PREVENTING HARASSMENT, DISCRIMINATION, AND RETALIATION

I. PURPOSE AND POLICY

The City of Soledad ("City") is committed to preventing harassment, discrimination, and retaliation, and maintains a strict policy prohibiting all types of harassment, discrimination, or retaliation because of race (including traits associated with race, such as hair texture and hairstyles), color, national origin, ancestry, religion, creed, sex, gender, gender identity, gender expression, genetic characteristics or information, physical or mental disability, medical condition, marital status, sexual orientation, age, pregnancy, reproductive health choices, childbirth, or related medical conditions, military or veteran status, any other basis protected by applicable federal, state, or local law, or any combination of such protected characteristics, a perception that the individual has any of those characteristics or any combination of those characteristics, including based on association with individuals with these protected characteristics, or any combination of these characteristics . All such harassment, discrimination, or retaliation is prohibited.

This policy applies to all officials, employees, interns, and volunteers involved in the operations of the City, as well as to applicants for employment, or any participant of another limited duration program to provide unpaid work experience, and prohibits harassment and discrimination by any employee including supervisors and co-workers, and by others doing business with the City. This policy prohibits retaliation by any employee, including supervisors and co-workers. If harassment occurs on the job by someone not employed by the City, the procedures in this policy should be followed as if the harasser were an employee of the City.

Conduct that may not be prohibited under harassment, discrimination, or retaliation law may nevertheless violate this policy, violate other City policies, or other City standards of conduct.

II. DEFINITIONS

A. **Discrimination**: Discrimination is any action or conduct by which an employee is treated differently or less favorably than other employees similarly situated to the employee, because the employee is a member of a Legally Protected Category or Characteristic. Examples of conduct that can constitute discrimination if based on an individual's Legally Protected Category or Characteristic include, but are not limited to the following:

1. Failing or refusing to hire an individual based on their Legally Protected Category or Characteristic.

2. Terminating an individual from employment based on their Legally Protected Category or Characteristic.

3. Singling out or targeting an individual for different or less favorable treatment because of their Legally Protected Category or Characteristic

B. **Employee**: Any individual under the direction and control of the City under any appointment or contract of hire or apprenticeship, express or implied, oral or written. For purposes of this policy, the term "employee" includes any individual who is an unpaid intern or volunteer of the City. The inclusion of any individual, including but not limited to unpaid interns and volunteers, in the definition of "employee" for purposes of this policy should not be interpreted to affect the applicability of any other policy or procedure of the City.

C. **Harassment**: Unwelcome verbal, visual, or physical conduct based on membership in a Legally Protected Category or Characteristic that creates an intimidating, offensive, or hostile work environment. Such conduct constitutes harassment when:

1. Submission to the conduct is made either an explicit or implicit condition of employment, or an unpaid internship or volunteer program;

2. Submission to or rejection of the conduct is used as the basis for an employment decision, or any decision related to an unpaid internship or volunteer program; or

3. The harassment unreasonably interferes with an employee's work performance or creates an intimidating, hostile, or offensive work environment.

Harassing conduct can take many forms and includes, but is not limited to, slurs, jokes, statements, gestures, pictures, computer images, or cartoons regarding an employee's Legally Protected Category or Characteristic. Harassment is prohibited whether it involves a co-worker, subordinate, supervisor or manager, or third parties doing business with or for the City.

D. **Legally Protected Category or Characteristic**: Race (including traits associated with race, such as hair texture and hairstyles), color, national origin, ancestry, religion, creed, sex, gender, gender identity, gender expression, genetic characteristics or information, physical or mental disability, medical condition, marital status, sexual orientation, age (40 and over), pregnancy, reproductive health choices, childbirth, breastfeeding, or related medical conditions, military or veteran status, any other basis protected by applicable federal, state, or local law, or any combination of such protected characteristics, a perception that the individual has any of those characteristics or any combination of those characteristics, including based on association with individuals with these protected characteristics, or any combination of these characteristics.

E. **Sexual Harassment**: Sexual advances, requests for sexual favors, or visual, verbal, or physical conduct of a sexual nature may all constitute sexual harassment when: (1) submission to such conduct is made a term or condition of employment, an unpaid internship, or volunteer program; or (2) submission to or rejection of such conduct is used as basis for employment decisions, or any decision relating to an unpaid internship or volunteer program, affecting the individual; or (3) such conduct has the purpose or effect of unreasonably interfering with an employee's work performance or creating an intimidating, hostile or offensive working environment. This definition includes potential forms of offensive behavior. The following is a non-exclusive list of some examples:

1. Unwanted sexual advances.

2. Offering employment benefits in exchange for sexual favors.

3. Making or threatening reprisals after a negative response to sexual advances.

4. Visual conduct, such as leering, making sexual gestures, displaying of sexually explicit jokes, comments about an employee's body or dress.

5. Verbal sexual advances or propositions.

6. Verbal abuse of a sexual nature, graphic verbal commentary about an individual's body, sexually degrading words to describe an individual, suggestive or obscene letters, notes, or invitations.

7. Physical conduct, such as touching, assault, impeding, or blocking movements.

8. Retaliation for reporting harassment or threatening to report harassment.

9. Electronic communications such as email, texts, or internet use that violate this policy

Sexual harassment can occur between members of the same or opposite sex and need not be motivated by sexual desire or attraction. Sexual harassment can be based on pregnancy, child birth, or related medical conditions where such conduct unreasonably interferes with the employee's work performance, affect or impact an employee's terms and conditions or privileges of employment or creates an intimidating, hostile or offensive work environment. Sexual harassment on the job is prohibited, whether it involves co-worker harassment, harassment by a supervisor or manager, or harassment by third parties doing business with or for the City.

F. **Supervisor**: Any individual having the authority to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees or the responsibility to direct them, or to adjust their grievances, or to effectively recommend such action, if the exercise of that authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

G. **Retaliation**. Taking adverse action against any employee because of the employee's opposition to a practice that the employee reasonably believes constitutes employment discrimination or harassment or because of the employee's participation in an employment discrimination or harassment investigation, proceeding or hearing. Retaliation also includes adverse action against an employee because of opposition or participation by a family member or close associate of the employee. Further, retaliation includes adverse employment action due to an employee's request for a reasonable accommodation.

1. Examples of Opposition: Opposition to perceived harassment or discrimination includes threatening to file a discrimination complaint with the Equal Employment Opportunity Commission ("EEOC"), the California Civil Rights Department ("CRD"), union, or court, or complaining or protesting about alleged employment discrimination or harassment to a manager, union official, co-worker, or other official. Opposition also includes a complaint or protest made on behalf of another employee or made by the employee's representative. A complaint about an employment practice constitutes protected opposition only if the employee communicates to the City a reasonable good faith belief that the practice opposed constitutes employment discrimination or harassment. Opposition in a manner that disrupts the workplace, or that constitutes an unlawful activity, or engaging in badgering or threatening of employees or supervisors, is not protected.

2. Examples of Participation: The City prohibits retaliation against any individual because the individual has filed a charge, testified, assisted or participated in any manner in an investigation, proceeding, hearing or litigation under federal or state employment discrimination or harassment statutes or at other hearings regarding protected employee rights, such as an application for unemployment benefits. The City also prohibits retaliation against somebody closely related to or associated with the employee exercising such rights.

3. Examples of Adverse Actions: For purposes of this policy, an adverse action includes the following acts, when the act is taken because of the employee's opposition to or participation in disciplinary actions, negative performance evaluations, undesirable transfer, undesirable assignments, negative comments, unwarranted criticism, undesirable change in benefits, undesirable change in work schedule, unwarranted exclusion from meetings or events, or undesirable change in work duties.

III. PROCEDURES

A. Training and Policy Dissemination:

1. Non-Supervisory Employees: All employees will be given a copy of this policy, and will receive guidance from the Human Resources Division on its provisions and the City's commitment to provide a harassment-free, discrimination-free, and retaliation-free workplace. All non-supervisory employees and temporary/seasonal employees will receive training in accordance with the requirements of the Fair Employment Housing Act (Government Code section 12950.1) and implementing regulations.

2. Supervisory Employees:

(a) All supervisors will be trained once every two years on matters relating to the prevention, reporting, and investigation of harassment, discrimination, and retaliation. Further, individuals appointed to supervisory positions from a non-supervisory position or as a new employee shall receive training within six months of their hiring or assumption of the supervisory position.

(b) Supervisory training will last for a minimum of two hours.

(c) Supervisory training will be conducted in a classroom or other interactive setting and will, at a minimum, cover the following topics:

(1) Information and practical guidance regarding federal and state statutory laws about sexual harassment;

(2) Information about the correction of sexual harassment and the remedies available to victims of sexual harassment;

(3) Practical examples aimed at instructing supervisors in the prevention of harassment, discrimination, and retaliation; and

(4) Information and practical guidance regarding the prevention of abusive conduct, which is defined as follows: conduct of an employer or employee in the workplace, with malice, that a reasonable person would find hostile, offensive, and unrelated to an employer's legitimate business interests. Abusive conduct may include repeated infliction of verbal abuse, such as the use of derogatory remarks, insults, and epithets, verbal or physical conduct that a reasonable person would find threatening, intimidating, or humiliating, or the gratuitous sabotage or undermining of a person's work performance. A single act does not constitute abusive conduct, unless especially severe and egregious.

B. **<u>Preventing Harassment, Discrimination, and Retaliation</u>**: The City's complaint procedure provides for a prompt, thorough, impartial, and objective investigation of every harassment, discrimination, or retaliation claim, appropriate disciplinary action against one found to have engaged in prohibited harassment, discrimination, or retaliation, and appropriate remedies to any victim of harassment, discrimination, or retaliation. The City encourages reporting of all perceived incidents of harassment, discrimination, and retaliation.

1. <u>Optional Process</u>: An employee who believes that another person has harassed, discriminated, or retaliated against the employee is encouraged to, but is not required to, confront this person and politely, but firmly inform the person of the conduct that the employee finds offensive or retaliatory

and request that the person cease this behavior. If the employee does not wish to confront the person harassing, discriminating, or retaliating against the employee, or if the employee's attempts to do so have failed, the employee should file a complaint with the City.

2. Filing a Complaint: Employees should follow this procedure to notify the City of harassment, discrimination, or retaliation. Employees who believe they have been harassed, discriminated against, including by persons doing business with or for the City, or retaliated against on the job, should promptly report the complaint to their immediate supervisor, any supervisor, the Human Resources Manager, or to the City Manager as soon as possible.

In addition to being able to report potential harassment, discrimination, or retaliation to any supervisory employee, the following suggested reporting procedures are available when filing a complaint about certain individuals in the City:

- Complaints regarding a person within the employee's direct chain of command may be provided to the Human Resources Manager.
- Complaints regarding the Human Resources Manager may be provided to the City Manager.
- Complaints regarding the City Manager or the City Attorney may be submitted to the City Clerk for consideration by the City Council during closed session.
- Complaints regarding a member of the City Council may be reported to the City Manager or the City Attorney.

The complaints should be as detailed as possible, and should include: details of the incident(s), name(s) of individuals involved, and the name(s) of any witness(es). The employee should also attach any documentary evidence to the complaint.

Notification to the City of potential harassment, discrimination, or retaliation is essential. The City assures employees that they will not be penalized in any way for filing a good faith complaint of potential discrimination, harassment, or retaliation.

Supervisors and managers must immediately refer all harassment, discrimination, or retaliation complaints to the City's Human Resources Manager.

ALL EMPLOYEES SHOULD NOTE THAT THE FAILURE TO USE THE CITY'S COMPLAINT PROCEDURE MAY HAVE AN ADVERSE EFFECT ON ANY CLAIM UNDER THIS POLICY WHEN SUCH CLAIMS ARE LITIGATED.

3. Investigation of Complaints: All incidents of harassment, discrimination, and retaliation that are reported must be investigated. The Human Resources Manager, or other appropriate person if the circumstances warrant, will promptly undertake or direct an effective, thorough, and objective investigation of the harassment, discrimination, or retaliation allegations. The investigation will be completed and the determination regarding the harassment, discrimination, or retaliation alleged will be made and such determination will be communicated to the complainant and the accused.

   Employees may be placed on administrative leave during an investigation until the conclusion of a discrimination, harassment, or retaliation investigation.

4. Corrective Action: If the City determines that a policy violation has occurred, the City will take effective remedial action commensurate with the circumstances. Appropriate action will also be taken to deter any such future violation of the policy.

In light of the City's duty to prevent harassment, discrimination, and retaliation and in light of the City's desire to have a professional and productive work environment, the City reserves the right to take appropriate corrective action when an employee engages in inappropriate conduct that does not fully rise to the legal standards and definitions set forth in Section II but violates other City policy or standards of conduct. For example, the City may take appropriate corrective action for inappropriate conduct, even if such conduct was not subjectively unwelcome or offensive to another employee of the City.

C. Anonymity and Confidentiality:

1. While the City will investigate anonymous complaints, the City strongly discourages anonymous complaints. EMPLOYEES CHOOSING TO FILE A COMPLAINT ANONYMOUSLY MUST BE AWARE THAT ANONYMITY IN THE COMPLAINT PROCEDURE MAY COMPROMISE THE CITY'S ABILITY TO COMPLETE A THOROUGH INVESTIGATION. Employees should also be aware that should the City learn of the identity of an anonymous complainant, the City cannot guarantee that the complainant's identity will remain confidential, if the City determines in its discretion that disclosure is necessary to complete the investigation.

2. The City will take all reasonable steps available to maintain the confidentiality of all complaints of harassment, discrimination, and/or retaliation as well as all information gathered during an investigation. However, the City retains sole discretion to determine whether disclosure of information is necessary to complete the investigation or for other legitimate purposes.

3. In order to protect the integrity of the investigation and the privacy of the individuals involved, the City may request that all employees involved in an investigation of harassment, discrimination, and/or retaliation complaints as complainant(s), witness(es), or accused are required to keep all information related to the investigation confidential.

D. **<u>Obligation to Cooperate</u>**: All employees involved in a workplace investigation into alleged harassment, discrimination, or retaliation are required to fully and truthfully cooperate with the investigation. Failure to fully and truthfully cooperate with the investigation is grounds for disciplinary action as provided for in the City's Personnel Rules and Regulations Manual, up to and including termination.

E. **<u>Obligation to Report</u>:**

1. <u>Supervisory Employees</u>: Any supervisor who receives a complaint of harassment, discrimination, or retaliation, who witnesses harassment, discrimination, or retaliation or who has any reason to believe that harassment, discrimination, or retaliation may have occurred in the workplace is required to report the conduct immediately to the Human Resources Manager. Failure to report may result in disciplinary action being taken against the supervisor as provided for in the City's Personnel Rules, up to and including termination.

2. <u>Non-Supervisory Employees</u>: While non-supervisory employees are not required under this policy to report potential harassment, discrimination, or retaliation, they are strongly encouraged to do so. If a non-supervisory employee elects to report potential harassment, discrimination, or retaliation, the employee may report to any supervisor or to the Human Resources Manager.

F. **<u>Intentionally False Complaints:</u>** Employees are prohibited from making an intentionally false complaint of harassment, discrimination, and/or retaliation. An intentionally false complaint is a complaint that the employee demonstrably does not believe to be true. Any employee making an intentionally false complaint is subject to disciplinary action, up to and including termination.

G. **<u>Additional Enforcement Information:</u>** In addition to the City's internal complaint procedure, employees should also be aware that the EEOC and the CRD investigate and prosecute complaints of harassment, discrimination, or retaliation in employment.

1. You can contact the EEOC as follows: Los Angeles District Office, 255 East Temple, 4th Floor, Los Angeles, California, 90012; 800-669-4000/800-669-6820 (TTY) or 213-894-1000; www.eeoc.gov.

2. You can contact the CRD as follows: 2218 Kausen Drive, Suite 100, Elk Grove, California 95758; 800-884-1684/800-700-2320 (TTY) or 916-478-7251; www.calcivilrights.ca.gov.

Employees should feel free, without fear of retaliation, to follow the procedures set forth above if they believe they have been harassed, discriminated or retaliated against as described in this policy.

For more information, contact the City’s Human Resources Department.

IV. <u>EXCEPTIONS</u>

There are no exceptions to this policy without the express authorization of the City Manager.

CITY OF SOLEDAD
POLICY AGAINST HARASSMENT, DISCRIMINATION, AND RETALIATION
ACKNOWLEDGEMENT OF RECEIPT

By my signature below, I acknowledge that I have received, read and understood the City of Soledad's Policy Against Harassment, Discrimination, and Retaliation, and I will abide by its terms. I understand that failure to fully comply with all terms set forth in the Policy may lead to disciplinary action, up to and including termination.

____
Name (PLEASE PRINT)

____
Signature

____
Date

ANTI-BULLYING POLICY

I. POLICY STATEMENT

The City of Soledad ("City") is committed to providing a safe work environment. In addition to prohibiting all forms of discrimination and harassment, the City also prohibits any form of "intimidation or bullying" or abusive conduct in the workplace or elsewhere, such as at off-site events.

This policy applies to all officials, employees, interns, and volunteers involved in the operations of the City, as well as to applicants for employment, or any participant of another limited duration program to provide unpaid work experience, and prohibits bullying by any employee including supervisors and co-workers, and by others doing business with the City.

II. POLICY COVERAGE

Every Employee and other individuals, such as temporary workers, unpaid interns, volunteers, consultants, independent contractors, and visitors, have the right to be treated with respect.

"Bullying" is defined as conduct of an individual that a reasonable person would find hostile, offensive, intimidating, humiliating, or degrading that is unrelated to the City's legitimate business interests. Bullying may be intentional or unintentional and may include any written, visual, verbal, or physical act, when the act physically harms the individual or damages the individual's property; has the effect of interfering with an Employee's ability to work; is severe or pervasive; and creates an intimidating or threatening environment.

Unlike harassment or discrimination, bullying does not need to be motivated by an individual's protected characteristic. Bullying comes in many shapes and sizes and can take many forms. Some examples of bullying include (this is a non-exhaustive list):

1. Use of disrespectful and devaluing language or comments.
2. Persistent or constant criticism of an Employee in front of other persons for the purpose of humiliating the Employee.
3. Invasion of privacy, such as spying, stalking, or rummaging through personal belongings.
4. Behavior that frightens, humiliates, belittles, or degrades, including criticism that is delivered with yelling or screaming.
5. Assigning undesirable work as a punishment.
6. Using confidential information to humiliate an Employee publicly or privately.
7. Withholding information that affects an Employee's performance.
8. Intimidating an Employee through inappropriate personal comments, disparaging opinions, or criticism with no basis in fact.
9. Taking credit for another Employee's work.
10. Isolating an Employee from other co-workers.
11. Purposefully excluding an Employee from work meeting(s).
12. Acts of intimidation or making threats against an Employee.
13. Sabotage, or deliberately subverting, obstructing, or disrupting another person's work

performance.
14. Spreading malicious rumors, gossip, or innuendo that is untrue.
15. Tormenting or taunting.
16. Using threatening gestures.
17. Unwanted physical contact, pushing, or shoving.
18. Use of any violence.
19. Graffiti or tagging.

Such conduct can also occur via use of electronic or telephonic communications such as the internet, e-mail, and chat-room misuse, mobile threats by text messaging, or calls or misuse of cameras and video equipment.

III. COMPLAINT PROCEDURE

The City will not tolerate bullying in any form. Any individual who believes that the individual is being or has been subjected to any form of bullying should immediately report such bullying to the individual's supervisor or Human Resources. In addition, any person who believes they have witnessed bullying or have received a report or knowledge of such conduct, whether the perpetrator is a Employee or a non-Employee, should immediately report the conduct to their supervisor or Human Resources.

The complaint should be as detailed as possible, and must include details of the incident(s), names of individuals involved, and the names of any witnesses. Any supporting documentary evidence should be attached to the complaint.

Any complaint of bullying or similar behaviors will be investigated before any disciplinary action is taken. If the City determines that bullying has occurred, the City will take effective remedial action commensurate with the circumstances, and appropriate action will be taken to deter any future conduct. Employees who violate this bullying policy are subject to disciplinary action, up to and including dismissal.

Anonymous Complaints: While the City will investigate anonymous complaints, the City strongly discourages anonymous complaints. EMPLOYEES CHOOSING TO FILE A COMPLAINT ANONYMOUSLY MUST BE AWARE THAT ANONYMITY IN THE COMPLAINT PROCEDURE MAY COMPROMISE THE CITY'S ABILITY TO COMPLETE A THOROUGH INVESTIGATION. Employees should also be aware that should the City learn of the identity of an anonymous complainant, the City cannot guarantee that the complainant's identity will remain confidential, if the City determines in its discretion that disclosure is necessary to complete the investigation.

IV. RESPONSIBILITIES

A. Supervisor Responsibilities:

1. Informing Employees of this policy.
2. Modeling appropriate behavior.

3. Taking all steps necessary to prevent bullying from occurring.
4. Receiving complaints in a fair and serious manner, and documenting steps taken to resolve complaints.
5. Monitoring the work environment and taking immediate appropriate action to stop potential violations, such as correcting inappropriate behavior or language.
6. Following up with those who have complained to ensure that the behavior has stopped and ensuring that there are no reprisals.
7. Assisting, advising, or consulting with Employees and Human Resources regarding this policy and complaint procedure.
8. Assisting in the investigation of complaints involving Employee(s) in their departments and, if the complaint is substantiated, recommending appropriate corrective or disciplinary action in accordance with City rules, up to and including dismissal.
9. Implementing appropriate disciplinary and remedial actions.
10. Reporting potential violations of this policy of which the supervisor becomes aware, regardless of whether a complaint has been submitted to Human Resources or the department head.
11. Participating in periodic training and scheduling Employees for training as required or requested by the City.

B. Employee Responsibilities:

1. Treating all individuals with respect and consideration.
2. Modeling appropriate behavior.
3. Participating in periodic training as required or requested by the City.
4. Fully cooperating with the City's investigations by responding fully and truthfully to all questions posed during the investigation.

V. POLICY AGAINST RETALIATION

No Employee will be subjected to any form of retaliation for reporting an incident of bullying, or participating in an investigation by the City or its representatives into allegations of bullying. Additionally, all Employees have a duty to cooperate in an honest and forthright manner in connection with any investigation being conducted by Human Resources or designee.

VI. FALSE ACCUSATIONS

While the City vigorously defends our Employees' right to work in an environment free of bullying, it also recognizes that false accusations can have serious consequences. Accordingly, Employees are prohibited from making an intentionally false complaint of bullying. An intentionally false complaint is a complaint that the Employee demonstrably does not believe to be true. Any Employee making an intentionally false complaint shall be subjected to disciplinary action, up to and including dismissal.

CITY OF SOLEDAD
ANTI-BULLYING POLICY
ACKNOWLEDGEMENT OF RECEIPT

By my signature below, I acknowledge that I have received, read and understood the City of Soledad's Anti-Bullying ("Policy"), and I will abide by its terms. I understand that failure to fully comply with all terms set forth in the Policy may lead to disciplinary action, up to and including termination.

____
Name (PLEASE PRINT)

____
Signature

____
Date

DRUG AND ALCOHOL FREE WORKPLACE POLICY

I. PURPOSE

A. The City of Soledad ("City") is committed to providing a healthy and safe work environment for its employees. The purpose of this policy is to maintain a workplace that is free of drugs and alcohol and to discourage drug and alcohol abuse ("substance abuse") by employees. There is a vital interest in maintaining safe and efficient working conditions for employees. Substance abuse is incompatible with health, safety, efficiency, and success. Employees who are under the influence of alcohol or who have any illegal drugs in their system, or who abuse legal drugs while conducting or performing business endanger their own health and safety and the health and safety of others.

B. Substance abuse can also cause a number of other work-related problems, including absenteeism and tardiness, substandard job performance, increased workloads for coworkers, disruption to other employees, delays in the completion of work, inferior quality of service, and disruption of resident relations. This policy governs not only the abuse of alcohol and illegal drugs but also the use and abuse of legal drugs in the workplace. Employees who use legal drugs, including prescription and over-the-counter drugs, should consult with a health care provider regarding the medication's impact on work and must comply with those provisions set forth in this policy that address such use.

C. To further its interest in avoiding accidents, to promote and maintain safe and efficient working conditions for its employees, to protect its business, property, equipment, and operations, and to comply with all federal and state requirements, including, but not limited to, the Drug-Free Workplace Act of 1988 (41 U.S.C. § 8103) and the California Drug-Free Workplace Act of 1990 (Government Code § 8355), the City has established this policy concerning employee use of alcohol and drugs. As a condition of hire and continued employment, each employee must abide by this policy. Each employee will be given a copy of this policy upon their hire.

D. In the spirit of creating a drug- and alcohol-free work environment, nothing in the policy shall be construed to restrict the City's ability to use common sense, prudence, technology, or external resources to protect the safety of its employees, its customers, or the public, unless otherwise prohibited by law.

Nothing in this policy is intended to diminish the City's commitment to employ qualified disabled individuals or to provide reasonable accommodation to such individuals consistent with all federal, state, and local laws.

II. APPLICABILITY

A. This policy applies to all applicants and employees of the City.

B. Certain employees may be subject to the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. No. 102-143, 105 Stat. 952, as amended) which requires alcohol and drug-testing of safety-sensitive transportation employees who are required to have a commercial driver's license (49 CFR Parts 40, 382, 391, 392, and 395, as amended). To comply with Department of Transportation (DOT) regulations, the City has developed specific guidelines regarding when and how drug and alcohol testing will occur, as well as provisions on rehabilitative services available to all covered employees. The specific guidelines for covered employees who are required to have a commercial driver's license are set forth in a separate commercial driver policy. Covered employees who are required to have a commercial driver's license are covered by this policy except where this policy conflicts with the commercial driver policy or with the Omnibus Transportation Employee Testing Act of 1991, as amended, the Federal Highway Administration Regulations, as amended, Federal Motor Carrier Safety Administration, as amended, or any other applicable Department of Transportation City regulations governing drug testing of employees required to possess a commercial driver's license, in which case the commercial driver policy or transportation-specific legal requirement will control.

III. DEFINITIONS

A. *Controlled Substances.* Any drug or substance that is classified into the five schedules or classes on the basis of its potential for abuse, accepted use, and accepted safety under medical supervision by the federal Drug Enforcement Administration. Examples of controlled substances include, but are not limited to, marijuana metabolites, cocaine metabolites, opiate metabolites, amphetamines, and phencyclidine (PCP). Controlled substances may be further classified as illegal or legal drugs.

B. *Illegal Drugs.* A controlled substance, a legal drug which has not been legally obtained, or a legal drug which was legally obtained, but that is being sold or distributed unlawfully.

C. *Legal Drugs*. Any drug, including any prescription drug or over-the-counter drug, that has been legally obtained and that is not unlawfully sold or distributed.

D. *Abuse of any Legal Drug*. Abuse of any legal drug means the use of any legal drug (i) for any purpose other than the purpose for which it was prescribed or manufactured; or (ii) in a quantity, frequency, or manner that is contrary to the instructions or recommendations of the prescribing physician or manufacturer.

E. *Drug Paraphernalia*. Drug paraphernalia means any device or instrument used for injecting, smoking, consuming, or otherwise administering a controlled substance/legal drug/illegal drug, which includes, but is not limited to the items set forth in California Health and Safety Code section 11364.

F. *Reasonable Suspicion*. Reasonable suspicion means a belief based upon objective facts, evidence, or other indicators sufficient to lead a reasonably prudent person to suspect that an employee is under the influence of drugs or alcohol so that the employee's ability to perform the functions of the job is impaired or reduced. For example, any of the following, alone or in combination, may constitute reasonable suspicion (this is not an exhaustive list):

1. Slurred speech;

2. Alcohol odor on breath/person;

3. Cannabis odor on breath/person;

4. Unsteady walking and movement;

5. Physical symptoms of impairment (e.g., glassy eyes, eye dilation, shaking, or erratic movement);

6. An accident involving City property that provides a reasonable basis to believe that the accident was likely to have been caused by impairment from drugs or alcohol;

7. Physical or verbal altercation;

8. Unusual behavior;

9. Job impairment;

10. Possession of alcohol, drugs, or prohibited drug paraphernalia; or

11. Information obtained from a reliable source with personal knowledge.

G. *Possession*. Possession means that an employee has the substance on the employee's person or otherwise under the employee's control.

H. *Under the Influence*. The use or misuse of any of the following in a manner and to a degree that impairs the employee's work performance or ability to use City property or equipment safely:

1. Any alcoholic beverage;

2. Any illegal drug or substance; or

3. Any legal drug.

I. *Impaired*. Diminished capacity, ability, mental acuity, or performance.

J. *Safety-Sensitive Employees*. Safety-sensitive employees are employees who hold safety-sensitive positions. Safety-sensitive positions are those requiring the performance of duties that present risks to self and others so that even a momentary lapse of attention can have disastrous consequences, including, but not limited to the following:

1. Positions that include interaction with children, where employees are directly responsible for protecting children, or where employees have continuous interaction or supervision that puts them in a position of influence over children.

2. Positions that have a history of drug or alcohol use include those where the City has established the existence of documented problems with drug or alcohol use by employees in a particular position or particular department.

Positions that are subject to the Omnibus Transportation Employee Testing Act of 1991 are also classified as "safety-sensitive" as that term is defined by the Department of Transportation regulations and federal law. Testing for these employees is addressed in a separate policy.

IV. POLICY

A. No Right of Privacy.

The City respects the individual privacy of its employees. However, employee privacy does not extend to the employee's use of City-provided equipment, supplies, or property. Employees should be aware that the terms of this policy limit their privacy in the workplace and that employees have no reasonable expectation of privacy with respect to City property, which may be searched at any time.

B. Cannabis

The City recognizes that the State of California has legalized the use of cannabis for recreational and certain medical uses. However, under federal law, the use of cannabis remains prohibited, and cannabis remains a controlled substance. The City will not take action against an employee solely because of the employee's lawful, off-duty use of cannabis. However, the City reserves the right to take disciplinary action under this policy, up to and including termination, when an employee is actually impaired by cannabis on duty or engages in any other conduct involving cannabis that violates this Policy. Any action involving cannabis use will be consistent with Government Code Section 12954.

C. Advance Notification To City Of Use Of Legal Drugs

1. *Use of Legal Drugs*. The City recognizes that it may be necessary for employees to use legal drugs from time to time. The City also recognizes that even legal drugs can impair the employee's ability to adequately or safely perform their duties. In order to accommodate employees who use legal drugs while helping avoid serious adverse consequences resulting from such drug use, employees are required to notify the City so that the City can determine if any work restrictions are advisable under the circumstances.

2. *When Notification is Required*. Employees who know or should know that their use of legal drugs might endanger their own safety or the safety of another person, might pose a risk of significant damage to the City's property, or might interfere with their job performance or the efficient operation of the City's business, are

obligated to report such drug use to the Human Resources Office. The City reserves the right to have either a City-designated physician or the employee's own physician determine whether it is advisable for the employee to continue working while taking such drugs.

3. *Duty to Disclose*. Employees who operate or who are responsible in any way for the operation, custody, or care of the City's property, or for the safety of other employees or other persons, have a duty to disclose the nature of their job duties to any prescribing physician or pharmacist and/or to a City physician or pharmacist and to inquire of the physician(s) or pharmacist whether their use of the prescribed drug might result in the dangers, risks, or impairment that this policy is intended to prevent.

4. *Restrictions on Work*. The City reserves the right to restrict the work activities of any employee who is using legal drugs or prohibit any employee from working entirely while the employee is using legal drugs.

5. *Duty to Refrain from Working*. No employee using legal drugs may report for or remain at work while impaired.

D. Prohibited Conduct

1. *Scope*. Employees may not engage in any of the prohibited conduct identified in this policy any time the employee is:

   a. On City premises, in the workplace, or in uniform;

   b. Conducting or performing City business, regardless of location;

   c. Operating or responsible for the operation, custody, or care of City vehicles, equipment, or other property, or

   d. Responsible in any way for the safety of other individuals associated with City, including, but not limited to, colleagues, management, visitors, residents, and vendors.

2. *Alcohol*. The following acts are prohibited, and commission of these acts may subject an employee to discipline, up to and including, termination:

   a. The unauthorized use, possession, purchase, sale, manufacture, distribution, transportation, or dispensation of alcohol; or

   b. Being impaired due to alcohol use.

3. *Controlled Substances*. The unlawful manufacture, distribution, dispensation, possession, or use of any controlled substance are prohibited, and commission of these acts may subject an employee to discipline, up to and including, termination.

4. *Illegal Drugs*. The following acts are prohibited, and commission of these acts may subject an employee to discipline, up to and including, termination:

    a. The purchase, sale, manufacture, distribution, transportation, dispensation, use, or possession of any illegal drug or drug paraphernalia; or

    b. Having any illegal drug in an employee's system.

        i. *Cannabis.* As it relates to testing for cannabis, consistent with Government Code section 12954, and except as otherwise required under federal law, this section shall only apply to an employee who has psychoactive cannabis metabolites in their system.

5. *Legal Drugs*. The following acts are prohibited, and commission of these acts may subject an employee to discipline, up to and including termination:

    a. The abuse of any legal drug; or

    b. The purchase, sale, manufacture, distribution, transportation, dispensation, use, or possession of any legal prescription or over-the-counter drug in a manner inconsistent with law; or

    c. Working while impaired by the use of a legal drug in violation of section IV above; or

    d. Working without providing the required notice in violation of section IV, above; or

    e. Failure to make proper disclosure in violation of section IV, above.

V. SUBSTANCE SCREENING

A. Job Applicants

Job applicants may be required to undergo drug and alcohol testing as a condition of employment with the City. No drug and/or alcohol test shall be administered prior to the applicant receiving a conditional offer of employment. Only positions that present a special need for drug and/or alcohol testing will be subject to this section. For purposes of pre-employment drug and/or alcohol testing, special needs include safety-sensitive positions.

B. Employees

Current employees will be subject to drug or alcohol testing in the following circumstances:

1. Following a determination that reasonable suspicion exists in accordance with this policy; or

2. When an employee is subject to return to duty and/or follow-up testing following an employee's return from drug and/or alcohol rehabilitation and/or treatment.

C. Testing

1. The City may use each or all of the following testing methods:

    a. Pre-employment testing;

    b. Reasonable suspicion testing;

    c. Post-accident testing; and

    d. Testing authorized or required by federal or state regulations, including Department of Transportation regulations.

2. *Consent*. Prior to the administration of any drug and/or alcohol testing, the City's testing provider shall attempt to obtain from the employee a completed and signed consent form. This form will document the employee's consent in writing to examination and testing and will authorize the release of such information to the City. Refusal by the employee to sign a consent form is considered insubordination and may be independent grounds for disciplinary action, up to and including termination.

3. *Interference with a Required Test or Refusal to Cooperate*. An employee will be subject to the same consequences as a positive test if the employee:

    a. Refuses the screening or test by engaging in behavior such as refusal to provide a urine specimen, body fluid specimen, hair, or breath sample without a valid medical explanation; a verbal declaration of refusal; or physical absence;

    b. Adulterates, dilutes, contaminates, or tampers with the specimen, or attempts to do so;

    c. Substitutes the specimen with that of another person, or sends an imposter to provide a specimen, or attempts to do either act;

    d. Refuses to sign the required forms or documentation;

    e. Otherwise refuses to cooperate in the testing process in such a way that prevents conducting or completion of the test.

4. *Results*. If the drug screen is positive, the employee may be requested to provide, within one (1) business day of the test results, bona fide verification of a valid

current prescription for the drug identified in the drug screen. The prescription must be in the employee's name.

5. *Cannabis*. Consistent with Government Code section 12954, and except as otherwise required under federal law, the City will not screen for nonpsychoactive cannabis metabolites.

VI. CONSEQUENCES OF POLICY VIOLATIONS

Violation of this policy by any employee may result in discipline, up to and including discharge, depending on the circumstances and at the sole discretion of the City. For those employees employed in positions covered by the DOT regulations, discipline will be administered in accordance with Title 13 of the California Code of Regulations and Title 49 of the Code of Federal Regulations.

A. Effect of Criminal Conviction

An employee who is convicted under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event will be deemed to have violated this policy.

B. Effect of a Positive Test

An employee who receives a positive test for drugs or alcohol will be in violation of this policy. An applicant who receives a positive test result for drugs or alcohol may have their conditional offer of employment rescinded and may not be hired.

C. Refusal to Test

Whenever an employee refuses an order to submit to a drug or alcohol test upon appropriate direction, the employee shall be reminded of the requirements of this policy and the disciplinary consequences for refusal. Such refusal may be considered insubordination and is grounds for disciplinary action up to and including termination. Refusal to test includes, but is not limited to:

1. Failing to appear at the collection site in the time allotted;

2. Leaving the collection site before the testing process is completed;

3. Failing to provide a breath, urine, hair, or saliva specimen;

4. Failing to permit the observation or monitoring of specimen collection when required;

5. Failing to provide a sufficient amount of urine or breath specimen without a valid medical explanation;

6. Adulterating or diluting a urine, breath, or saliva specimen;

7. Failing or refusing to take a second test when required;

8. Failing to cooperate with any part of the testing process; for example: refusing to sign the testing form when required.

Return to Duty/Follow-up Testing

Employees who violate this policy may also be required to participate in a drug and/or alcohol rehabilitation or counseling programs as a condition of continued employment. In certain instances (such as an employee who tested positive for drugs or alcohol or has successfully completed drug or alcohol rehabilitation), and solely at the City's discretion, the City may enter into an agreement with an employee who would otherwise be disciplined to permit the employee to keep their job upon fulfilling certain requirements pertaining to drug and/or alcohol rehabilitation, including, but not limited to, submitting to return to duty and/or follow-up testing when directed to do so by the City in accordance with this policy.

VII. CRIMINAL CONVICTIONS

Employees must notify the City of any conviction under a criminal drug statute for a violation occurring in the workplace, while conducting or performing City business regardless of location, or during any City-related activity or event, in writing, no later than 5 days after any such conviction. For purposes of this policy, a conviction includes a finding of guilt, a plea of *nolo contendre* or no contest, and/or an imposition of sentence by any judicial body charged with responsibility to determine violations of federal or state criminal drug and alcohol statutes. When required by applicable law, the City will notify agencies under contract of any employee who has been convicted under a criminal drug statute for a violation occurring while conducting or performing City business, regardless of location.

VIII. CONFIDENTIALITY

Disclosures made by employees to the Human Resources and Risk Manager concerning their use of legal drugs will be treated confidentially and will not be revealed to managers or supervisors unless there is an important work-related reason to do so, or disclosure is required by law. Disclosures made by employees to the Human Resources and Risk Manager concerning their participation in any drug or alcohol rehabilitation program will be treated confidentially. Laboratory reports and/or test results shall not be maintained in an employee's general personnel file and information of this nature will be maintained in a separate confidential medical folder.

Managers and supervisors must restrict communications concerning possible violations of this policy to persons who have an important work-related reason to know. In addition, managers and supervisors must not disclose the fact of an employee's participation in any drug or alcohol counseling or rehabilitation program.

IX. VOLUNTARY ASSISTANCE OR REHABILITATION

A. In General

The City encourages employees who suspect they may have alcohol or drug problems to seek voluntary assistance and rehabilitation at an early date. Accordingly, an eligible employee who decides to seek treatment or rehabilitation will not be subject to discipline solely because of seeking such treatment. However, the City reserves the right to discipline employees, up to and including termination, who are found to have engaged in activity prohibited by this policy.

B. Employee Assistance

The Employee Assistance Program (EAP) is available to assist employees in these efforts to overcome problems with drugs and/or alcohol. Information pertaining to such programs may be obtained by direct contact with the EAP agency or by contacting Human Resources and Risk Manager.

C. Leave of Absence for Voluntary Receipt of Assistance and Rehabilitation

Employees who wish to voluntarily enter and participate in an approved alcohol or drug rehabilitation program are encouraged to contact the Human Resources and Risk Manager, who will determine whether the City can accommodate the employee by providing unpaid leave to complete the program. The City reserves the right to deny such leave in accordance with applicable state or federal law if granting the leave is unreasonable or would impose an undue hardship on the City.

EMPLOYEE ACKNOWLEDGMENT OF RECEIPT OF DRUG AND ALCOHOL FREE WORKPLACE POLICY

My signature below acknowledges that I have received my copy of the City's Drug and Alcohol Free Workplace Policy ("Policy") and that I have read the Policy and understand my rights and obligations under the same.

I understand that this Policy only represents the City's current policies, procedures, rights, and obligations. Regardless of what the Policy states or provides, the City retains the right to add, change, or delete provisions of the Policy at any time and in its sole discretion.

By signing below, I agree to abide by all provisions of the Policy. I understand that failure to fully comply with all provisions of the Policy may lead to disciplinary action, up to and including termination.

PRINT FULL NAME: ____

SIGNATURE: ____

DATE: ___________________________

[RETAIN IN EMPLOYEE PERSONNEL FILE]

APPENDIX A

REASONABLE SUSPICION REPORT

Employee Name:
Job Title:
Department:
Supervisor:

OBSERVATION: Location/Building:

Date: **Time: From:** ☐**AM** ☐**PM** **To:** ☐**AM** ☐**PM**

CAUSE FOR SUSPICION (*Answer all that apply*):

1. **Presence of Drugs, Alcohol, and/or Paraphernalia *(specify)*:**

2. **Appearance:**
☐ Normal ☐ Flushed ☐ Puncture Marks
☐ Disheveled ☐ Bloodshot Eyes ☐ Inappropriate wearing of sunglasses
☐ Tremors ☐ Profuse Sweating ☐ Dilated/Constricted Pupils
☐ Body Odor ☐ Dry-mouth Symptoms ☐ Runny Nose/Sores
☐ Other:

3. **Behavior:**
Speech: ☐ Normal ☐ Incoherent ☐ Slurred ☐ Silent
☐ Confused ☐ Slowed ☐ Whispering
☐ Other:

Awareness: ☐ Normal ☐ Confused ☐ Mood Swings ☐ Euphoria
☐ Lethargic ☐ Disoriented ☐ Paranoid ☐ Lack of Coordination
☐ Other:

4. **Motor Skills**
Balance: ☐ Normal ☐ Swaying ☐ Falling ☐ Staggering
☐ Other:
Walking & Turning:
☐ Normal ☐ Swaying ☐ Arms Raised for Balance
☐ Stumbling ☐ Falling ☐ Reaching for Support
☐ Other:

Other Observed Action or Behavior *(specify, add other sheets as needed)*

Suspicion Reported by:

Signature: ____

Title:

Date: **Time:** ☐**AM** ☐**PM**

Witnessed by: *(must be a supervisor or manager trained in physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of controlled substances)*

Signature: ____

Title:

Date: **Time:** ☐**AM** ☐**PM**

OPTIONAL - 2nd Signature: __________________________________

Title:

Date: **Time:** ☐**AM** ☐**PM**

DRUG-FREE WORKPLACE POLICY FOR DRIVERS OF COMMERCIAL VEHICLES

I. PURPOSE

This Policy supplements the City of Soledad's ("City") Drug-Free Workplace Policy, establishing a drug-free workplace, and applies to those employees who are required to hold a commercial driver's license. In the event that this Policy conflicts with the City's Drug-Free Workplace Policy, this Policy and the federal Department of Transportation statutes and regulations, as amended, shall supersede the City's Drug-Free Workplace Policy.

This Policy is adopted pursuant to the Omnibus Transportation Employee Testing Act of 1991 (Pub. L. No. 102-143, 105 Stat. 952, as amended), and the regulations that implement it (49 CFR Parts 40, 382, 391, 392, and 395, as amended), as amended. This Policy incorporates those federal requirements, and any amendments that may be made subsequent to the adoption of this Policy. This Policy expressly restates portions of those requirements; however, the partial restatement should not in any way be interpreted to mean that those requirements not restated herein are inapplicable to drivers.

It is the goal of the City to create a healthy and safe working environment to deliver the best and most efficient municpal service to the citizens of Soledad. It is the responsibility of all City employees to cooperate in efforts to protect the life, personal safety, and property of co-workers and citizens. The City will not tolerate any drug or alcohol use, which may affect the job performance or pose a hazard to the safety and welfare of the employee, the public, and/or other employees of the City. Drug and alcohol use, which affects the employee's job performance, or jeopardizes City and public safety is proper cause for disciplinary action, up to and including termination.Any questions regarding this Policy and the DOT drug and alcohol testing can be directed to the Human Resources Director.

The City is, therefore, committed to establishing and maintaining a safe and healthy work environment free from the influence of alcohol and drugs. With this objective in mind, the City has established the following Drug-Free Workplace Policy for Drivers of Commerical Vehicles.

II. APPLICABILITY

This Policy applies to any employee who is required to possess a commercial driver's license as part of their job.

Those classifications include, but are not limited to the following:

A. Wastewater Collections System Supervisor
B. Water Reclamation Operator-in-Training (Assigned to Collections)

III. DEFINITIONS

A. **Accident**: An occurrence associated with the operation of a vehicle, if, as a result, any of the following occur:

1. An individual dies; or

2. An individual suffers bodily injury and immediately receives medical treatment away from the scene of the accident; or

3. One or more of the motor vehicles involved incurred disabling damage requiring that the motor vehicle be transported away from the scene by a tow truck or other motor vehicle.

B. **Alcohol**: The intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohols, including methyl and isopropyl alcohol.

C. **Breath Alcohol Technician ("BAT")**: A person who instructs and assists employees in the alcohol testing process and operates an evidential breath testing device.

D. **Commerce**:

1. Any trade, traffic, or transportation within the jurisdiction of the United States between a place in a state and a place outside of such state, including a place outside of the United States; and

2. Trade, traffic, and transportation in the United States which affects any trade, traffic, and transportation described in Section D.1. above.

E. **Commercial Motor Vehicle**: A motor vehicle or combination of motor vehicles used in commerce to transport passengers or property if the vehicle:

1. Has a gross combination weight rating of 26,001 or more pounds, inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or

2. Has a gross vehicle weight rating of 26,001 or more pounds, including the driver; or

3. Is designed to transport 16 or more passengers, including the driver; or

4. Is of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act (49 USC § 5103(b)) and which require the motor vehicle to be placarded under the Hazardous Materials Regulations (49 CFR pat 172, subpart F).

F. **Designated Employer Representative ("DER")**: An employee who is able to receive communications and test results from service agents and who is authorized to take immediately actions to remove employees from safety-sensitive duties and to make required decisions in the testing and evaluation processes. The City's DER is the Human Resources Manager or their designee.

G. **<u>Disabling Damage</u>**: Damage that precludes departure of a motor vehicle from the scene of the accident in its usual manner in daylight after simple repairs. This includes damage to the motor vehicle where the vehicle could have been driven, but would have been further damaged if so driven. This excludes the following:

1. Damage that can be remedied temporarily at the scene of the accident without special tools or parts;

2. Tire disablement or other damage even if no spare tire is available;

3. Headlamp or tail light damage; and

4. Damage to turn signals, horn, or windshield wipers, which make the vehicle inoperable.

H. **<u>DOT</u>**: The federal Department of Transportation.

I. **<u>Driver</u>**: Any person who operates a commercial motor vehicle. This includes, but is not limited to full time, regularly employed drivers; casual, intermittent, or occasional drivers; leased drives; and independent owner-operator contractors.

J. **<u>FMCSA</u>**: The Federal Motor Carrier Safety Regulations.

K. **<u>Medical Review Officer ("MRO")</u>**: A person who is a licensed physician and who is responsible for receiving and reviewing laboratory results generated by the City's drug testing program and evaluating medical explanations for certain drug tests results.

L. **<u>Performing a Safety Sensitive Function</u>**: A driver is considered to be performing a safety-sensitive function during any period in which the driver is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

M. **<u>Safety Sensitive Function</u>**: All time from the time a driver begins to work or is required to be in readiness to work until the time the driver is relieved from work and all responsibility for performing work. Safety-sensitive functions are:

1. All time at a City plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the City;

2. All time inspecting equipment as required by sections 392.7 and 392.8 of Title 49, Subtitle B, Chapter III of the Code of Federal Regulations, or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;

3. All time spent at the driving controls of a commercial motor vehicle in operation;

4. All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth;

5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and

6. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

N. **Substance Abuse Professional ("SAP")**: A person who evaluates employees who have violated this Policy and/or other DOT drug and alcohol regulation and who makes recommendations concerning education, treatment, follow-up testing, and aftercare.

O. **Transferee**: A person who transfers from a position in the City service that does not have safety sensitive functions to a position in the City service that does have safety sensitive functions.

IV. PROCEDURE

A. General Prohibitions:

1. Legal Drugs: As a City policy in addition to DOT/FMCSA regulations, a driver must receive authorization to work from the City's Human Resources Manager or designee and the City's MRO prior to taking any legal drug which may cause drowsiness or which may otherwise impair to any extent the employee's ability to safely and efficiently perform the driver's job.

(a) The City's MRO, after consultation with the Human Resources Manager, may authorize the employee to work while under the influence of a legal drug upon receipt of a fully completed and signed authorization form which states to the City's satisfaction that the employee will not be impaired in the performance of the employee's duties. The City, in its discretion, may request the MRO to issue an independent decision, which will be binding on the employee, at any time and as to any driver who is working or intends to work while under the influence of a legal drug. In making such an independent determination, the MRO may require the employee to submit to a physical examination to ensure that the drug does not impair job performance.

2. Illegal Drugs: As a City policy in addition to DOT/FMCSA regulations, the use, sale, purchase, offer to sell, transfer, possession, manufacture, or distribution of an illegal drug by any employee while in a City facility or a

City vehicle, or on City property or while in City uniform or while performing City business on duty is strictly prohibited. The presence of any amount determined to be a positive test result per DOT/FMCSA regulations of any illegal drug or its metabolites in any employee while performing City business or in a City facility, a City vehicle or in City uniform or on City property is prohibited.

(a) As a City policy in addition to DOT/FMCSA regulations, no employee shall bring drug paraphernalia, which is used in the storage, concealment, injection, ingestion, or consumption of illegal drugs onto City premises or property or into City vehicles.

(b) Drivers are prohibited from performing safety sensitive functions while under the influence of marijuana, cocaine, opiates, amphetamines, and/or phencyclidine. Drivers are prohibited from ingesting or consuming marijuana, cocaine, opiates, amphetamines, and phencyclidine at any time, whether on duty or off duty.

3. Alcohol: As a City policy in addition to DOT/FMCSA regulations, the possession, consumption, or sale of any amount of alcoholic beverage while at work, or on City property, or in a City vehicle or in a City uniform is prohibited for all employees.

4. In General: No driver shall report for duty or remain on duty requiring the performance of safety sensitive functions while having an alcohol concentration of 0.04 or greater. Drivers are prohibited from using alcohol while performing safety sensitive functions. Drivers are prohibited from using alcohol within four hours prior to performing a safety sensitive function.

5. On Duty: No driver who is found to have an alcohol concentration of 0.02 or greater, but less than 0.04, may perform safety sensitive functions until:

(a) The employee's alcohol concentration measures less than 0.02; or

(b) The start of the driver's next regularly schedule duty period, but not less than eight hours following administration of the test. The employee shall be retested to ensure that his/her alcohol level is below 0.02.

6. On Call Employees: Any driver who is subject to being on call or who is on stand by is prohibited from using alcohol while on call or on stand by. If a driver has consumed alcohol during this time, and the driver is called to report to duty, the driver must immediately notify their supervisor that the driver has consumed alcohol. The employee must also notify the supervisor whether the employee believes that the employee can perform safety sensitive function. If the employee admits to having consumed alcohol, but asserts that the employee can perform safety sensitive functions, the

employee shall be required to submit to an alcohol test prior to performing any safety sensitive functions.

7. Following an Accident: Drivers who are required to submit to a post-accident alcohol test under Section IV.C.3, are prohibited from using alcohol for eight hours following the accident, or until he/she undergoes a post-alcohol accident test, whichever occurs first.

B. Employee Assistance Program: The City maintains an Employee Assistance Program ("EAP") which offers confidential, professional counseling to employees and their family members. It provides a constructive way by which employees can deal with alcohol and/or drug-related problems before such problems impact job performance, family relations, and other areas of one's life. Employees experiencing personal or work performance problems associated with alcohol or drug use are urged to utilize the EAP.

1. It is the responsibility of employees to seek assistance from the EAP before alcohol and/or drug problems lead to disciplinary action, which can include termination for a first offense. Enrollment and participation in the EAP will not be used as the basis for disciplinary action and will not be used against the employee in any disciplinary proceeding. However, enrollment and participation in the EAP will not exempt an employee from discipline if that employee is found to have violated this Policy.

2. Provisions for leaves of absence for employees with alcohol and/or drug related problems who have not been found in violation of the Policy and who voluntarily have sought assistance through the EAP will be granted in accordance with the City Personnel Rules.

3. Any employee who tests positive for the presence of illegal drugs or alcohol at or above the cut off levels established by the DOT shall be referred to an SAP to determine what assistance, if any, the employee needs in resolving problems associated with drugs or alcohol misuse.

4. The cost of any treatment or rehabilitation services may be covered by the medical insurance plans available at the City, which may require a co-payment by the employee paid directly by the employee or the employee's insurance provider.

5. Information on the EAP can be obtained from the Human Resources Department.

C. Types of Drug and Alcohol Testing:

1. Pre-Employment/Promotional:

(a) All applicants and transferees who will perform safety sensitive functions are required to submit to a pre-employment drug and alcohol test. Only applicants and transferees who have been made a conditional offer of employment or transfer shall be subject to the pre-employment/promotional drug and alcohol tests. No applicant or transferee shall be permitted to perform safety sensitive functions until the applicant or transferee's drug test has a verified negative result. No applicant or transferee shall perform safety sensitive functions until the applicant's or transferee's alcohol test indicates that the applicant's or transferee's has an alcohol concentration of less than 0.02.

(b) When a driver or applicant has not performed a safety sensitive function for 90 consecutive calendar days, regardless of the reason, and the employee has not been in the City's random selection pool during that time, the City shall ensure that the employee takes a pre-employment drug test with a verified negative result.

(c) If an applicant does not pass an alcohol and drug test, the applicant must wait 12 months before reapplying and then must present evidence of completion of a drug and/or alcohol rehabilitation program that is acceptable to the City before the applicant is eligible to reapply for a job requiring perofrmance of safety sensitive functions.

2. Random: All drivers are subject to random drug and alcohol testing. The minimum annual percentage rate for random drug testing is fifty percent (50%) of all drivers; the random alcohol testing rate shall be ten percent (10%) of all drivers. The City may test more than these minimum percentages.

(a) Selection of Employees: The selection of employees for random drug and alcohol testing shall be made by a scientifically valid method, such as a random number table or a computer-based random number generator that is matched with employees' social security numbers, or other identifying numbers. Each driver shall have an equal chance of being tested each time selections are made.

(b) Testing Pool: Drivers will be placed in a pool that will include all employees who are required to be randomly tested by the DOT. The City may contract with a third party administrator to assign employees to a pool and administer that pool for random testing. Such a pool may include non-City employees.

(c) Timing: The City will ensure that random drug and alcohol tests are unannounced and unpredictable, and that the dates for administering the random tests are spread reasonably throughout the calendar year. Random testing will be conducted at all times of day when safety sensitive functions are performed.

(d) Procedures: Employees who are notified that they have been selected for random testing under this section are required to proceed immediately to the test site. A driver shall only be randomly tested for alcohol misuse while the employee is performing safety sensitive functions, just before the employee is to perform safety sensitive functions, or just after the employee has ceased performing such functions. A driver can be randomly tested for drugs anytime while on duty.

3. Post-Accident:

(a) Post-Accident Alcohol Test: As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City shall test for alcohol for each of its surviving drivers:

(1) Who was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within eight hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:

(a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(b) One or more motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(3) If an alcohol test is required, it should be administered within two hours following the accident, but it must be administered within eight hours following the accident. If it is not administered within eight hours following the accident, the City shall cease attempts to administer the alcohol test.

(b) Post-Accident Drug Test: As soon as practicable following an occurrence involving a commercial motor vehicle operating on a public road in commerce, the City shall test for controlled substances for each of its surviving drivers:

(1) Who was performing safety sensitive functions with respect to the vehicle, if the accident involved the loss of human life; or

(2) Who receives a citation within 32 hours of the occurrence under state or local law for a moving traffic violation arising from the accident, if the accident involved:

(a) Bodily injury to any person who, as a result of the injury, immediately receives medical treatment away from the scene of the accident; or

(b) One or more of the motor vehicles incurring disabling damage as a result of the accident, requiring the motor vehicle to be transported away from the scene by a tow truck or other motor vehicle.

(3) If a drug test is required, it must be administered within 32 hours following the accident, or the City must cease its attempts to administer the drug test.

(c) Failure to Remain Available: A driver who is subject to post-accident drug and/or alcohol testing, and who fails to remain readily available for such testing, including notifying the employee's supervisor or Director of their location if the driver leaves the scene of the accident prior to submission to such test, will be deemed to have refused to submit to testing.

(d) Need for Medical Attention: Nothing in the post-accident testing requirements should be read to require the delay of necessary medical attention for the injured following an accident or to prohibit a driver from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

4. Reasonable Suspicion: The City shall order an employee to submit to a drug and/or alcohol test when the City has reasonable suspicion to believe that the driver has used a prohibited drug and/or engaged in alcohol misuse.

(a) Finding of Reasonable Suspicion: The City's determination that reasonable suspicion exists shall be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances. A supervisor who is trained in detecting the signs and symptoms of drug use and alcohol misuse must make the required observations.

(b) Reasonable Suspicion Alcohol Testing: An employee may only be subjected to alcohol testing if the observations are made during, just preceding, or just after the period of the workday that the driver is performing safety sensitive functions. A reasonable suspicion alcohol test should be performed within two hours of the reasonable suspicion finding, but in no case shall an alcohol test be performed more than eight hours after making the reasonable suspicion finding.

(c) Written Record of Reasonable Suspicion: A written record shall be made of the observations leading to an alcohol or drug test and signed by the supervisor who made the observations, within 24 hours of the observed behavior or before the results of the tests are released, whichever is earlier.

5. Return to Duty and Follow Up Testing: When a driver refuses to submit to a test, has a verified positive drug test result, and/or has a confirmed alcohol test result of 0.04 or greater, the City shall require the employee submit to a drug and/or alcohol test, before returning the employee to duty to perform a safety sensitive function. All testing under this Section shall be in accordance with 49 CFR Part 40, Subpart O.

D. Refusal to Submit to Testing:

1. Acts that Constitute a Refusal to Submit to Testing: In accordance with DOT regulations, a driver who engages in any of the following conduct has refused to submit to a drug and/or alcohol test under this Section:

(a) Fails to appear for any test (except a pre-employment test) within a reasonable time, as determined by the City, consistent with DOT regulations, after being directed to do so by the City.

(b) Fails to remain at the testing site until the testing process is complete, except for an employee who leaves the testing site prior to the commencement of a pre-employment test;

(c) Fails to provide a urine specimen for any drug test, except for an employee who leaves the testing site prior to the commencement of a pre-employment test;

(d) In the case of a directly observed or monitored collection in a drug test, fails to permit the observation or monitoring of the driver's provision of a specimen;

(e) Fails to provide a sufficient amount of urine when directed, and it has been determined, through a required medical evaluation, that there was no adequate medical explanation for the failure;

(f) Fails or declines to take a second test the City or collector has directed the driver to take;

(g) Fails to undergo a medical examination or evaluation, as directed by the MRO as a part of the verification process, or as directed by the

DER when the employee cannot produce a sufficient amount of urine;

(h) Fails to cooperate with any part of the testing process; or

(i) Is reported by the MRO as having a verified adulterated or substituted test result.

2. Consequences for Refusal to Submit to Testing:

(a) Applicants: Any applicant who refuses to submit to testing shall be disqualified for employment.

(b) Employees: The City shall treat any refusal to submit to testing by an employee to be both insubordination and as though the employee had tested positive for being under the influence of drugs or alcohol, and the City will act accordingly.

E. Alcohol Testing Procedures: Testing will be performed in strict compliance with DOT regulations for alcohol and drug testing (49 CFR Part 40, as amended) by professionals on contract with the City. A complete copy of 49 CFR Part 40, as amended, is available for review in the Human Resources Division.

F. Drug Testing Procedures: Testing will be performed in strict compliance with DOT regulations for alcohol and drug testing (49 CFR Part 40, as amended) by professionals on contract with the City. A complete copy of 49 CFR Part 40, as amended, is available for review in the Human Resources Department.

G. Medical Review Officer: The City's MRO shall be qualified under the DOT regulations, and will adhere to all pertinent DOT regulations in performing duties as an MRO. The MRO shall have no relationship with the drug testing laboratory that creates a conflict of interest. The City's MRO shall be qualified employees or contractors of Agile Occupational Medicine or other qualified person so designated.

H. Breath Alcohol Technician: The City's BAT shall be qualified under the DOT regulations, and will adhere to all pertinent DOT regulations in performing duties as a BAT. The City's BAT shall be qualified employees or contractors of Agile Occupational Medicine or other qualified person so designated.

I. Testing Laboratory: The City shall only use testing laboratories that are certified by the Department of Health and Human Services under the National Laboratory Certification Program. The testing laboratory must adhere to all requirements set forth in the DOT regulations. The drug testing laboratory and the MRO may not have any relationship that creates a conflict of interest. The City's drug and alcohol testing laboratory is Agile Occupational Medicine.

J. Consequences of a Positive Test or a Refusal to Test:

1. <u>Pre-Employment Test</u>: An applicant whose test results are positive for any illegal drug or alcohol will not be hired.

2. <u>Transfer, Reasonable Suspicion, Post-Accident, Return-to-Duty, or Random Tests</u>:

   (a) <u>Drugs</u>:

   (1) A driver who refuses to submit to an alcohol test under this Policy shall not be permitted to perform safety sensitive functions.

   (2) As a City policy in addition to DOT/FMCSA regulations, a driver whose test results are positive for any illegal drug will be subject to disciplinary action, up to and including termination.

   (3) A driver who receives a verified positive drug test result shall be placed off work and shall be referred to an SAP for evaluation. The SAP shall make a determination as to whether the employee requires rehabilitation, and if so, shall recommend a course of rehabilitation to be completed under the City's EAP.

   (4) A driver whose test results are positive for a legal drug which has not been approved by the City's MRO for use by that employee at work (or such authorization has been revoked) may be placed off work pending the employee obtaining such approval.

   (b) <u>Alcohol</u>:

   (1) A driver who refuses to submit to an alcohol test under this Policy shall not be permitted to perform safety sensitive functions.

   (2) As a City policy in addition to DOT/FMCSA regulations, a driver whose test results are positive for alcohol will be subject to disciplinary action, up to and including termination.

   (3) A driver whose final test result shows an alcohol percentage of 0.02 or greater but less than 0.04 shall be removed from duty and shall not return to work for eight hours or until a test result below 0.02 is obtained, whichever comes first.

(4) A driver whose final test result shows an alcohol percentage at 0.04 or greater shall be suspended from work and shall be referred to a SAP for evaluation. The SAP shall make a determination as to whether the employee requires rehabilitation, and if so, shall recommend a course of rehabilitation to be completed under the City's EAP.

K. <u>Employee Admission of Drug and/or Alcohol Use</u>:

1. As a City policy in addition to DOT/FMCSA regulations, an employee who admits to alcohol misuse or drug use is subject to the referral, evaluation, and treatment provisions of the DOT drug testing regulations discussed above when the following conditions are met:

   (a) The driver does not self-identify in order to avoid drug or alcohol testing under this Policy;

   (b) The driver makes the admission of alcohol misuse or drug use prior to performing a safety sensitive function; and

   (c) The driver does not perform a safety sensitive function until the City is satisfied that the employee has been evaluated and has successfully completed education or treatment.

2. In the event that all of the above criteria are not met, the employee remains subject to all DOT regulations regarding referral, evaluation, and treatment.

L. **<u>Reporting of Drug-Related Convictions</u>**: As a City policy in addition to DOT/FMCSA regulations, a conviction of a felony for use, offer to sell, purchase or obtain possession, sale, manufacture, distribution, or dispensation of illegal drugs, or for abuse of legal drugs, is grounds for immediate termination. Employees arrested on such charges will be suspended without pay pending resolution of the criminal charges.

Employees must notify their immediate supervisor within five days of any arrest or conviction of a criminal drug statute and any arrest or conviction of a criminal statute relating to alcohol, including but not limited to driving under the influence. Failure to do so is grounds for immediate termination.

M. **<u>Condition of Employment</u>**: As a City policy in addition to DOT/FMCSA regulations, compliance with this Policy is a condition of employment. Failure or refusal of an employee to cooperate fully, sign any required document, submit to any inspection or test, or follow any prescribed course of substance abuse treatment is grounds for termination.

N. **<u>Clearinghouse</u>**: The City shall not allow an employee to perform safety-sensitive functions without conducting a pre-employment query of the DOT Clearinghouse strict compliance with DOT/FMCSA regulations for alcohol and drug clearinghouse (49 CFR Part 382.701 *et seq.*, as amended). The City shall not conduct any query without employee consent and shall conduct an annual query of consenting drivers as required by DOT/FMCSA regulations. Additionally, the City or its designated service agent(s), MRO, and/or SAP shall report the following required information to the Clearinghouse within the required time and maintain necessary documentation as required by DOT/FMCSA regulations:

1. A verified positive, adulterated, or substituted drug test result;

2. An alcohol confirmation test with a concentration of 0.04 or higher;

3. refusal to submit to any test required by DOT/FMCSA regulations;

4. A report of actual knowledge that an employee has used alcohol on duty, used alcohol within four hours of coming on duty, used alcohol prior to post-accident testing, or has used a controlled substance;

5. A SAP report of the successful completion of the return-to-duty process;

6. A negative return-to-duty test; and

7. A report of completion of follow-up testing.

A complete copy of 49 CFR Part 382, as amended, is available for review in the Human Resources Division.

N. **<u>Confidentiality</u>**: The City shall make every effort to assure confidentiality throughout the testing process and to protect the individual dignity and right to privacy of all employees. Personal data regarding the drug and alcohol testing results and EAP evaluations will be forwarded only to the MRO or the SAP and are confidential. Except as required by law, or expressly authorized or required by the regulations, the City shall not release any information from the records it is required to maintain, except as required to be disclosed or reported under the regulations. The employee, and the union if so authorized by the employee, upon written request, is entitled to obtain copies of any records pertaining to the employee's drug and alcohol testing.

ELECTRONIC COMMUNICATIONS POLICY

I. PURPOSE

The City of Soledad ("City") is making every effort to provide its employees with the best technology available to conduct the City's business. In this regard, the City has installed, at substantial cost, equipment such as computers and advanced technological systems such as electronic mail (e-mail) for use to conduct its official business. This Policy was created to advise all users regarding the access to and the disclosure of information created, transmitted, received, and stored via the use of land-line telephones, City-owned cellular phones, the Internet, City e-mail, computer systems, and Electronic Storage Systems. This policy also identifies the appropriate use of City cellular phones, ownership of City cellular phones, and address privacy of any data contained on or transmitted using City cellular phones, as outlined under this policy.

The City's Policy regarding the use of the Electronic Communications Systems, including, but not limited to, Internet, intranet, and e-mail, is, among other things, intended to guide employees on the performance of their duties. This Policy is also intended to place all users on notice that they should have no expectation of privacy when using any of the City's Electronic Communications Systems.

The City reserves the right to monitor Internet use, all e-mail, and other computer transmissions, land-line telephones, City-owned cellular phones, as well as any stored information, created, or received by users within any of the City's Electronic Communications Systems. The reservation of this right is to ensure that public resources are being used appropriately and to ensure that the City's Electronic Communications Systems are operating as efficiently as possible in order to protect the public interest. All computer applications, programs, and any information, whether work-related or personal, created or stored by users on City's Electronic Communications Systems, are City Property.

This policy applies to all employees of the City and to any person who is given access to the City's Electronic Communications Systems. No person shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.

II. DEFINITIONS

A. Cellular Phone (Mobile Phone): A type of short-wave analog or digital telecommunication in which a subscriber has a wireless connection from a mobile telephone to a relatively nearby transmitter. Types of cellular phones include Digital/Analog, satellite, Wi-Fi, as well as Smartphones such as Android, iPhone, and other data-enabled phones, including devices equipped with direct connect functionality.

B. Electronic Communications: Any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or part by a wire, radio, electromagnetic, photoelectric, or photo optical system, including but not limited to telephone calls, cellular phone calls, fax machine transmissions, text messages, and e-mail.

C. **Electronic Communications Systems:** All electronic equipment, devices, software, data, and/or other means of electronic communication (either furnished by the City or property of the employee used to conduct City business), including, but not limited to computer hardware and software, telephones, fax machines, cellular telephones, pagers, e-mail, Internet/World Wide Web, voice mail, personal digital assistants, and tablets. It also includes any wire, radio, electromagnetic, photo optical, photo electronic facilities for the transmission of Electronic Communications, and any computer facilities or related electronic equipment for the Electronic Storage of such communications, as well as any newly created devices yet to be created.

D. **Electronic Mail (E-mail):** E-mail may include non-interactive communication of text, data, images, or voice messages between a sender and designated recipient(s) by systems utilizing telecommunications links. It may also include correspondence transmitted and stored electronically using software facilities called "e-mail", "facsimile" or "instant messaging" system; or voice messages transmitted and stored for later retrieval from a computer system.

E. **Electronic Storage Systems:** Any stored data, wire, or Electronic Communication incidental to electronic transmission thereof. It also means any stored communications by an Electronic Communications service for purposes of backup protection of such communication.

F. **Handsfree:** An adjective used to describe a device that can be used without the use of hands; most commonly used with mobile phones. Hands-free devices are equipped with both a speaker and a microphone. Common examples of hands-free devices are mobile headsets and earpieces, which can be wired or wireless, as well as Bluetooth devices, which use wireless technology to exchange data over short distances.

G. **Messaging (Instant / Text (SMS) / PIN):** A text-based conference over telecommunication lines such as the Internet and/or cellular frequencies between two or more people who may or may be connected at the same time.

H. **Internet:** A worldwide network of networks, connecting informational networks communicating through a common communications language or "protocol."

I. **Land-line:** Standard telephone and data communications systems that use in-ground and telephone pole cables in contrast to wireless cellular and satellite services.

J. **Smartphone:** A cellular phone that is characterized as a wireless telephone set with special computer-enabled features, such as e-mail, text-messaging, Internet, Web browsing, fax, PIM, and LAN connectivity that provides computing and information storage and retrieval capabilities for personal or business use. Examples include Android, iPhone, and other data-enabled devices running mobile software.

K. **Social Networking Sites:** Any web-based URL site that allows for the public or private posting of messages, photos, or videos. Social networking sites include, but are not limited to, Facebook, LinkedIn, Twitter, YouTube, Yelp, and Instagram.

L. **Standards:** Departmental directions or instructions describing how to achieve policy.

M. **Users:** Any person using the City's Electronic Communications Systems.

N. **Vendors:** Any private person or business enterprise doing business with the City.

O. **Wi-Fi cellular phone:** A cellular telephone that can automatically switch between conventional cellular and Wi-Fi VoIP modes, even during the course of a conversation. A Wi-Fi LAN acts, in effect, as a cellular repeater for such a phone.

III. POLICY AND PROCEDURES

A. Access of Electronic Communications Systems.

1. No regular, probationary, temporary, seasonal, or contractual City employee or volunteer shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.

2. All employees, Councilmembers, Commissioners, and volunteers provided access to the City's Electronic Communications Systems, Electronic Communications, and Electronic Storage shall be given a copy of this and all related technology policies and shall sign an acknowledgement of the policies recognizing the parameters for compliance.

B. No Right of Privacy.

The City respects the individual privacy of its employees. However, employee privacy does not extend to the employee's work-related conduct or to the use of City-provided equipment or supplies. Employees should be aware that the terms of this Policy limit their privacy in the workplace.

The City's Electronic Communications Systems, Electronic Communications, and Electronic Storage are City property and are intended for City business. All Electronic Communications and Electronic Storage within these systems are the property of the City, regardless of the content, including any personal communications. The City reserves the right to monitor the Electronic Communications Systems for any reason at any time without notice to the user(s), including the right to review, audit, and disclose all matters and content sent over and/or stored on Electronic Communications Systems.

As a result, employees should be aware that no Electronic Communications transmitted on the Electronic Communications Systems, or Electronic Storage contained within the systems, is private or confidential. **Employees do not have an expectation of privacy with respect to any use, including storage, business or personal, of the City's Electronic Communications Systems**.

Employees should be aware that Electronic Communications and/or Electronic Storage can be copied, modified, and/or forwarded to others without the express permission of the original author. Therefore, employees must use caution in the storage, transmission, and dissemination of Electronic Communications outside of the City and must comply with all state and federal laws. Electronic Communications and/or Electronic Storage of the City may be recognized as official records in need of protection/retention in accordance with state and federal laws. All electronic communications are subject to the Personnel Rules and all state and federal laws, including but not limited to the California Public Records Act, open meeting laws, and the federal Electronic Communications Privacy Act.

C. Passwords.

All passwords created by the user or issued to the user are for the purpose of communication and are not to be shared, given, or otherwise disclosed to any other person. Passwords must not be shared and may be changed periodically by the City to ensure security. All security features contained within the City's Electronic Communications Systems, such as passwords, codes, or delete functions, will not prevent the City from accessing employees' business or personal Electronic Communications, stored or otherwise, on the City's Electronic Storage Systems.

D. Appropriate Use of Electronic Communications Systems.

The City's Electronic Communications Systems are designed to facilitate City business and communication through the appropriate use of the Electronic Communications Systems and Electronic Storage thereon. The City values its Electronic Communications Systems and Electronic Storage, and takes measures to safeguard them from corruption and illegal use, and to protect the City from any possible liability due to illegal use of the Electronic Communications Systems and Electronic Storage.

1. No user shall access the City's Electronic Communications Systems without reading and complying with the procedures set forth in this Policy.

2. All users requesting authorization to access the City's Electronic Communications Systems, Electronic Communications, and/or Electronic Storage shall be given a copy of all related technology policies and shall sign an acknowledgement of the policies recognizing the parameters for compliance with those policies.

E. Improper Use of Electronic Communications Systems.

It is the responsibility of each City employee to use the City's Electronic Communications Systems in a professional and courteous manner. The City forbids the use of its Electronic Communications Systems in a manner that violates any law, regulation, ordinance, or policy or procedure of the City. Electronic Communications Systems should not be used in any way that is offensive, harmful, or insulting to any person. Examples of prohibited uses include, but are not limited to:

1. Illegal activities;

2. Solicitation of funds;

3. Political messages or transmissions;

4. Messages or transmissions that violate the City's Policy Against Harassment, Discrimination, Retaliation and Abusive Conduct based on gender, genetic characteristics or information, race, color, national origin, ancestry, religion, creed, sex, physical or mental disability, medical condition, marital status, sexual orientation, gender expression or identity, age, pregnancy, childbirth, related medical condition, reproductive health decision-making, or military or veteran's status, or any other basis protected by applicable federal, state or local law;

5. Messages or transmissions that violate the City's personnel rules, and/or another policy of the City, including, but not limited to, policy against workplace violence or drug-free workplace policies; or

6. Any other message or transmissions which are in any way inappropriate.

F. Personal Use of Electronics Communications Systems.

The City's Electronic Communications Systems are primarily for the conduct of City business. Limited, occasional, or incidental use of the electronic communications systems (either furnished by the City or property of the employee) for personal, non-business purposes is permitted only under the following circumstances:

1. Personal use may not interfere with the productivity of the employee or his/her co-workers;

2. Personal use may not involve any prohibited activity described in this Policy;

3. Personal use may not involve conduct that is prohibited under other City Policy or Rule;

4. Personal use may not disrupt or delay the performance of City business;

5. Personal use may not consume City resources or otherwise deplete system resources available for City business purposes;

6. Personal use may not be used for personal employee gain or commercial ventures;

7. Personal use may not support or advocate non-City-related business purposes.

If an employee's personal use of the City's Electronic Communications Systems results in a cost to the City, the cost must be reimbursed to the City by the employee.

G. Retention of Electronic Communication.

No electronic communication shall be considered by the City to be retained in the ordinary course of business, with the exception of electronic communication containing content required to be retained by law.

It is the responsibility of the creator to determine if an electronic communication sent internally should be classified as a record that requires retention in accordance with the City Council-approved Records Retention Schedule. It is the responsibility of the recipient of an electronic communication received from outside City sources to determine if an electronic communication should be classified as a record that requires retention in accordance with the City Council-approved Records Retention Schedule. Once retention status is determined, transfer of the electronic communication to a printed hard copy is required prior to deletion or purge from the electronic communication system.

H. Access of Another Person's Electronic Communications.

Employees may not intentionally intercept, eavesdrop on, record, read, alter, retrieve, receive, send, or use another person's Electronic Communications and/or Electronic Storage without proper authorization. Employees, including system administrators and Supervisors, may not, without proper authorization, peruse Electronic Communications and/or Electronic Storage of other employees. Proper authorization may be granted as set forth in Section III-I of this policy.

I. Requests for Access to Employees' Data, Messages, and Phone Records.

Employees may not intentionally intercept, eavesdrop on, record, read, alter, retrieve, receive, send, or use another person's Electronic Communications, Electronic Communications Systems, or Electronic Storage Systems without proper authorization. Employees, including system administrators and supervisors, may not, without prior authorization from the City Manager, peruse Electronic Communications or Electronic Storage Systems of other employees.

Requests for access into an employee's individual data, messages, and phone records will be made to the City Manager. The City Manager may grant such request and direct appropriate action.

J. City-Wide Website Policies.

The City's website, including all domains owned and maintained by the City, represent a fundamental communication tool for providing critical City information to the public. The goal of the website is to encourage increased participation in City government and to help create a more vibrant community for residents and visitors alike. Toward that end, the development and use of the City's sites are guided by the Website Policy:

1. The City Manager is responsible for the creation and implementation of the City website, ensuring compliance with the City's policies regarding the website, and maintaining and securing the City's servers and website.

2. To preserve the public nature of the City's website and to avoid any perception that the City endorses or provides favorable treatment to any private person or business enterprise (hereinafter collectively referred to as "vendor"), no corporate or

commercial logos or links to vendor sites will be allowed on the City's external website, unless such link represents a mission critical partnership and is permitted by the City Manager.

3. Vendors that create or maintain a website for the City must follow all policies established for the City's website.

4. The City's website is for "official use" only. All information disseminated through the City's website must be related to the official duties and responsibilities of employees and City departments.

5. The California Public Records Act applies to information processed, sent, and stored on the Internet. Confidential information should not be posted on the City's external website. The City Manager must approve all posted information.

6. No City employee or official may use any City website for campaign-related purposes. Such campaign-related purposes include, but are not limited to, the following: statements in support or opposition to any candidate or ballot measure; requests for campaign funds or references to any solicitations of campaign funds; and references to the campaign schedule or activities of any candidate. No City official's website may be linked to any private website related to a candidate's campaign for elective office, but it may link directly to the home page of the Office of the City Clerk's election-related pages, where general election and candidate information can be found.

K. Internet Usage Policies.

1. **Authorization for Internet Access.** Authorization for Internet access must be obtained through the employee's supervisor. Once authorization is approved, the employee is responsible for the security of his/her account password and will be held responsible for all use or misuse of his/her account. Users must maintain secure passwords.

2. **General Provisions.** The City reserves the right to limit access to certain sites deemed inappropriate. Access may be monitored at the request of a Department Head. Should the need arise, you are obligated to cooperate with any investigation regarding the use of your computer equipment.

   Questions regarding confidential or proprietary information should be directed to the City Manager. City management has the right to monitor and log all transactions in or out of the system. All security features contained within the City's Electronic Communication Systems, such as passwords, codes, or delete functions, will not prevent the City from accessing employees' Electronic Communications, stored or otherwise, on the systems.

3. **Appropriate Use of the Internet.** Employees who are granted access to the Internet are expected to use this access in a professional and courteous manner. The prohibited uses of Electronic Communications Systems described in this Policy

apply to the use of the Internet. All users should be aware that appropriate use of the Internet includes, but is not limited to, the following rules:

(a) Never use an account assigned to another user.

(b) Never make an unauthorized attempt to enter any computer.

(c) Never post, send, or provide access to any confidential City materials or information, unless authorized.

(d) Never post, send, or provide videos or still footage taken during working hours and/or during the course of employment to any social networking website.

4. **Improper Use of the Internet.** Employees should be aware that the improper use of the Internet also includes, but is not limited to:

(a) Disclosing confidential information obtained in the course of employment;

(b) Accessing websites or online content that may degrade, hamper, or impede on the performance and/or capacity of the City's Electronic Communication Systems;

(c) Accessing gross, indecent, obscene, harassing, pornographic, or sexually explicit materials;

(d) Accessing gambling sites;

(e) Accessing illegal drug-oriented sites; and

(f) The representation of yourself as someone else, real or fictional.

5. **Social Networking Sites.**

(a) **Personal Use of Social Networking Sites.** Except as is consistent with Section F of this Policy, the City does not condone the personal use of social networking sites during the workday or by using City-owned equipment. Employees are also reminded and cautioned that information posted on a social networking site may not be private or confidential. Employees are also reminded and cautioned that information posted on a social networking site may be used as evidence in administrative or legal proceedings. An employee's use of social networking sites in a manner that violates City Rules or Policies will not be tolerated by the City and may be grounds for disciplinary action, up to and including termination.

(b) **Official City Use of Social Networking Sites.** The City may elect to use social networking sites to communicate with the public. Such official use of social networking sites is regulated by the City Manager. No department in the City may establish a presence on any social networking site without the advanced approval of the City Manager.

No employee is authorized to post information on behalf of the City on any social networking site without the express, written permission of the City Manager or, in the case of a department-specific site, the respective Department Head. Department Heads may also designate another employee to be responsible for the maintenance of the department's social networking site. Unauthorized posting on behalf of the City will not be tolerated.

L. Employee Terms of Use for City-Issued Phones

City-issued phones are provided for conducting City business. All telephone equipment (land-line phones and cellular phones) shall be issued to personnel according to the needs defined in their job descriptions.

The use of phones by employees for making personal calls may be permitted, subject to the provisions of this Policy, if it does not interfere with the conduct of City business. The use of City's phones must be in accordance with the following procedures and the procedures contained in the City's Cell Phone Use Policy:

1. All calls should be limited to the shortest amount of time necessary to conduct City business.

2. All City employees must continuously strive to minimize costs.

3. Employees are not allowed to use City-issued phones in an illegal, illicit, or offensive manner.

4. Employees are not allowed to use City-issued phones to conduct personal for-profit business.

5. Safeguarding issued equipment is the responsibility of the individual employee. Misuse or abuse of equipment may be cause for disciplinary action and/or cost reimbursement.

6. Features on cellular phones such as directory assistance, busy signal confirmations, text messaging, and emergency interruptions should only be used for official City business and only when absolutely necessary. Misuse or negligent use of these features may be cause for disciplinary action and/or cost reimbursement.

7. Employees are not allowed to operate cellular telephones, tablets, PDAs, laptop computers, navigational devices, or any other devices that may cause driver distraction when driving a City vehicle or when driving a private vehicle being used to conduct City business. Employees shall make every attempt to properly park their vehicle prior to using such devices. The only exception to this rule is if the employee uses a hands-free device.

M. City-Issued Phone Monitoring

On an annual basis, the Department Heads may review which employees have cell phones and whether or not they still need them.

Department Heads are responsible for documenting the issuance of a cell phone, its accessories, and ensuring that they are returned once the employee has exited the department. All equipment must be returned in good working condition, excluding reasonable wear and tear. Employees may be held financially responsible for unreturned equipment.

N. Information and Assistance

Any employees experiencing difficulties in the use of City's Internet services or in interpreting or implementing the Policy on the Use of Electronic Communications are encouraged to contact the Human Resources Office.

O. Violation of Policy

Violations of this Policy shall be reported to the City Manager and/or the appropriate Department Head. Any employee who accesses the City's Electronic Communications Systems without complying with the procedures set forth in this Policy or otherwise violated this Policy may be subject to disciplinary action, up to and including termination, as provided for in the City's Personnel Rules and Regulations. In addition, misuse of the Electronic Communications Systems may, in appropriate cases, be referred for criminal prosecution.

P. Lost, Stolen, or Damaged Electronic Equipment

Employees are responsible for the safe and proper use of city-owned electronic equipment, ensuring it is maintained in good working order and protected from damage or loss.

Reporting Procedures: Employees must submit a written memo for any incident of loss, theft, or damage to their supervisor and the IT department as soon as possible. Employees must provide as much detail as possible in their report, including the date, time, and location of the incident, as well as any relevant information about the equipment. In the event of loss or damage equipment, the City will determine whether to replace or repair the equipment, and will inform the employee of the decision.

In cases where damage or loss is determined to be due to employee negligence or misuse, the employee may be held responsible for the cost of repair or replacement.

Consequences of Non-Compliance

Disciplinary Action:
Failure to comply with this policy may result in disciplinary action, up to and including termination of employment.

Cost Recovery:
Employees may be required to reimburse the company for the cost of repair or replacement of damaged or lost equipment, particularly if the damage or loss is due to employee negligence or misuse.

CITY OF SOLEDAD
ACKNOWLEDGEMENT OF
POLICY ON THE USE OF ELECTRONIC COMMUNICATIONS

This will acknowledge that I have received, read, and understand the City of Soledad's Policy on the Use of Electronic Communications. I am aware that violation of this Policy may result in disciplinary action, up to and including termination. I understand this signed acknowledgement will be maintained in my personnel file.

I recognize and understand that the City's Electronic Communications Systems are to be used primarily for conducting City business. I am aware that I have no expectation of privacy or confidentiality when using the City's Electronic Communications Systems and/or Electronic Storage. I understand that the City has, and will exercise, the right to monitor, review, copy, and/or disclose all matters on the City's Electronic Communications Systems and/or Electronic Storage at any time, with or without notice to me, and that such access may occur during or after working hours. I realize that the use of a password or other security features does not restrict the City's access.

I also hereby consent that the City may monitor, review, and/or copy any information, both personal and business-related, on the City's Electronic Communications Systems and/or Electronic Storage at any time, and may, without further notice, disclose that information to a third party, including law enforcement agencies.

My signature below further signifies that I have read this Policy and that I accept and agree to comply with all of its provisions.

PRINT FULL NAME ____

SIGNED ____

DATE ____

[RETAIN IN EMPLOYEE PERSONNEL OR OTHER APPROPRIATE FILE]

Temporary Part-Time Employee
Leave of Absence Manual
September 2025

LEAVES OF ABSENCE

This Temporary Part-Time Employee Leave of Absence Manual ("Manual") sets forth basic guidelines for the management and administration of leaves of absence for temporary part-time hourly personnel employed by the City of Soledad (the "City").

SECTION 1. GENERAL PROVISIONS

A. Applicability of Manual. The provisions of this Manual will apply to all temporary part-time hourly positions. This Manual does not apply to any positions in the Classified Service.

B. Violation of Manual. Violations of the provisions of this Manual may be addressed as a performance matter and be grounds for disciplinary action. A violation will not make disciplinary action mandatory, but will be given such weight as the City determines to be appropriate in view of all the circumstances.

C. Amendment and Revision of Manual. Amendments and revisions of this Manual may be made by resolution of the City Council. The re-publication of this document or other written notification will be made generally available to employees.

D. Prior Policies Repealed. If the terms and provisions of this Manual are inconsistent or in conflict with the terms and provisions of any prior City Rules, resolutions, regulations, and/or policies governing the same subject, the terms of this Manual will prevail and such inconsistent or conflicting provisions or prior rules, resolutions, regulations, and/or policies are hereby repealed.

E. Employee Responsibility. It will be the responsibility of each employee to become aware and be knowledgeable of this Manual.

F. Distribution of Manual. A copy of this Manual will be distributed to each City employee. Newly hired employees will receive a copy upon hire. An employee with questions about this Manual may direct them to Human Resources.

G. Not an Employment Contract. None of the provisions of this Manual shall be deemed to create a vested contractual right for any employee.

H. Changes to the Law. When any local, state, or federal statute, regulation, or law that is incorporated in this Manual or upon which the Manual rely is amended through legislative or regulatory action or is deemed to have been amended by judicial decision, the Manual shall be deemed amended in conformance with those amendments.

I. Severability. If any section, subsection, sentence, clause, or phrase of the Manual is found to be illegal by a court of competent jurisdiction, such findings shall not affect the validity of the remaining portions of the Manual.

SECTION 2. LEAVES OF ABSENCE

A. Industrial Illness/Injury Leave. The City will grant a leave of absence to any employee who is unable to work due to an industrial illness/injury.

1. Duration. Leave duration under this section shall continue until: a) the City determines that the employee is released to return to work by the employee's health care provider without restrictions; b) the employee's health care provider releases employee to work with restrictions, and the City determines that it has a reasonable accommodation for the restrictions; or c) the City receives evidence, which the City deems satisfactory, from the employee's health care provider that the employee is unable to return with or without restrictions. The City may also terminate a leave of absence under this section if the employee retires from City employment or the employee fails to cooperate in good faith in the interactive process with the City to determine whether reasonable accommodation is available to return to work.

2. Coordination. If leave under this section is also designated as FMLA/CFRA leave of absence, the employee may coordinate any unused accumulated sick hours with any workers' compensation insurance, long-term disability, and any other wage replacement benefits, up to an amount equal to the employee's regular salary. Employee taking leave under this section that is *not* designated as FMLA/CFRA shall coordinate unused accumulated sick hours with workers' compensation insurance, long-term disability, and any other benefits provided to the employee, up to an amount equal to the employee's regular salary.

B. Leaves of Absence Without Pay. In accordance with the procedures in this section, a temporary unpaid leave of absence for a defined period may be considered because of illness or disability, to take a course of study increasing the employee's usefulness on return to City service, or for acceptable personal reasons.

1. Written Request. When an employee has exhausted their accrued paid sick leave, the employee may request a leave of absence without pay in accordance with this Section. The employee must submit a written request to the City Manager for a leave of absence without pay, along with any supporting documentation. The City Manager may request further reasonable documentation in support of the employee's request for a leave of absence without pay, including confirmation that the employee is reasonably expected to return to work with the City upon conclusion of the authorized leave period, in accordance with applicable laws.

2. Mandatory Exhaustion of Paid Leaves. If an employee is requesting a leave of absence for medical reasons, the employee is required to first fully exhaust the employee's paid sick leave in order to be eligible to receive a leave of absence without pay.

3. Authority to Grant a Leave of Absence Without Pay. The City Manager may grant an employee a leave of absence without pay for a period not to exceed three months. After three months, the leave of absence may be extended if so authorized by the City Manager. Extensions of leaves of absence will not be granted unless, in the judgment of the City Manager, the City would not experience undue hardship from

the employee's continued absence, or the particular circumstances would otherwise justify the extension. The approval or rejection of the City Manager will be in writing and final.

4. Return to Work. Upon expiration of a regularly approved leave, the employee will be reinstated in the position held at the time leave was granted, provided such position continues to exist. An employee on leave who fails to report to duty promptly at its expiration will be subject to disciplinary action for being on an unauthorized absence up to and including termination of employment.

C. Military Leave of Absence. Military leave shall be granted pursuant to state and federal law. An employee entitled to military leave shall give the employee's Department Director an opportunity within the limits of military regulations to determine when such leave shall be taken. Prior to taking military leave, an employee, when possible, shall present a copy of the employee's military orders to the employee's Department Director. The Department Director shall advise Human Resources of such military orders immediately.

D. Jury Duty. An employee who receives a summons or subpoena to appear for jury duty must provide reasonable advance notice to the employee's supervisor and human resources and provide a copy of the original summons to human resources. It will be the general rule to excuse employees of the City from the regular responsibilities of their positions without pay when called for jury duty. However, if, in the opinion of the City, the absence of the employee would result in an undue disruption of work programs, the City may direct the employee to request an exemption or postponement of jury duty. An employee excused from jury duty prior to the completion of the employee's normal workday must return to work.

E. Voting Leave. The City encourages eligible employees to register and vote in all federal, state, and local elections. Employees of the City are expected to vote prior to or following their assigned working hours. In accordance with the *Election Code*, Sections 14000 and 14001, if a registered voter employee does not have sufficient time outside regular working hours within which to vote at statewide elections, the employee may take off such working time as will enable the employee to vote. A maximum of two hours may be taken with pay. To receive time off for voting, the employee must notify the employee's Department Director in advance. Employees who need Voting Leave must take such leave at the beginning or end of the employee's work shift, based on the needs of the Department and the employee's schedule. The exact amount of time off work and the scheduling of time off shall be decided between the employee and the employee's Department Director. Employees who use Voting Leave are required to present a voter's receipt to their Department Directors.

F. Family and Medical Care Leave. The City provides family care and medical leaves of absence in accordance with the Family Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), and the Pregnancy Disability Leave Law ("PDL"). The policy regarding these leaves of absence are set forth in a separate City policy.

G. Subpoenaed Absence. An employee who is subpoenaed or otherwise required under a court order to provide testimony as a witness is entitled to leave without pay to comply with such subpoena or court order. An employee who receives a "Summons or Subpoena to Appear" for witness duty must provide reasonable advance notice to the employee's supervisor and human resources and provide a copy of the original summons to human resources.

H. Fitness for Duty Leave and Examination. Employees are expected to report to work fit for duty, which means able to perform their job duties in a safe, appropriate, and effective manner, free from adverse effects of physical, mental, emotional, and/or personal issues. This Section is intended to provide a safe environment and protect the health and welfare of employees and the public. If an employee feels that the employee is not fit to perform the employee's duties, the employee must notify the employee's supervisor immediately.

1. Reasons for Fitness for Duty Leave. In the discretion of the City, an employee may be placed on a Fitness for Duty Leave and/or ordered to participate in a fitness for duty examination in any of the following situations:

   a. An employee returns from a medical leave of absence of more than five working days.

   b. An employee is involved in the interactive process with the City under Section 3.

   c. Supervisor observes or receives a reliable report of an employee's possible lack of fitness for duty. Observations and reports may be based on, but are not limited to, employee's own self-report of potential unfitness, dexterity, coordination, alertness, speech, vision acuity, concentration, disproportionate response to criticism, and inappropriate or uncharacteristic interactions with the public, co-workers, and supervisors.

   d. Fitness for duty examinations based on a reasonable suspicion that an employee is under the influence of impairing drugs or alcohol shall be conducted in accordance with applicable City policy.

2. Procedures for Ordering a Fitness for Duty Examination. When a Supervisor becomes aware of or observes behavior that makes the Supervisor reasonably suspect that the employee may not be fit for duty, the Supervisor shall refer the employee to Human Resources, who will determine if a fitness for duty examination is appropriate, and, if so, will schedule the employee for a fitness for duty examination. If the circumstances warrant it, the Department Director may place the employee on leave pending the results of the employee's fitness for duty examination. The examination shall be paid for by the City.

3. Procedure Following Receipt of Examination Results. The doctor examining the employee shall be limited to finding the employee "fit for duty" or "fit for duty with restrictions" or "unfit for duty". In the case of finding an employee fit for duty, the

doctor may issue work restrictions. In no case shall the doctor reveal the underlying cause of the fitness or unfitness for duty without the employee's permission.

a. Fit for Duty. If the doctor finds the employee is fit for duty, the employee shall return to work immediately and perform all duties of the employee's position.

b. Fit for Duty with Restrictions. If the doctor finds the employee is fit for duty with restrictions, the doctor shall specifically enumerate what restrictions are necessary and for how long those restrictions are necessary. The City shall then evaluate those restrictions and determine if the City can reasonably accommodate those restrictions. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the City shall engage in the interactive process.

c. Unfit for Duty. If the employee is found to be unfit for duty, the employee shall not be permitted to work. The employee may request a leave of absence in accordance with the appropriate applicable provision(s) of this Manual. If the employee can provide certification of fitness for duty prior to the exhaustion of all paid and unpaid leave that the employee is entitled to under this Manual, the employee shall be returned to work. However, if such certification is from the employee's own health care provider, the City may request a second opinion from a doctor of its choosing and at its cost to evaluate the employee under the requirements of this Section. If the two certifications conflict, a third opinion will be sought from a doctor chosen by the City and the employee, at the expense of the City. The opinion of fit or unfit rendered by the third doctor shall be binding. If the employee's restrictions are based on a disability as defined by the ADA and/or FEHA, the City shall engage in the interactive process.

I. School Leave. The City will grant a leave of absence to an employee who is the parent, guardian, stepparent, foster-parent, grandparent, or a person who stands in loco parentis to a child, in accordance with the following provisions.

1. Permissible Purposes:

a. To participate in the activities of the child's primary or secondary school or licensed child care provider;

b. To find, or to enroll, or reenroll the child in a primary or secondary school or licensed child care provider.

c. To address an emergency, such as:

i. A request from a child care provider or school that the child be picked up.

ii. A provision in the attendance policy for the child care provider or school, other than a planned holiday, that prohibits the child from attending.

iii. Closure or unexpected unavailability of the child care provider or school, other than during planned holidays.

iv. A natural disaster, including, but not limited to, fire, earthquake, or flood.

d. To appear at the school of a suspended child pursuant to a request made by the child's school under California Education Code section 48900.1.

2. An employee may take up to 40 hours of leave per calendar year, but no more than eight hours in one calendar month. However, no limit shall be placed on the amount of leave taken under section 2(I)(1)(d). If more than one City employee requests leave in connection with the same child, only the first employee to provide notice is entitled to receive leave. The second employee may also be permitted to take a simultaneous leave of absence if the second employee obtains written supervisory approval. The amount of leave available is fixed at a maximum of 40 hours per calendar year, regardless of the number of children, grandchildren, or wards that an employee may have.

3. An employee must provide reasonable advance notice of the need for leave and must make all reasonable efforts to schedule the leave so as not to unduly disrupt the operations of the City. If an emergency makes such notice impossible, the employee shall notify the employee's Department Director as soon as possible. Employees returning from leave are required to provide written verification from the school or child care provider of the employee's need for leave at the specific time and date. If an employee fails to provide sufficient verification, the City may determine that the leave time was unauthorized.

4. Leave under this section is unpaid.

J. Sick Leave. The City provides part-time employees paid sick leave as required under California law. Details regarding paid sick leave, including accrual and use of such leave, are covered in this section of this Manual.

1. Definitions:

a. Hours Worked. Hours worked shall include all time when an employee is required to be on duty or to be on the City's premises or at a prescribed workplace, and all time when an employee is suffered or permitted to work. Paid sick time is not considered time worked.

b. Family Member. Family member means any of the following: a child (which means a biological child, adopted child, foster child, stepchild, legal ward, or a child to whom the employee stands in loco parentis. This definition of a child is applicable regardless of age or dependency status), a parent (which means a biological parent, adoptive parent, foster parent, stepparent, legal guardian of an employee or registered domestic partner, or person who stood in loco parentis when the employee was a minor child), a spouse, a registered domestic partner, a grandparent, a grandchild, a sibling, or a designated person (which means a person identified by the employee at the time the employee requests paid sick leave. The City limits the employee to one designated person per 12-month period for paid sick leave).

2. Paid Sick Leave:

a. Eligibility for Sick Paid Sick Leave. Employees are eligible for paid sick leave after they work for the City for at least thirty (30) days within a calendar year. Employees who work fewer than thirty (30) days within a calendar year are not eligible for paid sick leave.

b. Annual Sick Leave Advance. At the time of hiring, and on January 1st of each calendar year thereafter, the City shall grant employees forty (40) hours of sick leave to use for permitted purposes as described in this policy.

Temporary employees hired to work for the City for a period of less than 120 days will not receive 40 hours of sick leave up front, but will instead receive 1 hour of sick leave for every 30 hours worked.

c. Qualification Period Prior to Use of Paid Sick Leave. Employees are entitled to use their accrued paid sick leave only after completing ninety (90) days of employment. Employees who work fewer than 90 days are not entitled to take any paid sick leave. The days worked for the City, by an employee who separates from the City and is rehired within one year from the date of separation, shall count toward the 90-day qualification period.

d. Notice of Accrued Paid Sick Leave. All accrued paid sick leave will be reflected on the employee's paystub, including the balance of paid sick leave available.

e. No Advance of Paid Sick Leave. The City will not "advance" or "lend" paid sick leave to an employee prior to the City's annual sick leave advance on January 1 of any given calendar year.

f. Sick Time Rate of Pay. Employees shall be compensated for paid sick leave at their regular rate of pay for the position and schedule in which paid sick leave is utilized.

g. Annual Paid Sick Leave Use Limit. Employees may use up to 40 hours of accrued paid sick leave during a calendar year.

h. Forfeiture of Unused Sick Leave. Except for temporary employees hired to work for the City for a period of less than 120 days, any accrued and unused sick leave shall be forfeited on December 31 of every calendar year. Temporary employees hired to work for the City for a period of less than 120 days may carryover up to 80 hours of accrued and unused sick leave to the next calendar year.

i. Minimum Increments Paid Sick Leave. The minimum charge to an employee's paid sick leave account shall be 1 hour per work day.

j. No Compensation for Unused Sick Leave: No employee subject to this Leave of Absence Policy shall be compensated for, or allowed to exhaust any accrued sick leave upon resignation, retirement, termination, dismissal, lay-off, or death.

k. Abuse of Sick Leave. Abuse of sick leave may be grounds for discipline. Abuse shall be determined on a case-by-case basis. Sick leave abuse may include, but is not limited to, failure to abide by the provisions of this section and use of sick leave for purposes other than those permitted in this section.

l. Permitted Use of Sick Leave. Upon the oral or written request of an employee, the City shall permit the employee to use accrued paid sick leave for the following purposes:

   i. Diagnosis, care, or treatment of an existing health condition of, or preventative care for, an employee or an employee's family member.

   ii. Employees who are victims of crime or abuse may take time off as paid sick leave to obtain or attempt to obtain any relief. Relief includes, but is not limited to, a temporary restraining order, restraining order, or other injunctive relief, to help ensure the health, safety, or welfare of the employee or their child.

   iii. Employees who are victims of crime or abuse may take time off as paid sick leave to seek medical attention for injuries caused by crime or abuse; to obtain services from a domestic violence shelter, program, rape crisis center, or victim services organization or agency as a result of the crime or abuse; to obtain psychological counseling or mental health services related to an experience of crime or abuse; or to participate in safety planning and take other actions to increase safety from future crime or abuse, including temporary or permanent relocation.

m. Request for Use of Paid Sick Leave.

   i. An employee shall contact their immediate supervisor prior to or within one hour of the commencement of their work shift to report the need for paid sick leave. If no immediate supervisor is available, an employee shall contact their Department Director. Consideration shall be given to emergency situations that restrict the employee from contacting their immediate supervisor within the first hour of work, including, but not limited to: accident, injury, or hospitalization. In such emergency situations, an employee shall contact their supervisor as soon as practicable.

ii. If the need for paid sick leave unforeseeably arises, such as at an Employee's work site, the employee shall notify their immediate supervisor before the employee leaves the work site, or as soon as practicable.

iii. When an employee has advance notice of the need for paid sick leave, such as when scheduling non-emergency medical and dental appointments, the employee is required to notify their supervisor at least two (2) days in advance of their need for paid sick leave. Employees are encouraged to schedule medical and dental appointments outside normal working hours if possible.

iv. An employee is not responsible for searching for or finding another employee to cover their shift in order to use paid sick leave.

n. Unused Paid Sick Leave. No employee shall be compensated for, or allowed to exhaust any accrued paid sick leave upon resignation, including retirement, termination, layoff, or death.

o. Reinstatement of Unused Paid Sick Leave. Unused accrued paid sick leave at termination shall be reinstated upon return to active status occurring within no more than twelve (12) months of termination. For employees who return to the City within twelve (12) months from their previous separation, days worked prior to the previous separation will count toward the ninety (90) day qualification period.

p. Paid Sick Leave Accrual Upon Promotion to Regular Employee Status. If an employee is promoted to Regular Employee status, the employee's accrued paid sick leave shall remain intact and will thereafter be subject to all rules and policies governing accrued paid sick leave for regular employees.

q. Records Documenting Hours Worked and Paid Sick Leave Accrued and Used. The City shall keep records documenting the hours worked and paid sick leave accrued and used by an employee for three (3) years.

r. Employee Inspection of Records Pertaining to Paid Sick Leave. Upon reasonable request to Human Resources, and within twenty (21) calendar days after the request, the City shall afford current and former employees the right to inspect or copy records pertaining to their hours worked and paid sick leave accrued and used.

K. Bereavement Leave. An employee is eligible to receive leave under this section if the employee has been employed by the City for at least thirty (30) days prior to commencement of leave. Upon the death of an employee's immediate family member, as defined in this section below, the employee is entitled to take up to five (5) unpaid leave days for an immediate family member's death. However, the employee may use accrued sick leave to receive pay during leave under this section. Leave days under this section need not be consecutive, but shall be completed within three months of the date of death of the immediate family member.

1. For the purposes of this section, an immediate family member means: a spouse, domestic partner, child, parent, sibling, grandparent, grandchild, parent-in-law, or foster children, legal wards, and legal guardians. An employee must inform their supervisor prior to commencing bereavement leave. In administering this section, the City may require verification of death within thirty (30) days of the first day of the leave. Any documentation provided by the employee to support leave under this section shall be maintained as confidential. Sufficient documentation includes any of the following: a death certificate, a published obituary, or written verification of death, burial, memorial services from a mortuary, funeral home, burial society, crematorium, religious institution, or governmental agency.

L. Reproductive Loss Leave. Upon completion of thirty (30) days of employment with the City, an employee shall be eligible to receive reproductive loss leave as provided in this section.

A. Definitions applicable to this section.

1. Reproductive loss event: means the day or, for a multiple-day event, the final day of a failed adoption, failed surrogacy, miscarriage, stillbirth, or an unsuccessful assisted reproduction.

2. Failed adoption: means the dissolution or breach of an adoption agreement with the birth mother or legal guardian, or an adoption that is not finalized because it is contested by another party. This event applies to any person who would have been the parent if the adoption was completed.

3. Failed surrogacy: means the dissolution or breach of a surrogacy agreement, or a failed embryo transfer to the surrogate. This event applies to any person who would have been the parent if the child was born as a result of the surrogacy.

4. Miscarriage: means a miscarriage by a person, by the person's current spouse or domestic partner, or by another individual if the person would have been a parent of a child born as a result of the pregnancy.

5. Stillbirth: means a stillbirth resulting from a person's pregnancy, the pregnancy of a person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy that ended in stillbirth.

6. Unsuccessful assisted reproduction: means an unsuccessful round of intrauterine insemination or of an assisted reproductive technology procedure. This event applies to a person, the person's current spouse or domestic partner, or another individual, if the person would have been a parent of a child born as a result of the pregnancy.

B. Leave Entitlement. An employee may receive up to five (5) days of unpaid leave under this section following a reproductive loss event. If an employee experiences more than one reproductive loss event within a twelve (12)-month period, the City may grant additional reproductive loss leave, under this section, up to twenty (20) days within a twelve (12) month period. An employee may use leave entitlement under this section nonconsecutively.

Except as otherwise provided in subsection C "Impact of Other Leave" below, leave under this section shall be completed within three (3) months of the reproductive loss event.

C. Impact of Other Leave. If prior to or immediately following a reproductive loss event, an employee is on or chooses to go on leave under the City's Family Care and Medical Leave Policy, or any other leave entitlement under state or federal law, the employee shall complete leave under this section within three (3) months of the end date of the other leave.

D. Use of Accrued Paid Leave. An employee may use vacation leave, sick leave, or other leave that is otherwise available to the employee to receive compensation while on leave under this section.

E. Nonretaliation; Noninterference. The City will not retaliate against an employee, including imposing any disciplinary action, because of the employee's exercise of the right for leave under this section or an employee giving information or testimony as to their own reproductive loss leave, or another person's reproductive loss leave. Further, the City will not interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right provided under this section.

F. Confidentiality Provision. The City will maintain the confidentiality of any employee requesting leave under this section. Any information provided to the City pursuant to this section will be maintained as confidential and will not be disclosed except, as necessary, to internal personnel, legal counsel, or as may otherwise be required by law.

FAMILY CARE AND MEDICAL LEAVE, PREGNANCY DISABILITY LEAVE, AND MILITARY FAMILY LEAVE POLICY

I. PURPOSE:

To provide employees with information about and establish guidelines for the taking of family care and medical leave, in accordance with the federal Family and Medical Leave Act ("FMLA"), the California Family Rights Act ("CFRA"), and the California Pregnancy Disability Leave Law ("PDL").

II. POLICY:

To the extent not already provided for under current leave policies and provision, the City of Soledad (the "City") will provide family and medical care leave for eligible employees as required by State and federal Law. The leaves provided for in this Policy are granted under a variety of state and federal laws. Employees should be aware that leave under one Section of the Policy may also qualify for leave under another Section. In addition, leave may qualify under one law for a particular purpose, but not another law. For example, an employee is entitled to take CFRA leave to care for a domestic partner, but FMLA leave does not include domestic partners. In such cases, the City will advise affected employees in writing which of their statutorily-protected leaves are being used and how much of that leave remains.

Additional definitions and other provisions governing employees' rights and obligations under the FMLA, CFRA, and PDL that are not specifically set forth below are set forth in the Department of Labor's FMLA regulations (29 C.F.R. § 825.00 *et seq.*) and the California Department of Fair Employment and Housing's CFRA regulations (2 C.C.R. § 11087 *et seq.*) and PDL regulations (2 C.C.R. § 11035 *et seq.*) This Policy is deemed to include such regulatory provisions, including subsequent revisions to such regulatory provisions.

III. FAMILY CARE AND MEDICAL LEAVE (FMLA/CFRA LEAVE):

A. **Eligibility:** To be eligible for FMLA/CFRA leave, an employee must have been employed by the City for at least 12 months prior to the date on which the FMLA/CFRA leave is to commence, and have worked at least 1,250 hours over the 12-month period preceding the FMLA/CFRA leave. For employees performing covered military service under the federal Uniformed Service Employment and Reemployment Rights Act, periods of absence due to such service shall be counted for purposes of determining whether the employee meets these eligibility requirements.

B. **Qualifying Reasons for FMLA/CFRA Leave:** Employees meeting the eligibility requirements under Section III.A. may take FMLA/CFRA leave for any of the following qualifying reasons:

1. The birth of a child of the employee and in order to care for such child.

2. The placement of a child with the employee for adoption or foster care of the child by the employee and in order to care for that child.

3. Providing care for a spouse, child, or parent with a serious health condition.

   (a) The CFRA also provides for leave to care for the following family members due to a serious health condition: domestic partner, adult child, child of a domestic partner, grandparent, grandchild, sibling, parent-in-law, or a designated individual[1] who is either related by blood or whose association with the employee is the equivalent of a family relationship[2].

4. The employee's own serious health condition.

The FMLA and CFRA also provide for military exigency leave and military caregiver leave (FMLA only), and those types of leaves are addressed under Section V of this Policy. The PDL also provides for leave for employees with a serious health condition on account of the employee's pregnancy, childbirth, or related medical conditions, and that leave is addressed under Section IV.

C. **Child:** Leave may be taken under Section B.1., B.2., or B.3 under CFRA and FMLA, concurrently, by an employee for a "child" who is any of the following

1. A biological child, adopted child, foster child, stepchild, legal ward of the employee, or a child to whom the employee stands *in loco parentis*, and who, at the time leave is to commence is either:

a. under 18 years of age; or

b. 18 years of age or older and incapable of caring for himself/herself because of a mental or physical disability.

2. CFRA's definition of child includes child as defined in Section C.1 above, and also any of the following:

a. A child, as defined in Section C.1 above, of a registered domestic partner; or

b. An adult biological child, adopted child, foster child, stepchild, legal ward of the employee, or a child to whom the employee stands *in loco parentis* of the employee or of the employee's domestic

1 An employee may identify their "designated person" at the time the employee requests leave under this Policy
2 Each employee shall be limited to selecting one "designated person" per twelve month period for the purposes of this Policy.

partner.

D. ***In loco parentis***:

1. For purposes of this Policy an employee stands *in loco parentis* by providing day-to-day care or financial support with demonstrated intent of assuming the responsibilities typically held by a parent.

2. Whether an employee stands *in loco parentis* to a child for purposes of this Policy will be determined by the City on a case-by-case basis, and the City may require reasonable documentation to support an employee's claim of providing either day-to-day care or financial support for the child.

E. **Spouse:** The definition of spouse expressly includes individuals in lawfully recognized same sex marriages, common law marriages and marriages that were validly entered into outside of the United States if they could have been entered into at least one state. In addition, the regulatory definition of spouse has moved from "state of residence" rule to "place of celebration" rule in which to look to the law of the place in which the marriage was entered into as opposed to the law of the state where the employee resides. This allows all legally married couples, whether opposite-sex or same sex or married under the common law, to have consistent federal family leave rights regardless of their residence.

F. **Parent:** Parent means a biological, foster or adoptive parent, a stepparent, a legal guardian, or other person who stood in loco parentis to the employee when the employee was a child. A biological or legal relationship is not necessary for a person to have stood *in loco parentis* to the employee as a child. For purposes of leave under only CFRA, parent includes parent-in-law.

G. **Domestic Partner:** A registered domestic partner as defined by Family Code 297 through 297.5.

1. Two adults who have chosen to share one another's lives in an intimate and committed caring relationship.

2. Domestic partnership is established in the state of California when both persons file a Declaration of Domestic Partnership with the Secretary of State and the time of the filing all of the following requirements are met:

a. Neither persons are married to someone else nor is a member of another domestic partnership unless otherwise terminated, dissolved, or adjudged a nullity;

b. Both persons are at least 18 years of age and are not related by blood in any way that would prevent them from being married in California; and

c. Both persons are capable of consenting to domestic partnership.

H. **Serious Health Condition:** A serious health condition is an illness, injury, impairment, or physical or mental condition that involves the employee or a Covered Family Member[3] that makes the employee unable to work. Specifically it involves either inpatient care or continuing treatment or supervision by health care provider as follows: following:

1. "*Inpatient care*" means an overnight stay in a hospital, hospice, or residential medical care facility, or any subsequent treatment in connection with such inpatient care, or any resulting period of incapacity.

    a. A person is considered to have an "overnight stay" for purposes of this provision if a health care facility formally admits the person to the facility with the expectation that the person will remain at least overnight and occupy a bed, even if it later develops that such person can be discharged or transferred to another facility and does not actually remain overnight.

2. "*Continuing treatment or supervision by a health care provider*" means and includes any one or more of the following:

    a. In-person treatment two or more times, within 30 days of the first day of incapacity (CFRA excludes two or more in-person treatments within 30 days to establish continuing treatment), unless extenuating circumstances exist, by a health care provider, by a nurse under direct supervision of a health care provider, or by a provider of health care services (*e.g.* physical therapist) under orders of, or on referral by, a health care provider, with the first visit being within seven days of the first day of incapacity; or

    b. In-person treatment by a health care provider on at least one occasion, which results in a regimen of continuing treatment under the supervision of the health care provider, with the first visit being within seven days of the first day of incapacity (CFRA does not include a seven-day requirement to establish continuing treatment).

    c. Any period of incapacity due to pregnancy, or for prenatal care, whether or not in-person treatment is received during that time, or whether the resulting absence lasts fewer than three days (CFRA excludes pregnancy as a serious health condition, including other conditions of pregnancy related disability).

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3 For purposes of this Policy, a "covered family member" means: 1) a child as defined in Section III.C; 2) a parent as defined in Section III. F; 3) a spouse as defined in Section III.E, 4) a domestic partner as defined in Section III.G; 5) a Sibling (CFRA only); 6) a Grandparent (CFRA only); 7) a Grandchild (CFRA only); and/or 8) a Designated Person as provided in Section III.B.3 (CFRA only).

d. Any period of incapacity, or treatment for such incapacity, due to a chronic serious health condition, whether or not in-person treatment is received during that time, or whether the resulting absence lasts fewer than three days. A chronic serious health condition is one which:

i. Requires periodic visits (defined as at least twice a year) for treatment by a health care provider, or by a nurse under direct supervision of a health care provider; and

ii. Continues over an extended period of time (including recurring episodes of a single underlying condition); and

iii. May cause episodic rather than a continuing period of incapacity (*e.g.* asthma, diabetes, epilepsy, *etc.*).

e. A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider. Examples include Alzheimer's, a severe stroke, or the terminal stages of a disease.

f. Any period of absence to receive multiple treatments (including any period of recovery therefrom) by a health care provider or by a provider of health care services under orders of, or on referral by, a health care provider, for either:

i. Restorative surgery after an accident or other injury; or

ii. A condition that would likely result in a period of incapacity of more than three consecutive, full calendar days (CFRA excludes full-days provision and states incapacity of more than 3 consecutive days) in the absence of medical intervention or treatment, such as cancer (chemotherapy, radiation, *etc.*), severe arthritis (physical therapy), or kidney disease (dialysis).

3. "*Incapacity*" means that a person is unable to work, attend school, or perform regular daily activities due to a serious health condition, its treatment, or the recovery that it requires.

I. **Amount of Leave Entitlement:** Provided that all applicable conditions of Section III are met, an employee may take a maximum of 12 workweeks of FMLA/CFRA leave in a rolling 12-month period measured backwards from the date the employee uses any FMLA/CFRA leave.

1. Employees taking FMLA/CFRA leave for the birth, adoption, or foster care of their child must initiate and complete any FMLA/CFRA leave within one year of the birth of the child or placement of the child with the employee for adoption or foster care.

2. Parents who are both employed by the City may take a maximum combined total of 12 workweeks of FMLA leave and may each take a maximum of 12 workweeks of CFRA leave in a 12-month period for the birth, adoption, or foster care of their child. Both parents and registered domestic partners (CFRA only in some circumstances) may be on leave simultaneously, provided the employees provide a certificate, from a health care provider, stating the need for both employees' participation in the care of the child.

3. An employee's FMLA/CFRA leave does not need to be consecutive, but can be cumulative within a 12-month period.

4. Industrial injury leaves and all non-industrial injury leaves are FMLA/CFRA leaves if they qualify as serious health conditions.

J. Concurrent Use of Accrued Paid Leaves: Leave taken under this Policy is unpaid. Employees may elect or may be required to use their accrued leave balances concurrently with FMLA/CFRA leave, as provided below. When an employee elects or is required to use the employee's accrued leave balances, the employee may specify in writing the order in which the employee would prefer to exhaust accrued leave balances. If the employee fails to designate the order of exhaustion, the City will exhaust the leave balances in the following order: sick leave (subject to the terms of this Section III.J.1., below), vacation, administrative leave, compensatory time, and floating holiday. The paid leave shall run concurrently with the FMLA/CFRA leave, and shall not extend the employee's entitlement to FMLA/CFRA leave.

1. Sick leave: Employees are required to coordinate all accumulated sick leave concurrently when FMLA/CFRA leave is taken for the employee's own serious health condition. Employees may elect to so coordinate their accumulated sick leave when FMLA/CFRA leave is taken for any other reason under Section III.B. of this Policy.

2. Other paid leaves: Employees are required to coordinate all other accrued paid leaves of absence, including but not limited to, compensatory time off, administrative leave, vacation, and holiday leave, when taking FMLA/CFRA leave for any reason.

3. Coordination with Wage Replacement Plans: If an employee who is on FMLA/CFRA leave is also receiving a wage replacement payment from Workers' Compensation, the employee and the City may mutually agree to coordinate the employee's accrued paid leaves with the amount received from the wage replacement plan, up to an amount equal to the employee's regular salary.

K. **Intermittent or Reduced Schedule Leave:** Intermittent FMLA/CFRA leave is leave taken on an as-needed basis in increments of minutes, hours, or days. A reduced schedule FMLA/CFRA leave involves a reduction in the number of hours per day or per week that an employee regularly works, with the employee substituting FMLA/CFRA time for hours not worked. The minimum FMLA/CFRA leave increment that can be taken by an employee is fifteen (15) minutes.

1. **Calculation of Intermittent or Reduced Schedule Leave:** The maximum equivalent number of hours to which an employee is entitled during the 12-week period will be based on the employee's regularly scheduled workweek. For example, an employee who is regularly scheduled to work 40 hours per workweek will be entitled to a maximum of 480 hours of FMLA/CFRA leave, whereas, an employee who is regularly scheduled to work 32 hours per workweek will be entitled to a maximum of 384 hours of FMLA/CFRA leave. In calculating this amount for employees with a varying schedule, the City will use an average of the employee's workweeks within the 12-month period immediately preceding the intermittent or reduced schedule leave.

2. **Impact on Salary:** Where permitted by applicable state and federal wage and hour laws, the City may make deductions from an employee's salary for all hours of leave taken as intermittent leave, unless the employee is entitled or required to coordinate paid leave. Such deductions do not affect the employee's classification as exempt or nonexempt for purposes of the Fair Labor Standards Act.

3. **Inclusion of Scheduled Overtime**: If an employee normally would be required to work overtime hours, but is unable to do so because of an FMLA/CFRA-qualifying reason that limits the employee's ability to work overtime, the hours that the employee would have been required to work may be counted against the employee's FMLA/CFRA entitlement, as the employee would be considered to be using intermittent or reduced schedule leave. For example, if an employee is normally required to work 50 hours in a particular workweek, but because of an FMLA/CFRA-qualifying reason, the employee works only 40 hours that week, the employee would use 10 hours of FMLA/CFRA-protected leave out of the 50-hour workweek.

4. **Conditions for Taking Intermittent or Reduced Schedule Leave**

a. FMLA/CFRA leave taken for the employee's own serious health condition, or the serious health condition of the covered family member, as defined in Footnote 3 above, or FMLA taken for military caregiver leave under Section V.B. of this policy, may be taken intermittently or on a reduced leave schedule when medically necessary (as distinguished from voluntary treatments and procedures).

b. Military exigency leave under section V.A. of this Policy may be taken on an intermittent or reduced schedule basis without limitation.

c. Leave taken following the birth, adoption, or placement or foster care of a child may be taken on an intermittent or reduced schedule basis, subject to the conditions set forth in Section III.K. 6., below.

5. Temporary Transfer:

a. **Required by the City**: The City may require that the employee temporarily transfer to an available alternative position for which the employee is qualified and which provides equivalent pay and benefits and that better accommodates recurring leave periods than the employee's regular position.

b. **Requested by Employee**: An employee on intermittent or reduced schedule FMLA/CFRA leave for foreseeable and planned medical treatments may request a transfer to an open and available position for which the employee is qualified, if the duties of that position would better accommodate the employee's intermittent or reduced schedule FMLA/CFRA leave. Transfers will not be considered under this Section when the intermittent or reduced schedule FMLA/CFRA leave is unscheduled, such as in the case of chronic conditions.

6. Leave Taken for Baby Bonding: The basic minimum duration of a leave taken for the birth, adoption, or foster care of a child shall be two weeks. However, the City will also grant two requests for shorter leave periods in the applicable one-year period.

L. Employee Notice: Employees requesting leave under the FMLA/CFRA must notify their supervisor in accordance with the rules set forth below. Employees will provide the supervisor with sufficient information to make the City aware that the employee needs FMLA/CFRA leave, and the anticipated timing and duration of that leave. Supervisors must forward any such requests to Human Resources for review and approval. Employees may also provide notice of requested FMLA/CFRA leave to Human resources directly.

1. **Foreseeable Events:** An employee must provide the City with at least 30 days' advance notice before the date the leave is to begin, or must provide notice as soon as is practicable, normally the same business day or next business day if the employee is off work when the employee learns of the need for leave. If the employee provides less than 30 days' advance notice, the City may require explanation of why 30 days' advance notice was not practicable.

    a. In any case in which the need for FMLA/CFRA leave is foreseeable based on one of the circumstances listed below in subsection b., the employee shall make a reasonable effort to schedule any planned medical treatment or supervision so as not to unduly disrupt the operations of the City. However, any such scheduling shall be subject to the approval of the health care provider of the employee or the covered family member as defined in Footnote 3 above.

    b. The need for leave is considered "foreseeable" when it is taken for any of the following reasons:

        i. Planned medical treatment for a serious health condition of the employee.

        ii. Planned medical treatment for a serious health condition of a family member.

        iii. An expected birth, or placement for adoption or foster care.

    c. If an employee fails to provide the requisite 30-day advance notice for foreseeable events without any reasonable excuse for the delay, the City reserves the right to delay the taking of the leave by up to 30 days after the date the employee provides notice of the need for FMLA/CFRA leave.

2. **Unforeseeable Events:** If an employee requires FMLA/CFRA leave for an unforeseeable event, the employee is required to provide notice to the City as soon as is practicable.

3. **Notice of Intermittent/Reduced Schedule Leave:** The notice requirements for foreseeable intermittent or reduced schedule leaves shall be the same as for other foreseeable leaves, and the notice requirements for unforeseeable intermittent or reduced schedule leave shall be the same as for other unforeseeable leaves.

4. **Contents of Notice:** All requests for FMLA/CFRA leave should include the anticipated date(s) and duration of the leave and be sufficient to make the City aware that the employee needs leave under the FMLA/CFRA. The

employee must state the reason the leave is needed, by reference to the list in Section III.B. of this Policy. When the employee provides notice, it may not contain sufficient information for the City to determine whether the employee's leave could be for an FMLA/CFRA-qualifying purpose. In such cases, the City may follow up with the employee for additional information, and the employee is required to respond to the same. However, the employee shall not be required to provide the City with a diagnosis.

5. **Changes to Dates of Leave:** The employee must advise the City as soon as practicable when the employee learns that the dates of the FMLA/CFRA leave may change.

6. **Requests for Extension:** Any requests for extensions of an FMLA/CFRA leave must be received at least five business days before the date on which the employee was originally scheduled to return to work, where practicable, and must include the revised anticipated date(s) and duration of the FMLA/CFRA leave. If the employee has exhausted the employee's leave entitlement under Section III.I., the City will evaluate on a case-by-case basis whether additional leave may be available as a reasonable accommodation for the employee's own serious health condition; however, any such additional leave shall not be subject to the provisions of this Section III.

M. **City Response to a Request for FMLA/CFRA Leave or Request for Extension - Eligibility Notice**: Within five business days of an employee's request to take FMLA/CFRA leave, the City shall provide the employee with a written Eligibility Notice. The Eligibility Notice is not a designation of the employee being on FMLA/CFRA Leave. The Eligibility Notice shall include the following information:

1. Whether the employee is eligible to take FMLA/CFRA leave. If the employee is ineligible for FMLA/CFRA leave, the notice will include the reason(s) why the employee is ineligible.

2. Whether the employee has exhausted their 12-week FMLA/CFRA entitlement.

3. Whether additional information, such as a medical certification, is required from the employee in order to process the employee's request for FMLA/CFRA leave or request for extension.

4. The employee's rights and responsibilities under the FMLA/CFRA, which will include a statement of whether the employee is required to provide a medical certification or recertification. A statement requiring a medical certification will also advise the employee of the anticipated consequences of the employee's failure to provide adequate notice.

5. If the employee has requested an extension of leave for the employee's own serious health condition but has exhausted the leave entitlement under Section III.I., the City will advise whether additional leave will be granted as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section III.

N. Medical Certification and Recertification: Any request for FMLA/CFRA leave for an employee's own serious health care condition or for FMLA/CFRA leave to care for a family member with a serious health condition must be supported by medical certification from the treating health care provider. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained. Any request for an extension of FMLA/CFRA leave also must be supported by a medical certification from the treating health care provider. Again, employees are encouraged to use the City's medical certification to ensure that all pertinent information is obtained.

1. Timing of Request for Medical Certification: The City will request medical certification:

a. Within five business days after an employee requests foreseeable leave;

b. Within five business days after an employee provides notice of an unforeseeable leave, or within five business days after an unforeseeable leave commences, whichever is later;

c. At a later date if the City has a reason to question the appropriateness or duration of an employee's leave (FMLA only).

2. Timing for Employee's Return of the Medical Certification: All medical certifications and recertifications must be returned to the City within 15 days from the City request, regardless of whether the leave is foreseeable or unforeseeable. Exceptions to this may be granted when it is not practicable to provide the certification or recertification within 15 days, despite the employee's diligent, good faith efforts to do so.

3. Certification for Serious Health Condition of Covered Family Member: The employee must have the patient's treating health care physician complete a medical certification form when requesting family leave to care for a Covered Family Member (as defined in Footnote 1, above) with a serious health condition. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained.

a. **Medical Recertification:** If the employee requests additional leave beyond the time period which the health care provider originally estimated that the employee needed to take care of Covered Family Member, the City may request a recertification from the employee.

4. Certification for the Employee's Own Serious Health Condition:

a. **First Opinion:** The employee must have the employee's health care physician complete a medical certification form when requesting FMLA/CFRA leave for the employee's own serious health condition. Employees are encouraged to use the City's medical certification form to ensure that all pertinent information is obtained.

b. **Second and Third Opinions:** If the City has reason to doubt the validity of the certification provided by the employee, the City may require the employee to obtain a second opinion from a doctor of the City's choosing at the City's expense. If the employee's health care provider and the doctor providing the second opinion do not agree, the City may require a third opinion, also at the City's expense, performed by a mutually agreeable doctor who will make a final determination that shall be binding on both the City and the employee.

c. **Medical Recertification:** The City may request recertification of a medical condition upon the expiration of the time period which the health care provider originally estimated, if additional FMLA/CFRA leave is requested.

5. Certification for an Employee's Return to Work:

a. **Returning from a Continuous Leave:** As a condition of restoration to the employee's former position, an employee taking continuous leave under the FMLA/CFRA is required to provide the City with certification from the employee's health care provider stating that the employee is able to resume essential work functions. An employee who fails to provide the certification may have reinstatement delayed.

b. **Returning from an Intermittent or Reduced Schedule Leave:** In addition to the requirement in Section 5.a., above, if the employee is on intermittent or reduced schedule leave, the City may require a fitness for duty certification at fixed intervals not exceeding every 30 days if there are reasonable safety concerns. "Reasonable safety concerns" means a reasonable belief of significant risk of harm to the employee or others.

c. **Contents of Certification:** The City will provide the employee with a form and a copy of the employee's job description for the employee health care provider to review in completing the fitness for duty certification, and employees are encouraged to use the City's form to ensure that all pertinent information is obtained. The employee must provide a complete and sufficient fitness for duty certification. If the employee's health care provider releases the employee back to work with restrictions, the City will engage in the interactive process to determine what reasonable accommodation, if any, will permit the employee to return to work in accordance with the ADA and the FEHA.

6. **Employee's Failure to Provide a Medical Certification or Recertification:** If the employee fails to timely provide a complete and sufficient medical certification when requested, the request for FMLA/CFRA leave may be denied or delayed until a sufficient certification is provided. Employees will be advised of these consequences in connection with any request by the City for medical certification or recertification.

O. City's Designation of Leave: Absent extenuating circumstances, within five business days after the City has acquired enough information to determine whether the employee's request qualifies for FMLA/CFRA leave, the City will provide the employee with a written Designation Notice.

1. Designating Leave as FMLA/CFRA-Qualifying: If the leave is designated as being FMLA/CFRA-qualifying, the Designation Notice will contain, but is not limited to, the following information:

a. A statement that the leave is being designated as FMLA and/or CFRA leave;

b. The amount of leave being counted as FMLA and/or CFRA leave, if known;

c. Whether accrued paid leave will be used during the leave, and that any paid leave used will count as FMLA and/or CFRA leave;

d. Whether a medical certification or recertification will be required to release the employee to return to work; and

e. Whether a job description or description of essential duties is attached to the Designation Notice for the health care provider to use in completing the medical certification or recertification to release the employee to return to work.

2. Unable to Designate: If the City is unable to determine whether the leave requested is FMLA/CFRA-qualifying because more information is needed, the employee will be informed that

a. the medical certification is incomplete or insufficient, and the City will provide a list of deficiencies and explain the employee's opportunity to cure said deficiencies; or

b. a second or third medical opinion is being required.

3. **Not Designating Leave as FMLA/CFRA-Qualifying:** If the City has determined that the employee's leave does not qualify as FMLA/CFRA leave, or that employee has exhausted the 12-week FMLA/CFRA entitlement, the City will notify the employee in writing that the leave is not being designated as FMLA/CFRA leave, and the reason for the denial.

P. Employment Benefits and Protection:

1. **Previously Accrued Benefits and Seniority Status:**

a. Leave under the FMLA/CFRA will not result in the loss of any employment benefits accrued before the date the leave commenced.

b. Leave under the FMLA/CFRA will not constitute a break in service or otherwise cause the employee to lose longevity or seniority, even if other paid or unpaid leave constitutes a break in service for purposes of establishing longevity or seniority, or for layoff, recall, promotion, job assignment, or seniority-related benefits.

2. **No Accrual of Leave or Seniority during Unpaid FMLA/CFRA Leave:**

a. An employee on unpaid FMLA/CFRA leave shall not accrue any additional paid leave time. Thus, employees will not accrue vacation leave, sick leave, administrative leave, nor will they be paid for holidays during the unpaid leave.

b. The time off on unpaid FMLA/CFRA leave shall not count as time worked for purposes of establishing additional seniority for purposes of layoff, recall, promotion, job assignment, and other seniority-related benefits.

c. However, during the time that an employee supplements unpaid FMLA/CFRA leave with paid leave, the employee will continue to accrue leaves and benefits in accordance with the provisions of the City's policy governing those leaves of absence (*i.e.,* when coordinating with sick leave, the rules governing sick leave will apply with regard to the employee's benefits).

3. **Maintenance of Health Insurance of the Employee:** Employees will continue to receive the same medical benefits while on FMLA/CFRA leave for up to 12 workweeks, or longer depending on the basis for the qualifying leave, in a 12-month period. The City shall be responsible for the continued payment of the City's share of the cost of the employee's health benefits during the leave period. Benefits for absences beyond the allotted period will be handled in the same manner as benefits for employees on any other type of unpaid leave of absence. An employee who notifies the City that the employee does not intend to return to work from the FMLA/CFRA leave is not entitled to medical benefits provided by the City as if the employee were on a FMLA/CFRA leave and instead is entitled to the benefits provided to employees who are on an unpaid leave of absence for any other reason.

4. **Maintenance of Benefits Requiring Employee Contributions:**

    a. During any period of unpaid leave, unless otherwise prohibited by applicable law, an employee may elect to discontinue health insurance coverage for the employee, a spouse, registered domestic partner, and/or any dependent(s) as well as any other benefits offered or sponsored by the City to which the employee is required to make monthly contributions. Employees must notify the City in writing of such an election.

    b. An employee will continue to be responsible for making the payment of monthly contributions for which the City has not received advanced notice of election to discontinue. If any premium amounts are increased or decreased for other employees similarly situated, the employee will be required to pay the new premium rates.

    c. All monthly contributions are due and payable to the City at the same time as they would be if made through payroll deduction.

    d. If any monthly contributions are not received within 30 days of their due date, the City has the option to either discontinue said benefit(s) or continue said benefit(s) by making the monthly contributions on the employee's behalf.

    e. Upon the employee's return to work, the City is entitled to seek reimbursement from the employee for the employee's share of any monthly contributions made on the employee's behalf.

    f. Employees included in a pension or retirement plan may continue to make contributions in accordance with the terms of the plan during the period of leave. However, the City shall not be required to make plan payments for employees during the leave period which is unpaid, and the unpaid leave period shall not be counted for purposes of time accrued under the plan.

g. If the City provides a new health plan or benefits or changes health plans or benefits while an employee is on FMLA/CFRA leave, the City will give written notice to the employee to advise that the employee is subject to the new or changed plan/benefits in the same manner, and to the same extent, as if the employee were not on leave.

5. **Failure to Return from Leave:** The City may recover the entire premium it paid for maintaining health insurance benefits for an employee during any period of unpaid leave if the employee fails to return to work promptly upon the expiration of a leave for a reason other than the continuation, recurrence or onset of a serious health condition that entitles the employee to leave or other circumstances beyond the employee's control.

Q. Reinstatement:

1. **Restoration to Position:** When an employee returns from a leave under the FMLA/CFRA, the employee will be restored to the position held when the leave began, or to a comparable position, with equivalent (i.e. virtually identical) employment benefits, pay, and other conditions of employment.

a. The duties of the position must be capable of being performed in the same or similar geographic location, and involve the same or substantially similar duties as the position held when leave began, with responsibilities that entail substantially equivalent skill, effort, responsibility, and City.

2. **Denial of Restoration Rights:** There are two circumstances where the City may refuse to reinstate an employee to the employee's pre-leave position:

a. **Position No Longer Exists:** The City may refuse to reinstate an employee to the employee's pre-leave position at the conclusion of a leave under either the FMLA or CFRA when the employee's position and any comparable position have ceased to exist because of legitimate business reasons unrelated to the employee's FMLA/CFRA leave. In this case, the City shall reasonably accommodate the employee through alternative means that will not cause undue hardship to the City's operation. The City may offer the employee any other position that is available and suitable. The City is not required to create new employment that would not otherwise be created, discharge or transfer another employee, or promote another employee who is not qualified to perform the job.

b. **Key Employee (FMLA only)**: The City may refuse to reinstate an employee to the employee's pre-leave position at the conclusion of a leave under the FMLA, (but *not* CFRA), when the employee is considered a key employee. A key employee is a salaried eligible employee who is among the highest paid ten percent of the City's employees. In addition, the following steps will take place:

1. The City notifies the employee at the time the employee gives notice of the need for leave, or when leave commences, if earlier, that the Key Employee is a Key Employee, and also notifies the employee of the potential consequences with respect to reinstatement and maintenance of health benefits if the City should determine that reinstatement will result in substantial and grievous economic injury to its operations; and

2. As soon as the City makes a good faith determination that substantial and grievous economic injury will result if the City reinstates that Key Employee at the end of the requested FMLA leave period, the City notifies the employee that it intends to deny reinstatement at the end of the requested leave period. The notice from the City will include an explanation for the basis for the City's determination and provide the Key Employee with a reasonable time in which to return to work, taking into account the circumstances, such as the requested duration of the leave and the urgency of the need for the employee to return.

3. The Key Employee has already begun the FMLA leave at the time of receiving the notice, and the Key Employee does not return to work within the specified timeframe after receiving such notice from the City.

   A. The Key Employee will remain entitled to the maintenance of health benefits under Section III.P.4. for the duration of the originally-requested leave, but the City will not be entitled to recover its contributions to premiums under Section III.P.5.

   B. The Key Employee's rights will then continue under the FMLA unless and until the employee either gives notice that the employee will not seek to return to work, or the employee requests to return to work at the conclusion of the leave and receives notice that the City has denied that request.

4. If the Key Employee requests to return to work upon completion of the originally-requested leave, the City again determines that substantial and grievous economic injury will result if the City reinstates the employee, based on the facts at hand, and the City provides written notice of the denial.

3. **Opportunity to Fulfill Missed Requirements:** If an employee is unable to attend a necessary course, renew a license, or is otherwise adversely affected in terms of fulfilling minimum requirements or qualifications for the position as a result of the FMLA/CFRA leave the employee will be given a reasonable opportunity to fulfill those requirements or qualifications upon returning to work from FMLA/CFRA leave.

4. **Accommodation Upon Returning from Leave:** Nothing in this section prevents the City from accommodating an employee's request for any change in shifts, schedule, position, or geographic location. Similarly, nothing in this section prohibits the City from offering a promotion to a better position, or from providing a reasonable accommodation pursuant to its obligations under the Americans with Disabilities Act and the Fair Employment and Housing Act.

IV. PREGNANCY DISABILITY LEAVE OR TRANSFER.

A. Eligibility and Duration:

1. Eligibility:

a. Any employee who is disabled on account of pregnancy, childbirth, or related medical conditions may take a pregnancy-related disability leave, regardless of the number of hours worked or the employee's length of employment with the City. However, unless an employee has met the eligibility requirements under Section III of this Policy, the employee shall not be subject to the additional terms and conditions that apply to an employee who is eligible for FMLA leave.

b. An employee's pregnancy-related disability is not considered a serious health condition under the CFRA and is not counted against an employee's CFRA leave eligibility.

2. **Amount of Leave Entitlement:** An eligible employee may take a pregnancy-related disability leave for the period of disability, up to four

months (an equivalent of 17 1/3 weeks). The pregnancy disability leave shall run concurrently with any family care or medical leave to which the employee may be entitled under the FMLA. An employee is entitled to take off the number of days or hours that the employee would normally work during 17 1/3 weeks of employment. For example, an employee, who regularly works 40 hours per week is entitled to take 693 hours of leave, and an employee who regularly works 20 hours per week, would be entitled to 346.5 hours of leave.

3. **Temporary Transfer:** Any employee affected by conditions related to pregnancy, childbirth, or related medical conditions is entitled to transfer temporarily to a less strenuous or hazardous position or to less strenuous or hazardous duties upon the certification of the employee's health care provider that the transfer is medically advisable, if the transfer can be reasonably accommodated.

4. **Reasonable Accommodation:** The City will provide reasonable accommodation to an employee who is affected by pregnancy, childbirth or related medical conditions as required by law.

B. **Use of Accrued Leave**: An employee taking pregnancy-related disability leave must coordinate any available sick leave with the pregnancy-related disability leave. An employee taking pregnancy-related disability leave may, at the employee's option, coordinate any other accumulated paid leaves, including, but not limited to, vacation time, holiday pay, compensatory time off, or administrative leave with the pregnancy-related disability leave. The paid leave shall run concurrently with the pregnancy-related disability leave, and shall not extend the employee's entitlement to pregnancy-related disability leave beyond the amount specified in Section IV.A.2 of this Policy.

1. **Coordination with Wage Replacement Plans:**

a. This provision only applies when the employee's pregnancy-related disability leave is also designated as a serious health condition under the FMLA.

b. Pursuant to the provisions of the FMLA, if an employee is receiving a wage replacement payment from workers' compensation, the employee and the City may mutually agree to coordinate the employee's accrued paid leaves with the amount received from the wage replacement plan, up to an amount equal to the employee's regular salary.

c. If the employee is still receiving worker's compensation benefits when the twelve workweeks of leave under the FMLA expire, the City will require that the employee begin coordinating any additional accrued sick leave with those wage replacement benefits. The employee may also elect to coordinate all other accrued paid leaves with those wage replacement benefits.

C. **Notice**: An employee should notify the supervisor of the employee's need for pregnancy-related disability leave or transfer as soon as the employee is aware of the need for such leave.

1. **Foreseeable Events:** Where the need for pregnancy-related disability leave or transfer is foreseeable, the employee must provide at least 30 days' advance notice to the City of the need for pregnancy-related disability leave or transfer. If the leave or transfer is required in connection with any planned, non-emergency medical treatment or supervision, the employee shall consult with the City and make a reasonable effort to schedule any such planned medical treatment or supervision to minimize disruption to the City's operations, subject to the approval of the health care provider of the employee.

2. **Unforeseeable Events:** For non-emergency events that are not foreseeable 30 days in advance, or when 30 days' advance notice is not practicable, the employee must notify the City as soon as practicable under the circumstances, ordinarily within two business days after the employee learns of the need for leave.

3. **Notice of Intermittent Leave:** In the event that an employee requires intermittent pregnancy-related disability leave, the employee shall notify the City of the anticipated dates for the absences as much in advance as possible.

4. **Failure to Provide Notice:** If the employee fails to provide the requisite 30-day advance notice for foreseeable events without any reasonable excuse for the delay, the City reserves the right to delay the employee's right to take leave for up to 30 days after the date the employee provides notice of the need for pregnancy-related disability leave or transfer; provided, however, that the delay would not endanger the employee's health, pregnancy, or health of the employee's co-workers.

D. **Contents of Notice or Request for Extension**:

1. All requests for pregnancy-related disability leave or transfer should include the anticipated timing and duration of the leave or transfer and be sufficient to make the City aware that the employee requires a pregnancy-related disability leave or transfer. Any requests for extensions of a pregnancy-related disability leave or transfer must be received at least five business days before the date on which the employee was originally scheduled to return to work, where practicable, and must include the revised anticipated

date(s) and duration of the pregnancy-related disability leave or transfer.

2. If the employee has exhausted the leave entitlement under Section IV.A.2., the City will evaluate on a case-by-case basis whether additional leave may be available as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section IV.

E. **Intermittent or Reduced Schedule Leave**: Pregnancy-related disability leave can be taken on an intermittent or on a reduced schedule basis when medically advisable, as determined by the employee's health care provider. The minimum pregnancy-related disability leave increment that can be taken by an employee is fifteen minutes. If pregnancy-related disability is taken on an intermittent or reduced schedule basis and it is foreseeable based on planned medical treatment because of pregnancy, the City retains the discretion to temporarily transfer the employee to an alternative position, for which the employee is qualified, with equivalent pay and benefits, which better accommodates the employee's leave schedule, but need not have equivalent duties.

F. **City Response to a Request for Pregnancy-Related Disability Leave or Transfer or Request for Extension**: Within five business days of an employee's request for pregnancy-related disability leave or transfer, the City shall provide the employee with a written Eligibility Notice, which shall conform to the provisions of Section III.M. The Eligibility Notice shall also inform the employee of the additional rights under the California PDL. If the employee has exhausted the leave entitlement under Section IV.A.2., the City will advise whether additional leave will be granted as a reasonable accommodation; however, any such additional leave shall not be subject to the provisions of this Section IV.

G. **Medical Certification:**

1. **Timing of Certification:** Any request for pregnancy-related disability leave or transfer must be supported by a medical certification from a health care provider.

   a. For foreseeable pregnancy-related disability leaves or transfers, employees will provide the required medical certification before the leave/transfer begins. When this is not possible, employees must provide the required certification within 15 days, unless it is not practicable under the circumstances to do so. Failure to provide the required medical certification may result in the denial or delay of foreseeable pregnancy-related disability leaves or transfers until such certification is provided.

   b. In the case of unforeseeable leaves, failure to provide the required medical certification within 15 days of being requested to do so may result in a denial of the employee's continued leave until certification is eventually provided. Any request for an extension of the leave/transfer must also be supported by an updated certification.

2. **Contents of the Certification for Pregnancy-Related Leave:** Employees are encouraged to use the City's medical certification when requesting pregnancy-related disability leave to ensure that all pertinent information is obtained. The following information must be included: (1) date the employee became or will become disabled due to pregnancy; (2) the probable duration of the period or periods of disability; and (3) an explanatory statement that, due to the disability, the employee is unable to work at all or is unable to perform any one or more of the essential functions of the employee's position without undue risk to self, to the successful completion of the pregnancy, or to other persons.

3. **Contents of the Certification for Pregnancy-Related Transfers:** Employees are encouraged to use the City's medical certification when requesting pregnancy-related disability transfer to ensure that all pertinent information is obtained. The medical certification for pregnancy-related transfer shall include: (1) a description of the requested transfer or reasonable accommodation; (2) the date the need for the transfer or reasonable accommodation became medically advisable; (3) the probable duration of the need for the transfer or reasonable accommodation; and (4) an explanatory statement that, due to the disability, the transfer or reasonable accommodation is medically advisable.

4. **No Second/Third Opinions Allowed:** There will not be a second or third opinion regarding pregnancy-related disability leave or transfer.

5. **Return to Work Certification:** As a condition of restoration to the employee's former position, an employee taking leave under the FMLA/PDL is required to provide the City with certification from the employee's health care provider stating that the employee is able to resume original job duties.

H. **City's Designation of Leave**: Once an employee requests pregnancy-related disability leave or transfer, Human Resources shall notify the employee in writing whether the requested leave or transfer is approved and qualifies as pregnancy-related disability leave or transfer. This designation shall comply with the provisions of Section III.O, and shall also inform the employee of any additional rights and obligations under the California Pregnancy Disability Leave Law.

I. **Employment and Benefits Protection**: The provisions set forth in Section III.P. of this Policy regarding employment and benefits protection in connection with FMLA/CFRA leave also apply to all pregnancy-related disability leaves, except that where the City's policy permits employees on paid leave and/or unpaid leave to accrue seniority, employees on paid and/or unpaid pregnancy-related disability leaves shall also accrue seniority.

J. **Reinstatement**: Upon the completion of the employee's pregnancy-related disability leave or transfer period, and upon submission of the return to work notice, the employee shall be returned to the same position previously held, or to a comparable position as permitted by law. However, for pregnancy-related disabilities, there is no reinstatement exception for Key Employees.

V. MILITARY LEAVE.

The FMLA/CFRA provide for military exigency leave, which is addressed in Section V.A. of this Policy. The FMLA also provides for military caregiver leave, which is addressed in Section V.B. of this Policy.

A. **Military Exigency Leave**: The City permits employees who have a covered military family member in the Armed Forces (including the National Guard or Reserves) to take up to twelve workweeks of FMLA/CFRA leave due to a qualifying exigency resulting from the covered military family member's active military duty (or call to active duty status) in support of a contingency operation. ***Leave granted under this Section shall count against the FMLA/CFRA leave granted under Section III***.

1. **Definitions:**

a. **Armed Forces:** The Army, Navy, Air Force, Marine Corps, or Coast Guard, including the National Guard and Reserves.

b. **Covered Active Duty or Call to Active Duty Status:** One of the following:

i. For a member of a regular component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country; or

ii. For a member of a reserve component of the Armed Forces, duty during the deployment of the member with the Armed Forces to a foreign country under a federal call or order to active duty in support of a contingency operation under a provision of law referred to in section 101(a)(13)(B) of Title 10, United States Code.

c. **Covered Military Family Member:** An employee may take leave under FMLA/CFRA for the employee's spouse, son, daughter, or parent who is a member of the Armed Forces and is on Covered Active Duty or Call to Active Duty Status. An employee may take leave under CFRA for the employee's domestic partner who is a member of the Armed Forces and is on Covered Active Duty or Call to Active Duty status.

i. For purposes of this definition only, "son" or "daughter" means the employee's biological, adopted, or foster child, stepchild, legal ward, or a child for whom the employee stood *in loco parentis*, within the meaning of Section III.D. of this Policy, regardless of age.

d. **Covered Military Family Member's Child:** The biological, adopted, or foster child, stepchild, legal ward, or child for whom the Military Family Member stands *in loco parentis*, within the meaning of Section III.D. of this Policy, who is either under the age of 18 or who is aged 18 or older but incapable of self-care because of a physical or mental disability at the time leave under this Section V.A. is to commence.

e. **Covered Military Family Member's Parent:** The biological, adoptive, step, or foster father or mother, or an individual who stood *in loco parentis*, within the meaning of Section III.D. of this Policy, to a Covered Military Family Member who was under 18 years of age.

2. **Qualifying Reasons for Military Exigency Leave:** Military exigency leave can be taken for the following non-medical, non-routine activities only:

a. **Short-Notice Deployment Activities:** If a Covered Military Family Member receives seven or less calendar days' notice prior to the date of deployment, an employee may take FMLA/CFRA leave to address any issue arising from an impending call or order to active duty in support of a contingency operation. The employee may take FMLA/CFRA leave for up to seven days beginning on the date the Covered Military Family Member receives the notice of impending call or order to active duty.

b. **Military Events and Related Activities:** An employee may take FMLA/CFRA leave to attend any official ceremony, program, or event sponsored by the military that is related to the active duty or call to active duty status of the Covered Military Family Member. An employee may also take FMLA/CFRA leave to attend family support or assistance programs and informational briefings sponsored or promoted by the military, military service organizations, or American Red Cross that are related to the active duty or call to active duty status of a Covered Military Family Member.

c. **Childcare and School Activities:** An employee may take FMLA/CFRA leave for the following reasons, if the reason is necessitated by the Covered Military Family Member's active duty or call to active duty status, or circumstances arising from it:

i. To make alternative childcare arrangements of a Covered Military Family Member's Child;

ii. To provide childcare for a Covered Military Family Member's Child on an urgent, immediate need basis, but not on a regular, routine, or everyday basis;

iii. To enroll in or transfer a Covered Military Family Member's Child in a new school or day care facility; and/or

iv. To attend meetings with staff at a school or day care facility, such as regarding disciplinary measures, parent-teacher conferences, or meetings with school counselors, for a Covered Military Family Member's Child.

d. **Financial and Legal Arrangements:** An employee may take FMLA/CFRA leave in order to make or update financial or legal arrangements to address the Covered Military Family Member's absence while on active duty or call to active duty status; and/or to act as the Covered Military Family Member's representative before a federal, state, or local agency for purposes of obtaining, arranging, or appealing military service benefits while the Covered Military Family Member is on active duty or call to active duty status (up to a period of 90 days following the termination of the Covered Military Family Member's active duty status).

e. **Counseling Activities:** An employee may take FMLA/CFRA leave to attend counseling, provided that:

i. The need for counseling arises from the Covered Military Family Member's active duty or call to active duty;

ii. Such counseling is provided by someone other than a health care provider; and

iii. The counseling is for the employee, the Covered Military Family Member, and/or the Covered Military Family Member's Child. (Note that if medical counseling is needed due to a serious health condition, the employee may be able to take FMLA/CFRA leave under Section III instead.)

f. **Rest and Recuperation Activities:** If a military member is granted short-term, temporary, rest and recuperation leave during the period of deployment, an employee may take FMLA/CFRA leave to spend time with the military member. An employee may take FMLA/CFRA leave for this purpose for up to fifteen business days for each instance of rest and recuperation, beginning on the date the Covered Military Family Member commences each instance of rest and recuperation leave.

g. **Post-Deployment Activities:** An employee may take FMLA/CFRA leave to attend arrival ceremonies, reintegration briefings and events, and any other official ceremony or program sponsored by the military for a period of 90 days following termination of the Covered Military Family Member's active-duty status. An employee may also take FMLA/CFRA leave to address issues that arise from the death of a Covered Military Family Member while on active-duty status, such as meeting and recovering the body of, making funeral arrangements for, or attending funeral services for the Covered Military Family Member.

h. **Parental Care:** An employee may take FMLA/CFRA leave for care of a Covered Military Family Member's Parent who is incapable of self-care.

i. "Incapable of self-care" means that the individual requires active assistance to provide daily self-care in three or more of the following activities: caring appropriately for one's grooming and hygiene; bathing; dressing; eating; cooking; cleaning; shopping; taking public transportation; paying bills; maintaining a residence; using telephones and directories; using a post office; or other activities or instrumental activities of daily living.

ii. An employee may take parental care leave for the following purposes when the need arises from the covered active duty or call to active duty of the Covered Military Family Member:

A. To arrange for alternative care of the Covered Military Family Member's Parent from the existing care arrangement;

B. To provide care for the Covered Military Family Member's Parent on an urgent, immediate need basis (as opposed to a routine, regular, or everyday basis);

C. To admit to or transfer to a care facility the Covered Military Family Member's Parent; or

D. To attend meetings with staff at a care facility, such as meetings with hospice or social service workers, that are not regular or routine.

i. **Additional Activities:** An employee may take FMLA/CFRA leave for another form of exigency, provided that:

i. The reason for the leave arises out of the Covered Military Family Member's active duty or call to active duty;

ii. The City and the employee mutually agree that such leave shall be considered taken for a qualifying exigency; and

iii. The City and employee mutually agree on the timing and duration of the leave.

3. **Employee Notice of Need for Military Exigency Leave.**

a. **Timing of Notice:** Employees are required to give notice of the need for military exigency leave as soon as practicable under the circumstances.

b. **Content of Notice:** Employees are required to provide the City with sufficient information, depending on the situation, to notify the City as to the anticipated timing and duration of the leave, that a Covered Military Family Member is on active duty or call to active duty status, and that one of the qualifying exigencies in Section V.A.2. is present.

c. **Updates from Employee:** The employee is required to advise the City as soon as is practicable when the dates of leave or other circumstances change.

4. **City Response to Notice of Need for Military Exigency Leave:** The City will request any additional, necessary information needed to process the employee's request and will also follow the procedures set forth under Section III of this Policy in responding to an employee's notice that employee has a need for military exigency leave.

5. **Certification of Need for Military Exigency Leave:** The City will request certification of the employee's need for military exigency leave when it provides notice under Section III., and will provide the employee with a form to complete or an explanation of the information needed. Employees

requesting military exigency leave for the first time for a particular active duty or call to active duty are also required to provide the City with a copy of the military member's active duty orders.

a. **Required Information for Certification:**

i. A signed statement or description by the employee of the facts supporting the request for leave for one or more of the reasons set forth in Section V.A.2 and any available supporting written documentation, including, but not limited to, meeting announcements, appointment confirmations, or a copy of a bill for services.

ii. The approximate date on which the reason for the leave commenced, or will commence.

iii. The applicable timeframe.

A. If for a single, continuous period of time, the beginning and end dates for the employee's absence from work;

B. If on an intermittent or reduced schedule basis, the estimated frequency and duration of the employee's absences.

iv. For leave involving a meeting with a third party, appropriate contact information for the individual or entity, such as name, title, organization, address, telephone number, fax number, and email address, as well as a brief description of the purpose of the meeting.

v. For leave involving rest and recuperation activities, a copy of the Covered Military Family Member's Rest and Recuperation orders, or other documentation issued by the military indicating that the Covered Military Family Member has been granted Rest and Recuperation leave and identifying the dates of that Rest and Recuperation leave.

b. **Timing of City's Notice of Required Certification:** The City will request the certification in accordance with the timeframes set forth in Section III.N. of this Policy.

c. **Insufficient or Incomplete Certification:** Employees are required to provide a complete and sufficient certification. If an employee provides an incomplete or insufficient certification, the City will give the employee written notice of the deficiencies and seven calendar days to cure the deficiencies, unless seven days is not practicable, despite the employee's diligent, good faith efforts. The employee's leave may be denied if the employee fails to provide timely a required certification.

d. **Verification of Certification:** The City may verify the employee's certification by contacting the appropriate Department of Defense unit to verify the military member is on active duty or call to active duty status. If the exigency involves meeting with a third party, the City may contact the entity or individual with whom the employee is meeting to verify the meeting or appointment schedule and the nature of the meeting. The City will not request additional information. No permission from the employee is required for such verification.

B. Military Caregiver Leave: In addition to military exigency leave, as described above, the FMLA provides for military caregiver leave. As explained at length below, military caregiver leave is available when an employee whose covered military spouse, registered domestic partner, child, or other covered relative has incurred a serious injury while on active duty. ***Leave granted under this Section shall count against the FMLA leave granted under Section III***.

Specifically, the City will permit an employee who is the spouse, registered domestic partner, son, daughter, parent, or next of kin of a Covered Servicemember in the Regular Armed Forces, National Guard, or Reserves who has incurred a serious injury or illness in the line of duty, while on active duty, to take up to 26 workweeks in a single 12-month period, per Covered Servicemember, and per injury/illness of the servicemember.

Note that there are many differences between military exigency leave and military caregiver leave. The two types of FMLA military leave use different definitions, are utilized for different purposes, and grant different amounts of leave.

1. Definitions:

a. Armed Forces: The Army, Navy, Air Force, Marine Corps, or Coast Guard, including the National Guard and Reserves

b. Authorized Health Care Provider: For purposes of completing the certification required under Section V.3.b., an authorized healthcare provider includes any one of the following:

i. United States Department of Defense ("DOD") health care provider;

ii. A United States Department of Veterans Affairs ("VA") health care provider;

iii. A DOD TRICARE network authorized private health care provider;

iv. A DOD non-network TRICARE authorized private health care provider; or

v. Any health care provider permitted to provide medical certification under Section III.N of this Policy.

c. Covered Servicemember:

i. A current member of the Armed Forces who is undergoing medical treatment, recuperation, or therapy, is otherwise in outpatient status, or is otherwise on the temporary disability retired list, for a Serious Injury or Illness; or

ii. A veteran who is undergoing medical treatment, recuperation, or therapy, for a Serious Injury or Illness and who was a member of the Armed Forces, at any time during the period of five years preceding the date on which the employee commences FMLA leave to care for the veteran. If the veteran was discharged or released under conditions other than dishonorable, the period from October 28, 2009 through February 8, 2013 shall not be counted in determining whether the veteran's last day of service falls within the five-year period.

d. **Next of Kin:** The nearest blood relative of a Covered Servicemember (other than spouse, registered domestic partner, parent, son, or daughter), in the following priority order:

i. A blood relative designated in writing by the servicemember as the nearest blood relative for purposes of military caregiver leave under the FMLA, who, if so designated, shall be the only next of kin for purposes of this Policy;

ii. Blood relatives who have been granted legal custody of the servicemember by court decree or statutory provisions;

iii. Brothers or sisters;

iv. Grandparents;

v. Aunts or uncles; and

vi. First cousins.

If no blood relative has been designated under section V.B.1.d.i., all blood relatives at the next applicable level of priority shall be considered "next of kin" who may take FMLA leave to provide care for the Covered Servicemember, either simultaneously or not.

e **Outpatient Status:** The status of a Covered Servicemember who is assigned to a military medical treatment facility as an outpatient, or a unit established for the purpose of providing command and control of members of the military receiving medical care as outpatients.

f. **Parent of a Covered Servicemember:** A Covered Servicemember's biological, adoptive, step or foster father or mother, or an individual who stood *in loco parentis* to a Covered Servicemember, within the meaning of Section III.D. of this Policy.

g **Son or Daughter of a Covered Servicemember:** A Covered Servicemember's biological, adopted, or foster child, step child, legal ward, or child for whom the Covered Servicemember stood *in loco parentis*, within the meaning of Section III.D. of this Policy, except that this definition shall apply regardless of the child's age.

h. **Serious Injury or Illness:**

i. **For a current member of the Armed Forces**: An injury or illness incurred by a Covered Servicemember in the line of duty on active duty (or that existed before the beginning of the member’s active duty and was aggravated by service in the line of duty or active duty), and that may render the servicemember medically unfit to perform the duties of the servicemember’s office, grade, rank, or rating.

ii. **For a veteran who is a Covered Servicemember**:

A. An injury or illness that was incurred by the member in the line of duty on active duty in the Armed Forces (or existed before the beginning of the member’s active duty and was aggravated by service in line of duty on active duty) and that manifested itself before or after the member became a veteran; and

B. Is one of the following:

1. A continuation of a Serious Injury or Illness that was incurred or aggravated when the veteran was a member of the Armed Forces and rendered the veteran unable to perform the duties of their office, grade, rank, or rating; or

2. A physical or mental condition for which the veteran has received a U.S. Department of Veteran Affairs Service-Related Disability Rating (VASRD) of 50 percent or greater, and the VASRD rating is based, in whole or in part, on the condition precipitating the need for the military caregiver leave; or

3. A physical or mental condition that substantially impairs the veteran's ability to secure or follow a substantially gainful occupation by reason of a disability or disabilities related to military service, or would do so absent treatment; or

4. An injury, including a psychological injury, on the basis of which the veteran has been enrolled in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

i. **Veteran:** A person who served in the Armed Forces, and who was discharged or released therefrom under conditions other than dishonorable.

2. **Terms of Military Caregiver Leave.** An employee may take up to 26 weeks of leave, during a 12-month period, to care for a Covered Servicemember with a Serious Injury or Illness. The 12-month period begins on the first date of the employee’s military caregiver leave. Otherwise, except as set forth in this policy, the City shall grant military caregiver leave under the same terms that CFRA and other FMLA leave is granted under Section III of this policy.

3. **Relationship to CFRA and Other FMLA Leave**: Leave granted under this Section shall run concurrently with the FMLA and CFRA leave under Section III, unless the employee is caring for their “next of kin” who is not covered by the CFRA. Leave granted under this Section shall be included in computing the employee’s 12 weeks of leave granted under the FMLA, so that an employee may not, under any circumstances, exceed 26 total weeks of FMLA leave in a rolling 12-month period.

4. **Required Certifications:** The City will provide the employee with a form to complete that certifies the servicemember's family relationship, military status, and Serious Injury or Illness. The employee is required to ensure that this form, or an equivalent form containing the information set forth in this Section, is completely and sufficiently completed and returned within the same time periods set forth in Section III.N. of this Policy. If the employee fails to provide a complete and sufficient form, the City will inform the employee of the deficiencies, and grant the employee at least seven calendar days to cure them.

   a. **Certification of Family Relationship and Military Status:** The City will require proof of the servicemember's family relationship to the employee and proof of the servicemember's military status for the employee's first request of military caregiver leave for a particular illness or injury for a particular servicemember.

   b. **Certification of Serious Illness or Injury:** The City will require certification from an Authorized Health Care Provider that the servicemember is suffering from a Serious Illness or Injury. However, the employee will not be required to reveal the servicemember's diagnosis.

      i. The Authorized Health Care Provider may base the certification upon their personal determination and/or may certify their reliance upon determination(s) made by an authorized DOD representative or an authorized VA representative. The certification must also include:

         A. The name, address, appropriate contact information (telephone number, fax number, and/or email address) of the health care provider, the type of medical practice, the medical specialty, and the basis on which employee is an authorized health care provider, as set forth in Section V.B.1.b, above;

         B. The approximate date on which the injury or illness commenced, or was aggravated, and its probable duration; and

         C. Information sufficient to establish that the Covered Servicemember is in need of care, and addressing the following matters:

1. Whether the need for care is for a single continuous period, and if so, an estimate of the beginning and ending dates, including any time needed for treatment and recovery;

2. Whether there is a medical necessity for periodic care, based on a schedule of planned medical treatment, and if so an estimate of the treatment schedule;

3. Whether there is a medical necessity for periodic care for reasons other than planned medical treatment, such as episodic flare-ups, and if so, an estimate of the frequency and duration of the periodic care.

5. **Alternative Certifications:**

a. **Special Automatic Certification:** The DOD may issue a special invitation to a member(s) of a servicemember's family when a DOD health care provider has determined that the injury or illness is serious enough to warrant the immediate presence of a family member at the servicemember's bedside. If the DOD issues an invitational travel order ("ITO") or invitational travel authorization ("ITA") for "medical purposes" to any member(s) of the servicemember's family (even if the employee's name is not on it), the ITO or ITA constitutes automatic certification of military status and Serious Injury or Illness for the period of time specified in the ITO or ITA for the employee to take leave on either a continuous or intermittent basis, and the City will not require further certification of those matters for the specified period of time. However, in this circumstance, the City may still require proof of the covered family relationship between the employee and the servicemember. The ITO or ITA is in effect for the duration specified on it. If the employee wishes to request leave to care for a Covered Service Member beyond the period of time specified in an ITO or ITA, the employee must submit additional certification in accordance with Section V.B.3.b., above.

b. **Documentation of Enrollment in Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers:** As another alternative to the certification required under Section V.B.3.b., the City will accept as sufficient certification documentation of the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers, whether or not the employee is the named caregiver in the enrollment documentation. However, the City may still require proof of the covered family relationship between the employee and the servicemember. The City may also require proof of the servicemember's date of discharge and proof that the servicemember's discharge was other than dishonorable.

6. **Authentication and Clarification:** The City may seek authentication and clarification of a certification issued under Section V.B.3.d., or of an ITO or ITA, or of documentation of enrollment in the Department of Veterans Affairs Program of Comprehensive Assistance for Family Caregivers.

7. **Second and Third Opinions:** No second or third opinions of the servicemember's Serious Illness or Injury will be sought from an Authorized Health Care Provider who meets the criterion set forth in V.B.1(a)(i)-(iv); however, when a certification has been completed by an Authorized Health Provider who meets the criteria in V.B.1(a)(v), the City may request a second or third opinion. No second or third opinions will be sought regarding an ITO or ITA for the period of time specified in the ITO or ITA.

8.. **Recertification:** No recertifications of the servicemember's Serious Illness or Injury will be sought.

9. **Administrative Delays in Issuance of Military Documents:** When an employee is unable to submit required documentation within the timeframe required under Section III.N, despite the employee's diligent, good faith efforts to obtain such documents, the City will not delay or deny leave on the grounds of such administrative delay.

VI. EMPLOYEE RESPONSIBILITIES AND DUTY TO COOPERATE

Employees are expected to fully cooperate with the City in meeting the obligations and requirements set forth under this Policy, as well as those set forth in state and federal law. An employee's cooperation includes, but is not limited to, timely completion of all requested forms and responding to all inquiries for additional information. Cooperation also requires that an employee respond to the City's inquiries for information to determine whether the employee is requesting leave under the FMLA, CFRA, and/or PDL. Employees are also required to consult with the City and make a reasonable effort to schedule foreseeable treatments so as to not unduly disrupt the City's operations. Employees on family care or medical leave will respond to the City's reasonable inquiries and keep the City updated as to the status of the employee's family care or medical leave.

Failure to cooperate with the City or failure to meet the employee's responsibilities may result in a delay in granting the employee's leave, a denial of leave, and/or a denial of the protections and benefits afforded by the FMLA, CFRA, and/or PDL. Employees who have questions about their responsibilities under this Policy will direct their inquiries to Human

Resources.

Employer-Employee Relations Policy
September 2025

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Section 1 General Provisions

1.01. Statement of Purpose

A. This Policy implements Chapter 10, Division 4, Title 1 of the Government Code of the State of California (Sections 3500 et seq.) captioned "Local Public Employee Organizations," by providing orderly procedures for the administration of employer-employee relations between the City and its employee organizations. However, nothing contained herein shall be deemed to supersede the provisions of state law, City ordinances or resolutions, and rules which provide for other methods of administering employer-employee relations. This Policy is intended, instead, to strengthen methods of administering employer-employee relations through the establishment of a uniform and orderly process for communications between employees, employee organizations, and the City.

B. It is the purpose of this Policy to provide procedures for meeting and conferring in good faith with recognized employee organizations regarding matters that affect terms and conditions of employment of employees in appropriate units and that are not preempted by federal or state law, City ordinances. However, nothing herein shall be construed to restrict any legal or inherent exclusive City rights with respect to matters of general legislative or managerial policy, which include among others: The exclusive right to determine the mission of its constituent departments, commissions, and boards; set standards of service; determine the procedures and standards of selection for employment; direct its employees; take disciplinary action; relieve employees from duty because of lack of work or for other lawful reasons; determine the content of job classifications; subcontract work; maintain the efficiency of governmental operations; determine the methods, means and personnel by which government operations are to be conducted; take all necessary actions to carry out its mission in emergencies; and exercise complete control and discretion over its organization and the technology for performing its work.

1.02. Definitions

As used in this Policy, the following terms shall have the meanings indicated:

A. "Appropriate unit" means a group of employee classes or positions, established pursuant to Article II herein.

B. "City" means the City of Soledad, and, where appropriate, refers to the City Council or any duly authorized City representative as herein defined.

C. "Confidential Employee" means an employee who has access to or advance knowledge of decisions relating to the City’s employer-employee relations or access to or advance knowledge of information relating to or developed for the purpose of making decisions relating to the City's administration of employer-employee relations. Confidential employees shall be excluded from any bargaining unit containing employees other than those designated as confidential, management and/or supervisory.

D. "Consult," as used in this Policy, means to communicate orally or in writing with all effected recognized employee organizations for the purpose of presenting and obtaining views, or advising of proposed actions in a good faith effort to reach a consensus; and, as distinguished from meeting and conferring in good faith regarding matters within the scope of required meet and confer process, does not involve an exchange of proposals and counterproposals in an endeavor to reach agreement in the form of a Memorandum of Understanding, nor is it subject to Article IV herein.

E. "Day" means calendar day unless expressly stated otherwise.

F. "Employee" means any person holding a regular position of employment with the City.

G. "Exclusively Recognized Employee Organization" means an employee organization which has been formally acknowledged by the City as the sole employee organization representing the employees in an appropriate unit pursuant to Article II herein, having the exclusive right to meet and confer in good faith concerning required subjects pertaining to unit employees, and thereby assuming the corresponding obligation to fairly represent such employees.

Such recognition status may not be challenged by another employee organization (1) within twelve (12) months of such recognition, and (2) to take effect during a Memorandum of Understanding having a term of up to three (3) years.

H. "Factfinding." The process required by the MMBA in which disputes are submitted to a panel consisting of one member selected by each party and a chairperson selected either by the Public Employee Relations Board ("PERB") or by mutual agreement of the parties. After consideration of all the relevant facts, the panel makes findings of fact and provides recommended terms of settlement to the parties.

I. "Impasse" means that the representatives of the City and a recognized employee organization have reached a point in their meeting and conferring in good faith where their differences on matters to be included in a Memorandum of Understanding, and subjects over which they are required to meet and confer, remain so substantial and prolonged that further meeting and conferring would be futile.

J. "Management Employee" means an employee having responsibility for formulating, administering or managing the implementation of City policies, procedures, and programs.

K. "Meet and Confer in Good Faith" means as defined in Section 3505 of the California Government Code. Generally this term means the performance, by the Employee Relations Officer or his/her authorized representative, and by the duly authorized representative of a formally recognized employee organization, of their mutual obligation to meet and confer promptly upon request by either party and to continue for a reasonable period of time in order to freely exchange information, opinions and proposals. The process should include adequate time for the administration of impasse procedures set forth in the Personnel Rules and Regulations Manual, and to reduce any agreement to writing and to obtain the appropriate approvals. “Meet and confer in good faith” does not require either party to agree to a proposal or to make a concession.

L. "Memorandum of Understanding" or "MOU" means a written, negotiated agreement or contract between the City and an Exclusively Recognized Employee Organization which incorporates all agreed upon matters, and which is signed by the duly authorized representative of the City and the exclusively recognized employee organization. MOU's are not binding until ratified by the labor organization and adopted by the City Council.

M. “Peace Officer.” An individual employed by the City as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code and Section 3508 of the MMBA.

N. "Personnel Officer" means the City Manager or duly authorized representative or designee.

O. “Professional Employee.” An employee engaged in work requiring specialized knowledge and skills attained through completion of a recognized course of instruction, including, but not limited to engineers, architects, and the various types of physical, chemical, and biological scientists., as designated by the City Manager, subject to the provisions of California Government Code Section 3500 et seq., as applicable to the City. This definition shall include work of an employee that: (1) Is predominately intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (2) Involves the consistent exercise of discretion and judgment in its performance; (3) Is of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; and (4) Requires knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual or physical process; or is an employee who has completed the courses of specialized intellectual instruction and study described in this part (4), above, and is performing related work under the supervision of a professional person to qualify to become a professional employee as defined in (1) through (4), above. In the event of a dispute on the appropriateness of a unit of representation for professional employees, upon request of any of the parties, the dispute shall be submitted to the California State Mediation and Conciliation Service for mediation or for recommendation for resolving the dispute. The parties shall split any cost of such mediation.

P. "Proof of Employee Support" means Demonstrated proof that the requisite number of individual employees have clearly shown a desire to be represented by an employee organization for the purposes of meeting and conferring on wages, hours, and other terms and conditions of employment, or in the case of decertification petition, have clearly demonstrated that the employees no longer desires to be represented by the exclusive representative, using one or a combination of the following:

(1) an authorization card recently signed and personally dated by an employee, or

(2) a verified authorization petition or petitions recently signed and personally dated by an employee, or

(3) employee dues deduction authorization, using the payroll register for the period immediately prior to the date a petition is filed hereunder, except that dues deduction authorizations for more than one employee organization for the account of any one employee shall not be considered as proof of employee support for any employee organization.

The only authorization which shall be considered as proof of employee support hereunder shall be the authorization last signed by an employee. The words "recently signed" shall mean within ninety (90) days prior to the filing of a petition.

Q. "Scope of Representation" means as defined in Section 3505 of the California Government Code. Generally this means all matters relating to employment conditions in employer-employee relations, including, but not limited to, wages, hours and other terms and conditions of employment, except however, that the scope of representation shall not include matters reserved to management discretion under the MMBA - i.e. management rights, including consideration of the merits, necessity or organization of any service or activity carried out by the City.

R. "Supervisory Employee" means any employee, regardless of job description, having authority, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibility to direct them, or to adjust their grievances, or to recommend such action if, in connection with the foregoing, the exercise of such authority is not of a mere routine or clerical nature, but requires the use of independent judgment. Supervisory employees shall be excluded from any bargaining unit containing employees other than those designated as supervisory, management, and/or confidential.

Section 2 Representation Proceedings

2.01. Filing of Recognition Petition by Employee Organization

An employee organization which seeks to be formally acknowledged as the exclusively recognized employee organization representing the employees in an appropriate unit shall file a petition with the Employee Relations Officer containing the following information and documentation:

A. Name and address of the employee organization.

B. Names and titles of its officers.

C. Names of employee organization representatives who are authorized to speak on behalf of the organization.

D. A statement that the employee organization has, as one of its primary purposes, the responsibility of representing employees in their employment relations with the City.

E. A statement whether the employee organization is a chapter of, or affiliated directly or indirectly in any manner, with a local, regional, state, national or international organization, and, if so, the name and address of each such other organization.

F. Certified copies of the employee organization's constitution and bylaws.

G. A designation of those persons, not exceeding two in number, and their addresses, to whom notice sent by regular United States mail will be deemed sufficient notice on the employee organization for any purpose.

H. A statement that the employee organization has no restriction on membership based on race, color, ancestry, religion, creed, gender, gender identity, gender expression, national origin, age, sex, sexual orientation, mental or physical disability; genetic information, marital status, military or veteran status, medical condition or any other basis protected by local, state and/or federal law.

I. The group of job classifications or position titles of employees in the unit claimed to be appropriate, and the approximate number of employees in each job classification or job title, and the department and/or office to which they are affiliated with.

J. A statement that the employee organization has in its possession proof of employee support, as defined herein, from at least 30% of the employees in the unit claimed to be appropriate. The proof of support must clearly demonstrate that a majority of the employees in the proposed unit desire to have the employee organization represent them for the purposes of meeting and conferring on wages, hours and other terms and conditions of employment. Such written proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed disinterested third party in a sealed envelope, marked “confidential.”

K. A request that the Employee Relations Officer formally acknowledge the petitioner as the exclusively recognized employee organization representing the employees in the unit claimed to be appropriate for the purpose of meeting and conferring in good faith on all matters within the scope of representation.

The Petition, including the proof of employee support and all accompanying documentation, shall be declared to be true, correct and complete, under penalty of perjury, by the duly authorized officer(s) of the employee organization executing it.

2.02. City Response to Recognition Petition

Upon receipt of the Petition, the Employee Relations Officer shall determine whether:

A. There has been compliance with the requirements of the Recognition Petition set forth in 17.03; and

B. The proposed representation unit is an appropriate unit in accordance with Section 17.09.

If an affirmative determination is made by the Employee Relations Officer on the foregoing two matters, the Employee Relations Officer shall so inform the petitioning employee organization, give written notice of such request for recognition to the employees in the unit, and take no action on said request for thirty (30) days thereafter. If either of the foregoing matters are not affirmatively determined, the Employee Relations Officer shall offer to consult thereon with such petitioning employee organization and, if such determination remains unchanged, shall inform that organization of the reasons therefore in writing within 15 working days of the date the petition for recognition was submitted.

The petitioning employee organization may appeal such determination in accordance with Section 17.11 of this Policy.

2.03. Open Period for Filing Challenging Petition

Within thirty (30) days of the date written notice was given to affected employees that a valid recognition petition for an appropriate unit has been filed, any other employee organization may file a competing request to be formally acknowledged as the exclusively recognized employee organization of the employees in the same or in an overlapping unit (one which corresponds with respect to some, but not all the classifications or positions set forth in the recognition petition being challenged), by filing a petition evidencing proof of employee support in the unit claimed to be appropriate of at least thirty (30) percent and otherwise in the same form and manner as set forth in Section 17.03 of this Article II. If such challenging petition seeks establishment of an overlapping unit, the Employee Relations Officer shall call for a hearing on such overlapping petitions for the purpose of ascertaining the more appropriate unit, at which time the petitioning employee organizations shall be heard. Thereafter, the Employee Relations Officer shall determine the appropriate unit or units in accordance with the standards in Section 17.09 of this Article II. The petitioning employee organizations shall have fifteen (15) days from the date notice of such unit determination is communicated to them by the Employee Relations Officer to amend their petitions to conform to such determination, or appeal such determination pursuant to Section 17.11 of this Article II.

2.04. Granting Recognition Without an Election

When an employee organization petitioning for exclusive recognition as the representative of a unit determined to be appropriate, submits written proof that it represents at least 50 percent of the employees in such unit with its petition for recognition and if no other employee organization filed a challenging petition, the petitioning employee organization and the Employee Relations Officer shall request the California State Mediation and Conciliation Service, or another agreed upon neutral third party, to review the count, form, accuracy and propriety of the proof of support If the neutral third party makes an affirmative determination, the Employee Relations Officer shall formally acknowledge the petitioning employee organization as the exclusive recognized employee organization for the designated unit.

2.05. Election Procedure

The Employee Relations Officer shall arrange for a secret ballot election to be conducted by a party agreed to by the Officer and the affected employee organization(s), in accordance with such party's rules and procedures, and subject to the provisions of this Policy. All employee organizations who have duly submitted petitions which have been determined to be in conformance with 17.03 shall be included on the ballot. The choice of “no organization” shall also be included on the ballot. Employees entitled to vote in such election shall be those persons employed in regular permanent positions within the designated appropriate unit who were employed during the pay period immediately prior to the date which includes the date which is (15) days before the date of the election, including those who did not work during such period because of illness, vacation or other authorized leaves of absence, and who are employed by the City in the same unit on the date of the election. An employee organization shall be formally acknowledged as the exclusively recognized employee organization for the designated appropriate unit following an election or run-off election if it received a numerical majority of all valid votes cast in the election. In an election involving three or more choices, where none of the choices receives a majority of the valid votes cast, a run-off election shall be conducted between the two choices receiving the largest number of valid votes cast; the rules governing an initial election being applicable to a run-off election.

There shall be no more than one valid election under this Policy pursuant to any petition in a 12-month period affecting the same unit.

In the event that the parties are unable to agree on a third party to conduct an election, the election shall be conducted by the California State Mediation and Conciliation Service.

Costs of conducting elections shall be borne in equal shares by the City and by each employee organization appearing on the ballot.

2.06. Procedure for Decertification of Exclusively Recognized Employee Organization

A Decertification Petition alleging that the incumbent exclusively recognized employee organization no longer represents a majority of the employees in an established appropriate unit may be filed with the Employee Relations Officer only during the month of March of any year following the first full year of recognition, or during the thirty (30) day period commencing one hundred twenty (120) days prior to the termination date of a Memorandum of Understanding then having been in effect less than three (3) years, whichever occurs later. A decertification petition may be filed by two or more employees or their representative, or an employee organization, and shall contain the following information and documentation declared by the duly authorized signatory under penalty of perjury to be true, correct and complete:

A. The name, address and telephone number of the petitioner and a designated representative authorized to receive notices or requests for further information.

B. The name of the established appropriate unit and of the incumbent exclusively recognized employee organization sought to be decertified as a representative of that unit.

C. An allegation that the incumbent exclusively recognized employee organization no longer represents a majority of the employees in the appropriate unit, and any other relevant and material facts relating thereto.

D. Proof of employee support that at least thirty (30) percent of the employees in the established recognized appropriate unit no longer desire to be represented by the incumbent exclusively recognized employee organization. Such proof shall be submitted for confirmation to the Employee Relations Officer or to a mutually agreed upon disinterested third party within the time limits specified in the first paragraph of this Section 17.08.

The petition, including all accompanying documents, shall be verified, under oath, by the person signing it that its contents are true. It may be accompanied by a petition for recognition by a challenging organization.

E. An employee organization may, in satisfaction of the Decertification Petition requirements hereunder, file a Petition under this Section in the form of a Recognition Petition that evidences proof of employee support of at least thirty (30) percent, that includes the allegation and information and otherwise conforms to the requirements of Section 17.03 of this Article II. The employee organization must also state that it wishes to replace the incumbent employee organization as the exclusive representative

The Employee Relations Officer shall initially determine whether the Petition has been filed in compliance with the applicable provisions of this Article II. If the determination is in the negative, the Employee Relations Officer shall offer to meet thereon with the representative(s) of such petitioning employees or employee organization and, if such determination thereafter remains unchanged, shall return such Petition to the employees or employee organization with a statement of the reasons therefore in writing. The petitioning employees or employee organization may appeal such determination in accordance with Section 17.11 of this Article II. If the determination of the Employee Relations Officer is in the affirmative, or if a negative determination is reversed on appeal, the Officer shall give written notice of such Decertification or Recognition Petition to the incumbent exclusively recognized employee organization and to unit employees.

The Employee Relations Officer shall thereupon arrange for a secret ballot election to be held fifteen (15) days after such notice to determine the wishes of unit employees as to the question of decertification and, if a Recognition Petition was duly filed hereunder, the question of representation. Such election shall be conducted in conformance with Section 17.07 of this Article II.

During the "open period" specified in the first paragraph of this Section 17.08 of this Article II, the Employee Relations Officer may on his/her own motion, when he/she has reason to believe that a majority of unit employees no longer wish to be represented by the incumbent exclusively recognized employee organization, give notice to that organization and all unit employees that he/she will arrange for an election to determine that issue. In such event any other employee organization may within fifteen (15) days of such notice file a Recognition Petition in accordance with this Section 17.08, which the Employee Relations Officer shall act on in accordance with this Section 17.08 of this Article II.

If, pursuant to this Section 17.08 of this Article II, a different employee organization is formally acknowledged as the exclusively recognized employee organization, such organization shall be bound by all the terms and conditions of any Memorandum of Understanding then in effect for its remaining term.

2.07. Policy and Standards for Determination of Appropriate Units

The policy objectives in determining the appropriateness of units shall be the effect of a proposed unit on (1) the efficient operations of the City and its compatibility with the primary responsibility of the City and its employees to effectively and economically serve the public, and (2) providing employees with effective representation based on recognized community of interest considerations. These policy objectives require that the appropriate unit shall be the broadest feasible grouping of positions that share an identifiable community of interest. Factors to be considered shall be:

A. Similarity of the general kinds of work performed, types of qualifications required, and the general working conditions.

B. The extent to which members have similar work location and interaction with other City employees.

C. The extent to which members interchange job functions and job duties.

D. The extent to which members have a common line of supervision.

E. History of representation in the City and similar employment; except however, that no unit shall be deemed to be an appropriate unit solely on the basis of the extent to which employees in the proposed unit have organized.

F. Consistency with the organizational patterns of the City.

G. Number of employees and classifications, and the effect of the unit on the administration of employer-employee relations created by the fragmentation of classifications and proliferation of units.

H. Effect on the classification structure and impact on the stability of the employer-employee relationship of dividing a single or related classifications among two or more units.

I. The application and consistency of wage, hour, and benefit packages (including retirement benefits) within the proposed bargaining unit.

Notwithstanding the foregoing provisions of this Section, managerial, supervisory and confidential responsibilities, as defined in Section 17.02 of this Policy, are determining factors in establishing appropriate units hereunder, and therefore such managerial, supervisory and confidential employees may only be included in units that do not include non-managerial, non-supervisory and non-confidential employees. Managerial, supervisory and confidential employees may not represent any employee organization which represents other employees. In the establishment of appropriate units, professional employees shall not be denied the right to be represented separately from nonprofessional employees.

The Employee Relations Officer shall have the responsibility of designating the confidential, managerial, supervisorial or professional status of employees upon the initial formation of a bargaining unit; and thereafter, upon the petition by an employee organization or by the recommendation of the City Manager.

Full-time Peace Officers may not be denied the right to be included in a "peace officer" only unit as that term is defined in these rules and regulations.

The Employee Relations Officer shall, after notice to and consultation with affected employee organizations, allocate new classifications or positions, delete eliminated classifications or positions, and retain, reallocate or delete modified classifications or positions from units in accordance with the provisions of this Section. The decision of the Employee Relations Officer shall be final.

2.08. Procedure for Modification of Established Appropriate Units

Requests by employee organizations for modifications of established appropriate units may be considered by the Employee Relations Officer only during the period specified in Section 17.08 of this Article II. An employee organization may initiate a petition under this section to: (1) add unrepresented classifications to a unit it represents; (2) divide a unit it represents into 2 or more units; (3) to consolidate 2 or more units it represents into 1 unit; (4) to delete classifications or positions from a unit, where by virtue of changes in circumstances, the positions are no longer appropriate in the established unit; (5) to make technical changes to clarify or update the unit descriptions; (6) to resolve a dispute as to unit placement or designation of a new classification or position; or (7) to delete classifications or positions in cases where no changes in circumstance are alleged, on the basis that the classification or positions is management, confidential, supervisory, or professional, and is otherwise prohibited by law from inclusion in the unit. Such requests shall be submitted in the form of a Recognition Petition and, in addition to the requirements set forth in Section 17.03 of this Article II, shall contain a complete statement of all relevant facts and citations in support of the proposed modified unit in terms of the policies and standards set forth in Section 17.09 of this Article II, including:

A. The name, address, and telephone and fax numbers of the exclusive representative(s) of the unit(s) affected by the petition;

B. A brief description of the title(s) of the established unit(s);

C. A brief description of the modification(s) sought by the petition, including, but not limited to, a statement of the position(s) or classification(s) that the petition seeks to include in the unit;

D. A list of all classifications to be included in the modified unit and the number of employees in each classification, as well as the division(s) and/or department(s) to which they belong;

E. Written proof of support that at least 30 percent of the employees within the classifications, who, if the proposed modification should be granted, would be moved from one represented unit to another; except that there is no proof of support requirement for the proposed addition of employees constituting less than ten percent or the original unit and where the proposed addition would increase the size of the established unit by less than ten percent.

(1) If the petition requests the addition of classifications or positions to an established unit, and the proposed addition would increase the size of the established unit by ten percent or more, the Public Employment Relations Board ("Board") shall require proof of majority support of persons employed in the classifications or positions to be added.

(2) If the petition requests the addition of classifications or positions to an established unit and the classifications or positions are also included in a proposed appropriate unit in a pending request for recognition or petition for certification, the Board shall require proof of at least thirty percent support of persons employed in the classifications or positions to be added.

The Employee Relations Officer shall process such petitions as other Recognition Petitions under this Article II.

The Employee Relations Officer may by his/her own motion propose that an established unit be modified. The Employee Relations Officer shall give written notice of the proposed modification(s) to any affected employee organization and shall hold a meeting concerning the proposed modification(s), at which time all affected employee organizations shall be heard. Thereafter the Employee Relations Officer shall determine the composition of the appropriate unit or units in accordance with Section 17.09 of this Article II, and shall give written notice of such determination to the affected employee organization(s). The Employee Relations Officer's determination may be appealed as provided in Section 17.11 of this Article II. If a unit is modified pursuant to the motion of the Employee Relations Officer hereunder, employee organizations may thereafter file Recognition Petitions seeking to become the exclusively recognized employee organization for such new appropriate unit or units pursuant to Section 17.03 of this Article II.

2.09. Appeals

An employee organization aggrieved by an appropriate unit determination of the Employee Relations Officer; or an employee organization aggrieved by a determination of the Employee Relations Officer that a Recognition Petition (Sec. 17.03), Challenging Petition (Sec. 17.05), Decertification Petition (Sec. 17.08), Unit Modification Petition (Sec. 17.10), or employees aggrieved by a determination of the Employee Relations Officer that a Decertification Petition (Sec. 17.08) has not been filed in compliance with the applicable provisions of this Article II, may, within ten (10) days of notice of the Employee Relations Officer's final decision, request to appeal such determination to the City Council for final decision.

Appeals to the City Council shall be filed in writing with the City Clerk, and a copy therein served on the Employee Relations Officer. The City Council shall commence to consider the matter within thirty calendar (30) days of the filing of the appeal. The City Council may, in its discretion, refer the dispute to a third party hearing process. Any decision of the City Council on the use of such procedure, and/or any decision of the City Council determining the substance of the dispute shall be final and binding.

Section 3 Administration

3.01. Submission of Current Information by Recognized Employee Organizations

All changes in the information filed with the City by an exclusively recognized employee organization under items (A.) through (K.) of its recognized petition under Section 17.03 of this Policy shall be submitted in writing to the Employee Relations Officer within fourteen (14) days of such change.

3.02. Employee Organization Activities - Use of City Resources

Access to City work locations and facilities by employee organizations shall be authorized only to the extent required by the MMBA or provided for in the appropriate Memoranda of Understanding for an exclusively recognized employee organization. Such activities and access shall be limited to:

A. Activities pertaining directly to the employer-employee relationship and not other activities such as political campaigns;

B. Non-work time when employees are free from duty, and in non-work locations within the City facilities unless prior arrangements have been made with management at the facility;

C. Such times and locations that do not interfere with the employees' regular duties, or the efficiency, safety and security of City operations.

3.03. Meeting and Conferring in Good Faith and Memoranda of Understanding.

Pursuant to the provisions of California Government Code, Section 3500 et seq., as said sections apply to City, the City, through its designated representatives, shall meet and confer in good faith with representatives of exclusively recognized employee organizations, regarding matters within the scope of representation. Only exclusively recognized employee organizations shall be entitled to negotiate with duly designated management representatives on wages, hours, and other terms and conditions of employment for the employees in the bargaining units for which they have been recognized as the exclusive representative.

When the meet and confer process is concluded between the City and an exclusively recognized employee organization, all agreed upon matters shall be incorporated in a written memorandum of understanding signed by the duly authorized City and the exclusively recognized employee organization. The memorandum of understanding shall be submitted to the City Council for determination and implementation on matters over which the Council has authority. A memorandum of understanding shall not be binding on the City or the exclusively recognized employee organization until approved by the City Council.

3.04. Administrative Rules and Procedures

The City Manager or designee is hereby authorized to establish such rules and procedures as appropriate to implement and administer the provisions of this Policy after consultation with affected employee organizations.

Section 4 Impasse Procedures

4.01. Initiation of Impasse Procedures

If the meet and confer process has reached impasse as defined in Section 17.02 of this Policy, either party may initiate the impasse procedure by filing with the other party a written request for an impasse meeting, together with a statement of its position on all issues. An impasse meeting shall then be scheduled promptly by the Employee Relations Officer. The purpose of such meeting shall be:

A. To review the position of the parties in a final good faith effort to reach agreement on a Memorandum of Understanding;

B. To identify and specify in writing the issue or issues that remain in dispute; and

C. If the impasse is not resolved, to discuss arrangements for the utilization of the impasse procedure provided herein, including mediation and possible factfinding.

4.02. Mediation

A. If the City and the exclusively recognized employee organization do not resolve the disputed issues at the impasse meeting, the parties may agree to submit the dispute to mediation within 5 working days following the impasse meeting. If the parties agree to submit the dispute to mediation, within 10 working days after the impasse meeting, the City Manager shall notify the California State Mediation and Conciliation Service that the parties have reached impasse and request the appointment of a mediator and scheduling of mediation as soon as possible. Alternatively, the parties may mutually agree to the selection and scheduling of a particular mediator or receive a list of seven (7) mediators from the California State Mediation and Conciliation Service. If the parties agree to select a mediator from a list of seven (7), the parties shall select one from the list by, after a toss of coin (with the winner of the coin toss to decide which party shall move first), alternately striking names until one name remains. That person remaining shall serve as the mediator. The parties shall provide to the mediator written statements outlining their relative positions on the remaining disputed issues. All mediation proceedings shall be private. The mediator shall make no public recommendation or statement, nor take any public position at any time concerning the issues.

B. The mediator or either party shall have the right to terminate the mediation proceedings at any time and for any reason. When either party determines mediation is unsuccessful, but no later than thirty (30) calendar days after the appointment of the mediator, mediation shall be deemed to have concluded.

4.03. Factfinding

A. Request for Factfinding.

1. When the Dispute was Submitted to Mediation. In the event that the City and the exclusively recognized employee organization fail to reach agreement through mediation, the exclusively recognized employee organization may request factfinding be used in an attempt to resolve the remaining issues in dispute. The exclusively recognized employee organization must submit the request for factfinding in writing to the Public Employment Relations Board ("PERB"), with a copy sent simultaneously to the City Manager. If the dispute was submitted to mediation, the exclusively recognized employee organization may request factfinding not sooner than thirty (30) calendar days, but not later than 45 calendar days, following the appointment or selection of the mediator, selected/appointed in accordance with 17.17 above.

2. When the Dispute was not Submitted to Mediation. If the dispute was not submitted to mediation, the exclusively recognized employee organization must request factfinding no later than 30 calendar days from the date either party presented a written declaration of impasse. Requests for factfinding shall be made in accordance with the MMBA and applicable PERB Regulations.

3. Within 5 calendar days of submitting a request for factfinding with PERB, the exclusively recognized employee organization must submit the following written information to the City:

a. A statement that the parties are at an impasse and have been unable to reach agreement;

b. A statement identifying the issues in dispute; and

c. Any documentation to support the party's position.

B. Selection of Factfinding Panel. If the exclusively recognized employee organization timely requests factfinding, a factfinding panel of three shall be appointed in the following manner:

1. Within five (5) calendar days of the request for factfinding, each party shall select one individual of its own choosing to serve on the factfinding panel.

2. Within five (5) calendar days of the request for factfinding, the City and the exclusively recognized employee organization shall jointly select the third member of the factfinding panel ("Pre-Designated

Chairperson") and the third person shall serve as the factfinding panel chairperson.

3. If the parties are unable to mutually agree on a Pre-Designated Chairperson within five (5) calendar days of the exclusively recognized employee organization's request for factfinding, the City shall request that PERB provide the parties a list of seven (7) qualified factfinders, and the parties will select a factfinder from this list who will certify that he or she will start the factfinding proceedings within ten (10) calendar days of notification by the parties. After a toss of a coin to decide which party shall strike the first name, a representative of the City and a representative of the exclusively recognized employee organization shall alternatively strike one name from the list until one name remains, and such person shall act as the factfinding Pre-Designated Chairperson. The next to the last name stricken shall be the alternate factfinding chairperson in the event the first named person is not available. The procedure shall be followed until there is an available Pre-Designated Chairperson. The City shall confirm, with PERB, the Pre-Designated Chairperson within ten (10) calendar days of the date it received a list of seven (7) qualified fact-finders from PERB.

C. Factfinding Proceedings. All factfinding proceedings shall be private. The factfinding members and/or the factfinding panel shall not have the authority to resolve the dispute. The members of the factfinding panel, the City, and the exclusively recognized employee organization shall each maintain the confidentiality of the factfinding process.

1. The factfinding process shall be deemed to be completed thirty (30) calendar days after the appointment of the Pre-Designated Chairperson. The factfinding panel or chairperson may not extend the time lines without expressed mutual written consent of the parties.

2. Failure by either party to be available within the thirty (30) calendar day time period shall not cause an extension of the time frames.

3. The factfinding panel shall be limited in scope only to the matters the parties identified as having reached impasse over and to those matters within the mandatory subjects of bargaining unless the parties mutually agree, in writing, to submit issues that are non-mandatory subjects.

D. Factfinding Criteria. The factfinding panel shall consider, weigh, and be guided by the following criteria:

1. State and federal laws that are applicable to the employer.

2. Local rules, regulations, or ordinances.

3. Stipulations of the parties.

4. The interests and welfare of the public and the financial ability of the public agency.

5. Comparison of the wages, hours, and conditions of employment of the employees involved in the factfinding proceeding with the wages, hours, and conditions of employment of other employees performing similar services in comparable public agencies.

6. The consumer price index for goods and services, commonly known as the cost of living.

7. The overall compensation presently received by the employees, including direct wage compensation, vacations, holidays, and other excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.

8. Any other facts, not confined to those specified in paragraphs (1) to (7), inclusive, which are normally or traditionally taken into consideration in making the findings and recommendations.

E. Factfinding Report. Within thirty (30) calendar days after its appointment, the factfinding panel shall submit in writing a report containing any findings of fact and recommended terms of settlement to the parties.

1. To the extent the factfinding panel makes findings and recommendations, those findings and recommendations shall be made on an issue-by-issue basis, either making no recommendation (and indicating that no recommendation is being made), or recommending either the City's position or the exclusively recognized employee organization's position.

2. The factfinding panel shall limit is findings and recommendations to the issues that fall within mandatory subjects of bargaining, unless the parties mutually agree, in writing, to submit issues that are non-mandatory subjects.

3. The parties shall maintain the confidentiality of the factfinding panel's report during the first nine (9) calendar days following its issuance. If the parties have not reached agreement on a new or successor memorandum of understanding by ten (10) calendar days following issuance of the factfinding panel's report, the City shall make the report public.

4. The factfinding report shall be advisory only, and the City Council may choose to adopt or act on any, all, or none of the recommendations of the panel.

5. On or after the date the City has released the factfinding panel's report to the public, the City may, after holding a public City Council hearing regarding the impasse, implement the last, best and final offer, but may not implement a memorandum of understanding.

6. If the factfinding panel was unable to meet the deadline, and thereby is unable to recommend terms of settlement to the City Council, that fact shall constitute the totality of the report.

F. Discontinuation of Factfinding. Notwithstanding any other provision of these Rules, the exclusively recognized employee organization may choose to discontinue ongoing factfinding at any time by notifying the City in writing that it waives its right to complete the factfinding process. Written waivers shall be irrevocable. Upon receiving a waiver from the exclusively recognized employee organization, the City may, after holding a public hearing regarding the impasse, implement the last, best, and final offer.

G. The factfinding provisions contained in these Rules shall remain in effect and apply only so long as state law requires the parties to proceed to factfinding.

4.04. Costs of Impasse Procedures

The cost for the services of a mediator and fact-finder or chairperson of a fact-finding panel utilized by the parties, and other mutually incurred costs of mediation and fact-finding, shall be borne equally by the City and the exclusively recognized employee organization. The cost for a fact-finding panel member selected by each party, and other separately incurred costs, shall be borne by such party.

Section 5 Miscellaneous Provisions

5.01. Construction

This Policy shall be administered and construed as follows:

A. Nothing in this Policy shall be construed to deny to any person, employee, organization, the City, or any authorized officer, body or other representative of the City, the rights, powers and authority granted by federal or State law.

B. This Policy shall be interpreted so as to carry out its purpose as set forth in Article I.

C. Nothing in this Policy shall be construed as making the provisions of California Labor Code Section 923 applicable to City employees or employee organizations, or of giving employees or employee organizations the right to participate in, support, cooperate or encourage, directly or indirectly, any strike, sickout or other total or partial stoppage or slowdown of work. In consideration of and as a condition of initial and continued employment by the City, employees recognize that any such actions are in violation of their conditions of employment except as expressly otherwise provided by legally preemptive state or contrary local law. In the event employees engage in such actions, they shall be subject to disciplinary action up to and including termination, and may be replaced, to the extent such actions are not prohibited by preemptive law; and employee organizations may thereby forfeit rights afforded to them under City law or a ratified and approved MOU.

5.02. Severability

If any provision of this Policy, or the application of such provision to any persons or circumstances, shall be held invalid, the remainder of this Policy, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

5.03. City Management Rights

The City retains the sole right to manage its business and determine the merits, necessity, nature, or extent of services to be performed. Unless specifically in conflict with a ratified and approved MOU, all management rights shall remain vested exclusively with the City. In addition to all rights or powers granted by law, City's management rights include but are not limited to:

A. The right to determine the mission of the City, including without limitation the City's departments, divisions, institutions, boards and commissions;

B. The right of full and exclusive control of the management of the City; supervision of all operations; determinations of methods, means, location and assignments of performing all work; and the composition, assignment, direction, location and determination of the size and mission of the work force;

C. The right to determine the work to be done by employees, including establishment of service levels, appropriate staffing and the allocation of funds for any positions(s) within the City;

D. The right to review and inspect, without notice, all City-owned facilities, including without limitation desktop computers, work areas and desks, e-mail, computer storage drives, voicemail systems and filing cabinets and systems, to the full extent permitted by law;

E. The right to change or introduce different, new or improved operations, technologies, methods or means regarding any city work, and to contract out for work;

F. The right to establish and modify qualifications for employment, including the content of any job classification, job description or job announcement, and to determine whether minimum qualifications are met;

G. The right to maintain and modify the City's classification plan;

H. The right to establish and enforce employee performance standards;

I. The right to schedule and assign work, make reassignments and assign overtime work;

J. The right to hire, fire, promote, discipline, reassign, transfer, release, layoff, terminate, demote, suspend or reduce in step or grade, all employees;

K. The right to establish and modify bargaining units; to assign new or amended classifications to particular bargaining units; and to designate any position confidential, supervisory, management or otherwise for bargaining unit assignments pursuant to the MMBA;

L. The right to inquire and investigate regarding complaints or concerns about employee performance deficiencies or misconduct of any sort, including the right to require employees to appear, respond truthfully and cooperate in good faith regarding any City investigation;

M. The right to maintain orderly, effective and efficient operations;

N. The right to publish its views, and to distribute appropriate information, concerning any labor relations issue;

O. The right to correct misstatements and other inaccurate information disseminated by third parties concerning the City's labor relations and any aspect thereof; and

P. The right to take any appropriate lawful measure to ensure the best delivery of services to the public in response to any work stoppage, including without limitation: (a) altering work schedules or locations to ensure coverage; (b) investigating absences to ensure no violation of City policies.

Except in cases of emergencies as defined in the MMBA or in Government Code section 8558, the City shall provide advance notice to each recognized employee organization affected by any ordinance, rule, resolution, or regulation directly relating to matters within the scope of representation proposed to be adopted by the City and shall give such recognized employee organization the opportunity to meet with city representatives. In the event of emergency causing the City to immediately adopt an ordinance, rule, resolution or regulation directly relating to matters within the scope of representation, the City shall provide notice and opportunity to meet at the earliest practicable time.

5.04. Rights of City Employees

Unless specifically in conflict with a ratified and approved MOU, all employees shall enjoy the following rights:

A. The right to form, join, and participate in the activities of employee organizations of their own choosing for the purpose of representation on all matters of employer-employee relations;

B. The right to refuse to join or participate in the activities of employee organizations;

C. The right to represent themselves individually in their employee/employer relations; and

The right to be free of interference, intimidation, restraint, coercion, or discrimination because of exercising rights specified in this section.

SERVICE AND EMOTIONAL SUPPORT ANIMAL POLICY

I. PURPOSE AND POLICY

The City of Soledad ("City") may permit employees, on a case-by-case assessment, to bring a service or emotional support animal on City premises during working hours, subject to this Service and Emotional Support Animal Policy ("Policy"). This Policy applies to all employees of the City and is designed to work in conjunction with the City's reasonable accommodation policy for qualified individuals with a disability, as such terms are defined under the law.

II. PROCEDURE

Prior to bringing a service or emotional support animal on premises, an employee must request a reasonable accommodation and start the interactive process with Human Resources. The Human Resources Manager will review the request and seek approval from the Personnel Director. An employee who requests the support of a service or emotional support animal must provide a letter from their health care provider certifying that the animal is necessary as an accommodation to allow the employee to perform the essential functions of their job.

III. SERVICE ANIMALS

The American with Disabilities Act ("ADA") defines a service animal as a dog or miniature horse that has been individually trained to do work or perform tasks for an individual with a disability. The task(s) performed by the service animal must be directly related to the person's disability. The City may, subject to compliance with this Policy and any other related requirements contained in the City's Personnel Rules and Regulations Manual or any other related policy, approve an employee's service animal at City offices.

IV. EMOTIONAL SUPPORT ANIMALS

An emotional support animal (also known as a comfort animal) provides reassurance just by being with a person. Dogs, cats, birds, hamsters, and many other species can serve as emotional support animals. However, they do not qualify as "service animals" under the ADA. The City has chosen to allow emotional support animals on its premises, ***only*** if these two conditions are met:

- The animal owner has obtained prior approval from the Personnel Director; and
- The animal does not pose a threat of harm or disruption to others. Whether an animal poses a threat of harm or disruption to others is subject to the pertinent Department Director's sole evaluation, in consultation with Human Resources, based on the Department Director's sole discretion. A decision that an animal poses such harm or disruption, is not subject to appeal or grievance and shall be final and binding.

Please note: each employee requesting an emotional support animal must comply with the same limitations, restrictions, and requirements as employees requesting a service animal, which appear below. Employees who do not uphold these responsibilities may be asked to remove an emotional support animal from the premises.

V. RESPONSIBILITIES OF EMPLOYEES BRINGING SERVICE ANIMALS OR EMOTIONAL SUPPORT ANIMALS

A. Medical Need for Animal. An employee who requests the support of a service or emotional support animal must provide a letter from their health care provider certifying that the animal is necessary as an accommodation to allow the employee to perform the essential functions of their job.

B. Control. The service or emotional support animal must respond to voice or hand commands and be under the full control of its employee handler. Animals should always be on a leash or harness unless the leash or harness would reasonably interfere with its service or support. The animal should not destroy City or building property or the property of people onsite, show aggression or cause physical harm, or otherwise endanger the health or safety of anyone in the workplace.

C. Etiquette. The service or emotional support animal should not actively seek the attention of other people, display behaviors or noises that are disruptive in the workplace, or create offensive odors.

D Waste Cleanup. All service or emotional support animals must be housebroken. Employee handlers must ensure that their animal has adequate breaks for relieving itself. The cleanup of waste is the sole responsibility of the employee handler. In the event of an accident in City offices, the employee handler must clean the fluid or other matter and inform Human Resources so that a thorough cleaning may be completed.

E. General Cleanup. The employee handler is responsible for cleaning up after their animal before leaving the office each day.

F. Equipment. The employee handler should bring items necessary to support their animal while in City offices including but not limited to a leash, harness, food/water bowl(s), and/or sleeping mat/pad. The City is not responsible for any loss or damages to these items.

VI. REMOVAL OF SERVICE AND EMOTIONAL SUPPORT ANIMALS

Please note that the City assumes no responsibility for the care or well-being of service or emotional support animals. The City reserves the right to remove a service or emotional support animal from the premises in certain circumstances including, but not limited to the following:

- The animal is not under the employee handler's control;
- The animal is not house-trained;
- The animal is disruptive, exhibits aggression or causes physical harm, or otherwise endangers the health or safety of anyone in the workplace;
- The animal destroys City or building property or the property of others; or
- The animal produces offensive odors

A determination as to whether a service or emotional support animal shall be removed is subject to the pertinent Department Director's sole evaluation, in consultation with Human Resources, based on the Department Director's sole discretion. A decision that an animal shall be removed under to this policy is not subject to appeal or grievance, and shall be final and binding.