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**TOWN OF LOS GATOS**

**AND**

**AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES  
(AFSCME)**



**MEMORANDUM OF UNDERSTANDING**

**JULY 1, 2013 - JUNE 30, 2016**

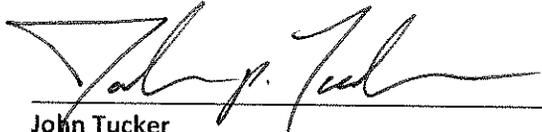
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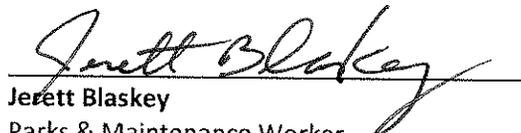
**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE TOWN OF LOS GATOS  
AND  
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES (AFSCME)**

THIS AGREEMENT IS ENTERED INTO AS OF JULY1, 2013, BETWEEN THE TOWN OF LOS GATOS, HEREINAFTER REFERRED TO AS THE "TOWN", AND THE LOS GATOS "AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES", HEREINAFTER REFERRED TO AS "AFSCME".

Pursuant to Town Resolution 1974-41 of the Town of Los Gatos and Section 3500 et. seq. of the Government Code, the duly authorized representatives of the Town and AFSCME, having met and conferred in good faith concerning the issues of wages, hours, and terms and conditions of employment, as herein set forth, declare their agreement to the provisions of this Memorandum of Understanding.

**FOR AFSCME:**

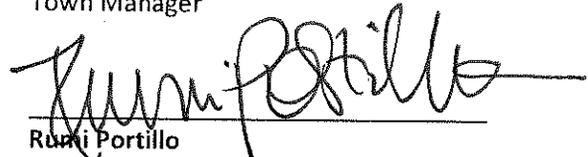
  
\_\_\_\_\_  
**John Tucker**  
Business Agent

  
\_\_\_\_\_  
**Jerett Blaskey**  
Parks & Maintenance Worker  
AFSCME President

  
\_\_\_\_\_  
**Sherrie Olsen**  
Parks & Maintenance Worker  
AFSCME Secretary-Treasurer

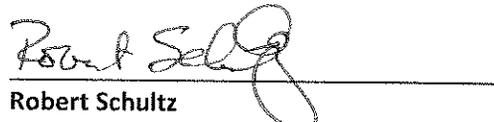
**TOWN OF LOS GATOS:**

  
\_\_\_\_\_  
**Greg Larson**  
Town Manager

  
\_\_\_\_\_  
**Rumi Portillo**  
Human Resources Director

  
\_\_\_\_\_  
**Lynne Lampros**  
Deputy Town Attorney

**APPROVED AS TO FORM:**

  
\_\_\_\_\_  
**Robert Schultz**  
Town Attorney

Attest:  
  
\_\_\_\_\_  
CLERK ADMINISTRATOR



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**TOWN OF LOS GATOS  
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES  
MEMORANDUM OF UNDERSTANDING  
ON SALARIES, FRINGE BENEFITS AND WORKING CONDITIONS**

**Section 1. Purpose**

The Town and the Union agree that the purpose of this Memorandum of Understanding is to promote and provide harmonious relations, cooperation, and understanding between the Town and the employees represented by the Union; to provide an orderly and equitable means of resolving disputes that may arise concerning this Agreement; and to set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation pursuant to the State Government Code and the Town Employer-Employee Relations Resolution.

**Section 2. Term**

This Memorandum of Understanding shall commence on July 1, 2013 and terminate on June 30, 2016.

**Section 3. Union Rights**

**3.1 Advance Notice**

Except in cases of emergency as provided in this subsection the Union, if affected, shall be given reasonable advance written notice of any ordinance, resolution, rule or regulation directly relating to matters within the scope of representation proposed to be adopted by the Town and shall be given the opportunity to meet with the appropriate management representatives prior to adoption.

In cases of emergency when the foregoing procedure is not practical or in the best public interest, the Town may adopt or put into practice immediately such measures as are required. At the earliest practicable date thereafter the Union shall be provided with the notice described in the preceding paragraph and be given an opportunity to meet with the appropriate management representatives. The Union shall timely raise any issues arising under this subsection

**3.2 No Discrimination**

The Town and Union agree that neither will discriminate in any way against employees covered by this Agreement because of their membership and/or activities on behalf of the Union.

**3.3 Stewards**

The Town agrees to recognize two (2) duly appointed Union Stewards and two (2) duly appointed alternate Stewards for purposes of Union representation. The Union shall provide the Town with a list of those duly appointed individuals. The Steward or Union Officer shall distribute to all new unit employees material(s) furnished for such purpose by the Union.

**3.4 Representation**

Upon request of an employee covered by this Agreement, the Steward and/or Union representative shall be present during meetings which the employee reasonably anticipates will involve that individual employee in disciplinary matters. To the extent possible, disciplinary and grievance matters affecting employees shall be considered during normal working hours and with pay.

**3.5 Access to Premises**

The designated Union business representative, for performance of official duties, shall not be denied access to Town premises subject to that representative first advising Town management that he/she is on the premises and subject to not interfering with the work duties of Town employees.

### **3.6 Bulletin Boards and Union Literature**

The Union shall have the right to use the Corporation Yard Bulletin Board and employee mailboxes for posting and distribution of Union materials.

### **3.7 Release Time**

The Town shall provide two (2) AFSCME-authorized union representatives with up to 20 hours of release time each year for the purpose of attending Union conventions, conferences and union-sponsored training programs. The use of release time will have no impact on accrual of paid leave, seniority, completion of probation and eligibility for health and welfare benefits, or pension benefits.

## **Section 4. Savings Clause**

If any provision or the application of any provision of this agreement as implemented should be rendered or declared invalid by any final court action or decree or by reasons of any preemptive legislation, the remaining sections of this agreement shall remain in full force and effect for the duration of this agreement.

## **Section 5. Union Membership and Payroll Deductions**

Every employee shall become a member of the Union or pay to the Union a service fee in an amount that shall not exceed membership dues. The Union shall certify in writing to the Town any changes in the amount of membership dues or service fee.

### **5.1 Authorization of Membership Dues or Service Fee**

Any employee may sign and deliver to the Town an authorization for payroll deduction of membership dues or service fee. The Town agrees to remit to the Union all monies deducted accompanied by a list of workers for whom such deductions have been made and indicating any changes in personnel from the list previously furnished.

### **5.2 Payroll Deduction**

Upon the written request of the Union, the Town will deduct the amount of the service fee from the paycheck of any employee who has not authorized a payroll deduction of membership dues or service fee. The Town shall not be obligated to put into effect any new, changed, or discontinued deduction until the pay period commencing thirty (30) days or longer after such submission.

### **5.3 Political Dues Deduction (PEOPLE)**

Any employee may sign and deliver to the Town an authorization card for payroll deduction of voluntary contributions to Public Employees Organized to Promote Legislative Equality (PEOPLE). The Town agrees to remit monthly to the Union all monies deducted for PEOPLE accompanied by a list of employees for whom such deductions have been made. Such authorization may be invoked or revoked in writing by the employee at any time.

### **5.4 Indemnification and Hold Harmless**

The Union shall indemnify and hold harmless the Town against any and all suits, claims, demands, and liabilities that may arise out of, or by reason of, any action or omission of the Town in complying with this Section.

## **Section 6. Management Rights**

The Union recognizes that the rights of the Town include, but are not limited to, the exclusive right to determine the mission of its constituent departments, commissions and boards; set the standards of service; determine the procedures and standards of selection for employment and promotion; direct its employees; take disciplinary action; relieve its employees from duty because of lack of work or other legitimate reasons; maintain the efficiency of governmental operations; determine the methods, means, and personnel by which government operations are to be conducted; determine the content of job classifications; take all necessary action to determine when an emergency exists and to carry out its mission in emergencies including the requirement that employees work overtime; and exercise complete control and discretion over its organization and the technology of performing its work.

## **Section 7. Town Employer-Employee Relations Resolution**

The Union and the Town recognize the existing language in Town Resolution 1974-41 as it governs all aspects of labor relations in the Town. Any changes in Resolution 1974-41 which apply to AFSCME Local 101 will be made after meeting and consulting with the Union.

## **Section 8. Equal Employment Opportunity**

The Union and Town support equal employment opportunity programs.

## **Section 9. Non-Discrimination**

The Town and Union agree that all provisions of this Agreement shall be applied equally to all employees covered herein without favor or discrimination because of race, color, national origin, ancestry, religion, religious creed, physical disability, mental disability, medical condition, genetic information, marital status, sex, sexual orientation, gender, gender based pregnancy/childbirth, gender identity, gender expression, age (over 40), or political affiliation or any other basis prohibited by applicable Federal, State or Town law. The parties further agree that Section 9 and 9.1 shall not be subject to the Grievance Procedure provided in this Agreement.

### **9.1 General Provisions Regarding Americans with Disabilities Act**

Because the ADA requires accommodations for individuals protected under the Act, the Union recognizes the Town's obligation to comply with all provisions of the ADA on a case by case basis.

#### **9.1.1**

The Union recognizes that the Town has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. The Union will be notified of these proposed accommodations prior to implementation by the Town.

#### **9.1.2**

Any accommodation provided to an individual protected by the ADA shall not establish a past practice.

### **9.2 Non-Discrimination for Union Activity**

The Town and Union agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Union, or because of any authorized activity on behalf of the Union. The parties further agree that this Section 9.2 may be subject to the Grievance Procedure provided in this Agreement.

## **Section 10. Compensation**

### **10.1**

Employee Appreciation One-Time Payment: Upon successful ratification of this agreement, the Town will provide employees with a one-time lump sum payment of 1.5% of their salary paid in cash on December 13, 2013.

### **10.2**

Employees will receive a pay adjustment as follows:

2% salary increase on July 1, 2014

2% salary increase on July 1, 2015

## **Section 11. Out-of-Classification Pay**

The Town and the Union agree that it is the intent of Town management, whenever possible, to avoid working an employee out of classification for a prolonged period of time.

It is further agreed that an employee assigned to work out-of-classification shall be compensated from the first day of the out-of-classification assignment. Out-of-classification pay shall be a minimum of five percent (5%), above the employee's regular salary; or the lowest rate of the higher classification, whichever is greater.

Training programs mutually agreed to by the Town and the Union which are designed to enhance and/or provide career development opportunities shall not be subject to this provision.

Any employee who believes they are working out of classification may request a review of their classification.

### **11.1 Street-Sweeper Specialty Pay**

Employees assigned to operate the street sweeper shall be paid a 5% differential above their base hourly rate. This special assignment pay shall be paid for actual time worked and does not apply to nonworked hours such as vacation, holidays, personal or sick leave.

In accordance with CalPERS regulations, this special assignment pay is reported as PERSable income for those employees who are assigned to operate the street sweeper on a routine and consistent basis. Thus, employees who operate the street sweeper on back-up basis shall be paid the premium in accordance with this agreement but the premium will not be reported as PERSable income.

The Department Director retains the right to determine street sweeper assignments in accordance with the needs of the department. Employees assigned to operate the street sweeper must meet the qualifications of the job and demonstrate proficiency to operate the equipment.

### **11.2 Class A Driver's License Pay**

Employees who maintain a valid California Commercial Class A Driver's License shall be paid \$30 per month.

## **Section 12. Payroll Practices**

### **12.1 Payroll Periods and Availability of Checks**

Employees shall be compensated on a biweekly basis.

Employee pay shall not be withheld more than seven (7) days following end of payroll period; however, overtime may appear on the next payroll period if it is worked following the submittal of time sheets, or during a pay period with a Town holiday which requires early submittal of time sheets and early distribution (before Friday) of paychecks. This may also occur at the end of the fiscal and calendar year.

Every effort will be made to make paychecks available to employees as soon as checks are signed and ready for distribution.

### **12.2 Automatic Deposit**

The Town shall provide an optional direct deposit system for use by employees.

### **12.3 Deduction and Accrual Information**

Payroll deductions and leave balances shall appear on paychecks and be current to the latest payroll period.

## **Section 13. CalPERS Benefits**

### **13.1 2% at 55**

Effective December 16, 1992, the Town's contract with the Public Employees' Retirement System (PERS) provided the 2% at 55 retirement formula for eligible Miscellaneous Town employees (regular employees). Employees shall contribute 7% towards the retirement benefit.

### **13.2 2.5% at 55**

Effective July 1, 2008, the Town amended its contract with PERS to include a 2.5% at 55 PERS retirement benefit (Gov't Code 21354.4). Employees shall contribute 8% towards the retirement benefit.

### **13.3 2% at 60 (Two-Tier Retirement)**

Effective September 15, 2012, the Town amended its contract with PERS to include the 2% at 60 retirement benefit (Gov't Code 21353). Employees hired in this tier are subject to PERS 36-month final average compensation (Gov't Code 20037), and will not be eligible for PERS Fourth Level of 1950 Survivor Benefits (Gov't Code 21574).

### **13.4 2% at 62 (Public Employees' Pension Reform Act of 2013 [PEPRA])**

For employees hired on or after January 1, 2013, who meet the definition of new member under Gov't Code 7522.04(f), the Town will provide the 2% at 62 retirement benefit.  
For employees hired on or after January 1, 2013, the Town will use the 36-month final average compensation (Gov't Code 20037).  
New members hired on or after January 1, 2013 shall pay an amount that is equal to one half (1/2) the normal cost of his/her CalPERS pension, or the current contribution rate of similarly situated employees, whichever is greater. (Gov't Code 7522.30(c)).

### **13.5 EPMC, 414(h)(2) IRC**

Effective June 24, 2001, the Town will cease its participation in the Public Employees' Retirement System "Employer Paid Member Contribution" (EPMC) provision. Concurrently, the Town will begin paying in salary to the employees covered by this MOU the equivalent dollar amount of the former EPMC (7% of salary). Employees shall be responsible for making their own PERS member contributions.

Substantially concurrent with the adoption of this MOU, the Town will adopt a Resolution materially the same as that recommended by the Public Employees' Retirement System to implement the provisions of 414 (h) (2) of the Internal Revenue Code (IRC). AFSCME accepts the terms of this Resolution and acknowledges that this Resolution will apply to all current and future members of AFSCME.

### **13.6 Military Service Purchase**

The Town shall permit employees to purchase PERS credit for military service time.

### **13.7 Retiree Health**

In accordance with the Public Employees' Medical and Hospital Care Act (PEMHCA), employees qualify for retiree health benefits upon five (5) years of service if they meet the vesting requirements as set forth by CalPERS and take a service or disability retirement from Town employment. Additionally, the employee must actually draw a CalPERS pension within ninety (90) days of separation from the Town, provided the employee remains with the Town's health plan through COBRA.

#### **13.7.1**

For Medicare Eligible retirees, the Town's contribution will align to Kaiser North Medicare rates.

## Section 14. Health and Welfare Benefits and Rate of Town Contribution

Employees may participate in either the Insurance Program or the Cash Allocation Program. Employees shall select either the Insurance Program or the Cash Allocation Program annually during the Town's open enrollment period, or at any other time permitted by the PEMHCA, such as a qualifying event (e.g., birth of a child, marriage, spouse's loss of medical coverage, etc.)

### 14.1 Insurance Programs

#### 14.1.1 Dental

The Town shall contribute up to the Delta Dental Premier premium for each employee at the employee's level of participation (i.e., Employee Only, Employee Plus One, or Employee Plus Two or More.)

#### 14.1.2 Medical

The Town will provide a choice of coverage under the Public Employees' Retirement System Health Benefits Medical Program.

The Town will provide payment of medical insurance premiums equal to the cost of Kaiser North Medical Insurance Program at the employee's level of participation (i.e., Employee Only, Employee Plus One, or Employee Plus Two or More), offered by the Public Employees' Retirement System Health Benefit Medical Program. If the employee chooses medical coverage under a program more expensive than Kaiser North, the difference will be paid by the employee through payroll deduction.

##### 14.1.2.1

Effective January 2013, Town will pay Kaiser North based on level of participation (Employee, Employee Plus One, Employee Plus Two or More.) Town will pay the full cost of Kaiser Employee Only. For dependents, employee will contribute per pay period for the first two pay periods of each month, the following:

\$20/per pay period for Employee Plus One;  
\$50/per pay period for Employee Plus Two or More.

##### 14.1.2.2

Effective January 2015, Town will pay the full cost of the employee at the level of Kaiser North Employee Only. For dependents, Town will pay 90% of the cost for dependents at the level of Kaiser North and Employee will pay 10% of the dependent cost.

As such, Town will pay 90% of the difference between Kaiser North Employee Only and Kaiser level of participation (Employee Plus One or Employee Plus One/More, depending on family status.)

Example: Employee Only Premium is \$800; and Employee Plus One Premium is \$1,400

Employee Plus One Premium (\$1400) minus Employee Only Premium (\$800) = \$600  
Town pays 90% of \$600=\$540  
Employee pays 10% of \$600=\$60

#### 14.1.3 Vision

The Town shall pay for employee-only coverage under the Town's Vision Service Plan (VSP). Employees may enroll eligible dependents at their own cost.

## **14.2 Cash Allocation Program**

Employees participating in the Cash Allocation Program must either purchase coverage under the Public Employees' Retirement System Health Benefits Medical Program or must show proof of other medical coverage.

The Town contribution to the Cash Allocation program will be equal to Four Hundred Twenty Dollars (\$420) per month.

Benefits which can be purchased by the cash allocation plan include medical insurance and dental insurance. These benefits are available on a pre-tax basis.

Employees may also choose to receive part or all of their cash allocation plan in cash. Any amount received in cash is taxable. Employees choosing to receive taxable cash will have the option of receiving it in two equal amounts in December and June, or the first two paychecks of each month (24 times a year).

Employees choosing to use cash allocation plan funds for medical insurance must pay all medical premiums from the allocation prior to receiving a cash allocation.

## **14.3 Supplemental Health and Welfare Benefits**

### **14.3.1 Life Insurance**

Coverage of \$50,000 plus \$50,000 accidental death: Town to pay for premium. Additional life insurance may be purchased by the employee equal to once or twice the employee's base salary, not to exceed \$200,000.

### **14.3.2 Disability Insurance**

Short Term Disability Policy effective 8th calendar day; coverage of 60% of weekly earnings up to maximum of \$1,300 per week for 12 weeks. Long Term Disability benefits begin on the 91st day of disability; coverage of 60% of monthly earnings up to a maximum of \$6,000/month.

### **14.3.3 Employee Assistance Program**

Premiums shall be paid by the Town.

### **14.3.4 Unemployment Insurance**

The Town will provide State-mandated benefits as required by law.

## **Section 15. Workers' Compensation**

The Town and Union agree that employees who sustain illness or injury arising out of and in the course of their Town employment shall receive benefits equal to those mandated by the State of California, and the California Labor Code plus the difference between State mandated benefits and the individual's regular salary, if any, paid by the Town and charged to the employee's accrued sick leave balance. If sick leave is not available, other accrued leave balances shall be charged. If an employee does not have accrued leave balances, the employee shall receive only the State-mandated benefits.

Pursuant to the Town disability insurance policy, employees shall receive the short term disability insurance effective the 8th day of disability and the long term disability insurance effective the 91st day of disability.

The policies and procedures affecting the use of workers compensation will be developed and administered by the Town Personnel Officer in accordance with State law. There is a three day (calendar) waiting period to receive benefits, unless the employee is hospitalized or out for more than two weeks. In the event of a non-hospitalized on-the-job injury verified as such and eligible for worker's compensation disability payments, the Town will compensate employees for the first three day waiting period.

## **Section 16. Deferred Compensation**

The Town shall continue to make a Deferred Compensation program available to employees. The Town makes no representation on the merit of the plan or any of the investment products or instruments which may be offered by the plan. The responsibility for evaluating the investment options within the plan is the responsibility of the individual participant. The Town shall not be obligated to offer more than one Deferred Compensation carrier.

## **Section 17. Uniforms**

Uniforms shall be provided to employees at the expense of the Town and shall be required to be worn during working hours. Employees are to report to work in uniforms that are neat, clean, and in good repair. In the event an employee's uniform is damaged or worn as determined by the supervisor, the item may be replaced in advance of the annual schedule.

### **17.1 Uniform Items for All Employees**

On an annual basis, the Town will supply seven (7) shirts, one standard jacket, one pair of rain pants, one pair of rain boots and one cold-weather jacket. Uniform items will be provided annually by November 1. Employees shall be responsible to launder uniform items.

#### **17.1.1 Optional Shorts**

Upon employee request and supervisor approval, the Town will furnish up to (2) pairs of shorts per year. Employees are permitted to wear shorts only when shorts do not pose a safety hazard. The supervisor has the authority to determine when shorts are acceptable.

#### **17.1.2 Optional Weather-Protective Headwear**

Upon request by the employee, the Town will supply up to two (2) approved caps or hats per year. No other type of headwear is permitted to be worn during work hours.

### **17.2 Uniform Items for Mechanics**

In addition to the items listed above, the Town will provide coveralls that will be laundered by the Town.

## **Section 18. Safety Equipment**

The Town shall retain the right to establish minimum safety and quality standards for safety equipment, clothing and steel-toed safety shoes to be used while performing assigned tasks. If an employee is at work without the required clothing or safety equipment, that employee will not be paid until s/he is at the worksite with the required clothing and safety equipment.

### **18.1 Steel-toed Safety Shoes**

On an annual basis, the Town will provide one pair of steel-toed safety shoes per employee. The steel-toed safety shoes must be worn at all times except for classroom training or administrative assignments. In the event an employee's safety shoes are damaged, worn, or unsafe as determined by the supervisor, the shoes may be replaced in advance of the annual schedule. The not-to-exceed amount will be \$200 for AFSCME employees. In addition to this amount, the Town will provide up to an additional \$20 for high climber boots for two (2) AFSCME employees as assigned by the Department Director. If the safety shoe selected by the employee is less than the amount provided by the Town, the employee may apply the difference toward shoelaces, socks or other safety-shoe related accessories at the time of purchase.

## **Section 19. Mileage**

Employees using personal vehicles on official Town business shall be reimbursed at the mileage rate established by the I.R.S. Private vehicles used for Town business shall comply with the California Vehicle Code.

## **Section 20. Work Schedule**

### **20.1 Standard Work Day**

The standard workday shall be 8.5 consecutive hours including a 15-minute morning and a 15-minute afternoon work break, and a forty (40) minute lunch break, which shall include any wash-up time. The standard workday shall begin at 7:00 AM and end at 3:30 PM, the last ten (10) minutes of which shall be available for wash-up time. Minimum seventy-two (72) hours' notice will be provided by the Town for non-emergency changes in schedule.

### **20.2 Use of Town Vehicle**

An employee whose lunch or break period begins at a work location other than the Corporation Yard may use the job site Town vehicle to go to lunch or obtain food. Travel time in connection with this privilege shall not extend the lunch period beyond the forty (40) minutes including wash-up time, nor extend the break period beyond fifteen (15) minutes.

### **20.3 Early Start Pay**

Non-overtime work begun prior to 7:00 AM shall receive additional compensation of 5% above the employee's base hourly rate for the entire shift.

The Early Start premium will not apply if the employee's start time is adjusted at the request of the employee under a flexible work arrangement authorized by the department.

### **20.4 Special Events**

As related to work during special events, the Town will prepare a list of special events annually to be updated monthly as information becomes available. In making assignments to work, volunteers will be used first. In the absence of volunteers, assignments to work can be made on a reverse seniority basis. The list shall rotate.

### **20.5 Work Week**

The Town has no intention of changing existing work weeks at the present time.

The Town's decision to change existing work weeks will involve but not be limited to the following considerations:

- (a) Failure to meet the performance objectives of the work unit.
- (b) Change in service level.

Prior to a change in work week (except in the event of an emergency) the Town will give a minimum two weeks' notice to affected employees. Further, the Town agrees to meet in good faith to attempt to resolve any hardships caused by a change in work week.

### **20.6 4-10 Schedule for Vehicle Maintenance Shop**

The Town agrees to maintain a 4/10 (4 day per week/10 hours per day) plan for the vehicle maintenance shop as long as Monday and Friday in each workweek can be covered by a mechanic. In addition, this program shall be evaluated quarterly to determine if productivity and coverage meet the Town's repair needs. This will determine if the program will continue.

### **20.7 Work Schedule and Holidays**

Represented employees are entitled to eight (8) hours of paid time off in observation of the holidays listed in Section 29.

#### **20.7.1 Hours Worked on an Observed Holiday**

Employees assigned to work on an observed holiday shall be paid time-and-a-half for hours worked.

#### **20.7.2 Hours Worked on the Actual Holiday**

Employees assigned to work on an actual holiday that is different than the observed holiday shall be paid double time for the hours worked.

## **20.8 Flex Schedule**

As an alternative to the normal schedule described in the above section, employees may be granted the option to participate in a Flex Schedule under the following terms and conditions:

The Department Director, with the approval of the Town Manager, has the exclusive authority to approve an employee's request for a flex schedule. The decision to implement or terminate a flex schedule is final and is not subject to meet and confer or any grievance procedure. Participating employees will be provided notification at least one (1) full pay period prior to termination of a flex schedule.

Employees on a flex schedule will receive no more than eight (8) hours on a paid holiday and will be required to use other accrued leaves or to re-arrange their schedule to maintain an 80-hour pay period.

## **Section 21. Overtime**

### **21.1 Scheduling**

All overtime will be scheduled pursuant to the needs of the Town. Overtime shall be scheduled provided the individual is capable of performing the assignment. In the absence of volunteers, the Town shall assign overtime in rotation based on reverse seniority. Seniority for the purpose of this section is defined by total continuous service to the Town.

#### **21.1.1**

Overtime for work in progress shall be assigned to the employees responsible for the assignment.

#### **21.1.2**

Overtime for special events shall be offered on a rotational basis in accordance with seniority.

### **21.2 Compensation**

Overtime shall be compensated at the rate of time and one-half based upon either hours in excess of eight (8) per day or hours in excess of forty (40) per week. Overtime work shall accumulate or be paid off at the employee's option subject to the scheduling needs of the Town. If an employee elects to receive compensatory time off in lieu of overtime pay, for each hour of overtime work they will receive one and one-half hour of compensatory time credit.

### **21.3 Compensatory Time**

Use of compensatory time will be at the Town's discretion based on scheduling needs. The Town shall, to the best of its ability and subject to scheduling needs of the Town, make every effort to accommodate employee requests for compensatory time off. The maximum accrued compensatory time accumulation shall be eighty (80) hours.

## **Section 22. Call Back**

Call back is defined as Town required return to work after an employee has completed his/her normal work shift and before his/her next scheduled normal workday. An employee notified of overtime that is not contiguous to his/her shift less than 72 hours in advance will be paid at the call back rate. An employee called back to work shall be reimbursed for mileage.

### **22.1**

For an employee on standby: Minimum call-back shall be three (3) hours at the overtime rate with such three-hour period defined beginning with the time of the initial call and concluding thirty (30) minutes after the employee calls in to the Police Department dispatcher that the assignment has been completed.

### **22.2**

For an employee not on standby: Minimum call-back shall be four (4) hours at the overtime rate with such three-hour period defined beginning with the time of the initial call and concluding thirty (30) minutes after the employee calls in to the Police Department dispatcher that the assignment has been completed.

### **22.3**

A subsequent call-back shall be considered to be within the initial call-back if the employee is notified within the original three-hour period. If two hours and forty-five minutes of the original three-hour period expires before the employee is notified, then a new three-hour minimum shall go into effect. This section also applies to employees on stand-by duty as provided in Sec. 23.

### **22.4**

When additional assistance is needed on a call-back event, supervisor approval is required to call back in more than one additional employee.

## **Section 23. Standby**

### **23.1 Assignment and Scheduling**

The Union recognizes the Town right to schedule standby assignments for employees at Town discretion. Standby assignments shall be made in order to provide services outside the regular work schedule. Standby shall be assigned for the months of November through March, with additional standby periods to be determined on an as-needed basis at the discretion of the Department Director.

Standby assignments shall be scheduled on a volunteer basis, using a list of all employees and offered by rotation based on seniority. Each rotation will last for seven (7) days. Seniority for the purpose of this section is defined as total continuous service to the Town. In the absence of volunteers, the Town shall schedule standby. To the best of its ability, the Town shall schedule standby assignments as far in advance as possible. The Union recognizes the need for standby provision of services and further recognizes that employee failure to respond when assigned standby duty may be cause for disciplinary action including termination.

### **23.2 Compensation**

Standby assignments shall be compensated at the rate of four (4) hours straight time pay for every twenty-four (24) hours of assignment. Assignments of standby duty for more or less than twenty-four (24) hours shall be compensated on a pro-rated basis (4 hours for each 24 hours). Specific call out of employees on standby assignments shall be compensated at the regular overtime rate. Town shall provide a cell phone to employees on standby assignment.

### **23.3 Eligibility**

Employees who can respond within a reasonable time period (i.e., 40 minutes on average) shall be eligible for standby duty regardless of where they reside. The Department Director shall qualify employees for standby duty by ascertaining that travel to standby assignments can be accomplished safely.

An employee who meets the above requirement, and whose work would not normally involve assignment to standby duty, may volunteer for such duty and will be assigned to the list of volunteer employees from which standby duty is assigned, at such time as he/she has received the necessary training in standby duties and skills. It is the intent of the parties that employees be notified by the Department as soon as possible after the execution of this Agreement that new volunteers will be accepted for training together with information for potential volunteers. If there are volunteers, the Labor-Management Committee shall be convened to discuss implementation of the appropriate training at the earliest practicable date.

### **23.4 Stand-By Training**

The Town will provide additional training in stand-by duties for newly hired employees during their first year of employment.

## **Section 24. Emergency Work**

If an emergency work situation (as defined by the Supervisor) does not permit an employee to take their meal period and/or breaks, the missed meal period and/or breaks will be credited as compensatory time at time-and-a-half.

## Section 25. Work Furlough Program

### 25.1 Town Participation

AFSCME recognizes the right of the Town to participate in the Work Furlough Program coordinated by the County of Santa Clara. The purpose of the program is to provide public service for local government through a sentencing alternative program for individuals to perform clean-up and maintenance-type duties.

### 25.2 Responsibilities

#### 25.2.1

A regular Town employee at the level of Maintenance Worker or higher will be responsible to conduct work related to the Work Furlough Program.

#### 25.2.2

An hourly employee at the level of Maintenance Assistant or higher will be assigned to assist the regular Town employee as necessary, at the discretion of the Department Director or designee.

### 25.3 Assignment and Scheduling

#### 25.3.1

AFSCME employees will be provided ten (10) calendar days' notice prior to a Work Furlough Program assignment except when a fill-in is necessary due to an emergency or unusual circumstance.

#### 25.3.2

Work Furlough Program assignments shall be first made on a voluntary basis. In the absence of volunteers, the Town will assign employees with the least seniority from employees hired on or after July 1, 2007.

### 25.4 Compensation

Maintenance Workers will receive a 5% out-of-class premium for supervision duties when assigned to the Work Furlough Program. This premium will be applied to the entire shift and is in addition to any overtime compensation.

### 25.5 Evaluation

Work performed by Town employees related to the Work Furlough Program is subject to inclusion in the employees' annual review.

### 25.6 Liability

Town employees assigned to the Work Furlough Program are covered for liability purposes by the Town of Los Gatos while performing duties within the scope of his/her job.

## Section 26. Vacation Schedule

The following vacation schedule shall apply to all employees:

0 to 36 months	10 days per year - 3.08 hours per pay period
37 to 60 months	16 days per year - 4.92 hours per pay period
61 to 120 months	21 days per year - 6.46 hours per pay period
121 to 180 months	23 days per year - 7.08 hours per pay period
181 months and over	25 days per year - 7.70 hours per pay period

Maximum accrual of vacation hours shall be 320 hours.

## **Section 27. Vacation Cash-Out**

Employees who terminate from Town service shall have all accrued vacation leave and compensatory time cashed out effective the last full work-day with the Town. This will terminate the employee's status as an employee of the Town. All represented employees will be eligible to cash out 100% of accrued vacation time twice per year in May and November. Such monies will be included in the first payroll check of June and December.

All employees may apply vacation time cash-out to deferred compensation, so long as applicable law permits.

## **Section 28. Sick Leave**

### **28.1 Accrual Rate**

Accumulation rate shall be eight (8) hours per month (3.70 hours per pay period). Maximum accrual of sick leave hours shall be 1200 hours.

### **28.2 Sick Leave and Other Accrued Leaves**

When an employee is absent for any of the purposes for which sick leave may be used, he/she may use other accrued leaves when sick leave has been exhausted, unless he/she has received a second consecutive written notice of counseling within an eighteen (18) month period regarding excessive or abusive use of sick leave.

### **28.3 Sick Leave Cash-Out Program**

Employees who terminate employment with the Town for any reason other than retirement may cash out their accumulated sick leave as follows:

Months of Employment
1- 59 months at 25%
60 - 119 months at 37.5%
120 months or more at 50%

If an employee is terminated due to a layoff, the employee shall be eligible to cash out 100% of accrued sick leave at time of layoff. In order to be eligible for the terminating sick leave cash-out program, an employee must have a sick leave accrual balance of at least 150 hours at the time of termination. Employees who terminate employment with the Town after a prolonged period of illness or injury, may apply to the Town Manager for a waiver of the 150 hours requirement.

### **28.4 Sick Leave Conversion at Retirement to Town Trust**

All employees hired prior to July 1, 2007 who retire may convert 100% of their accumulated sick leave to a dollar equivalent at their hourly rate of pay at the time of retirement. Employees hired after July 1, 2007 are not eligible for this Sick Leave Conversion option under this provision.

This amount shall be held in an account. The employee's portion of medical insurance premium payment will be withheld from their monthly retirement payment by PERS. The Town agrees to pay the retiree quarterly in advance on the first pay period of January, April, July, and October of each year after retirement. The first payment will be prorated to the nearest quarter. The retiree's portion of medical payments will be paid from this account by the Town until all monies are depleted from the account or the retiree dies, whichever occurs first.

This account will not accrue interest and will not be paid in cash to the retiree or any beneficiaries, except that upon the death of a retiree whose sick leave account has not been exhausted, the retiree's spousal survivor shall be paid the full cash value of the remaining sick leave in the retiree's account.

The retiree shall be responsible for 100% of their share of future medical insurance payments once the account is exhausted.

## Section 29. Holidays

The following shall be observed as paid eight (8) hour holidays for employees represented by the Union:

- January 1st (New Year's Day)
- 3rd Monday in January (Martin Luther King's Birthday)
- the 3rd Monday in February (President's Birthday)
- the last Monday in May (Memorial Day)
- July 4th (Independence Day)
- the first Monday in September (Labor Day)
- Thanksgiving Day
- the Friday following Thanksgiving Day.
- December 25th (Christmas Day)
- four (4) hours each on December 24 and December 31.
- every day declared a holiday by the President or Governor, subject to the Mayor also proclaiming the day as a holiday

Holidays which fall on Saturday shall be observed on the Friday prior, and holidays which fall on Sunday shall be observed on the following Monday.

## Section 30. Personal Leave

The employee shall be entitled to twenty-four (24) hours per calendar year; such leave shall be non-cumulative with no cash value. Of the twenty-four (24) hours annually, the employee may take twelve (12) hours without prior notice and twelve (12) hours with prior notice. If an employee's use of Personal Leave without prior notice results in the Town having to change another employee's schedule without 72 hours' notice, the situation will be considered an emergency under Section 20 (Work Schedule) and will not result in penalty to the Town.

## Section 31. Maternity Leave/Family Leave/Medical Leave

The Town recognizes State and Federal law regarding Maternity Leave and Family and Medical Leave. The Town will take action to inform employees of the current provisions of laws affecting these leaves. The Town may, at its discretion, approve leave beyond the specific amount provided above.

## Section 32. Catastrophic Time Bank

If an employee, spouse, or significant other, or child becomes catastrophically ill or injured, the employee may request in writing of the Town Manager that a catastrophic time bank be established. The bank will enable employees to donate accrued CTO, vacation, or sick leave to the requesting employee in accordance with Departmental policies to be developed.

## Section 33. Bereavement Leave

A maximum of 40 hours of bereavement leave shall be provided to each employee for a death in his/her immediate family or the immediate family of their spouse/registered domestic partner. Immediate family for the purpose of this section includes spouse/registered domestic partner, parent, grandparent, child, or sibling.

## Section 34. Military Leave

Military leave and benefits shall be granted in accordance with State and Federal Law, including the continuation of employee salary and benefits and employees will receive up to thirty (30) calendar days of pay.

## **Section 35. Personal Emergency Leave**

Leave will be available for employees for disasters declared by Federal, State, County, or Town officials if those disasters affect all or a portion of the Town "urban service area". Leave subject to scheduling by the Town. Employees shall be allowed to charge time off to accumulated overtime, vacation hours, and sick leave hours (in that order). In the event of a Town emergency (e.g., flood, earthquake) employees are required to remain at work until released by their Supervisor.

## **Section 36. Jury Duty**

An employee required to serve as a trial juror or an expert witness (expertise related to Town employment) shall have his/her salary and benefits continue; the employee shall turn over to the Town any compensation (other than travel related) from the courts or other source for jury duty.

## **Section 37. Leave Without Pay**

Leave without pay shall be subject to approval of the Town Manager or designee.

An employee who is on leave without pay shall not earn any employment benefits (including, but not limited to such benefits as vacation sick leave, medical benefits, dental and other insurance benefits, retirement credits for time employed or seniority entitlements of any kind) for the duration of such leave. An employee who is on leave without pay will have the ability to continue medical and dental coverage at their own expense in accordance with the Town's administrative policy on benefit retention.

Vacation, sick leave, or time worked shall not be used intermittently during an extended leave to interrupt a determination that an employee is on leave with no pay.

### **37.1 Voluntary Time Off**

Employee participation in this plan is contingent on the Town's agreement and understanding that employee participation cannot be interpreted as anything other than a temporary and limited good faith effort being made by the employee to do his/her part to help ease the Town's budget shortfall. This is not to be construed as a representation of employee commitment to a permanent program or an admission of any kind that the employee would not become harmed by such a plan becoming mandatory.

Employees may request voluntary unpaid time off under the following circumstances:

- A. No impact on accrual of paid leave, seniority, and completion of probation.
- B. No impact on benefit eligibility and Town contributions.
- C. Employees may cancel participation in the program at any time.

## **Section 38. Accrual of Benefits**

There shall be no accrual of benefits during unauthorized leave, suspension, or leave without pay.

## **Section 39. Notice of Vacancies**

Town job vacancies shall be posted on the Corporation Yard Bulletin Board for the duration of the recruitment period.

## **Section 40. Promotions**

Subject to the needs of the Town, promotional examinations shall be used whenever possible to fill vacancies in the Town service.

Employees promoted to higher paying classifications shall receive a minimum five (5%) percent increase in salary or an amount which shall not exceed the highest step in the range of the higher classification.

## **Section 41. Probationary Period**

The probationary period shall be twelve (12) months for all newly hired employees and six (6) months for employees receiving promotions. If at the end of a six month probationary period a promoted employee who has been routinely evaluated, trained and counseled is not meeting required performance standards, then the Town may extend the probationary period in three month increments, for a total maximum probationary period of 12 months.

An employee who is rejected during a promotional probation period, shall have the right to return to his/her former classification, and the same right shall apply to an employee who is displaced as a result of such return, provided, however, that no such right shall apply - and no additional right shall be conferred hereby - to an employee who is serving his/her initial probationary period with the Town unit.

## **Section 42. Outside Employment**

No full-time paid employee in the classified service shall hold any job other than employment by the Town without the written recommendation of his/her department manager and the written approval of the Town Manager. A copy of such approval shall be filed with the Personnel Officer. No employee, whether in the classified service or not, shall engage in other employment or activity which in any way involves a conflict with the interests of the Town or his/her responsibilities or duties as an employee.

Outside employment shall be reviewed and re-approved by the Department Director and Town Manager on a yearly basis.

## **Section 43. Attendance**

Employees shall be in attendance at their work in accordance with the rules regarding hours of work, holidays and leaves.

An employee whose absence is not authorized will not receive pay or benefits for the absent period and shall be subject to discipline. Failure on the part of an employee absent without leave to return to duty shall be grounds for discharge. It shall be the responsibility of an employee absent without leave to notify the Department Director of the reason the employee is absent and of the employee's availability for duty.

## **Section 44. Personnel Files**

Employees shall have the right to review materials in their individual personnel files in accordance with State law.

## **Section 45. Performance Evaluations**

### **45.1 Evaluations**

Performance evaluations shall take place at least every three (3) months for all probationary employees and shall take place at least annually thereafter on the anniversary of an employee's employment with the Town. Employees eligible for step increases shall receive their performance evaluation no later than fifteen (15) days prior to their employment anniversary date. Employee evaluation forms shall include a section with a box to be checked indicating whether an employee agrees or disagrees with his/her evaluation. Employees granted step increases shall receive those increases effective the closest pay period in which they are eligible.

All performance evaluations shall be discussed with the employee prior to the evaluation being completed. Employees shall sign their individual performance evaluations as evidence of discussion having taken place; employee signature does not necessarily imply agreement with the evaluation. An employee may attach separate written comments to his/her evaluation.

Performance evaluations shall be conducted annually from the employee's (1) date of hire, (2) date of last merit increase, or (3) date the employee entered his/her classification. The classification date shall supersede the hire date, and the date of the last merit increase shall supersede both the hire date and the classification date.

Performance evaluations shall be completed by an employee's immediate supervisor (i.e., PW Maintenance Supervisor or Parks Maintenance Supervisor). Written comments made by any other supervisor, superintendent or management personnel shall not change the numerical rating of the immediate supervisor.

The Town agrees to provide employees with a copy of both the initial and final versions of their quarterly and annual performance evaluations.

Sick leave usage shall not be directly evaluated on the performance evaluation. Performance categories that are affected by excessive or abusive use of sick leave shall be evaluated.

## **45.2 Counseling**

In the event that a worker's performance or conduct appears to be unsatisfactory or needing improvement, informal verbal or written counseling shall be provided by the worker's immediate supervisor. Counseling should be separate from ongoing work site dialogue and should address performance or conduct which, if not improved, may eventually result in a negative evaluation or disciplinary action. Documentation of such counseling shall be given to the worker at the time of the counseling and will not be placed in a worker's personnel file. When the situation allows counseling, counseling shall be used prior to any unfavorable reports being issued. Counseling should normally take place between the worker and the immediate supervisor.

## **45.3 Unfavorable Reports On Performance Or Conduct**

If upon such counseling a worker's performance or conduct does not improve and a negative evaluation or disciplinary action could result, the supervisor shall prepare a written report that includes specific suggestions for corrective action, if appropriate. A copy shall be given to the worker and a copy filed in his/her personnel file. Workers shall have the right to attach a written rebuttal to the report for inclusion in their personnel file.

## **Section 46. Seniority**

Unpaid leaves of absence and breaks in continuous service shall not be credited to employee seniority.

Seniority will be a factor in determining vacation use.

The Town shall establish a rule of ten promotional system and shall grant employees one point for each year of Town service up to a maximum of ten points when employees apply for promotional positions.

## **Section 47. Layoff Policy**

### **47.1 Definitions**

As used in this Section, the following words and phrases shall be defined as follows:

#### **47.1.1**

Service Seniority shall be defined as the length of time an employee has served as a regular employee of the Town. Service seniority shall not be earned for standby duty, overtime work, during periods of suspension without pay as a result of disciplinary action, or for non-medical leave without pay. Service Seniority for unpaid military leave will be considered in the manner prescribed by State and Federal law.

#### **47.1.2**

Classification Seniority shall be defined as the length of time the employee has served as a regular employee in a classification including anytime spent in a higher classification. A higher classification shall mean a job classification with a higher salary range.

#### **47.1.3**

A lower class shall mean a job classification with a lower salary range.

## **47.2 Order of Layoff**

When one or more employees in the same class are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows:

- (1) Temporary employees in the order to be determined by the appointing authority.
- (2) Probationary employees in the order to be determined by the appointing authority.
- (3) Permanent employees in inverse order of classification seniority.

## **47.3 Notice of Layoff**

Employees subject to the provisions of this Section shall be given a minimum 30 calendar day notice in writing prior to the effective date of layoff. The Union shall receive concurrent notice, and upon written request within seven calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate Town representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff. Notwithstanding the effort to work cooperatively, the Town has the exclusive right to determine the methods, means, numbers and kinds of personnel by which by services are to be provided. The Town's decision to make a reduction in force or layoff an employee(s) is not subject to the duty to meet and confer.

## **47.4 Reassignment in Lieu of Layoff**

In the event of layoff, any employee so affected may elect to:

- (1) Accept a position in a lower class in which the employee has attained permanent status, provided the employee is otherwise qualified and has more service senior than other employee(s) in such lower class.
- (2) Accept a vacant position in a lower class for which the employee has the necessary education, experience, and training as determined by the Director of Human Resources or designee.
- (3) Any employee entitled to the options noted above, which involve assignment to a lower classification, may elect to be placed on layoff in lieu of accepting such assignment to the lower class. In the event the employee elects to be placed on layoff, such employee will only be recalled to the classification from which the employee elected to be placed on layoff.

## **Section 48. Layoff Reinstatement**

### **48.1**

The names of such persons who are laid off or who elect reassignment in lieu of layoff in accordance with the provisions of Section 47 of this Memorandum of Understanding shall be placed upon a Reinstatement Eligible List in inverse order of Service Seniority, i.e., the person with the greatest Service Seniority on the Reinstatement Eligible List for the classes affected shall be offered reinstatement when a vacancy exists in the affected class. Prior to reinstatement, an employee shall be required to meet the qualifications of the positions to which he/she is reinstated.

### **48.2**

In the event an employee accepts reinstatement to a lower class to which the employee is entitled, such person's name shall remain on the Reinstatement Eligible List for reinstatement to higher class, provided such a person, except for lack of seniority, would have been otherwise entitled to such higher class at the time of the most recent layoff.

### **48.3**

Any person who is reinstated to a class which is the highest class to which they would have been entitled at the time of the layoff shall have the employee's name removed from the Reinstatement Eligible List.

**48.4**

In the event a laid off employee cannot be contacted by the Town through usual and customary channels within 10 working days, such person's name shall be removed from the Reinstatement List, providing, however, that such person within the twenty-four month period specified herein may request that his/her name be returned to the Reinstatement Eligible List and such person's name may be at the sole discretion of the Personnel Officer, or designee, be returned to the Reinstatement Eligible List. In this case, the decision of the Personnel Officer or designee shall be final and not subject to any grievance procedure contained herein.

**48.5**

In no event shall the names of any person laid off pursuant to the provisions of this Section remain on Reinstatement Eligible List for a period longer than twenty-four months from the effective date of such person's most recent layoff.

**48.6**

Upon reinstatement to any classification to which the employee is entitled pursuant to the provision of this Section, all benefits acquired by the employee prior to layoff shall also be reinstated. An employee shall not receive credit for time spent on layoff in computing time for any benefit entitlement.

**48.7**

A laid-off employee shall lose their reinstatement rights for: (1) failure to return to work within 30 days of notice of reinstatement; (2) retirement; and (3) termination for cause.

**48.8**

Laid-off/displaced employees shall be paid accrued leaves and related benefits in accordance with this Memorandum of Understanding and applicable Town policies and rules. Employees being re-employed who received a sick leave pay off at the time of layoff/displacement, shall have the uncompensated portion of their sick leave balance restored; provided, however, that only those sick leave hours accrued after re-employment shall be applied to sick leave payoff or retiree medical related to a subsequent termination.

**Section 49. Contracting Out**

No bargaining unit employees shall be laid off as a result of the Town entering into a contract with any outside party.

**Section 50. Safety Committee**

Union shall encourage its member's participation in the Town-wide Safety Committee.

**Section 51. Safety**

The Town shall continue to comply with all applicable State rules and regulations relative to safety. The Town and Union agree to maintain a joint committee to investigate and make recommendations on safety issues identified by the Union and the Town.

**Section 52. Physical Examinations and Tests**

The Town agrees to provide full cost reimbursement for physical examinations and job-related tests that may be required of employees as a condition of continued employment with the Town.

## **Section 53. Grievance Procedure**

Grievances shall be defined as alleged violations of this agreement or disputes regarding interpretations, application, or enforcement of this agreement or Town ordinances, resolutions, and written policies related to personnel policies and working conditions. Grievances shall not include disagreements, disputes, or activities regarding or pertaining to examinations for employment or promotion, disciplinary action, performance evaluations, probationary terminations and items subject to meet and confer. (Nothing in these definitions shall be construed to limit "permanent" employees from appealing decisions affecting their employment to the Town Personnel Board.)

No act or activity which may be grievable may be considered for resolution unless a grievance is filed in accordance with the procedure contained herein within thirty (30) calendar days of the date the grievable activity occurred or the date the employee could reasonably have known such activity occurred. This statute of limitations shall not apply to probationary employees.

The parties agree that all grievances will be processed in accordance with the following procedure:

### **Step 1**

Any employee who has a grievance shall first try to get it settled through discussion with his/her immediate supervisor without undue delay. Every effort shall be made to find an acceptable solution at the lowest possible level of supervision. If after such discussion the employee does not believe the grievance has been satisfactorily resolved, he/she may file a formal appeal in writing to his/her Department Director within ten (10) calendar days after receiving the informal decision of his/her immediate supervisor.

### **Step 2**

The Department Director receiving the formal appeal shall render his/her written decision within ten (10) calendar days after receiving the appeal. If after receipt of the written decision of the Department Director the employee is still dissatisfied, he/she may appeal the decision of the Department Director to the Town Manager. Such appeal shall be made by filing a written appeal to the Town Manager within five (5) days after receipt of the written decision of the Department Director. The Town Manager shall review the decision of the Department Director, and his/her decision, which shall be rendered within twenty (20) working days after the appeal is made, shall be final unless appealed to the Personnel Board by either the employee or the Department Director.

### **Step 3**

The appealing party may file a written appeal of the decision, findings and conclusions of the Town Manager to the Personnel Board within ten (10) working days of the Town Manager's decision. Within sixty (60) calendar days of the filing of the appeal, the Personnel Board shall review the decision of the Town Manager and the appeal filed. The Personnel Board may ratify, modify or reverse the Town Manager's decision. The decision of the Personnel Board shall be final.

The time limitations for filing and responding to grievances may be waived or extended by mutual agreement of the parties. If either party to the grievance so requests, an informal hearing shall be conducted at the Department Director or Town Manager appeal levels. Employees may be represented by counsel, Union representative, Union steward or other person at any stage in the grievance process

## **Section 54. Disciplinary Procedure**

### **54.1 Suspension**

Suspension shall be a temporary separation from Town service without pay for disciplinary purposes. The Department Director, with notice to the Personnel Officer, may suspend an employee without pay for disciplinary purposes.

### **54.2 Reduction in Pay**

Reduction in pay shall be a decrease in salary to a lower step within the salary range for disciplinary purposes

Reduction in pay is a decrease in compensation paid to an employee for a fixed period of time for disciplinary purposes

The Department Director, with notice to the Personnel Officer, may impose a reduction in pay to an employee for disciplinary purposes.

### **54.3 Demotion**

The Department Director, with notice to the Personnel Officer, may demote an employee whose performance of his/her required duties is below standard, or for other disciplinary purposes. Demotion may be made to vacant position, if approved by the Personnel Officer, in lieu of layoff. No employee shall be demoted to a position for which he/she does not possess the minimum qualifications. Written notice of the demotion shall be given by the Department Director to the employee before or within (3) days after the effective date of the demotion, and a copy filed with the Personnel Officer within the same period.

### **54.4 Termination**

The Department Director, with notice to the Personnel Officer, may terminate an employee whose performance of his/her required duties is below standard, or for other disciplinary purposes, written notice of the termination shall be given by the Department Director to the employee before ten (10) days of the effective date of the termination, and a copy filed with the Personnel Officer within the same period.

### **54.5 Grounds for Discipline**

The Town's standards of conduct are established for the guidance of all employees. These standards are only a partial list of unacceptable behaviors and conduct and are not the exclusive grounds for discipline.

1. Fraud in securing employment or making a false statement on an application for employment.
2. Incompetency, i.e. inability to comply with the minimum standard of an employee's position for a significant period of time.
3. Inefficiency or inexcusable neglect of duty, i.e., failure to perform duties required of an employee within his/her position.
4. Willful disobedience and insubordination, a willful failure to submit to duly appointed and acting supervision or to conform to duly established orders or directions of persons in a supervisory position.
5. Dishonesty, involving employment.
6. Being under the influence of alcohol or dangerous drugs or narcotics while on duty.
7. Excessive absenteeism.
8. In excusable absence without leave.
9. Abuse of sick leave, i.e., taking sick leave without a doctor's certificate when one is required, or misuse of sick leave.
10. The conviction of either a misdemeanor or a felony involving moral turpitude shall constitute grounds for dismissal of any employee. The record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The Personnel Officer may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline, or the determination if such conviction is an offense involving moral turpitude. A plea or verdict of guilty, of a conviction showing a plea of nolo contendere made to charge a felony or any offense involving moral turpitude, is deemed to be a conviction within the meaning of this Section. The Personnel Officer may suspend or dismiss said employee when the time for appeal has elapsed or the judgment of the conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code of the State of California allowing such person to withdraw his plea of guilty and enter a plea of not guilty, or setting aside a verdict of guilty, or dismissing the accusation or indictment.
11. Discourteous treatment of the public or other employees.
12. Improper or unauthorized use of agency property.
13. Refusal to subscribe to any oath or affirmation which is required by law in connection with agency employment.

14. Any willful act of conduct undertaken in bad faith, either during or outside of duty hours which is of such a nature that it causes discredit to the agency, the employee's department or division.
15. Inattention to duty, tardiness, indolence, carelessness or negligence in the care and handling of agency property.
16. Violation of the rules and regulations published by the employee's department.
17. Outside employment not specifically authorized by the appointing authority in accordance with Town procedures.
18. Acceptance from any source of a reward, gift, or other form of remuneration in addition to regular compensation to an employee for the performance of his or her official duties in accordance with policy on Gifts, "Gratuities Or Rewards".
19. The refusal of any officer or employee of the agency to testify under oath before any Grand Jury having jurisdiction over any then pending cause of inquiry in which the investigation of government bribery or misconduct in agency office is involved shall constitute of itself sufficient ground for the immediate discharge of such officer or employee.
20. Willful violation of any of the provisions of the ordinances, resolutions or any rules, regulations or policies which may be prescribed by the agency.
21. Improper political activity. Example: Those campaigning for or espousing the election or non-election of any candidate in national, state, county or municipal elections while on duty and/or during working hours or in an agency uniform on or off duty; or the dissemination of political material of any kind while on duty and/or working hours or in uniform.

## **54.6 Procedures for Taking Disciplinary Action**

Disciplinary action shall be taken in compliance with the following procedures:

### **54.6.1 Notice of Intent**

Whenever the Department Director intends to suspend an employee, demote the employee, reduce the employee in pay or dismiss the employee, the Department Director shall give the employee a written notice of discipline which sets forth the following:

- a. The disciplinary action intended;
- b. The specific charges upon which the action is based;
- c. A factual summary of the grounds upon which the charges are based;
- d. A copy of all written materials, reports, or documents upon which the discipline is based;
- e. Notice of the employee's right to respond to the charges either orally or in writing to the appropriate authority;
- f. The date, time and person before whom the employee may respond in no less than (3) working days;
- g. Notice that failure to respond at the time specified shall constitute a waiver of right to respond prior to final discipline being imposed.

### **54.6.2 Response by Employee**

The employee shall have the right to respond to the Department Director orally or in writing. The employee shall have a right to be represented at any meeting set by the appropriate authority to hear the employee's response. Such meeting will only be permitted once and continued for no more than two days. In cases of suspensions for three (3) days or more, demotions, reductions in pay or dismissal the employee's response will be considered before final action is taken.

### **54.6.3 Final Notice**

After the response or the expiration of the employee's time to respond to the notice of intent, the appropriate authority shall: (1) dismiss the notice of intent and take no disciplinary action against the employee or (2) modify the intended disciplinary action or (3) prepare and serve upon the employee a final notice of disciplinary action. The final notice of disciplinary action shall include the following:

- a. The disciplinary action taken;
- b. The effect of the disciplinary action taken;
- c. Specific charges upon which the action is based;
- d. A factual summary of the grounds upon which the charges are based;
- e. The written materials, reports and documents upon which the disciplinary action is based;
- f. The employee's right to appeal if any.

### **54.6.4 Termination**

The Department Director, with permission from the Personnel Officer, may terminate an employee immediately if it is found that the employee is guilty of gross misconduct.

## 54.7 Disciplinary Appeals Hearing Procedure

The appeal procedure described herein shall apply only to cases of disciplinary suspensions, reductions-in pay, demotions and dismissals affecting regular part-time and fill-time classified service employees.

1. Following a review of the proposed disciplinary action, the Personnel Officer, shall serve on the employee affected, by registered mail or personal delivery, a statement signed by the Department Head indicating the Department Head's decision. This statement shall clearly inform the employee of the grounds for the decision and the acts or omissions which support the grounds. The statement shall further notify the employee that he or she has the right within five (5) working days after receipt of this notice, to request a hearing on the charges by filing the request with the Personnel Officer.
2. If, within the five-day (5) appeal period, the employee involved does not file said appeal, unless good cause for the failure is shown, the action of the Department Head shall be considered conclusive and shall take effect as prescribed.
3. If, within the five-day (5) appeal period, the employee involved files such notice of appeal by giving written notice of appeal to the Personnel Officer, the Personnel Officer shall submit the appeal to the Town Manager.
4. A time for an appeal hearing shall be established which shall not be less than twenty (20) working days, from the date of the filing of the appeal. All interest parties shall be notified in writing of the date, time, and place of the hearing at least ten (10) working days prior to the hearing.
5. All hearings shall be private; provided, however, that the appellant may request a hearing open to the public. Any request for an open hearing shall be submitted (5) days prior to the hearing date or the hearing will be closed.
6. Five (5) working days prior to the date set for the hearing each party shall serve upon the other party and submit to the Town Manager list of all witnesses and all exhibits to the Personnel Officer.
7. The employer's exhibits shall be designated by number. The employee or association exhibits shall be designated by alphabetical letter. Neither party will be permitted to call during the hearing a witness not identified pursuant to this section nor use any exhibit not provided pursuant to this section unless that party can show that they could no reasonably have anticipated the prior need for such witness or exhibit.
8. The hearing will not be conducted in accordance with technical rules related to evidence and witnesses but hearings shall be conducted in a manner most conducive to determination of the truth. Any relevant evidence may be admitted if it is the type of evidence on which responsible persons are accustomed to rely 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. Hearsay evidence may be used for the purpose of supplementing or explain any direct evidence but shall not be sufficient in itself to support a finding unless it would be admissible over the objection in civil actions. The rules dealing with privileges shall be effective to the same extent that they are now or hereafter may be recognized in civil actions, and irrelevant and unduly repetitious evidence may be excluded. Decisions made by the Town Manager shall not be invalidated by any informality in the proceedings.
9. The Town Manager shall rule on the admission or exclusion of evidence.
10. Each party shall have these rights: To be represented by legal counsel or other person of his or her choice; to call and examine witnesses; to introduce evidence; to cross-examine opposing witnesses on any matter relevant to the issues; to impeach any witness regardless of which party first called him or her to testify; and to rebut the evidence against him/her. If the employee does not testify in his or her own behalf, he/she may be called and examined as if under cross-examination.
11. Oral evidence shall be taken only on oath or affirmation.
12. The hearing shall proceed in the following order, unless the Town Manager for special reason, otherwise directs:
13. The party imposing discipline shall be permitted to make an opening statement.
14. The appealing party shall be permitted to make an opening statement.
15. The party imposing disciplinary action shall produce the evidence on his or her part.
16. The party appealing from such disciplinary action may then open his or her defense and offer his or her evidence in support thereof.
17. The parties may then, in order, respectively offer rebutting evidence only, unless the Town Manager for good reason, permits them to offer evidence upon their original case.
18. Arguments shall be permitted in discretion of the Town Manager. The party with the burden of proof shall have the right to close the hearing by making the last argument.
19. The Town Manager shall determine relevancy, weight, and credibility of testimony and evidence, and shall base its findings on the preponderance of evidence.
20. During the examination of a witness, all other witnesses, except the parties, shall be excluded from the hearing upon motion of either party.
21. No still photographs, moving pictures, or television pictures shall be taken in the hearing chamber during a hearing.

22. The Town Manager, prior to or during a hearing, may grant a continuance for any reason he/she believes to be important to his/her reaching a fair and proper decision.
23. The Town Manager shall render his/her findings and decision as soon after the conclusion of the hearing as possible, and in no event, later than ten (10) working days after conducting the hearing unless otherwise stipulated by the parties. The Town Manager's decision shall set forth the recommendations as to each of the charges and the reasons therefore.
24. The Town Manager may recommend the sustaining or rejecting of any or all of the charges filed against the employee. The Town Manager may recommend sustaining, rejecting, or modifying the disciplinary action invoked against the employee.
25. The decision of the Town Manager is final unless appealed to the Personnel Board. The proposed decision shall be filed with the charged employee and the Department Head, and shall set forth the recommended effective date the employee is to be reinstated, which may be any time on or after the date the disciplinary action went into effect.
26. Either the appealing party or the Department Head may file a written appeal to the proposed decision, findings, and conclusions of the Town Manager within ten (10) working days of the Town Manager's decision.
27. The party desiring to contest the decision of the Town Manager may request a transcript for review by the Personnel Board within ten (10) working days of the Town Manager's decision. If the appealing party requests a transcript, that party shall pay the cost of the transcript.
28. Within ten (10) working days of the filing of the appeal, the Personnel Board shall review the decision of the Town Manager, the appeal filed and the record. The Personnel Board shall review the decision of the Town Manager, the appeal filed and the record. The Personnel Board may ratify, modify or reverse the Town Manager's decision; the Personnel Board shall first obtain a transcript of the hearing. The decision of the Personnel Board shall be final.

## **Section 55. Unpaid Furloughs**

AFSCME understands that the Town Manager has the unilateral authority to implement unpaid furloughs. Time will be tracked on timesheets and monitored to ensure that all employees meet the unpaid furlough requirement.

### **55.1**

**Town-wide Closures:** The Town Manager will close Town services on designated days for which employees will take unpaid time. The closure schedule will be published for employees and the public in advance. In the event that the Town requires an employee to work on a designated furlough day, the employee shall not be furloughed on that day but shall take an unpaid furlough day on a date mutually agreeable to the employee and his or her supervisor. Rescheduled furlough days must be pre-approved by a supervisor in advance and in accordance with standard operating and staffing requirements.

#### **55.1.1**

**Rolling Furloughs:** As an alternative to taking unpaid furlough on a Town-wide Closure day, employees may request to schedule unpaid furlough on a regularly scheduled workday. The request is subject to supervisory approval and subject to meeting operational needs. Furlough hours may be scheduled as a minimum of four (4) hours.

### **55.2**

**Supervisory Authority:** The parties recognize the supervisor's authority to approve or deny paid or unpaid time off based upon the operational needs of the department. Time off will be granted in a manner that minimizes operational hardship.

### **55.3**

**Incomplete Furloughs:** If an employee does not complete their unpaid furloughs by the last pay period of the fiscal year, the employee's accrued vacation hours will be forfeited for the balance of the unpaid furlough. The parties understand that furlough hours have no cash value.

### **55.4**

**Effect on Paychecks:** To minimize fluctuations in paychecks, the furlough pay reduction will be taken in equal increments over the fiscal year, regardless of when the actual furlough day is taken.

## **55.5**

No Limitation: The parties understand that paragraphs in this section are intended to provide a structure for the use of furlough hours identified in this fiscal year and are not intended to limit the Town Manager's authority to implement unpaid furloughs in any other fiscal year.

## **55.6**

The unpaid furlough for FY2013/14 (originally budgeted at 40 hours) is rescinded and furlough deductions were stopped effective November 24, 2013. No further deductions will be made for FY 2013/14 and employees will be reimbursed 16 hours already deducted from paychecks. Employees have the option to be paid the 16 hours of reimbursement in cash or to convert the hours to personal leave to be used during the year-end holiday closure.

Employees will also receive a one-time bonus of 8 hours (prorated for part-time employees) of paid leave for the unpaid furlough closure that had been implemented on Veteran's Day 2013. However if employees worked on Veteran's Day 2013, then the time shall be applied to their personal leave balance for FY 2013/14.

## **Section 56. Closure Days with Paid Leave Allowed**

AFSCME understands that the Town Manager, for budgetary constraints or for operational efficiency, may close all nonessential services and permit employees to use paid leaves. For example, the Town Manager may institute the closure of nonessential services between the Christmas and New Years' holidays. Where not in conflict with the provisions of Section 54 (Unpaid Furloughs), in regard to these closure days:

### **56.1**

Employees performing essential services and scheduled to work on the Closure Days will receive straight-time pay for hours worked, unless the hours worked represent overtime (more than forty [40] hours per week).

### **56.2**

At their election, employees who are not scheduled to work may utilize accrued paid vacation, compensatory time off, or personal leave to cover the furlough hours. Leave must be requested in the manner provided in the MOU. Employees who use paid leave will accrue sick leave, vacation and CalPERS credit while on leave.

### **56.3**

While employees have the option to utilize paid vacation, compensatory time off, or personal leave, they are also permitted to take leave without pay (LWOP). Employees who take LWOP will maintain their health, life and disability insurance, as well as any medical cash allocations. Employees who utilize LWOP will not accrue sick leave, vacation or CalPERS credit while on LWOP.

### **56.4**

If an employee requests to work during the closure days due to hardship (e.g., the employee is out of leave and is financially unable to take time without pay), the Department Director will first try to assign the employee in their own department. If a suitable assignment is not available in the employee's own department, the Town Manager maintains the management right to place the employee in an alternative assignment for the furlough period.

### **56.5**

The Town Manager maintains the management right to determine essential and nonessential services.

## **Section 57. Comprehensiveness of Agreement**

Town and Union agree that this agreement represents all salary, wages, and fringe benefits subject to negotiation and available to employees.

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## AFSCME MOU Exhibit A

### For Fiscal Year 2013/14 – 0% (Last Increase Effective September 1, 2011)

Classification Title	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Equipment Mechanic	\$29.34	\$20.80	\$32.34	\$33.96	\$35.66	\$37.40
Facility Technician	\$27.94	\$29.34	\$30.80	\$32.34	\$33.96	\$35.66
Lead Parks & Maintenance Worker	\$30.72	\$32.25	\$33.86	\$35.56	\$37.34	\$39.20
Parks & Maintenance Worker	\$24.71	\$25.95	\$27.24	\$28.61	\$30.04	\$31.54
Parks & Maintenance Worker/Tree Trimmer	\$25.95	\$27.25	\$28.60	\$30.04	\$31.54	\$33.12
Parks & Maintenance Worker Trainee	\$20.18	\$21.19	\$22.25	\$23.37	\$24.53	\$25.76
Senior Parks & Maintenance Worker	\$27.92	\$29.32	\$30.79	\$32.32	\$33.94	\$35.64
Town Arborist	\$29.34	\$30.80	\$32.34	\$33.96	\$35.66	\$37.44

### For Fiscal Year 2014/15 – 2% Increase Effective July 1, 2014

Classification Title	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Equipment Mechanic	\$29.93	\$31.42	\$32.99	\$34.64	\$36.37	\$38.19
Facility Technician	\$28.50	\$29.93	\$31.42	\$32.99	\$34.64	\$36.37
Lead Parks & Maintenance Worker	\$31.33	\$32.90	\$34.55	\$36.27	\$38.09	\$39.99
Parks & Maintenance Worker	\$25.20	\$26.46	\$27.78	\$29.18	\$30.64	\$32.17
Parks & Maintenance Worker/Tree Trimmer	\$26.48	\$27.80	\$29.19	\$30.65	\$32.19	\$33.80
Parks & Maintenance Worker Trainee	\$20.58	\$21.61	\$22.69	\$23.83	\$25.02	\$26.27
Senior Parks & Maintenance Worker	\$28.48	\$29.90	\$31.40	\$32.97	\$34.62	\$36.35
Town Arborist	\$29.93	\$31.42	\$32.99	\$34.64	\$36.37	\$38.19

### For Fiscal Year 2015/16 – 2% Increase Effective July 1, 2015

Classification Title	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6
Equipment Mechanic	\$30.53	\$32.05	\$33.65	\$35.33	\$37.10	\$38.95
Facility Technician	\$29.07	\$30.53	\$32.05	\$33.65	\$35.33	\$37.10
Lead Parks & Maintenance Worker	\$31.96	\$33.56	\$35.24	\$37.00	\$38.85	\$40.79
Parks & Maintenance Worker	\$25.70	\$26.99	\$28.34	\$29.76	\$31.25	\$32.81
Parks & Maintenance Worker/Tree Trimmer	\$27.01	\$28.36	\$29.77	\$31.26	\$32.83	\$34.48
Parks & Maintenance Worker Trainee	\$20.99	\$22.04	\$23.14	\$24.31	\$25.52	\$26.80
Senior Parks & Maintenance Worker	\$29.05	\$30.50	\$32.03	\$33.63	\$35.31	\$37.08
Town Arborist	\$30.53	\$32.05	\$33.65	\$35.33	\$37.10	\$38.95

