employees shall be entitled to a maximum of five (5) days bereavement leave per incident.

- 5.2 Eligibility for bereavement leave shall apply to the death of immediate family members, as defined herein.

#### **SECTION 6 – WORKER COMPENSATION LEAVE**

- 6.1 The City shall provide employees with work related disability leave in accordance with State law.
- 6.2 Terms and conditions of worker's compensation leave, including eligibility, shall be in accordance with the City's elected plan carrier for miscellaneous employees.

#### **SECTION 7 – MILITARY LEAVE**

- 7.1 The City shall grant military leave to employees as provided in the California Military and Veterans Code Sections 389 through 395.4.
- 7.2 Employees on ordered military leave shall be paid their regular pay rate, offset by the amount of military pay received, for a maximum of one year (12 months) from the date of full time military service.
- 7.3 Employees may, at the individual's election, utilize accumulated vacation and compensatory time after one year (12 months), if full-time military service is required.

#### **SECTION 8 – LEAVE OF ABSENCE WITHOUT PAY / FAMILY MEDICAL LEAVE ACT / CALIFORNIA FAMILY RIGHTS ACT**

- 8.1 The City has the authority to grant or deny an employee's request for leave of absence from work without pay, except that the City shall not unreasonably deny a request for unpaid leave due to the medical disability of the employee or a member of his/her immediate family.
- 8.2 An employee on an unpaid leave for 61 days or more shall not accrue seniority for that portion of the leave over 60 days. After the expiration of the unpaid leave, the employee shall be assigned to his / her former classification.
- 8.3 Probationary employees are not eligible for unpaid leaves of absence, except as required by law. The employee requesting the leave shall state in writing the reasons for the request. In all cases, the City Manager shall retain exclusive authority for approving such leave and its duration. The employee shall have no appeal rights with respect to this decision.
- 8.4 The City shall comply with the Family Medical Leave Act of 1993 in all respects.
- 8.5 The City shall comply with the California Family Rights Act of 1993 in all respects.

#### **SECTION 9 – TIME OFF FOR VOTING**

- 9.1 The City shall provide employees with time off for voting subject to the following conditions:
- i. When an employee claims not to have sufficient time outside of working hours to vote at a statewide election, the employee may, without loss of pay, with the

approval of supervisor, use working hours which, when added to the voting hours available outside of working hours, shall enable the employee to vote.

- ii. The supervisor may not authorize an employee to use more than two (2) hours from work with pay for voting.
- iii. The authorized time for voting shall be at the beginning or end of work period, only, whichever allows the employee the most time for voting and the least time away from work.
- iv. If the employee knows or has reason to believe that time off for voting shall be necessary on election day, the employee must notify his/her supervisor of that fact at least two (2) days in advance.

#### **SECTION 10 – LUNCH PERIOD**

- 10.1 An uninterrupted lunch period of thirty (minutes) or one (1) hour shall be afforded to each employee, based upon the employee's approved work shift.
- 10.2 The lunch period may not be combined with rest periods or used to compensate for a late arrival or early departure from work.

### **ARTICLE VII LAYOFF**

#### **SECTION 1 – PREREQUISITE FOR LAYOFF**

When, as a result of a reduction in workforce (RIF), it becomes necessary to initiate a layoff of employees included by this MOU, the following shall be the prerequisite to such a layoff:

- 1.1 All non-classified part-time, temporary, seasonal and/or recurrent and probationary employees working in the class have been released from the class.
- 1.2 Employees in the class have been given the opportunity to seek lateral transfer to existing vacant positions. Such transfer requests shall not be denied except for just cause. The employee shall be required to meet the minimum standards of the class.
- 1.3 Management shall meet and consult with the representative of the Union on alternative courses of action to avoid such layoff.
- 1.4 Notice of actual layoff shall be given no less than forty-five (45) calendar days before the date of implementation. Such notice shall include:
  - i. Classification where layoff is to occur;
  - ii. Seniority list by total continuous City seniority of employees in the affected class;
  - iii. List of current vacancies in all classes represented by this MOU;
  - iv. Separate notice to any employee in the class who has two (2) or more below standard evaluations within the preceding three (3) years.

## **SECTION 2 – ORDER OF LAYOFF**

- 2.1 Employees who have two (2) or more below standard annual evaluations within the preceding three (3) years shall be laid off first.
- 2.2 Next layoff shall occur on the basis of City-wide seniority, the least senior employee based on total continuous employment shall be laid off first and any subsequent layoff shall proceed to the next, least senior employee.
- 2.3 Where the total and continuous employment of two (2) employees are of the same length, the seniority shall be decided by drawing lots.

## **SECTION 3 – VOLUNTARY DEMOTION**

- 3.1 An employee affected by a Reduction in Force (RIF) may choose voluntary demotion to avoid layoff.
- 3.2 Such voluntary demotion may be to a lower or equal class of previous standing or to a lower or equal class in the same occupational grouping.
- 3.3 If the voluntary demotion causes a layoff in the lower or equal class, such layoff shall follow the provisions of this Article. However, in no event can an employee displace someone with more seniority except as permitted by Section 2.1 of this Article.

## **SECTION 4 – RECALL**

- 4.1 Employees who laterally transfer, take a voluntary demotion or are affected by a Reduction in Force pursuant to the provisions of this Article, shall have their names placed on a recall list for the classification of original standing.
- 4.2 Such a list shall be inverse order of layoff, lateral transfer or demotion.
- 4.3 The recall list shall be kept by the Personnel Officer and shall be used when any vacancy for that class is to be filled.
- 4.4 The list shall be maintained until all names have been offered an opportunity for recall or at the end of three (3) years, whichever occurs first.
- 4.5 The appointing authority shall offer appointment to the first name on said list. If the individual accepts, he/she shall be appointed after sixty (60) days from the date of layoff.
- 4.6 The employee may be required to take a medical examination to ensure that the employee is capable of performing the duties of the class.
- 4.7 The individual shall be required to meet the minimum standards of the class.

## **ARTICLE VIII NON-DISCRIMINATION**

The City shall not discriminate in the treatment of an employee on the basis of race, color, religion, gender, political party or activity, national origin, sexual preference, age, marital status,

medical condition (cancer related), pregnancy, or pregnancy related conditions, physical or mental disability, association activity or association membership.

## **ARTICLE IX HEALTH AND SAFETY**

### **SECTION 1 – SAFETY RESPONSIBILITIES**

- 1.1 The City and the Union shall make a good faith effort to provide and maintain a safe and healthful place of employment.
- 1.2 Employees shall perform their assigned duties safely using the practices, means, methods, operations, and processes prescribed by law, occupational safety or health standard, City safety order, or safety rules and regulations. Employees shall report any unsafe practices, equipment or hazardous conditions promptly to their immediate supervisor.
- 1.3 The City shall not require nor permit any employee to enter in any employment or job site which is not reasonably safe and healthful.
- 1.4 The City shall not discipline any employee for refusing to perform tasks in the performance of which any law, occupational safety or health standard, or safety order would be violated, or if such violation would create a real hazard to the individual employee.

## **ARTICLE X DISCIPLINE AND DISCHARGE**

### **SECTION 1 – JUST CAUSE**

- 1.1 An employee, covered by this MOU, may be suspended without pay, demoted or discharged for just cause.
- 1.2 Suspension without pay may be achieved through a temporary decrease in a step without any loss of work by the employee.
- 1.3 The step decrease shall not exceed the period of time necessary to achieve the loss of pay equivalent to a stated suspension; and it shall not effect the employee's anniversary date.

### **SECTION 2 – CAUSES FOR DISCIPLINARY ACTION**

- 2.1 The following types of employee conduct may result in disciplinary action up to and including termination. These types are listed only as examples, and are not representative or inclusive of all issues that may lead to disciplinary action.
  - a. Omission or willful misrepresentation of material fact or other fraud in securing employment.
  - b. Substandard performance of work duties and responsibilities.
  - c. Neglect of duties.

- d. Insubordination or willful disobedience.
- e. Improper use of drugs, including drunkenness on duty; use of illicit drugs while on duty; improper use of prescription medication which can affect performance and judgment while on duty; inability to properly perform work duties as a result of prior drug or alcohol abuse as defined in and under compliance with ADA regulations.
- f. Unexcused absence from duty, including but not limited to participation in unlawful strikes or other job actions, such as sick-ins, blue flu, etc.
- g. Conviction of a felony or misdemeanor involving moral turpitude where the conviction impairs the employee's ability to perform regular job duties. A plea or verdict of guilty, or a conviction following a plea of nolo contendere to a charge of a felony or any offense involving moral turpitude is deemed to be a conviction within the meaning of this section.
- h. Discourteous treatment of the public or other employees.
- i. Continued inability to work effectively and amicably with other employees of the department or those contacted in the course of business, which conduct adversely impacts the operations of the department.
- j. Misuse or theft of City property.
- k. Inconsistent, incompatible, or conflicting outside employment activity, or enterprise that the employee fails to relinquish after notice to cease.
- l. Violation of an established departmental rule.
- m. Other failure of good behavior either during or outside of duty hours that is of such a nature that it causes discredit to the employee's department or employment.
- n. Excessive absenteeism or tardiness.
- o. Violation of safety rules and regulations.

### **SECTION 3 – REPRESENTATION**

Employees may be represented by an association representative or legal counsel at pre-disciplinary conferences and/or post-disciplinary appeal hearings.

## **ARTICLE XI GRIEVANCE PROCEDURE**

### **SECTION 1 – GRIEVANCE DEFINED**

A grievance is a complaint by an employee that there has been a violation of this MOU. The employee, or employees bringing such a claim, shall state the manner in which the violation affects their wages, hours, working conditions, or job security as specified in this MOU.

## **SECTION 2 – INFORMAL DISCUSSION OF GRIEVANCE**

- 2.1 When an employee has a complaint, the employee and/or the employee's designated representative shall first informally discuss the matter with the employee's immediate supervisor within ten (10) working days from the incident or decision generating the grievance.
- 2.2 If after discussion with the immediate supervisor, the complaint has not been satisfactorily resolved, the employee and/or employee's designated representative shall have the right to discuss the complaint with the supervisor's immediate superior.
- 2.3 If after such a discussion, the complaint has not been satisfactorily resolved, the employee shall have the right to file a formal, written grievance.

## **SECTION 3 – FORMAL GRIEVANCE PROCEDURE**

A formal grievance process shall be used to resolve an employee's complaint not satisfactorily resolved through Section 2 of this Article.

- 3.1 An employee shall have the right to present a formal grievance, in writing, within five (5) working days after an unsuccessful resolution of the informal grievance with the immediate supervisor and the immediate supervisor's superior. All formal grievances shall state the violation of this MOU and the manner in which it affects the employee's wages, hours, working conditions or job security.
- 3.2 The formal grievance shall be presented to the employee's supervisor. The supervisor shall discuss the grievance with the employee and/or the employee's designated representative, within five (5) working days after receipt of the formal grievance. Within ten (10) working days of this discussion, the supervisor shall render a written decision regarding its merits. If the supervisor's decision does not satisfactorily resolve the complaint, the employee and/or employee's designated representative may present the formal grievance to the City's Personnel Officer. The grievance shall be considered resolved and no further review of the subject matter of the grievance shall be permitted under this Article when the employee does not seek further review of the grievance within ten (10) working days after the receipt of the decision of the supervisor. Failure of the supervisor to render a written decision on the grievance within five (5) working days constitutes a decision denying the grievance.
- 3.3 When the employee presents a formal grievance to the Personnel Officer, the Personnel Officer shall discuss the grievance with the employee and/or the employee's designated representative. Within ten (10) working days after receipt of the formal grievance, the Personnel Officer shall render a written decision regarding its merits. If the decision of the Personnel Officer resolve the complaint, the employee and/or the employee's designated representative may present the formal grievance to the City Manager. The grievance shall be considered resolved, and no further review of the subject matter of the grievance shall be permitted when the employee does not seek further review of the grievance within ten (10) working days after receipt of the decision of the Personnel Officer.
- 3.4 When the employee presents a formal grievance to the City Manager, the City Manager shall discuss the grievance with the employee and/or the employee's designated representative. Within ten (10) working days after receipt of the grievance, the City Manager shall render a written decision regarding its merits. The decision of the City Manager shall resolve the grievance and no further review of the subject matter of the grievance shall be permitted within the City's administrative procedures. Should the City

Manager fail to render a written decision within ten (10) working days, the employee may consider the administrative procedures completed and sue for redress the grievances.

- 3.5 If the decision of the City Manager does not resolve the grievance to the employee's satisfaction, the employee, and/or the Union, may sue for redress of grievances.

#### **SECTION 4 – NON-DEPARTMENTAL GRIEVANCES**

- 4.1 Grievances resulting from decisions or actions outside the departmental chain-of-command shall be initiated first at the department from which a complaint generates, and shall follow the procedures as detailed in Sections 2 and 3 of this Article.
- 4.2 When the grievance involves an action or decision of the Personnel Officer, the grievance shall be informally discussed with the Personnel Officer. If the informal discussion does not satisfactorily resolve the grievance, the formal grievance procedure detailed in Section 3 shall be initiated with the Personnel Officer and/or City Manager, as appropriate.

#### **SECTION 5 – REPRISALS**

The City shall not institute any reprisals against any employee or designated representative resulting from the use of the grievance procedure. The City Manager may designate a third party to serve as the final reviewer for employee grievances.

### **ARTICLE XII CITY RIGHTS**

#### **SECTION 1 – EXCLUSIVE CITY RIGHTS AND AUTHORITY**

The City retains the exclusive right to manage and direct the performance of City services and the work force performing such services. The following matters shall be within the exclusive authority of the City. The consideration of the merits, necessity, or organization of any service or activity conducted by the City shall include, but not be limited to the City's right to:

- 1.1 Determine issues of public policy;
- 1.2 Determine and change the facilities, methods, means and personnel by which City operations are to be conducted;
- 1.3 Expand or diminish services;
- 1.4 Determine and change the number of locations, relocations, and types of operations and the processes and materials to be employed in providing all City services, including but not limited to the right to contract or outsource any work or operation;
- 1.5 Determine the size and composition of the work force, to assign work to employees in accordance with requirements as determined by the City, and to establish and change work assignments;
- 1.6 Determine job classifications;
- 1.7 Appoint, transfer, promote, demote, and lay off employees for lack of work or financial resources;
- 1.8 Initiate disciplinary action;

- 1.9 Determine policies, procedures, and standards for selection, training and promotion of employees;
- 1.10 Establish employee standards, including but not limited to quality and quality standards;
- 1.11 Maintain the efficiency of governmental operations;
- 1.12 Exercise complete control and discretion over its organization, and the technology of performing its work and services;
- 1.13 Establish reasonable work and safety rules and regulations in order to maintain the efficiency and economy desirable in the performance of City services; and
- 1.14 Determine any and all necessary actions to carry out its mission in emergencies.
- 1.15 The exclusive decision making authority of the City and its management on matters involving the City rights and authority shall not be in any way, directly or indirectly, subject to the grievance procedure. The employee may grieve the impact of the exercise of exclusive City rights and authority that directly relate to matters within the scope of representation.

### **ARTICLE XIII UNION RIGHTS**

#### **SECTION 1 – PERSONNEL FILES**

There shall be one official personnel file for each employee and it shall be maintained at City Hall by the Personnel Officer. Employees may inspect the employee's personnel files upon request, presented in writing, to the Personnel Officer. Such requests shall be made at reasonable intervals within regular working hours. Copies of the personnel file contents shall be provided to the employee at no cost. Employees shall be notified if a member of the public requests information from the employee's file.

### **ARTICLE XIV MODIFICATION AND DURATION**

#### **SECTION 1 – SEVERABILITY**

Notwithstanding any other provisions of this MOU, in the event that any Article, Section, or Subsection of this MOU shall be declared invalid by any court or by any State or Federal law or regulation, or should a decision by any court or any State or Federal law or regulation diminish the benefits provided by this MOU, or impose additional obligations on the City, the City and the Union shall meet and confer on the affected Article, Section or Subsection. In such event, all other Articles, Sections or Subsections of this MOU not affected shall continue in full force and effect.

#### **SECTION 2 – DURATION**

- 2.1 This MOU shall be binding on the City and the Union when approved and adopted by both parties.

2.2 Except as otherwise provided herein this MOU shall be in full force and effect from July 1, 2006 and shall remain in full force and effect to and including June 30, 2009.

## **ARTICLE XV DEFINITION OF TERMS**

The following terms, whenever used in this MOU, shall have the meanings set forth in this Article.

### **SECTION 1 – ACTING DUTY**

The temporary assignment of an employee to a higher paid classification to perform the major, essential duties of the classification.

### **SECTION 2 – CLASSIFICATION**

A position or positions that describes the duties, responsibilities and qualifications for that classification.

### **SECTION 3 – WORKDAY**

A calendar day of 24 hours.

### **SECTION 4 – DEPARTMENT HEAD**

An individual assigned to any of the following classifications: City Manager, Chief of Police, Administrative Services Manager.

### **SECTION 5 – ELIGIBLE DEPENDENTS**

An eligible dependent shall be defined as spouse, domestic partner as defined by law, dependent children under age twenty-three (23) who have never been married, as well as children over age twenty-three (23) who have never been married and are incapable of supporting themselves due to physical or mental disabilities existing prior to obtaining age twenty-three (23), are currently eligible to be enrolled. Eligible dependents shall also include any individual for whom the employee is responsible as a caretaker as defined by State and Federal law.

### **SECTION 6 – EMPLOYEE**

An individual compensated through the City payroll and appointed to one of the classifications listed in Appendix A.

### **SECTION 7 – FULL-TIME**

The work period of an employee in the classified service in a classification approved by the City Council to work 40 hours in a designated work week.

### **SECTION 8 – IMMEDIATE FAMILY**

Shall include an employee's spouse, domestic partner as defined by law, children, parents, brothers, sisters, grandparents, grandchildren, parents-in-law, brothers-in-law, sisters-in-law, sons-in-law, daughters-in-law, the employee's spouse's children or any relative, including a foster child, living in the immediate household.

## **SECTION 9 – LEAVE**

An authorized absence from work.

## **SECTION 10 – MANAGEMENT**

An employee assigned to any of the following classifications:  
City Manager, Chief of Police or Administrative Services Manager.

## **SECTION 11 – POSITION**

The duties and responsibilities assigned to an employee within a classification.

## **SECTION 12 – PREVAILING RATE**

The basic pay rate within a pay range paid to an employee for the performance of the duties of a classification.

## **SECTION 13 – SENIORITY**

A status acquired by an employee based on the employee's period of continuous service in job class for the City.

## APPENDIX A

Positions affected by this Memorandum of Understanding include:

Maintenance Worker  
Senior Maintenance Worker  
Public Works Supervisor

### SALARY SCHEDULE EFFECTIVE JULY 1, 2006

	Title	A	B	C	D	E
1	Maintenance Worker	\$29,042	\$30,495	\$32,020	\$33,620	\$35,302
2	Senior Maintenance Worker	\$32,014	\$33,615	\$35,297	\$37,061	\$38,913
3	Public Workers Supervisor	\$33,615	\$35,297	\$37,061	\$38,913	\$40,860

### SALARY SCHEDULE EFFECTIVE JULY 1, 2007

	Title	A	B	C	D	E
1	Maintenance Worker	\$31,365	\$32,935	\$34,582	\$36,310	\$38,126
2	Senior Maintenance Worker	\$34,575	\$36,304	\$38,121	\$40,026	\$42,026
3	Public Workers Supervisor	\$36,304	\$38,121	\$40,026	\$42,026	\$44,129

### SALARY SCHEDULE EFFECTIVE JULY 1, 2008

	Title	A	B	C	D	E
1	Maintenance Worker	\$33,874	\$35,570	\$37,349	\$39,215	\$41,176
2	Senior Maintenance Worker	\$37,341	\$39,208	\$41,171	\$43,228	\$45,388
3	Public Workers Supervisor	\$39,208	\$41,171	\$43,228	\$45,388	\$47,659