

CITY OF YUBA CITY
STAFF REPORT

Date: September 17, 2019
To: Honorable Mayor and Members of the City Council
From: Human Resources Department
Presentation By: Natalie Springer, Human Resources Director

Summary

Subject: Police Sergeants' Letter of Understanding (LOU).
Recommendation: A. Adopt a Resolution approving a two year Letter of Understanding with the Police Sergeants.
B. Approve a supplemental appropriation of \$94,800 to the FY 2019/2020 adopted budget.
Fiscal Impact: An increase in cost of \$94,800 for FY 2019/2020 and \$222,300 cumulatively for FY 2020/2021.

Purpose:

To approve the Police Sergeants' Letter of Understanding.

Background:

The City's employment agreement with the Police Sergeants' group expired on June 30, 2019. The City and the Police Sergeants' group have been meeting since April 2019 to negotiate a new employment agreement. The previous agreement included a one-time PERSable distribution at 2% of annual compensation based on hourly wage (whichever was greater) and a 2% salary increase in year two. In addition, the contract included increased bilingual pay, acting pay and vacation accrual rates for lateral Police Sergeants.

While the City continues to face growing employee pension obligations the City must remain competitive in recruiting and retaining Police employees, which requires competitive employee compensation. The proposed employment contract is an attempt to find the balance between competitive employee compensation and management of the increasing employee pension obligations.

Analysis:

The Police Sergeants have agreed to a two year Letter of Understanding that:

1. Includes a 5% hourly rate increase in year one (applied retroactively to the first full pay period after July 1, 2019);
2. Includes a 4% hourly rate increase in year two (effective the first full pay period after July 1, 2020);
3. Includes 7.5% incentive pay (increase from 5%) for employees assigned to Investigations

- and Net-5 (effective September 28, 2019);
4. Increases education incentive pay to 5.2% for Sergeants who possess a POST Supervisory Certificate. The cap shall be increased to 12.7% (effective the pay period that includes July 1, 2020);
 5. Eliminates requirement for Accident Reconstruction Certificate for Traffic Sergeant;
 6. Increases benefits for dental and vision coverage;
 7. Increases Tuition Reimbursement Program to \$5,000 per fiscal year;
 8. Includes adjustment to comparable agency data source list.

The complete Letter of Understanding is attached.

Fiscal Impact:

The proposed changes will result in a net increase in cost of \$94,800 for FY 19/20 and \$222,300 cumulatively for FY 20/21. Costing does not include benefit rates or increased pension costs.

Alternatives:

Do not approve the Police Sergeants' Letter of Understanding and provide staff direction.

Recommendation:

Adopt a Resolution approving a two year Letter of Understanding with Police Sergeants, and approve a supplemental appropriation of \$94,800 to the FY 2019/2020 adopted budget.

Attachments:

- A. Cost impact of Police Sergeants Agreement Terms
- B. Police Sergeants LOU Resolution
- C. Police Sergeants LOU

Prepared By:

Submitted By:

/s/ Ciara Wakefield

Ciara Wakefield
Administrative Analyst II

/s/ Michael Rock

Michael Rock
City Manager

Reviewed By:

Human Resources

NS

Finance

RB

City Attorney

SLC by email

ATTACHMENT A

City of Yuba City
Sergeants - Impact of 2 Year Agreement--FINAL

Sergeants

<i>FY 19/20 - Year 1</i>	
Pay Rate Increase - 5%	\$ 81,800
Detective & Net 5 Premium	13,000
Year 1 Total Cost	<u>\$ 94,800</u>
<i>FY 20/21 - Year 2</i>	
Pay Rate Increase - 5%	\$ 81,800
Detective & Net 5 Premium	13,000
Pay Rate Increase - 4%	85,100
Education Incentive-Year 2	28,900
Detective & Net 5 Premium	13,500
Year 2 Total Cumulative Cost	<u>\$ 222,300</u>
<i>Grand Total Cost Impact-2 Year Total</i>	<u>\$ 317,100</u>

Note: Costing does not include changes in benefit rates

ATTACHMENT B

RESOLUTION NO.

**RESOLUTION OF THE CITY COUNCIL OF THE CITY OF YUBA CITY
APPROVING THE POLICE SERGEANTS LETTER OF UNDERSTANDING
JULY 1, 2019 – JUNE 30, 2021**

WHEREAS, the City recognizes the Police Sergeants commitment to the City and its citizens while providing outstanding and dedicated service to all and;

WHEREAS, City staff and the Police Sergeants have negotiated a tentative two year Letter of Understanding subject to Council approval which was approved by Police Sergeant representatives on August 27, 2019 and;

WHEREAS, the City appreciates the efforts and energy the Police Sergeants have put forth to negotiate this Letter of Understanding.

NOW, THEREFORE, BE IT RESOLVED by the City Council of the City of Yuba City as follows:

Approve the attached Police Sergeants Letter of Understanding.

The attached Letter of Understanding is hereby approved effective immediately and is retroactive to July 1, 2019.

The Director of Finance is hereby authorized to make the necessary budget adjustments to implement the provisions of this resolution.

The foregoing Resolution of the City Council of the City of Yuba City was duly introduced, passed and adopted at a regular meeting thereof held on the 17th day of September 2019.

AYES:

NOES:

ABSENT:

ATTEST:

Shon Harris, Mayor

Patricia Buckland, City Clerk

Approved as to form:

Stacey Sheston
BB&K, Special Counsel

ATTACHMENT C

LETTER OF UNDERSTANDING

Between

The City of Yuba City

And

The Yuba City Police Sergeants

July 1, 2019 through June 30, 2021

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ARTICLE 1 MANAGEMENT AND ASSOCIATION RIGHTS

1.1 Management Rights

City Rules and Regulations, Section 3.03, Employer-Employee Standards, B, City Rights is incorporated into this agreement.

1.2 Association Rights

The City agrees to follow the rights of employees as enumerated in the Peace Officers Bill of Rights and will adhere to the provisions of the Myers-Milias Brown Act that states in part, "the matter in question is negotiable if it primarily relates to and has a significant or material relationship to wages, hours, and terms and conditions of employment, and is not itself a fundamental management right related to the merits, necessity, or organization of any service or activity provided by law or executive order."

ARTICLE 2 WAGES

2.1 Hourly Rate Increase

Effective the first full pay period following July 1, 2019, the City agrees to implement a 5% ongoing base hourly rate increase.

Effective the first full pay period following July 1, 2020, the City agrees to implement a 4% ongoing base hourly rate increase.

2.2 Education Incentive

Effective March 3, 2018, the Sergeants shall receive an educational incentive of 2.5% for an Associate's degree or POST Intermediate Certificate; 7.5% for a Bachelor's degree or POST Advanced Certificate and an additional 2.7% for possession of a POST Supervisory Certificate. Incentive pays are not cumulative, meaning that a Sergeant is eligible only for once incentive for each type of degree or certificate (i.e., if a Sergeant has two Associate's degrees, the employee is eligible for an incentive of 2.5%; if a Sergeant has an Associate's degree and a POST Intermediate Certificate, the employee is eligible for an incentive of 5.0%). Incentive pays are not compounded, meaning that each incentive is separately applied to the Sergeant's base pay. The Total of all the above incentives shall not exceed 10.2% per employee.

Effective the pay period that includes July 1, 2020, education incentive pay for Sergeants who possess a POST Supervisory Certificate shall receive 5.2% incentive pay and the cap for employees with a POST Supervisory Certificate shall be increased to 12.7%.

2.3 Bilingual Pay

Police Sergeants who are proficient in speaking a foreign language shall receive a \$100 per month bilingual pay incentive. The method for certifying proficiency and the determination of which languages will be covered under this program shall be determined by the City in consultation with the Police Sergeants Association.

2.4 Holiday Pay

In lieu of time off for holidays and holiday pay, Police Sergeants assigned to regular patrol shifts shall receive straight time pay for 7.33 hours per month, paid and computed on a bi-weekly basis. This pay shall be computed at the hourly equivalent rate for the employee's monthly salary. For new or terminating employees, said in lieu pay shall be pro-rated from the date of employment or to the date of termination within the pay period.

2.5 Call Back Pay

Sergeants who are called or scheduled to return to work after having left the work site shall be compensated in accordance with Personnel Rule 2.06(l). A return to work prior to the start of the

shift shall also be compensated accordingly provided that the reporting time for work is 2 or more hours prior to the regular shift start time.

2.6 On Call Pay

Police Sergeants who are assigned to on-call status during weekday evenings (Monday - Thursday, 5:00 p.m. to 8:00 a.m.) will receive standby pay of \$2.45 per hour.

2.7 Daylight Savings Time

Police Sergeants who work on those days when daylight savings time change occurs shall be paid overtime for hours in excess of their regular scheduled work hours. If daylight savings time causes an employee to work less than a full shift, the employee shall be allowed to use vacation or accumulated compensatory time to make up the difference. Vacation or accumulated compensatory time so used shall be considered as in pay status.

2.8 Uniform Allowance

For all positions required to wear a uniform, a uniform allowance of \$900 per year shall be paid.

2.9 Acting Pay

Employees assigned to higher classifications on a temporary basis shall receive acting pay. Employees will be compensated by receiving pay in the higher classification at that step in the salary range which results in a minimum of a 5% increase in compensation over their current base wage rate.

In order to qualify for acting pay, employees must:

- A. Work a minimum of four consecutive hours in order to be eligible for compensation;
- B. Meet the minimum qualifications for the higher classification; and
- C. Be assigned with the approval of the Police Chief, or his/her designee.

Time spent in acting assignments may be considered during promotional recruitment but shall not substitute for minimum qualifications for education and experience requirements.

3.0 Detective and FTO Pay

Employees assigned to Investigation, Net-5, Field Training Officer, and/or the Traffic Division shall receive 5% of incentive pay (calculated from base hourly wage).

Effective the first full pay period after adoption, employees assigned to Investigation and Net-5 shall receive 7.5% incentive pay (calculated from base hourly wage).

Effective the first full pay period after adoption, the Traffic Division incentive pay shall no longer require possession of an Accident Reconstruction Certificate.

ARTICLE 3 PUBLIC EMPLOYEES RETIREMENT SYSTEM

3.1 Retirement Terminology

Retirement benefits shall be provided to eligible employees in accordance with the appropriate, then existing, contract(s) between the City and the Public Employees Retirement System (PERS).

The use of terms "Classic Member" and "New Member" shall be as defined by CalPERS and the Public Employee Pension Reform Act of 2013 (PEPRA). For ease of reference, a summary of these definitions is provided below, however, the definitions set forth in the CalPERS statutes and regulations, as applied by CalPERS, shall control.

"Classic Members" are those members who entered into membership with a qualifying public retirement system on or before December 31, 2012 who do not meet the definition of "New Member" in Government Code section 7522.04(f).

A "New Member" is defined in Government Code section 7522.04(f) as any of the following:

- An individual who becomes a member of a qualifying public retirement system for the first time on or after January 1, 2013, and has no prior membership in any other qualifying public retirement system; or
- An individual who becomes a member of a qualifying public retirement system for the first time on or after January 1, 2013, and is not eligible for reciprocity with another qualifying public retirement system; or
- An individual who established prior membership in a qualifying public retirement system and after a break in service of more than six months, returns to active membership in that system with a new employer.

3.2 Classic Member Retirement Formula

- A. The 3% at 50 PERS formula shall be provided for "Classic Member" public safety category employees hired prior to July 1, 2012. The 3% at 55 PERS formula shall be provided for "Classic Member" public safety category employees hired on or after July 1, 2012.
- B. Safety employees hired prior to December 16, 1989 shall have their benefit based on the single highest year of salary. Classic member employees hired on or after December 16, 1989 shall have their benefit based on the three highest years' salary.
- C. All other current retirement benefits including the optional benefit programs in the existing contract between the City and CalPERS for safety members shall remain in effect to the extent permitted by law.

3.3 "New Member" Retirement Formula Provided by Statute

- A. Effective January 1, 2013, employees classified as new member safety category employees:

2.7% at 57 retirement formula.

3.4 Employee Contribution

- A. Employees classified as classic safety category employees:
 - All classic safety employees shall cost share 9% towards the employer contribution rate.

- B. New Members shall contribute towards their retirement benefits in accordance with PEPRA.
- C. All applicable contributions identified in (A) thru (C) above shall be made through payroll deduction on a pre-tax basis as permitted by law.

3.5 City's Paying and Reporting the Value of the Member Contribution (Classic Only)

The City shall pay 100% of the employee's contribution to CalPERS and continue to report 100% of the employer payment of member contributions to CalPERS as additional compensation for retirement purposes only.

ARTICLE 4 HEALTH, DENTAL, VISION, LIFE INSURANCE AND EAP

4.1 Health Plans

A. Employee Contributions:

Employee contributions are on a pre-tax basis.

B. Health Care Premium Cost:

The split is 80%/20% between the City and the employee, with the City paying 80% of the total premium cost and the employee paying 20%. The contribution shall be based on the lowest cost (as measured by premium cost) PORAC health plan available.

C. Cash-in-Lieu Payment:

Cash-in-Lieu payments are when an employee reduces the level of health care coverage rather than entire coverage shall be as follows:

Employees, who reduce the level of health care coverage to which they are entitled, i.e. from full family coverage to employee plus one, or employee only coverage, or from employee plus one to employee only coverage, shall be entitled to a Cash-in-Lieu benefit. The Cash-in-Lieu benefit is based upon the PORAC health plan.

The employee making the election covered above, shall receive the difference between the Cash-in-Lieu benefit to which they would have been entitled had they waived coverage at their present coverage level and Cash-in-Lieu benefit for the lower level elected.

The Cash-in-Lieu of medical insurance bonus for employees electing to forego health insurance coverage will be based on the below percentages of the PORAC health plan:

Employee only:	25%
Employee plus one dependent:	25%
Family coverage:	30%

4.2 Dental and Vision Plans

The City shall pay 90% of premium and employees shall pay 10% of the premium. Premiums will be based on periodic actuarial conducted by an outside consultant. Effective January 1, 2020, for dental, the calendar year maximum shall increase to \$1,750 and for vision, the benefit maximum (as defined in the plan document) shall increase to \$600 every 24 months.

4.3 Claims Administrator

At the City's option, and after consultation with the Police Sergeants, the City may change the Dental and Vision Plan claims administrator at any time.

4.4 Life Insurance

A life insurance benefit amount of \$25,000 shall be maintained at the City's expense for employees in the Police Officer's Association. Dependent life insurance \$2,000 per dependent (spouse and children from 6 months to 19). Payment for dependent life insurance is the responsibility of the employee.

4.5 Employee Assistance Program

The Yuba City employee assistance program (EAP) is an employee benefit that assists employees with personal problems and/or work-related problems that may impact their job performance, health, mental and emotional well-being. The City offers free and confidential assessments, short-term counseling, referrals, and follow-up services for employees and their household members. For details about the EAP program please see the Human Resources Department.

4.6 Vacation Accrual Rates

Lateral employees from other agencies shall receive credit for prior public sworn service when determining years of service for vacation benefits. For all current employees who lateraled into the Police Department prior to this agreement shall receive credit for prior public sworn service for purposes of future vacation accrual. There shall be no retro vacation leave bank balance adjustments.

4.7 Tuition Reimbursement

Effective the first full pay period after adoption, tuition reimbursement shall be increased to a maximum of five thousand dollars (\$5,000) per fiscal year.

ARTICLE 5 WORK SCHEDULES

The City will adopt a FLSA 207(k) exemption with a 14 day work period for personnel effective the second pay period in January 2019. Staff will work a 14-day work period consisting of 4-11s/3-11s workweeks. Sergeants working in the Traffic Division or Detective Division will work various hours as determined by the department, with the same entitlement to overtime. An additional 9-hour shift will occur approximately every 3rd work period for purposes of training activities.

Assigned work schedules may be changed at the sole discretion of the Police Chief subject to written notice to the Sergeants for an opportunity to meet and discuss no less than 30 days prior to implementation.

5.1 Overtime

Subject to the limitations below, Sergeants will be eligible for overtime compensation. Sick leave hours will not be counted as hours worked and will limit an employee's eligibility for overtime in any single 14-day work period. All other forms of paid leave will be counted as hours worked. Overtime compensation is paid at time-and-a-half an employee's regular rate of pay.

Contract overtime occurs when an eligible employee works hours beyond their regular daily, assigned shift (for example: beyond 11 hour patrol shifts or 9 hour training shift) or when an eligible employee works additional hours on their scheduled days off (for example: a fifth 11-hour shift within a 14-day work period). The recurring 9-hour training shift will be compensated at the base hourly rate, not at the overtime rate unless the total hours worked exceed 86 for the 14-day

work period.

Sergeants who use sick leave in any 14-day work period are ineligible for shift overtime during that particular period until the number of overtime hours actually worked exceeds the number of sick leave hours used in that 14-day work period. This means that if a Sergeant calls in sick for a regularly scheduled 11-hour shift, then the Sergeant will not be eligible for overtime unless and until the Sergeant works more than 11 overtime hours (i.e., by working past the end of a daily shift or by working an extra shift) during that 14-day work period.

"FLSA overtime" occurs when an employee actually works (i.e., not counting paid time off) beyond the maximum number of hours in the applicable work period (i.e. beyond 86 hours in the 14-day period.) Contract overtime hours that also contribute to FLSA-overtime for a given work period are paid only once at the premium rate. For example, if an employee regularly scheduled to work 4, 11-hour days Monday through Thursday works 11 hours on Saturday, the 11-hours of "shift" overtime also count as 11 hours of FLSA overtime, and thus are paid as overtime only once (i.e., a total of 11 hours of overtime for that week).

Hours worked on City-approved shift trades do not factor into any of these overtime calculations.

ARTICLE 6 DEFERRED COMPENSATION

Police Sergeants shall receive a monthly City contribution of \$50 paid into a City of Yuba City deferred compensation plan.

ARTICLE 7 CERTIFICATIONS

The City shall pay the costs associated with obtaining and maintaining special certificates that are required by the State of California, the City of Yuba City or any governmental agency to obtain and maintain as a condition of employment.

ARTICLE 8 DEPARTMENT OF TRANSPORTATION COMMERCIAL DRIVER LICENSE TESTING

It is mutually agreed that the Addendum to the Alcohol and Drug Abuse Policy Implementing the Omnibus Transportation Employee Testing Act of 1991 (Exhibit A) shall remain in effect.

ARTICLE 9 LEAVE DONATION PROGRAM

The City currently facilitates a Leave Donation Program to assist employees dealing with a catastrophic illness or injury. While an employee is utilizing any such donated hours, the City will continue to pay its portion of the contribution to the employee's health, dental, vision and life insurance premiums in accordance with the applicable Memorandum of Understanding. The maximum is 30 calendar days of Catastrophic leave or until Short Term Disability (STD) starts.

ARTICLE 10 COUNSELING MEMORANDUM

The attached policy on Counseling Memos (Exhibit C) shall remain in effect.

ARTICLE 11 COMPENSATORY TIME

11.1 Maximum Accumulation

Compensatory time for Police Sergeants may be accumulated to a maximum of eighty (80) hours.

11.2 Maximum Cash Out

Upon written request, Police Sergeants shall be paid for up to 40 hours, per fiscal year, of recorded compensatory time. Payment will be at the earliest payroll period. The City, at its option,

may reimburse a Police Sergeant up to 40 accrued hours of compensatory time at the end of any fiscal year. Any additional employee requests are subject to the approval of the Police Chief or designated representative.

11.3 Doctrine of Constructive Receipt

Both parties agreed to meet and confer during the term of this agreement to resolve any potential doctrine of constructive receipt issues.

ARTICLE 12 DMV LICENSE EXAMINATION

Physical examinations for Police Sergeants who are required to maintain a Class A or B California driver's license as a job requirement shall have the expense paid by the City. Employees may elect to go to their own personal physician or to the medical center designated by the City. Employees electing to go to their own personal physician shall be reimbursed upon submission of an itemized receipt to the Human Resources Department. The maximum amount eligible for reimbursement is the amount the City has contracted for with the designated medical center.

ARTICLE 13 SHORT TERM DISABILITY

13.1 Waiting Period

A 30-calendar day waiting period must pass before benefits are payable.

13.2 Premium

The City shall set the STD rates based on outside actuarial; no premium cap shall exist.

13.3 Benefit

The benefit shall be equal to 60% of earnings at time of the disabling event; no dollar cap on the benefit shall exist.

ARTICLE 14 AMERICAN DISABILITIES ACT COMPLIANCE

14.1 Accommodation

Because the ADA requires accommodations for individuals protected under the Act, and because these accommodations must be determined on an individual, case-by-case basis, the parties agree that the provisions of this Agreement and the Personnel Rules may be disregarded in order for the City of Yuba City to avoid discrimination relative to hiring, promotion, granting permanency, transfer, layoff, reassignment, termination, rehire, rates of pay, job and duty classification, seniority, leaves, fringe benefits, training opportunities, hours of work or other terms and privileges of employment.

14.2 Legal Obligation

The parties recognize that the City has the legal obligation to meet with the individual employee to be accommodated before any adjustment is made in working conditions. The City will notify affected employees of these proposed accommodations prior to implementation.

14.3 Protection

Any accommodation provided to an individual protected by the ADA shall not establish a past practice, nor shall it be cited or used as evidence of a past practice in the grievance procedure.

ARTICLE 15 INTEREST BASED PROBLEM SOLVING

The employees and the City utilized the Interest Based Problem Solving Process philosophy to negotiate this contract. This contract represents the results of open, honest sharing of information and concerns related to issues for the employees and the City. Based on the philosophy of using this process, the employees and the City agree and understand that this is a living contract and agree to meet and discuss any items within this agreement that become of concern to either party

during the course of this agreement. Both parties understand that any changes to this agreement are subject to the mutual consent of the employees and the City Manager and are also subject to approval by the City Council.

ARTICLE 16 COMPARABLE AGENCIES

The Parties have agreed that the following agencies are comparable for purposes of salary data collection: City of Chico, City of Lincoln, City of Rocklin, City of West Sacramento, City of Woodland, County of Sutter, and County of Yuba.

ARTICLE 17 TERM OF AGREEMENT

The term of this agreement shall be July 1, 2019 through June 30, 2021.

Date: _____ Date: 9-12-19


CITY OF YUBA CITY

POLICE SERGEANTS

Michael Rock, City Manager

Michael Pugh

Robin Bertagna, Director of Finance



Stephan Thornton

Natalie Springer, Director of Human Resources



Sam Escherman

THE CITY OF YUBA CITY

Addendum to Alcohol and Drug Abuse Policy Implementing the Omnibus Transportation Employee Testing Act of 1991

The purpose of this policy is to assure worker fitness for duty and to protect our employees and the public from risks posed by the use of alcohol and controlled substances. This policy is also intended to comply with all applicable Federal regulations governing workplace anti-drug programs in the transportation industry. The Federal Highway Administration (FHWA) of the Department of Transportation has enacted 49 CFR Part 382 that mandates urine drug testing and breathalyzer alcohol testing for safety-sensitive positions and prevents performance of safety-sensitive functions when there is a positive test result. The Department of Transportation has also enacted 49 CFR Part 40 that sets standards for the collection and testing of urine breath specimens. In addition, the Department of Transportation has enacted 49 CFR Part 29, "The Drug-Free Workplace Act of 1988," which requires the establishment of drug free workplace policies and the reporting of certain drug-related offenses to the Department of Transportation. The policy incorporates those requirements of safety-sensitive employees and others when so noted.

THE CITY OF YUBA CITY recognizes that the use of alcohol and/or controlled substances in the workplace is not conducive to safe working conditions. In order to promote a safe, healthy and productive work environment for all employees, it is the objective of the City to have a work force that is free from the influence of alcohol and controlled substances.

A. Applicability

This policy applies to all safety-sensitive employees, volunteers, and contractors when they are on City property or when performing any City related business. It applies to off-site lunch periods and breaks when a safety-sensitive employee is scheduled to return to work. Visitors, vendors, and contracted employees are governed by this policy while on City premises, and they will not be permitted to conduct business if found to be in violation of this policy.

A safety-sensitive position is defined as any position requiring the use of a Class "A" or Class "B" commercial driver license. Fire safety employees will be subject to the policy in accordance with State and Federal laws. A safety-sensitive employee is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

This policy addendum coexists with the current Alcohol and Drug Abuse Policy except where it is intended by Federal regulations to super ceded the policy, as specified herein.

B. PROHIBITED SUBSTANCES

"Prohibited substances" addressed by this policy including the following:

Drugs:

Marijuana, amphetamines, opiates, phencyclidine (PCP) and cocaine.

Alcohol:

This use of beverages or substances, including any medication, containing alcohol such that it is present in the body at a level in excess of that stated in Department of Transportation guidelines while actually performing, ready to perform, or immediately available to perform any City business is prohibited. "Alcohol" is defined as: the intoxicating agent in beverage alcohol, ethyl alcohol, or other low molecular weight alcohol, including methyl or isopropyl alcohol.

C. PROHIBITED CONDUCT

Manufacture. Trafficking. Possession. And Use

Any safety-sensitive employee engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance or alcohol on City premises, in City vehicles or while conducting City business off the premises is absolutely prohibited. Violation will result in removal from safety-sensitive duty and referral to a Substance Abuse Professional (SAP).

Impaired/Not Fit for Duty

Any safety-sensitive employee who is reasonably suspected of being impaired, under the influence of a prohibited substance, or not fit for duty shall be removed from safety-sensitive job duties and be required to undergo a reasonable suspicion controlled substance or alcohol test. Employees failing to pass this reasonable suspicion controlled substance or alcohol test shall remain off duty and be referred to a Substance Abuse Professional (SAP). A controlled substance or alcohol test is considered positive (failed) if the individual is found to have a quantifiable presence of a prohibited substance in the body above the minimum thresholds defined in the Department of Transportation guidelines.

Alcohol Use

No safety-sensitive employee may report for duty or remain on duty when his/her ability to perform assigned functions is adversely affected by alcohol or when his/her breath alcohol concentration is 0.04 or greater. No safety-sensitive employee shall use alcohol while on duty or while performing safety-sensitive functions. No safety-sensitive employee shall use alcohol within four hours of reporting for duty nor during hours that he/she is on call. Violation of this provision is prohibited and will subject the employee to removal from safety-sensitive duty and referral to a Substance Abuse Professional (SAP).

Compliance with Testing Requirements

All safety-sensitive employees are subject to controlled substance testing and breath alcohol testing. Any safety-sensitive employee who refuses to comply with a request for testing, who provides false information in connection with a test or who attempts to falsify test results through tampering, contamination, adulteration, or substitution shall be considered as having a positive test result and shall be removed from duty immediately and referred to a Substance Abuse Professional (SAP). Refusal to submit to a test can include an inability to provide a urine specimen or breath sample without a valid medical explanation, as well as a verbal declaration, obstructive behavior or physical absence resulting in the inability to conduct the test. Employees who refuse the referral to the SAP shall be subject to immediate termination from their position.

Treatment/Rehabilitation Program

An employee with a controlled substance and/or alcohol problem may be afforded an opportunity for treatment in accordance with the following provisions:

Positive Controlled Substance and/or Alcohol Test: A Rehabilitation Program is available for safety-sensitive employees who have tested positive for a prohibited substance on a one-time basis only. Employees will be immediately terminated on the occurrence of a second verified positive test result within 36 months and may be terminated or offered additional rehabilitation at the City's sole discretion after 36 months. The City will immediately serve a Notice of Intended Disciplinary Action in accordance with the personnel rules. The safety-sensitive employee will pay referral to the Substance Abuse Professional (SAP) and any other recovery treatment costs. In regards to probationary employees, the City reserves sole discretion in offering a one-time opportunity for rehabilitation in lieu of immediate termination. When recommended by the Substance Abuse Professional (SAP), participation and completion of rehabilitation program within the prescribed time allowed is mandatory. Failure of a safety-sensitive employee to attend and/or complete a prescribed program will result in termination from employment. Prior to return-to-duty testing, an employee must follow the rehabilitation program recommended by the SAP and agree to sign a Return-to Duty Agreement. Employees may use their accrued leave balances of CTO and vacation or be placed on an approved leave of absence. The Notice of Discipline documents shall specify the employee's leave status when discipline is imposed. The duration and frequency of follow-up testing will be determined by the SAP but will not be shorter than one year or longer than five years. The employee shall pay all costs

associated with follow-up testing unless the City receives such services included from the program administrator Fremont-Rideout Drug Testing Services.

Voluntary Admittance: All employees who feel they have a problem with controlled substances and/or alcohol may request voluntary admission to the rehabilitation program. Requests must be submitted through the Department Head to the Director of Human Resources for review. **The safety-sensitive employee will pay rehabilitation plan development costs and any other treatment plan costs.** The City shall have sole discretion in determining any financial contribution to assist the employee. An employee failing to complete the program within the prescribed time allowed will be subject to termination from employment. An employee completing a rehabilitation program must agree to sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up testing for 36 months following return to duty. A positive result on the return-to-duty test or on the unannounced follow-up tests within a 36-month period will result in termination from employment. A positive follow-up test after 36 months may result in termination or additional rehabilitation at the City's sole discretion.

Leave Balance: Participants in a rehabilitation program may use accumulated sick leave, (provided a substance abuse professional has attested in writing for the need to use a sick leave) vacation, and CTO leave balances. Time spent in a rehabilitation program shall be counted as utilized leave time under the Federal and State Family Care Leave Act if it qualifies as a "serious health condition" under the law. Once leave balances have been exhausted, an employee will be placed on an approved leave without pay in accordance with Personnel Rule 2.11(B).

D. NOTIFYING THE CITY OF CRIMINAL DRUG CONVICTION

Pursuant to the "Drug Free Workplace Act of 1988" any employee who fails to immediately notify the City of any criminal controlled substance statute conviction shall be subject to disciplinary action, up to and including termination of employment.

E. PROPER APPLICATION OF THE POLICY

The City is dedicated to assuring fair and equitable application of the Substance Abuse Policy. Therefore, supervisors are required to administer all aspects of the policy in an unbiased and impartial manner. Any supervisor who knowingly disregards the requirements of this policy, or who is found to deliberately misuse the policy with respect to his/her subordinates shall be subject to disciplinary action, up to and including termination.

F. TESTING FOR PROHIBITED SUBSTANCES

Analytical urine controlled substance testing and breath testing for alcohol will be conducted as required under the Department of Transportation guidelines. All safety-sensitive employees shall be subject to testing prior to employment, randomly, for reasonable suspicion, and following an accident, as defined in the Department of Transportation guidelines. In addition, all safety-sensitive employees will be tested prior to duty after failing a controlled substance and/or alcohol test. Employees who have returned to duty will be subject to unannounced follow-up tests for up to five years, as determined by a Substance Abuse Professional (SAP). Safety-sensitive employees who perform safety-sensitive functions as defined in the Department of Transportation guidelines shall also be subject to testing on a randomly selected, unannounced basis.

Testing shall be conducted in a manner to assure a high degree of accuracy and reliability and using techniques, equipment, and laboratory facilities, which have been approved by the United States Department of Health and Human Services (DHHS). All testing will be conducted consistent with the procedures put forth in the Department of Transportation guidelines. Testing may be conducted by a mobile unit, which meets the requirements of DHHS.

The controlled substances that will be tested for include marijuana, cocaine, opiates, amphetamines, and phencyclidine (PCP). An initial controlled substance screen will be conducted on each specimen. For those specimens that are positive, a confirmatory Gas Chromatography/Mass Spectrometry (GC/MS) test will be performed. The test will be considered positive if the controlled substances levels present are above the minimum thresholds established in the Department of Transportation guidelines.

Tests for alcohol concentration will be conducted utilizing an approved Evidential Breath Testing device (EBT) operated by a trained Breath Alcohol Technician (BAT). If the initial test indicated an alcohol concentration of 0.02 or greater, a confirmation test will be performed to confirm the result of the initial test. An employee who has a confirmed alcohol concentration of 0.02 but less than 0.04 will be removed from his/her position for at least twenty-four hours unless a re-test results in an alcohol concentration 0.02 or less. An alcohol concentration of 0.04 or greater will be considered a positive alcohol test and in violation of Department of Transportation guidelines and this policy.

Any safety-sensitive employee who has a pending or confirmed positive controlled substance or alcohol test will be removed from safety sensitive duties and/or his/her position, placed on unpaid leave, vacation, or CTO (at the employee's discretion) informed of educational and rehabilitation program available, and evaluated by a Substance Abuse Professional (SAP). Transfer of an employee to a non-safety sensitive position will be made at the sole discretion of the City.

The City affirms the need to protect individual dignity, privacy, and confidentiality throughout the testing process.

Employees in Safety-sensitive positions may be tested under any of the following circumstances:

Pre-Employment Testing

All Applicants for safety-sensitive classifications shall undergo urine controlled substance testing prior to employment. Receipt of satisfactory test results is required prior to employment and failure of a controlled substance test will disqualify the applicant from further consideration for employment.

Reasonable Suspicion Testing

All safety-sensitive employees will be subject to urine and/or breath testing when there is a reason to believe that controlled substances or alcohol use is adversely affecting job performance. A reasonable suspicion referral for testing will be made on the basis of documented objective facts and circumstances, which are consistent with the effects of substance abuse. Examples of reasonable suspicion include, but are not limited to, the following:

1. Observation of unsatisfactory work performance or on-the-job behavior.
2. Physical signs and symptoms consistent with prohibited substance use.
3. Occurrence of a serious or potentially serious accident that may have been caused by human error.
4. Fights (to mean physical contact), assaults and flagrant disregard or violations of established safety, security, or other operation procedures.

Reasonable suspicion determinations will be made by a supervisor who is trained to detect the signs and symptoms of controlled substance and alcohol use and who reasonably concludes that an employee may be adversely affected or impaired in his/her work performance due to prohibited substance abuse or misuse.

Post-Accident Testing

Safety-sensitive employees will be required to undergo controlled substance and/or breath alcohol testing if they are involved in an accident with a City vehicle that results in a fatality. This includes all safety-sensitive employees who are on duty in the vehicles and any other whose performance could have contributed to the accident. In addition, a post-accident test will be conducted when the employee is cited for a moving violation and (i) any involved vehicle requires towing from the scene or (ii) any person involved requires medical treatment away from the scene of an accident.

Following the accident, the safety-sensitive employee will be tested as soon as possible, but not to exceed eight hours for alcohol and 32 hours for controlled substances. Any employee who leaves the scene of the accident without appropriate authorization prior to submission to controlled substance and alcohol testing will be considered to have refused the test and be subject to termination. Post-accident testing of safety-sensitive employees will include not only the operation personnel, but also any other covered employees whose performance could have contributed to the accident.

Random Testing

Employees working in safety-sensitive classifications will be subjected to randomly selected, unannounced testing. The random selection will be by a scientifically valid method. Each safety-sensitive employee will have an equal chance of being tested each time selections are made. Safety-sensitive employees will be tested either just before duty, during duty, or just after the safety-sensitive employee has ceased performing his/her duty.

Return-to-Duty Testing

All safety-sensitive employees who have previously tested positive on a controlled substance or alcohol test must test negative and be evaluated and released to duty by the Substance Abuse Professional (SAP) before returning to duty. Employees will be required to undergo unannounced follow-up controlled substance and/or alcohol breath testing following returning to duty. The SAP will determine the duration and frequency. However, it shall not be less than 6 tests during the first 12 months, nor longer than 60 months in total, following return to duty.

Employee Requested Testing

Any safety-sensitive employee who questions the result of a required controlled substance test under Department of Transportation guidelines may request that an additional test be conducted. This additional test may be conducted at the same laboratory or at a different DHHS certified laboratory. The test must be conducted on the split sample that was provided at the same time as the original sample. All costs for such testing are to be paid by the employee unless the second sample test invalidated the original test. The method of collecting, storing, and testing the split sample will be consistent with the procedures set forth in the Department of Transportation guidelines. The safety-sensitive employee's request for a re-test must be made to the Medical Review Officer (MRO) within 72 hours of notice of the initial test result. Requests after 72 hours will only be accepted if the delay was due to documentable facts that were beyond the control of the employee.

G. EMPLOYEE ASSESSMENT

Any safety-sensitive employee who tests positive for the presence of controlled substances or whose breath alcohol concentration is above the minimum thresholds set forth in the Department of Transportation guidelines will be assessed by a Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance, if any, the employee needs in resolving problems associated with prohibited substance abuse or misuse.

If a safety-sensitive employee is returned to duty following rehabilitation, he/she must agree to and sign a Return-To-Duty Agreement, pass a return-to-duty controlled substance and/or alcohol test and be subject to unannounced follow-up tests for a period of one to five years, as determined by the SAP. Referral to the Substance Abuse Professional (SAP) and any other recover treatment costs will be borne by the safety-sensitive employee. Employee will be immediately terminated on the occurrence of a second verified positive test result within 36 months and may be terminated or offered additional rehabilitation at the City's sole discretion after 36 months.

H. CONTINUOUS COMPLIANCE REQUIREMENTS

The City shall apply and interpret this policy to maintain required compliance with applicable Federal laws and regulations, including subsequent amendments and interpretive rulings.

I. CONTACT PERSON

Any questions regarding this policy should be directed to the following City representative:

Title: Director of Human Resources
Address: 1201 Civic Center Boulevard, Yuba City, CA 95993
Telephone: (530)822-4610

J. DEFINITIONS

ACCIDENT – an unintended happening or mishap where there is a loss of human life (regardless of fault), bodily injury or property damage totaling \$4,400 or more.

ALCOHOL – the intoxicating agent in a beverage alcohol, ethyl alcohol or other low molecular weight alcohol including methyl or isopropyl alcohol.

ALCOHOL CONCENTRATION – the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test under this regulation. For example, 0.02 means 0.02 grams of alcohol in 210 liters of expired deep lung air.

ALCOHOL USE – consumption of any beverage, mixture, or preparation, including any medication containing methyl alcohol. Since ingestion of a given amount of alcohol produces the same alcohol concentration in an individual whether the alcohol comes from a mixed drink or cough syrup, the Department of Transportation prohibits the use of any substance containing alcohol, such as prescription or over-the-counter medication or liquor filled chocolates. Prescription medications containing alcohol may have a greater impairing affect due to the presence of other elements (e.g., antihistamines).

BREATH ALCOHOL TECHNICIAN (BAT) – a person trained to proficiency in the operation of the Evidential Breath Testing (EBT) device that the technician is using in the alcohol testing procedures. BAT's are the only qualified personnel to administer the EBT tests.

CHAIN OF CUSTODY – the procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of collection to final disposition.

COLLECTION SITE – a place designated by the City where individuals present themselves for the purpose of providing a specimen of either urine and/or breath.

COMMERCIAL MOTOR VEHICLE – a motor vehicle, or combination of motor vehicles used in commerce to transport passengers or property if the motor vehicle: (1) has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross weight rating of more than 10,000 pounds; or (2) has a gross vehicle weight rating of 26,001 or more pounds; or (3) is designated 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 and which requires the motor vehicle to be placarded under the Hazardous Materials Regulations.

CITY – THE CITY OF YUBA CITY

CITY TIME – any period of time in which the safety-sensitive employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions.

CONFIRMATION TEST – for alcohol testing means a second test, following a screening test with a result of 0.02 or greater, which provides quantitative data of alcohol concentration. For controlled substances testing this means a second analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screen test and which uses a different technique and chemical principle from that of the screen test in order to ensure reliability and accuracy. (Gas chromatography/mass spectrometry (GC/MS) is the only authorized confirmation method of cocaine, marijuana, opiates, amphetamines and phencyclidine).

CONTROLLED SUBSTANCE (DRUG) TEST – a method of detecting and measuring the presence of alcohol and other controlled substances, whether legal or illegal, in a person's body. A controlled substance test may either be an initial test or confirmation test. An initial controlled substance test is designed to identify specimens having concentrations of a particular class of drug above a specified concentration level. It eliminates negative specimens from further consideration.

Controlled substances will be tested under the Department of Health and Human Services guidelines. **The primary (initial or screening) controlled substance test thresholds for a verified positive test result are those that are equal to or greater than:**

Marijuana Metabolites	50 ng/ml
Cocaine Metabolites	300 ng/ml
Phencyclidine (PCP)	25 ng/ml
Opiates Metabolites (1)	300 ng/ml
Amphetamines	1,000 ng/ml

(1) 25 ng/ml if immunoassay

A confirmation drug testing is a second analytical procedure to detect the presence of a specific drug or its metabolite. The confirmation procedure is conducted independent of the initial test and uses a different technique and chemical principle in order to confirm reliability and accuracy. **The confirmatory controlled substance test thresholds for a verified positive test result are those that are equal to or greater than:**

Marijuana Metabolite (THC) (1)	15 ng/ml
Cocaine Metabolite (2)	150 ng/ml
Phencyclidine (PCP)	25 ng/ml
Opiates	
Morphine	300 ng/ml
Codeine	300 ng/ml
Amphetamines	
Amphetamine	500 ng/ml
Methamphetamine (3)	500 ng/ml

(1) Delta-9-tetrahydrocannabinol-9-carboxylic acid

(2) Benzoylcegonine

(3) Specimen must also contain amphetamine at a concentration greater than or equal to 200 ng/ml

DEPARTMENT OF TRANSPORTATION GUIDELINES – The controlled substance and alcohol testing rules (49CFR Part 199 (RSPA – Pipeline), Part 219 (FRA – Railroad), Part 382 (FHWA – Commercial Motor Vehicle), 654 (FTA – Mass Transit) and 14 CFR 61 (FAA – Aviation) et.al.) setting forth the procedures for controlled substance and alcohol testing (49 CFR Part 40) in all transportation industries.

DRIVER – any person who operates a commercial motor vehicle. This includes full time, regularly employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operator contractors who are either directly employed by or under lease to an employer or who operate a commercial motor vehicle at the direction of, or with the consent of, an employer. For the purposes of pre-employment/pre-duty testing only, the term driver includes a person applying to an employer to drive a commercial motor vehicle.

DRUG (CONTROLLED SUBSTANCE) METABOLITE – the specific substance produced when the human body metabolizes (changes) a given drug (controlled substance) as it passes through the body and is excreted in urine.

EMPLOYEE – any person who is employed by the City or who is a volunteer in a safety-sensitive position requiring a commercial driver license. A complete list of safety-sensitive employee (function and/or position) classifications is listed in Attachment B.

EVIDENTIAL BREATH TESTING DEVICE (EBT) – the device to be used for breath alcohol testing.

MEDICAL REVIEW OFFICER (MRO) – a licensed physician responsible for analyzing laboratory results generated by an employer's controlled substance (drug) testing program. The MRO is knowledgeable about substance abuse disorders and has appropriate medical training to interpret and evaluate positive test results.

PERFORMING (SAFETY SENSITIVE FUNCTION) – a safety-sensitive employee is considered to be performing a safety sensitive function and includes any period in which the safety-sensitive employee is actually performing, ready to perform, or immediately available to perform such functions.

POST-ACCIDENT ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted after accidents on employees whose performance could have contributed to the accident. For drivers this is determined by a citation for a moving traffic violation and for all fatal accidents even if the driver is not cited for a moving traffic violation. See Attachment A.

PRE-EMPLOYMENT ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted before applicants are hired or after an offer to hire, but before actually performing safety sensitive functions for the first time. Also required when employees transfer to a safety sensitive position.

PROHIBITED DRUGS (CONTROLLED SUBSTANCES) – Marijuana, Cocaine, Opiates, Amphetamines, or Phencyclidine.

PROHIBITED SUBSTANCES – means and is synonymous to drug abuse and/or alcohol misuse or abuse.

RANDOM ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – conducted on a random unannounced basis just before, during or just after performance of safety sensitive functions.

REASONABLE SUSPICION CONTROL AND/OR CONTROLLED SUBSTANCE TESTING – conducted when a trained supervisor observes behavior or appearance that is characteristic of alcohol or controlled substance abuse.

REFUSE TO SUBMIT (TO AN ALCOHOL AND/OR CONTROLLED SUBSTANCE TEST) – a safety-sensitive employee fails to provide an adequate breath or urine sample for testing without a valid medical explanation after that safety-sensitive employee received notice of the requirement to be tested, or engages in conduct that clearly obstructs the testing process (i.e., verbal declarations, obstructive behavior or physical absence resulting in the inability to conduct the test).

REHABILITATION – The total process of restoring an employee to satisfactory work performance through constructive confrontation, referral to the SAP and participation in SAP recommendations such as education, treatment and/or support groups to resolve personal, physical or emotional/mental problems which contributed to job problems.

RETURN-TO-DUTY AND FOLLOW-UP ALCOHOL AND/OR CONTROLLED SUBSTANCE TESTING – Conducted when an individual who has violated the prohibited alcohol or controlled substance conduct standards returned to performing safety sensitive duties. Follow-up tests are unannounced and at least 6 tests must be conducted in the first 12 months after an employee returns to duty. Follow-up testing may be extended for up to 60 months following return to duty upon the SAP recommendation.

RETURN-TO-DUTY AGREEMENT – a document agreed to and signed by the employer, safety-sensitive employee and the Substance Abuse Professional that outlines the terms and conditions under which the safety-sensitive employee may return to duty after having had a verified positive controlled substance test result or an alcohol concentration to 0.04 or greater on an alcohol test.

SAFETY-SENSITIVE EMPLOYEE (FUNCTION AND/OR POSITION) – An employee or volunteer is considered to be performing a safety-sensitive function during any period in which that employee is actually performing, ready to perform, or immediately available to perform any safety-sensitive functions and any employee who transfers into or is assigned safety-sensitive functions.

A complete list of safety-sensitive employee (function and/or position) classifications is listed in Attachment B.

SCREENING (INITIAL) TEST – In alcohol testing, it means an analytical procedure to determine whether a safety-sensitive employee may have a prohibited concentration of alcohol in their system. In controlled substance testing, it means an immunoassay screen to eliminate negative urine specimens from further consideration.

SUBSTANCE ABUSE PROFESSIONAL (SAP) – a licensed physician (Medical Doctor or Doctor of Osteopathy), or licensed or certified psychologist, social worker (with knowledge of, and clinical

experience in, the diagnosis and treatment of drug and alcohol-related disorders, the license alone does not authorize this), Certified Employee Assistance Professional (CEAP), or addiction counselor certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission (NAADAC) with knowledge of, and clinical experience in, the diagnosis and treatment of alcohol and controlled substance-related disorders. The employee shall select a SAP from a list provided by the City.

SUPERVISOR – a person in authority who has had one hour of training on the signs and symptoms of alcohol abuse and an additional hour of training on the signs and symptoms of controlled substance abuse.

VEHICLE – a bus, electric bus, van, automobile, rail car, trolley bus, truck or vessel used for mass transportation.

SAFETY-SENSITIVE EMPLOYEE CLASSIFICATIONS AS OF AUGUST 1, 2006

Equipment Operator
Fleet Maintenance Supervisor
Lead Mechanic
Maintenance Supervisor – Water/Sewer
Maintenance Supervisor – Streets
Mechanic
Parks Maintenance Supervisor
Parks Maintenance Workers I, II, III (only those who have a commercial Drivers License)
Plant Maintenance Mechanic (See note 3)
Public Works Maintenance Workers I, II, III
Recreation Supervisor I/II
Senior Arborist
Senior Plant Maintenance Mechanic (See note 3)
Streets Maintenance Supervisor
Sweeper Operator
Temporary Positions that require a commercial drivers license

NOTE:

- (1) New positions requiring a commercial license will be subject to this policy.
- (2) Any employee who possesses a commercial license and makes himself or herself available to drive for the benefit of the City is also subject to this policy.
- (3) If these employees possess a commercial license.

**CITY OF YUBA CITY
CATASTROPHIC ILLNESS AND INJURY DONATION PLAN**

Purpose

To assist employees confronting personal or family catastrophic illness or injury who need the support of City employees to avoid financial hardship.

Plan Guidelines

1. Regular and probationary employees who are on an approved leave of absence (in accordance with Human Resources Rules 2.11 (B) or (D)) may receive donated hours of vacation, sick leave, or compensatory time off (CTO) from other employees.

2. Employees seeking donations of time shall submit a written request to the Human Resources Department stating the reason(s) for the request. The Director of Human Resources shall review requests. Each request shall be evaluated solely on its merits. If approved, the Director of Human Resources will initiate efforts to notify City employees of the request for the donation of hours. The name of the employee will be identified but the City will not release confidential medical information.

If disapproved, the requesting employee may seek review of the decision by the joint labor-management committee consisting of one representative from each of the following groups:

- A) Yuba City Employees Association
- B) Firefighters' Association
- C) Police Officers' Association
- D) Middle Managers Group
- E) First Level Managers Group
- F) Human Resources Department

In the event the Committee reaches a tie decision, the decision shall be made in favor of the employee.

The decision of the labor-management committee shall be final and binding, and shall not be subject to the grievance procedure.

3. To be eligible for donated leave hours, the employee must be on an approved leave of absence for their critical illness or injury or to provide required care for a family member (spouse, child, parent) who is critically ill or injured. The guidelines of the Family Care Leave (Human Resources Rule 2.11 (D)) shall be used to determine whether the critical illness or injury qualifies for the donation of leave hours. Verification of need via physician statements will normally be required. The employee must have exhausted, or is reasonably expected to exhaust, all accumulated leave hours (vacation, sick leave, CTO) in order to receive leave.

COUNSELING MEMO POLICY

When a department head becomes aware of employee conduct, which requires documentation but does not warrant formal disciplinary action, a counseling memorandum may be issued to the employee. The purpose of a counseling memo is to provide notice to the employee of a deficiency or problem observed, document infractions, and modify behavior.

Counseling memos shall be issued on a standard form used by the City. A copy of the counseling memo shall be given to the employee and a copy shall be maintained in the employee's personnel file for a period of two years. At the conclusion of two years, the employee can ask that the counseling memo be removed from the personnel file. At that time or any time thereafter that it is discovered that a counseling memo exists in the personnel file after two years, all copies shall be removed from any file maintained by the City, including the department or supervisor, and given to the employee. No future reference to the counseling memo will be made in a subsequent disciplinary process or performance evaluation. However, should an employee receive a subsequent counseling memo, or other disciplinary action within the two year period, a counseling memo shall not be discarded until a two year period has passed in which no counseling memo or disciplinary action has been issued.

During the two-year period the counseling memo may be used by a supervisor to support disciplinary action. The fact that a counseling memo has been issued shall not be referenced in a performance evaluation, however the substance of the counseling memo may be referenced in a performance evaluation if the supervisor deems it necessary.

Counseling memos used prior to the adoption of this Memorandum of Understanding are subject to this policy.