

AGREEMENT

BETWEEN THE

CITY OF LAKE OSWEGO

AND THE

LAKE OSWEGO MUNICIPAL EMPLOYEE'S ASSOCIATION  
(LOMEA), Local 1546 of AFSCME Council 75 AFL-CIO

JULY 1, 2012 THROUGH JUNE 30, 2015

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## AGREEMENT AND PURPOSE

This Agreement is entered into between the City of Lake Oswego, Lake Oswego, Oregon, hereinafter referred to as the "City," and the Lake Oswego Municipal Employees' Association, Local 1546 of AFSCME Council 75 AFL-CIO, hereinafter referred to as the "Union," for the purpose of fixing wages, hours and conditions of employment in the bargaining unit covered by this Agreement. The purpose of this Agreement is to set forth the sole and full agreement between the parties relative to such matters.

## ARTICLE 1 – RECOGNITION

**Section 1.1.** The City recognizes the Lake Oswego Municipal Employees' Association (LOMEA), Local 1546 of the AFSCME Council 75, AFL-CIO as the sole and exclusive bargaining agent for the purpose of establishing wages, hours and conditions of employment for all employees employed in regular positions budgeted by the City and eligible for health insurance and other benefits as set forth in this Agreement, excluding those positions set forth below:

All classifications represented by other bargaining units, persons employed in a supervisory and/or confidential position as defined in ORS 243.650(6) and (23), interns and persons employed as temporary, on-call or contract employees.

A regular position is distinguished from a temporary, on-call or contract position in that the regular position relates to a budgeted position for which an employee is eligible for the City's health insurance and other benefits as set forth in this Agreement.

A regular position covered by the LOMEA Agreement is defined as a position in one of the following categories:

- A full-time position normally scheduled for 40 hours per week
- A part-time position normally scheduled for 20-39 hours per week
- A seasonal position scheduled to work at least 80 hours per month for at least eight consecutive months.

**Section 1.2.** All references to employees in this Agreement designate both sexes, and whenever the male gender is used, it shall be construed to include male and female employees.

**Section 1.3.** The City shall assign each employee to a classification. The City may, at its discretion, establish new classifications. The City shall notify the Union when a new classification has been established. If the classification is determined to be in the bargaining unit, the wage rate and pay grade for the new classification shall be subject to negotiations and statutory impasse resolution procedures.

**Section 1.4.** During the term of this Agreement, the City agrees not to convert any full-time positions into one or more part-time positions, unless the position is vacant or the City finds other suitable employment for any displaced employee within the City service.

At the request of the incumbent, the City may agree to reclassify a regular full-time employee to a regular part-time position. The reclassification does not affect the full-time status of the positions for budgetary purposes.

**Section 1.5. - Temporary Positions:** Any position created as a temporary position which is filled for more than twelve (12) consecutive months shall either be eliminated at the end of twelve (12) months or the position shall then be considered a regular position and become part of the bargaining unit. A temporary employee who is retained beyond the twelve (12) month period will be required to complete an initial probationary period. This Section shall not apply to a reoccurring temporary position that is filled for less than eight (8) months in any twelve (12) month period.

The intended use of a temporary reoccurring position is to assist with expected increases in workload not to exceed eight (8) months in a twelve (12) month period.

The intended use of a temporary non-reoccurring position or a temporary non-reoccurring employee is to cover unexpected vacancies, or vacancies created by a temporary increase in workload, termination, or medical leaves granted to a regular employee for up to twelve (12) months. It is acknowledged that there will be exceptions to this policy. Exceptions to this policy shall be mutually agreed upon by the City and the LOMEA.

**Section 1.6.** Quarterly and upon request, the City will provide the Union with the date of hire of any temporary employee.

## **ARTICLE 2 – MANAGEMENT RIGHTS**

**Section 2.1.** The Union recognizes and agrees that responsibility for management of the City and direction of its work force is vested solely in the City and responsible department heads. The Union recognizes and agrees that in order to fulfill this responsibility, the City shall retain the exclusive right to exercise the regular and customary functions of management, including, but not limited to, directing the activities of the various City departments; determining standards and levels of service and methods of operation, including subcontracting and the introduction of new equipment; the right to hire, lay off, transfer and promote, including determining the procedures and standards thereof; to discipline and discharge probationary employees; to determine work schedules and assign work; and to exercise any other right not specifically abridged by this Agreement. Nothing in this clause shall have the effect of nullifying agreements entered into under other sections of this Agreement, provided that management rights and prerogatives are not subject to the grievance procedure, specified in Article 22, except where abridged by a specific provision of this Agreement. It is further agreed that the City retains all rights, powers and privileges not expressly specified in this section.

## **ARTICLE 3 – EMPLOYEE RIGHTS**

**Section 3.1.** It is agreed that employees represented by the Union shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation on matters of employee relations. Employees covered by this Agreement also shall have the right to refuse to join in the activities of the Union or any other employee organization. No employee or member of the Union shall be interfered with, intimidated, restrained, coerced or discriminated against by the City or by the Union because of his/her exercise of these rights and privileges contained in this agreement.

**Section 3.2. - Non-Discrimination:** Neither the City nor the Union shall discriminate against any employee covered by this Agreement because of age, marital status, sex, sexual orientation, physical disability, race, color, creed, religion, national origin, union affiliation, political affiliation or other protected status or activities.

**Section 3.3. Non-Retaliation:** Neither the City nor the Union shall interfere with, intimidate, restrain, coerce, or discriminate or retaliate against an employee for “whistle blowing.” “Whistle blowing” includes reporting the violation of any federal, state or local statutes and City ordinances or policies.

**Section 3.4.** It is the goal of the Union and the City that employees, including supervisors, shall at all times treat each other with respect. Oral warnings, correction of conduct, instruction or other communication between supervisors and employees will be done in a manner which will not embarrass an employee before other employees or the public.

**Section 3.5.** The City shall endeavor to provide employees with a safe and healthy workplace and shall take action to address unsafe or unhealthy conditions. Employees are encouraged to inform the City of unsafe work conditions without fear of reprisal or recrimination.

**Section 3.6.** The City agrees to comply with employees’ constitutional protections when conducting searches of personal property.

**Section 3.7. - Email Usage:** Employees and the Union Executive Board may use the City email system to communicate to the Union membership announcements about meeting subjects, dates and times. The Executive Board members and/or stewards may also use the City’s email to communicate with the City administration, Executive Board members and employees for the purpose of processing formal grievances and filing official correspondence with the City.

**Section 3.8. - Outside Employment:** Notice of outside employment while an employee of the City shall be given to the City’s Human Resources Director. The Human Resources Director shall keep such notification in confidence, and disclose such information only on a need to know basis. The City reserves the right to require termination of that employee’s outside employment if the employment:

- a) Results in an actual conflict of interest.
- b) Detracts from the efficiency and effectiveness of the employee in his/her City work.
- c) Proves incompatible with the employee’s work schedule.

**Section 3.9. - New Employee Orientation:** A Union representative will be allowed up to 20 minutes during the new employee orientation to make a presentation to represented employees. However, if the City fails to provide the Union timely advance notice of the new employee orientation meeting, the Union representative shall be allowed to meet with the employee for 20 minutes on paid time. The presentation can address the purpose of the Union, benefits of belonging to the Union, and related information. It is not time to be used for discussion of labor/management disputes.

## ARTICLE 4 – UNION SECURITY

**Section 4.1.** Membership or nonmembership in the Union shall be the individual choice of employees covered by this Agreement. Any employee who chooses not to belong shall make a "payment in lieu of dues" which shall be in an amount set by the Union.

**Section 4.2.** Notwithstanding the foregoing, any employee who, based upon bona fide religious tenets or teachings of a church or religious body of which such employee is a member or as otherwise required by law, objects to "fair share" as required in Section 4.1 shall not be required to do so. Such employee shall pay an amount of money equivalent to regular Union dues to a nonreligious charity or to another charitable organization mutually agreed upon by the employee affected and the representative of the labor organization to which such employee

would otherwise be required to pay dues. The employee shall furnish written proof to the City that this has been done.

**Section 4.3.** The City agrees to deduct from the paycheck of each employee, pursuant to this Article, Union dues or "fair share" commencing with the first pay period following date of hire.

**Section 4.4.** The City will not be held liable for checkoff errors, but will make proper adjustments with the employee and the Union for errors as soon as practical and upon notification from the Union. The Union agrees to indemnify and hold harmless the City from any action arising under this Article.

**Section 4.5.** The aggregate deductions of all employees shall be remitted to AFSCME and an itemized statement shall be remitted to the President and Treasurer of the Union, as well as to AFSCME, within three (3) business days following each payday.

**Section 4.6.** The City shall notify the President of the Union of all new hires in the bargaining unit within two (2) weeks after their date of employment, furnishing the Union with the employee's name, position title and mailing address. The City shall also notify the President of the Union of the new employee's orientation date, time and location when determined.

## **ARTICLE 5 - PEACEFUL PERFORMANCE OF CITY SERVICES**

**Section 5.1.** During the duration of this Agreement, there will be no strike (including sympathy strike) by the Union, nor will any of its negotiators, representatives or employees investigate, promote, sponsor, engage in or condone any strike, slowdown, concerted stoppage of work, or any other intentional disruption of the operations of the City, regardless of the reason for doing so. For purposes of this section, "strike" means an employee's refusal and concerted action without others to report for duty, or his/her willful absence from his/her position, or his/her stoppage of work, or his/her absence in whole or in part from full, faithful or proper performance of his/her duties of employment for the purpose of inducing or coercing a change in the conditions, compensation, rights, privileges or obligations of employment.

**Section 5.2.** In the event of a violation of this provision by the Union or employees in the bargaining unit, the City may discipline or discharge any member of the Union involved in such activity on a uniform basis. Nothing in this Article shall preclude recourse by the City to such other legal or equitable remedies as may be available to it.

**Section 5.3.** The Union agrees to inform its members of their obligations under this agreement, and to direct them to return to work.

**Section 5.4.** During the term of this Agreement, the City will not instigate a lockout over a dispute with the Union so long as there is no breach of this Article.

## **ARTICLE 6 - HOURS OF WORK**

### **Section 6.1. - Work Schedule:**

**Normal Work Week:** A normal workweek shall consist of forty (40) working hours in a consecutive seven (7) day period, which shall coincide with the department's calendar week, which shall commence on Monday, at 12:01 a.m.

**Work Schedules:** Each bargaining unit member shall be assigned to a regular work schedule or a variable work schedule at the time the employee is hired. A schedule consists of the days of the week and the hours of the day that the employee works.

**Regular Work Schedule:** A regular work schedule has a fixed starting and quitting time. For full time employees, it consists of:

- Eight (8) hours per day on the basis of a five (5) consecutive day work week, or
- Ten (10) hours per day on the basis of a four (4) consecutive day work week.

Both the employee and his/her supervisor shall mutually agree to a regular work schedule. The supervisor will not unreasonably withhold approval of requests to change the regular work schedule to one of the above options. The City reserves the right to determine the work schedule based on the needs of the City and the services to the public.

For part-time employees a regular work schedule consists of a minimum average of twenty (20) hours per week on the basis of a five (5) consecutive day work week.

**Variable Work Schedule:** A variable work schedule is a work schedule that permits variable starting and quitting times during the work week and, by mutual consent, may vary consecutive work days, but which does not exceed forty (40) hours in a work week. Variable work schedules are voluntary for both the City and the employee and must be authorized in advance by the supervisor. Part time employees may also work a variable schedule.

**Flexible Hours:** An employee and the City may agree to “flexing” an employee’s work schedule on a temporary basis which is not the same as working a variable schedule. (See 7.2).

**Section 6.2. - Rest Periods:** Employees will be granted a paid rest period of fifteen (15) minutes during each half (1/2) shift. In the event an employee is required to work after the end of a shift, he/she will be granted an additional rest period for each increment of four (4) hours worked or major portion of four (4) hours worked, i.e. one additional rest period if they work more than ten (10) hours and one minute and a second additional rest period if they work more than fourteen (14) hours and one minute. Rest periods shall be scheduled by the City in accordance with specific operating requirements of each employee’s duties, but must generally be taken near the middle of each half (1/2) shift or each increment of four (4) hours worked after completion of a shift. Rest periods will be considered paid working time.

**Section 6.3. - Meal Periods:** Employees shall be granted either a thirty (30) or sixty (60) minute unpaid meal period during the middle of each work shift. An additional unpaid meal period of either thirty (30) or sixty (60) minutes will be granted to employees who are required to work fourteen (14) hours and one minute. Meal periods shall not be considered working time. Employees may adjust their meal period with supervisory approval. Employees who are required to work during their meal period shall be paid for such time or their shift may be reduced by a corresponding amount upon mutual agreement of the employee and the City.

**Section 6.4. - Posting Schedules and Shifts:** Work schedules and shifts shall be posted on bulletin boards within the work area of affected employees in the Library, Operations Division and Water Treatment Plant.

**Section 6.5. - Changing Established Schedules:** Established work schedules as defined in Section 6.1 may only be changed after thirty (30) days written notice to affected employees.

**Section 6.6. - Inclement Weather/Emergency Shift Change:** On or before October 15th of each year, the City shall establish and post a twenty-four (24) hour work schedule for inclement weather for employees of the Operations Division. The City will consult with employees regarding the work schedule and attempt to establish the schedule based upon seniority and the needs of the Division. The City may implement the inclement work schedule when deemed necessary.

**Section 6.7. - Water Treatment Plant Schedules and Shifts:** In applying the terms of this Article, work schedule for operators at the Water Treatment Plant has the following definitions:

“Schedule” refers to the days of the week the operator is assigned to work.

“Shift” refers to the daily hours an employee is assigned to work.

- “First Shift” is the day shift, which starts in the morning.
- “Second Shift” begins during the afternoon
- “Third Shift” follows the second shift and is only used when the Water Treatment Plant is on a five day, eight hour shift schedule.

If the City temporarily changes an operator’s normal work shift or schedule with less than seven (7) calendar days’ notice, the City will pay overtime for the first two (2) days of the changed shift or schedule.

If the City temporarily changes an operator’s normal work schedule such that it splits or changes the operator’s normal days off at the time of the schedule change, the City will pay overtime for the first two (2) days of the changed shift or schedule, regardless of whether seven (7) calendar days’ notice was given.

**Section 6.8. – Filling Open Shifts within Divisions in the Library:** Open established shifts shall be available to part-time bargaining unit employees who work in positions in the same classification series in that division of the Library based on seniority, subject to the conditions described below.

The part-time employee’s established schedule must remain less than forty (40) hours per week and there must be no increase in the FTEs for that division of the Library. If an established shift is open, the City will notify all represented part-time employees in that division and classification series via email of the open shift. Part-time employees will have five (5) business days from the date of the email notice to reply via email. If more than one part-time employee submits a request, the employee with the most seniority will be given the shift. The City may, however, deny an employee’s request based on operational need or budgetary considerations.

## ARTICLE 7 - OVERTIME

**Section 7.1. - Overtime Rate of Pay:** Employees assigned a five (5) day eight (8) hour or four (4) day ten (10) hour work schedule shall be compensated at a rate of pay of time and one-half (1-1/2) for work performed in excess of eight (8) hours per day for employees working a five (5) day eight (8) hour work week or ten (10) hours per day for employees working a four (4) day ten (10) hour work week, or forty (40) hours in a work week. Shift differential shall be included in the computation of overtime when overtime is worked within the same work week as the applicable shift work. Overtime shall be computed to the nearest fifteen (15) minute period.



All overtime must be approved in advance by the City, unless advance approval cannot be obtained due to emergencies or other urgent operational needs.

**Section 7.2. - Flexing Hours:** An employee who works in excess of his/her regularly scheduled hours of work on any given day may, with the approval of his/her supervisor, waive the daily overtime pay and flex the remaining hours worked during the work week so that the employee is not working more than forty (40) hours during the work week.

**Section 7.3. - Variable Work Schedules:** Employees assigned a variable work schedule under the terms of Article 6.1 shall be compensated at a rate of pay of time and one-half (1 1/2) for all work performed in excess of forty (40) hours in a work week.

**Section 7.4. - 'Hours Worked':** For the purposes of determining hours worked, vacation, sick leave, compensatory time and holidays shall be considered as hours worked. Military leave shall not be considered as hours worked pursuant to the Fair Labor Standards Act.

**Section 7.5. - Compensatory Time In Lieu of Overtime Pay:** All overtime worked shall be paid or the employee shall receive compensatory time. In the case of compensatory time, the following shall apply:

At the discretion of the employee, overtime may be compensated by granting the accrual of compensatory time in lieu of overtime pay. Compensatory time in lieu of overtime pay shall accrue at the rate of time and one-half (1 1/2) for overtime work. Employees may accrue a maximum of eighty (80) hours compensatory time, exclusive of compensatory time in lieu of holidays. In exigent circumstances, the City Manager has the discretion to temporarily (up to six months) increase the maximum accrual cap of eighty (80) hours of compensatory time.

Compensatory time off shall be taken by mutual consent and as approved by the Department Head, or employee's supervisor, consistent with the needs of the City.

**Section 7.6. - 'Flex Time' In Lieu of Overtime Pay:** Time off in lieu of overtime pay shall be at the straight time rate if taken within the workweek (i.e., "flextime") regardless of the designated schedule if mutually agreed upon by the City and employee.

**Section 7.7. - Call-Back:** An employee who is released from work and called back to perform emergency work shall receive a minimum of three (3) hours' pay at the overtime rate unless the time is within two (2) hours prior to the regular starting time; in which case, the employee shall be paid at the overtime rate for actual time worked. Overtime shall be paid for call-backs exclusive of Section 7.4 regarding working hours. This minimum shall not apply more than once when an employee is paged or called back more than once within a three (3) hour period.

**Section 7.8. - Approval of Changes in Work Schedules:** All time off in lieu of overtime pay, i.e. compensatory time and flextime, must be approved in advance by the employee's supervisor.

## **ARTICLE 8 - SPECIAL PAY**

**Section 8.1. - Standby:** Whenever an employee who works in the Operations Division or the Water Treatment Plant Division is required to be available to receive emergency phone calls during the evenings and/or weekends outside their normal working hours for one week consecutively, the employee will be entitled to standby pay. Employees required to be on standby for a consecutive seven (7) day period shall receive twelve (12) hours of standby pay at the straight time rate. Employees required to be on standby for a period which includes a holiday

shall receive twelve (12) hours additional standby pay. Standby pay is intended to cover all time spent on the phone responding to requests for service. No overtime shall be paid unless the employee is required to return to work.

Employees at their option shall be allowed to trade standby duty with another employee on the standby list. Management will be notified in advance and it will be documented on the schedule.

Employees at their option shall be allowed to forfeit, to another employee on the standby list, up to two (2) standby shifts per calendar year. Employees can only take up to an additional four (4) standby shifts per calendar year. Management will be notified in advance and it will be documented on the schedule.

The standby schedule will be a one year schedule that is updated annually with employee input and consideration to vacations and/or other commitments. The City may adjust the schedule throughout the year as needed due to operational needs. However, any adjustment shall be done with as little disruption to the schedule as possible. This schedule shall be posted in accordance with Section 6.4 – Posting Schedules.

**Section 8.2. - Shift Differential for Water Treatment Plant Operators:** Water Treatment Plant Schedules are defined in Section 6.7.

Water Treatment Plant Operators working the first shift will not be paid shift differential. Operators working the second shift, after any overlap period with the first shift, shall be paid an additional 4% per hour. Third shift operators shall be paid an additional 5% per hour.

**Section 8.3. - Show Up Pay for Operations Employees:** An employee working in the Operations Division who is scheduled for work, reports for work and is required by his or her supervisor to leave work prior to the beginning of his or her shift shall be paid the equivalent of three (3) hours pay at time and one-half. When such an employee actually begins his/her scheduled shift and is sent home prior to the end of the shift, the employee shall be paid for the remainder of the scheduled shift.

## **ARTICLE 9 – WAGES**

**Section 9.1.** Effective July 1, 2012 and for subsequent years of the Agreement, wages shall be as follows:

- A. For the period July 1, 2012 through June 30, 2013, wages shall be increased by 2.9%. In order to be eligible for retroactive wages or other benefits, an employee must be employed on the date the Agreement becomes effective, i.e. the date the Agreement is ratified by the bargaining unit and approved by the City Council, whichever occurs later.
- B. For the period July 1, 2013 to June 30, 2014 the wage increase shall be the yearly percentage change in the Portland Consumer Price Index for Urban Wage Earners (CPI-U) for the period of time ending December 31, 2012 with a minimum of 2% and a maximum of 4%. The percentage change is determined by comparing the change between December 31, 2011 and December 31, 2012. The amount shall be carried to the first decimal point. The new wage scale shall be attached as Appendix A and made a part of this agreement.

- C. The parties agree to reopen Article 9 of the Agreement no later than February 1, 2014 for the purpose of negotiating wage increases to be effective July 1, 2014 through June 30, 2015.

**Section 9.2.** The City shall continue to pay a six percent (6%) average employee contribution to the Public Employee Retirement Fund for the employee members then participating in the Public Employee Retirement System or the Oregon Public Service Retirement Plan. Such payment of employee member monthly contributions to the system shall continue for the life of this Agreement, and shall also be applicable to employees who first began to participate in the system on or after July 1, 1980 to the termination of this Agreement. The full amount of required employee contributions paid by the City on behalf of employees pursuant to this agreement shall be considered as "salary" within the meaning of ORS 238.005(20)(5) for the purposes of computing an employee member's "final average salary" within the meaning of ORS 238.005(8); but shall not be considered as "salary" for the purposes of determining the amount of employee contributions required to be contributed pursuant to ORS 238.200 & 238.440. Such paid employee contributions shall be credited to the employee accounts pursuant to ORS 238.205, and shall be considered to be employee contributions for the purposes of ORS 238.005 to 238.750.

If the Oregon Public Employee Retirement System (PERS) statute is modified to end the employer "pick-up" of the employee contribution, the parties agree to enter into negotiations to determine a successor retirement benefit.

**Section 9.3. - Salary Administration:** An employee shall move from Step 1 to Step 2 (or the next higher step if hired at a step above step 1) after 180 days of employment and yearly thereafter through the steps of the salary range based on satisfactory performance. If an employee is denied a step increase due to unsatisfactory performance, the employee may grieve the denial through the grievance procedure to the City Manager whose decision shall be final and binding.

**Section 9.4. – Incentive Pay:** The pay plan incorporated into this Agreement is structured in such a manner as to include compensation for educational and certification accomplishments as these skills are related to the particular classifications. However, mechanics shall receive a maximum of \$5.00 (Five Dollars) per month for each individual certificate issued by the National Institute for Automotive Excellence for the successful completion of tests concerning automobile mechanics.

## **ARTICLE 10 - HOLIDAYS**

**Section 10.1.** Except as provided below, employees shall be entitled to the following paid holidays:

- |    |                        |     |   |
|----|------------------------|-----|---|
| 1. | New Year's Day         | 7.  | Veteran's Day   |
| 2. | Martin Luther King Day | 8.  | Thanksgiving Day  |
| 3. | President's Day        | 9.  | Friday Following Thanksgiving Day                             |
| 4. | Memorial Day           | 10. | Four hours the second half of the work day on Christmas Eve*  |
| 5. | Independence Day       | 11. | Christmas Day   |
| 6. | Labor Day              | 12. | Four hours the second half of the work day on New Year's Eve* |
|    |                        | 13. | Personal Holiday  |

\*When Christmas Day or New Year's Day falls on Tuesday through Friday and City Hall and/or other City facilities are closed early on Christmas Eve or New Year's Eve, employees who are required to work will be credited with four hours personal holiday time for Christmas Eve and for New Year's Eve.

Holiday pay will be set at eight (8) hours. Employees who work ten (10) hours per day on the basis of a four (4) consecutive day work week or any other schedule where the employee would normally work more than eight (8) hours on the holiday shall have the option of using vacation, compensatory time, leave without pay, or work extra hour(s) to offset this benefit.

Part-time employees shall be entitled to holiday pay as per Appendix "C". Seasonal employees shall be entitled to the above holidays if so employed when the holiday occurs (see Appendix "C").

**Section 10.2.** Except for the Library, when the holiday falls on a Saturday, the holiday will be observed on the preceding Friday. When the holiday falls on a Sunday, the holiday will be observed on the following Monday. For the Library, the holiday will be observed on the actual day.

**Section 10.3.** When a full-time or seasonal employee is unable to observe a holiday because the holiday falls on the employee's day off, the employee shall receive eight (8) hours compensatory time at the straight time rate in lieu of the holiday off (see Appendix "C").

**Section 10.4. – Holiday Pay:** When a full-time or seasonal employee is called back or required to work on a recognized holiday, the employee shall be compensated at the rate of two (2) times the normal rate of pay for actual time worked plus the regular holiday pay, except for those employees who receive compensatory straight time off in lieu of holidays as set forth in Article 10.5.

If a part-time employee is called back or required to work on a recognized holiday that they are not normally scheduled to work, they will be paid straight time for the hours worked, plus receive an equal number of hours of compensatory straight time (see Appendix "C").

**Section 10.5.** Employees assigned to the Water Treatment Plant shall accrue 9.7 hours compensatory time per month for each full month worked in lieu of paid holidays. For work that is less than a full month, compensatory time in lieu of paid holidays shall be prorated to actual time worked. Holiday time may be accrued up to forty (40) hours. Accrued time may be taken off at the mutual consent of the parties consistent with the needs of the City. If other City employees are granted four (4) hours personal holiday time on the day before Christmas and the day before New Year's, Water Treatment Plant employees shall also be granted four (4) hours personal holiday time for each day.

**Section 10.6.** The "personal holiday" must be taken within the fiscal year. Personal holidays shall not accrue from one fiscal year to another. If an employee fails to take a personal holiday, it shall not be compensated. Accrued time may be taken off at the mutual consent of the parties, consistent with the needs of the City. With the exception of the Christmas Eve and New Year's Eve personal holiday time, part-time employees' personal holiday time shall be as follows: employees assigned to a 20 – 29 hours per week shift shall receive 50% of the amount of time received by a full-time employee; employees assigned to a 30 – 39 hours per week shift shall receive 75% of the amount of time received by a full-time employee. Regular part-time employees shall be provided pay for four (4) hours during the half-holidays on Christmas Eve and New Year's Eve.

## ARTICLE 11 - VACATION

### **Section 11.1. - Vacation Accrual – Represented Full Time Employees:**

Full-time employees shall accumulate vacation in the following manner:

Years of Service	Hours of Vacation Per Month	Weeks Per Year	Days Per Year	Max Vacation Accrual (hrs)
0 through 3	8	2.4	12	192
4 through 9	11	3.3	16.5	264
10 through 15	14.33	4.2	21.50	343.92
16 through 19	15.66	4.8	23.50	375.84
20 +	16.67	5	25	400.08

**Section 11.2. - Limitations:** Full-time employees working less than a full month shall be credited a prorated amount of vacation. In no instance shall an employee accrue vacation time while he/she is on a leave of absence without pay. Full-time employees who have depleted their accumulated vacation time will not be eligible to receive vacation pay.

Full-time employees may accumulate vacation time to a maximum of two (2) times their yearly accrual. Part-time employees may accumulate vacation time to a maximum of two (2) times what a full-time employee with their years of service would accrue. Employees may cash out up to eighty (80) hours of accrued vacation time twice per fiscal year with the approval of the Department Head.

Regular, full-time employees are required to take forty (40) hours vacation annually. The forty (40) hours do not have to be taken consecutively. This requirement may be waived upon request of an employee for extenuating circumstances at the discretion of the Human Resources Department. Vacation time off must be approved in advance by the Department Director or his/her designee, unless there are exigent circumstances.

**Section 11.3. - Vacation Reduction:** When an employee exceeds the maximum allowable vacation (two times yearly accrual), the City on a monthly basis, shall contribute the value of the excess vacation time into the employee's VEBA account.

**Section 11.4. - Vacation Accrual – Represented Part Time and Seasonal Employees:** Seasonal employees shall accrue vacation time at the full time rate while so employed. Regular part time employees shall accrue vacation hours in the same proportion that their work hours bear to full-time employment based on the years of service as set forth in Section 11.1 above. The date of original hire into a position represented by the Union shall be used for calculating accrual rates. Represented part-time and seasonal employees who have depleted their accumulated vacation time will not be eligible to receive vacation pay.

**Section 11.5. - Converting Accrued Sick Leave to Vacation Leave:** *See 12.6 under Sick Leave.*

**Section 11.6. - Donating Vacation to Another Employee's Sick Leave Account:** *See Article 12.4 under Sick Leave.*

## ARTICLE 12 - SICK LEAVE

**Section 12.1. - Sick Leave Accrual for Represented Full Time Employees:** Sick leave shall be earned by each regular full-time employee at the rate of eight (8) hours for each full month of service. Employees shall be credited a prorated amount of sick leave for work less than a full month. Sick leave may be accumulated to a total of not more than one-thousand eighty hours (1080). Accumulated sick leave beyond one-thousand eighty hours (1080) shall be transferred to the employee's VEBA account on a monthly basis.

**Section 12.2. - Sick Leave Accrual for Represented Part Time and Seasonal Employees:** Seasonal employees shall accrue sick leave time at the full time rate while so employed. Part-time employees shall accrue sick leave in the same proportion that the employee's work hours bear to full-time employment.

**Section 12.3. - Using Sick Leave:** Employees may utilize their sick leave for the following purposes:

- A. When the employee is unable to perform their work duties by reason of an off-the-job illness or injury, necessity for dental or medical care, or exposure to contagious disease under circumstances which the health of the employee with whom associated or members of the public necessarily dealt with would be endangered by attendance on duty.
- B. When an employee is unable to perform their work duties by reason of an on-the-job injury or occupational illness, set forth in Article 14.
- C. An employee may utilize their sick leave allowance by reason of illness or injury in the immediate family of the employee when the employee's attendance is required to care for the immediate family member. "Immediate family" is defined as mother, father, spouse, domestic partner, sister, brother, children (including foster or court appointed children), step children, grandparents, grandchildren, and in-laws or other relatives residing in the employee's household which requires the employee's absence from work. For purposes of this Article, where sick leave benefits are extended to "spouses", domestic partners shall be considered a spouse, and relatives of domestic partners shall be considered a spouse's relatives. A charge shall be made against sick leave credits for time absent from work only.
- D. For other OFLA qualifying absences.

Represented part-time employees who work an average of twenty (20) or more hours per week will be eligible to use sick leave for OFLA qualifying absences.

An employee may utilize his sick leave or vacation account until such time as the employee is eligible to receive disability insurance payments under PERS or the City's long term disability insurance policy.

A charge against the employee's sick leave or vacation account shall be made on a prorated basis and in proportion to the pay received from the City. All sick leave payments shall cease upon the depletion of the employee's sick leave account. Employees who have depleted their accumulated sick time shall draw from their vacation, personal holiday, and/or compensatory time banks to receive pay for absences that occur after their sick leave accounts are depleted,

unless they are part-time employees working an average of twenty (20) or more hours per week or are on OFLA and/or FMLA leave.

**Section 12.4. – Sick Leave Verification:** All sick leave must be approved by the supervisor. Approval may be withheld pending certification of the attending physician or practitioner or other acceptable verification that such illness or injury prevents the employee from working or his/her attendance is necessary to care of an ill or injured immediate family member under the following conditions:

- A. Whenever the employee's absence exceeds three (3) consecutive workdays; or
- B. Whenever the City can articulate facts giving rise to a good faith concern that misuse of sick leave has occurred (i.e. questionable pattern of usage; calling in on a previously denied day off; etc.), provided the employee has been notified of such facts and has been given the opportunity to address the concern before certification is required.

The City will reimburse employees for the cost charged for obtaining medical verification, including wages for time spent obtaining verification. However, it is understood and agreed that employees will obtain verification via email, mail or facsimile, whenever possible.

No compensation for accrued sick leave shall be allowed to any employee upon separation from employment. Sick leave shall not accrue during any period of leave of absence without pay. Abuse of sick leave shall be cause for disciplinary action.

Upon retirement of an employee, and as allowed under Oregon law, the City will report any unused sick leave hours to PERS for use in determining final average salary retirement calculations.

**Section 12.5. - Donated Leave Bank:** An employee may donate up to forty (40) hours of their accrued vacation, compensatory or personal holiday time per calendar year to a donated leave bank administered by Human Resources for use by other employees who have exhausted their sick leave and other paid leave accounts due to illness, injury or other medical conditions. Employees donating vacation, compensatory or personal holiday time to the City's donated leave bank must maintain a minimum of forty (40) hours in their vacation bank. Donating time shall not be used to extend employment. To be eligible to apply for donated leave, an employee must have a serious illness, injury or medical condition or be caring for a family member with a serious illness, injury or medical condition that requires a prolonged absence from work and must not be receiving or eligible to receive social security disability or long term disability benefits.

Applications for donated leave must be made to Human Resources, in writing, and must describe the serious illness, injury or medical condition necessitating the leave. All applications for donated leave must be approved by Human Resources. Employees who are seeking donations may apply and obtain approval to receive donated leave before they deplete their paid leave banks. The employee's donation to the bank will be converted to money based on the donor's hourly rate. When a request for a donation is approved by Human Resources, the money is paid out at the receiving employee's current rate of pay.

**Section 12.6. - Converting Accrued Sick Leave to Vacation Leave:** Represented full time employees who have a minimum of forty (40) hours in their sick leave bank and represented part-time employees who have a minimum of twenty (20) hours in their sick leave bank who do not use an unscheduled absence during any consecutive three (3) month period shall be entitled to convert accrued sick leave to vacation leave as follows:

- A. Represented full-time employees shall be entitled to convert up to eight (8) hours of accrued sick leave to the same number of hours of vacation leave.
- B. Represented part-time employees who work an average of twenty (20) to twenty-nine (29) hours shall be entitled to convert up to four (4) hours of accrued sick leave to the same number of hours of vacation leave.
- C. Represented part-time employees who work an average of thirty (30) to thirty-nine (39) hours shall be entitled to convert up to six (6) hours of accrued sick leave to the same number of hours of vacation leave.

To be eligible for a conversion, eligible employees must submit their signed Sick Leave Conversion Request forms to payroll no later than the thirty (30) calendar days following the end of the three (3) month period for which they are seeking conversion.

Sick leave conversion rights do not apply to 8-month seasonal employees covered by the Agreement or employees serving their initial probationary period.

Except for the use of OFLA/FMLA leave, any use of unscheduled absences from work, including absences for doctor's appointments, school appointments, funerals, etc., makes an employee ineligible to make the conversion for the period in which the leave occurs. Unscheduled absence is defined as an absence for which the employee has either failed to report to work or remain at work as scheduled, without a written leave request having been submitted at least two weeks in advance of the requested absence.

### ARTICLE 13 - LEAVES OF ABSENCE

**Section 13.1.** The City will comply with the federal Family Medical Leave Act (FMLA) and the Oregon Family Leave Act (OFLA). An employee may utilize sick leave benefits for family leave as set forth in Article 12- Sick Leave, or any accrued compensatory time, vacation time or personal holiday time after the depletion of sick leave. The City will not require the employee to take accrued leave during family leave.

Employees who return to work from FMLA or OFLA leave are entitled to be restored to the position of employment they held when their leave commenced if that position still exists, without regard to whether the City filled the position with a replacement worker during the period of leave. If the position held by the employee at the time family leave commenced no longer exists, the employee is entitled to be restored to any available equivalent position with equivalent employment benefits, pay and other terms and conditions of employment consistent with applicable law.

**Section 13.2. – Bereavement Leave:** In the event of a death in the employee's immediate family as defined below, the employee may take up to a maximum of forty (40) hours leave per occurrence. Approval of the specific amount of leave time shall depend upon: 1) the distance needed to travel to attend the funeral; 2) whether or not the employee is responsible for making funeral arrangements; and 3) any other related factors. Bereavement leave shall not be charged to the employee's sick leave account.

For the purposes of bereavement leave only, "immediate family" shall include those individuals listed as "immediate family" in 12.3, the employee's step relatives and the grandparents and grandchildren of both the employee and the employee's spouse or domestic partner. An



employee may request bereavement leave for any other individuals but the granting of that request will be at the discretion of the Human Resources Director.

**Section 13.3.** Military leave shall be granted in accordance with applicable state and federal law.

**Section 13.4.** Educational leave may be granted up to nine (9) months without pay to attend school on a full time basis at the sole discretion of the Department Director. Prior to educational leave, the City may require the employee to exhaust all available paid leave time except sick leave.

**Section 13.5.** Other leaves may be granted up to six (6) months without pay for purposes other than outside employment at the sole discretion of the Department Director. The City may require the employee to exhaust all available paid leave time prior to the unpaid leave except sick leave.

**Section 13.6.** When an employee is called for jury duty or is subpoenaed as a witness as a result of his/her official employment duties with the City, he/she will be continued at full salary for the period of service required. All monies received as witness fees or pay for jury duty must be signed over to the City when compensation is received.

**Section 13.7.** Insurance benefits may be continued by an employee while on non-FMLA approved, unpaid leave of absence provided the employee makes timely advance payment of the premiums. Failure to make the advance premium will result in a lapse of coverage until the employee returns to paid employment.

**Section 13.8.** In the event of emergency closure of City facilities due to inclement weather or other natural or human caused disaster (e.g., flood, earthquake, volcano, terrorism), when employees are prohibited from coming to or remaining at work (i.e., their supervisor requires them to go home), the City shall pay affected employees their regular rate of pay for up to three (3) days.

In the absence of an emergency closure, if employees decide that such conditions prevent them from coming to work or causes them to leave early, employees can use paid leave time, including vacation, comp time, personal time or up to three (3) days leave without pay per incident.

## **ARTICLE 14 - WORKER'S COMPENSATION**

**Section 14.1.** When an employee is absent from work because of an on-the-job injury or occupational illness, the employee may select one of the following options for compensation during his/her absence:

- A. The employee will only receive his/her Workers' Compensation time loss payments.
- B. Employees may notify the City in writing that they wish to voluntarily turn in their first and all subsequent Workers' Compensation time loss payments. Employees who do so will, in turn, receive their regular paycheck (including any scheduled overtime) and benefits for the period they are receiving time loss payments. In addition, the following will occur.
  1. No sick leave will be deducted from the employee's accruals for one hundred eighty (180) calendar days following the first day of absence due to

the on-the-job injury or occupational illness or aggravation of any such injury or illness.

2. After the one hundred eighty (180) calendar days, employees shall use available sick leave payments in order to receive their regular gross wages. However, an employee's sick leave bank account shall be charged for only the difference between the employee's time loss payments and his/her regular gross wages.
  3. In the event an employee who elects this option fails to provide the City with any of his/her Workers' Compensation time loss payments received from the City's Workers' Compensation insurance carrier, the employee will receive only time loss benefits for that period. The employee shall provide the City with the time loss payment within fifteen (15) business days after receiving it. In the event an overpayment occurs, the City can automatically deduct any overpayment in full from the employees' next paycheck, or from subsequent checks if there is not a sufficient amount in the next paycheck.
  4. In the event an employee's time loss benefits end, but he/she is unable to return to work, that employee may utilize full sick leave benefits in order to receive his/her regular gross wages.
  5. In the event an employee's sick leave benefits are depleted, that employee shall use available compensatory time and vacation pay to receive their regular gross wages. In the event an employee does not specify whether he/she prefers to utilize compensatory time or vacation pay, compensatory time will be used first, then vacation pay.
- C. The City shall not reduce the amount of family leave available to an employee eligible for leave under the Oregon Family Leave Act (OFLA) for any period the employee is unable to work because of a disabling compensable injury consistent with applicable law.

**Section 14.2.** If an employee's workers' compensation claim is disputed, the employee will be eligible to exercise the same options as outlined in Section 14.1, while the claim is in disputed status. In the event the employee's injury or illness is determined to be non-compensable at any point in the workers' compensation process, whether by the City's workers' compensation carrier or through a workers' compensation proceeding, the employee shall, from that date, be treated as though he/she suffered a non-compensable injury or illness and shall be eligible to draw full available sick leave benefits. If the employee's sick leave benefits are depleted, the employee shall use available compensatory time and vacation pay. In the event an employee does not specify whether he/she prefers to utilize compensatory time or vacation pay, compensatory time will be utilized first, then vacation pay.

**Section 14.3.** In the event there is a final decision issued through the Workers' Compensation Board or Oregon courts, reversing a previous determination that an employee's injury or illness *was or was not* compensable, the employee's sick leave and other paid leave accounts will be adjusted to reflect what he/she should have received in sick leave and other benefits pursuant to Section 14.1, above. Any such adjustment will not, however, permit an employee to receive the restoration of sick leave or other paid leave benefits for any portion of an employee's time off for

which he/she was receiving time loss or disability insurance benefits. If the employee's sick leave and other paid leave accounts are insufficient to allow the City to adjust for overpayments, the employee's sick leave account will be adjusted to reflect a negative balance. The City will not, however, reflect a negative balance in the employee's other paid leave accounts or deduct from the employee's subsequent paychecks to adjust for overpayments.

**Section 14.4.** In the event that the procedure set forth in this Article is found to be in violation of state statute or other law, the City and Union agree to re-open this Article for negotiation.

**Section 14.5.** Employees who are granted light duty assignments, as well as employees who are working in their regular positions, while recovering from Workers' Compensation injuries or illnesses must utilize sick leave benefits for absences from work that are attributable to such injuries or illnesses (i.e. doctor's appointments, physical therapy sessions, etc.), consistent with applicable law.

## **ARTICLE 15 - LAYOFF**

**Section 15.1.** The City may lay off employees for lack of work, reorganization, changes in staffing, shortage of funds or business necessity. Layoff shall be by job classification within a division or, for those departments that do not have separate divisions, by job classification within a department. The City will determine the staffing level (number of full time, part-time and represented seasonal positions) and the classification of those positions. Once the staffing level is determined, employees in the job classification(s) selected shall be laid off based upon their qualifications, skills and abilities to perform the work. In instances where two (2) or more employees' skills, abilities, and qualifications are relatively equal, seniority shall be the determining factor. Provided, however, that the following order of layoff within such classifications shall occur: temporary; probationary part-time; probationary full-time; seasonal; regular part-time; and regular full time.

**Section 15.2. - Definition of Seniority:** Seniority is defined as set forth in Article 19 – Probation and Seniority. For the purpose of Article 15, part-time employees and represented seasonal employees shall have their seniority pro-rated based on their average hours worked during the thirty-six (36) months preceding date of layoff multiplied by years of service from last date of hire. If two (2) employees have the same bargaining unit seniority date, then seniority is determined by date of employment with the City.

**Section 15.3. - Notice to the Union:** At least fourteen (14) calendar days prior to notice of layoff, the City shall provide the Union written notice of its intent to lay off employee(s). The notice will include the job classification(s); the names of the employee(s) in those job classifications who have been tentatively selected for layoff; the category of employment of those employee(s) (regular full-time, regular part-time, seasonal) and a seniority list by name, job classification and category.

If the Union desires to discuss possible options to the pending layoff or question the selection of the employee(s) tentatively selected for layoff, it shall notify the City to schedule a meeting within seven (7) calendar days of receipt of notice of layoff. Both the notice and the discussions will be treated with confidentiality. The City shall discuss with the Union the criteria which shall be used to determine qualifications, skills, abilities and seniority of employees and the order of layoff. This discussion will include the possibility of transferring work being performed by temporary or on-call employees to employees identified for possible layoff.

The City shall attempt in lieu of a layoff and upon agreement with the Union and the affected employee, to transfer or demote the employee scheduled for layoff to another position in the

bargaining unit; the employee is qualified to perform the duties of the position; and the transfer or demotion does not displace another employee subject to the other provisions of this Article. In the event more than one employee scheduled for layoff possesses the required certifications, licenses, knowledge, skill and ability to perform the duties of the position, the position will be offered to the most senior employee.

If at the end of a six (6) month probationary period, the City determines the employee has not successfully completed the probationary period, the employee shall be placed on the recall list.

**Section 15.4. - Notices of Layoff to Employees:** An employee who is selected for layoff shall be given written notice of a pending layoff at least forty-five (45) calendar days before the effective date of the layoff. An employee who is laid off as the result of bumping by another bargaining unit employee will be given written notice of pending layoff at least thirty (30) calendar days before the effective date of the layoff. The City may, however, with agreement from an employee who has received notice, elect to pay an employee for the regular hours he/she would have worked during the forty-five (45) or thirty (30) day period in lieu of requiring the employee to work during that period. The layoff notice shall advise the employee of available options as described in Section 15.5 and shall include a list of all positions the employee may potentially be qualified to bump into.

**Section 15.5. - Employee Options:** Employees who receive layoff notices shall have the following options:

- A. Accept the layoff.
- B. Exercise their bumping rights as set forth in Section 15.6.

**Section 15.6. - Bumping Rights:** An employee notified of layoff may bump an employee with lower seniority in the same job classification. If no other position in the employee's classification is available, the employee may bump an employee with lower seniority in the same pay grade or lower pay grade, provided he/she possesses the required certifications, licenses, knowledge, skill and ability to perform that job. No part-time or seasonal employee may bump a full-time employee.

An employee notified of layoff must exercise his/her bumping rights in writing to the Human Resources Department within seven (7) business days of receipt of the layoff notice. In the event the employee wants to exercise his/her bumping rights and has timely notified the Human Resources Department, but does not identify which position he/she wishes to bump into, the least senior person in the classification shall be the person bumped.

Employees will be given six (6) months from the date of placement to obtain the required certifications and licenses for the position. If an employee is unable to obtain the certifications and licenses within this period, then the employee shall be laid off and shall be placed on the recall list. Employees who bump into a classification they have previously held are presumed to possess the required knowledge, skills and abilities to perform that job.

An employee who bumps into a new position due to layoff is eligible to move back to his/her former position should it become available within twenty-four (24) months after the effective date of his/her layoff. The right to bump back into a former position will be granted before other employees are granted recall rights to that position.

Full-time employees may bump full-time and part-time employees with less seniority. Part-time employees may bump only part-time employees with less seniority and seasonal employees may bump only seasonal employees with less seniority.

**Section 15.7. - Recall Rights:** Bargaining unit employees who have been laid off will be placed on a recall list in the inverse order of seniority for a period of twenty-four (24) months from the date of layoff. Regular full-time employees shall have recall rights to the full-time job classification they held at the time of layoff or a full-time position or, upon request, a part-time position in the same or lower pay grade, provided they possess the certifications, licenses, knowledge, skill and ability to perform the job. Laid off full-time employees must request to be recalled to part-time positions in writing to the Human Resources Director before the effective date of their layoffs.

Regular part-time employees and seasonal employees represented by the Union shall have recall rights to the part-time or seasonal classifications they held at the time of layoff or a part-time or represented seasonal position in the same or lower pay grade, provided they have the certifications, licenses, knowledge, skill and ability to perform the job. Laid off part-time employees must request to be recalled to a full-time position, but will be recalled only after eligible full-time employees have been recalled first. Laid off part-time employees must also request to be recalled to full-time positions in writing to the Human Resources Director before the effective date of their layoffs.

Employees will be given six (6) months from the date of placement to obtain the required certifications and licenses for the position. If the employee is unable to obtain the certifications and licenses within this period, then the employee shall be laid off and shall be placed on the recall list.

Probationary employees shall have no recall rights.

Recall rights shall continue for a period of twenty-four (24) months from date of layoff. Recall shall be offered to those employees on the recall list for the job classifications for which they are qualified prior to hiring any new bargaining unit employee(s).

Notice of recall shall be made by Certified Mail – Return Receipt Requested and regular mail. Employees shall be responsible for keeping the City informed of their correct address. Failure to respond to such recall notice within thirty (30) calendar days of mailing, shall cause loss of recall rights and separation from employment. Recalled employees shall have two (2) weeks to report to work, unless mutually agreed otherwise.

A laid off part-time employee who requests to be offered a full-time job and declines, shall remain on the recall list. A laid off full-time employee who requests to be offered a part-time job and declines, shall remain on the recall list. A laid off full-time employee who is offered a full-time job and declines shall relinquish all recall rights provided for within this Article and Agreement. A laid off part-time employee who is offered a part-time job and declines, shall relinquish all recall rights provided for within this Article and Agreement.

Employees who are recalled to a position they did not hold at the time of layoff will serve a six (6) month probationary period. If at the end of a six (6) month probationary period, the City determines the recalled employee has not successfully completed the probationary period, the employee shall be returned to the recall list for any portion of the twenty-four (24) months of recall rights remaining, minus the period of time recalled to City employment. An employee recalled to his/her former position will not be required to serve a probationary period.

Employees who are recalled from layoff shall have the sick leave balance they had accumulated on the date of layoff restored and regular (non-probationary) employees shall be returned to work with their seniority restored for all purposes, i.e. salary step, vacation accrual, they would have advanced to had the employee not been laid off. Employees who were on initial probation at time

of layoff and are voluntarily recalled by the City will be required to serve their remaining probationary time and, upon completion of probation, will be credited with their initial service for all purposes, i.e. salary step, vacation accrual, etc.

**Section 15.8.** Employees who are laid off and exercise their right to continued medical benefits under COBRA will be placed on COBRA and have COBRA medical insurance benefits paid for by the City for six (6) months or until they are eligible for medical insurance from another source, whichever occurs first. The paid COBRA is limited to a total of six (6) months during a twenty-four (24) month recall period.

It is the responsibility of laid off employees to promptly notify the Human Resource Department if they become eligible for medical insurance from another source and to verify when they became eligible for such benefits. Failure to do so will result in forfeiture of recall rights, unless waived by the City.

## **ARTICLE 16 - EMPLOYEE INSURANCE BENEFITS**

**Section 16.1. - Life, AD&D, and Disability Insurance:** All eligible regular full-time, represented seasonal and represented part-time employees will be provided with Life, AD&D and Disability benefit coverage as follows:

**A. Disability Insurance:** This plan shall provide long-term disability coverage \$4,000/month or 60% of the employee's salary, whichever is less, after a ninety (90) day waiting period. Additional costs shall not be subject to payment by the City.

**B. Life Insurance:** This plan provides a term life insurance benefit in the amount of \$25,000 and shall include an accidental death and dismemberment benefit.

**Section 16.2. – Medical, Dental, Vision, and Prescription Insurance:** All eligible regular full-time, represented seasonal and represented part-time employees will be provided with the following medical, dental and vision insurance plan options:

**A. Medical Insurance Plans:** The indemnification plan shall be substantially comparable to the medical insurance plan currently offered by the City through Pacific Source Health Plans and shall include limited chiropractic care and a \$15.00 co-pay. Employees may, at their option, select the City's HMO plan offered through Kaiser Permanente.

**B. Dental Service Plans:** The primary plan shall be substantially comparable to the Oregon Dental Service's "Incentive Dental Program," which includes coverage for orthodontic, crown, and inlay services. Employees may, at their option, select Kaiser dental coverage regardless of whether they have Kaiser or PacificSource medical insurance.

**C. Vision Plan:** This plan shall be substantially comparable to the VSP Vision Plan currently offered by the City. Employees who select the City's HMO plan will have vision coverage through Kaiser Permanente.

**Section 16.3. - Premium Cost Sharing:** Effective January 1, 2013, for regular full-time and represented seasonal employees the City will pay:

- 93% of the composite monthly premium cost of the medical insurance plan they have selected effective January 1, 2013 and 91% of the composite monthly premium cost of the medical insurance plan they have selected effective July 1, 2013.

- 100% of the premium cost for the dental plan they have selected; and
- 100% of the premium for the vision insurance plan, unless the employee is on the City's HMO plan.

Represented seasonal employees shall be entitled to receive the same contribution for insurance benefits as full-time employees while employed.

The Union will notify the City in writing by March 31, 2013 if the employee contribution will be calculated from tiered rates or composite rate. In the event the City is notified that contributions will be calculated from tiered rates, the change to tiered rates will become effective July 1, 2013.

The City shall provide represented part-time employees medical, dental and vision insurance plan premiums in the same proportion that their work hours bear to full-time employment. For any premium balance due, the City shall provide to represented part-time employees an amount equal to the City's service plan (currently PacificSource, ODS, plus VSP) premium applied to the medical and dental HMO Plan premium, consistent with existing practices. The minimum percentage of premium costs for part-time employees shall be at least the same percentage as for full-time employees.

Represented part-time employees who choose to participate in one of the dental plans only, and do not select medical coverage, shall have 100% of their dental premium paid by the City.

Employees will be responsible for the difference and will pay the monthly amount through a payroll deduction. In the event of non-payment or insufficient wages to cover the premium, an employee who is eligible for health insurance as described in this Article, must pay his/her share of the premium directly to the City.

**Section 16.4. - Continuation of Benefits:** An employee will continue to receive medical, dental, vision, disability and life insurance benefits through the City's payment of its portion of the premium costs during the time they are:

- A. On paid status (hours worked or any paid leave) at least twenty (20) hours in the month or on FMLA or FMLA/OFLA leave, whichever is greater; or
- B. Off work due to a compensable on-the-job injury or occupational illness for a period up to one (1) year from the date of original injury or diagnosis, whether or not the employee has any accrued leave time, provided he/she has timely exercised COBRA rights.

**Section 16.5. - Domestic Partners:** For purposes of this Article, where insurance benefits are extended to "spouses", a domestic partner shall be considered a spouse. Children of domestic partners shall be considered family members of an employee.

**Section 16.6. - Voluntary Employee Beneficiary Association (VEBA):** The City will continue a Voluntary Employee Beneficiary Association (VEBA) for the employees covered by this Agreement. The City will continue to make contributions of \$40.00 per employee per month into employee VEBA accounts. The City will make contributions of \$50.00 per employee per month into employee VEBA accounts commencing June 1, 2013 and \$55.00 per employee per month into employee VEBA accounts commencing July 1, 2013.

**Section 16.7. – Reopener:** As set forth in Section 36.1 of this Agreement, the parties agree to reopen Article 16 for the purposes of negotiating employee insurance benefits to be effective July 1, 2014 through June 30, 2015.

## ARTICLE 17 - EDUCATION REIMBURSEMENT

**Section 17.1.** Subject to a maximum of \$3,000 (Three-thousand dollars) per employee, per fiscal year, and the availability of funds, the City will reimburse employees at the rate of one hundred percent (100%) for the cost of books and tuition for any successfully completed academic course which is directly related to their assigned department or a mutually agreed upon career development plan. The course must have prior approval by the respective department head and must be completed with a 2.0 or "C" or better grade. Once such career development plan has been agreed upon by the department head, the City will not withhold reimbursement for any course required by such plan. Any books purchased and reimbursed by the City are to be returned to the City and shall be considered City property upon completion of the course. The City will attempt to budget funds to allow employees to utilize the provisions of this Article.

Reimbursement is not available through the City if other compensation is available from other sources, such as the G.I. Bill, LEEP, or other similar programs.

A further stipulation for any tuition reimbursement is that the benefited employee is required to continue employment with the City for a period of one (1) year after completion of the course(s) provided. Voluntary separation from the City, prior to this time period, will require that the employee reimburse the City the prorated portion of the amount received. The employee will be credited one-twelfth (1/12th) of the amount received for each month of completed service after completion of the course for which reimbursement was made (For example, an employee who has received educational reimbursement for a course, but completes only six (6) months of service following completion of that course will be responsible for reimbursing the City for one half (1/2) of the reimbursement received.) The City may recover the reimbursement through deduction from the employee's final paycheck to the extent permitted by law.

**Section 17.2. -Licenses and Certifications:** The City agrees to continue to pay license and certification fees and costs associated with those licenses and certifications incurred by employees. The licenses and certifications must be related to employment and approved by the supervisor.

Employees are responsible for renewing and maintaining certificates they acquired as qualifications for the job they hold. If such a required certificate lapses solely because of an employee's action or inaction the employee shall be subject to discipline.

## ARTICLE 18 - UNIFORMS AND CLOTHING

**Section 18.1.** The City agrees to provide full time and represented seasonal employees in the Operations Division, excluding administrative staff who perform only desk functions, at Parks Maintenance, at the Water Treatment Plant, and any job classifications added at the discretion of the Department Director, the following clothing:

- A. New employees shall purchase pants and be provided new logoed shirts, vests, sweatshirts and/or other clothing not to exceed \$250 per fiscal year. The color and style of the uniform is at the discretion of the City. The employee shall maintain the uniform.

Replacement uniforms may be purchased by the City or reimbursement provided to the employee based upon the condition of the clothing. Replacement costs shall not exceed \$250 annually per fiscal year (July 1 - June 30).



- B. Five (5) pairs of coveralls which are to be maintained by the City and replaced by the City when not serviceable.
- C. One (1) pair of safety boots (shoes) not to exceed an amount \$ 150 per fiscal year. An employee, at the employee's option, may use part of his/her \$250 clothing allowance towards the purchase of one or more pairs of safety boots. An employee may also use money not used on safety boots (shoes) to purchase work clothes. Safety boots or shoes will be replaced by the City when not serviceable, but not more than once per fiscal year.
- D. One (1) set of rain gear will be provided and maintained by the City. Rain gear will be replaced by the City when not serviceable.
- E. One (1) heavyweight coat which is to be maintained by the employee and replaced by the City when not serviceable. The quality of the coat shall be mutually agreed to between the City and the Union.
- F. One (1) pair of insulated coveralls when requested which will be replaced at least every three (3) years. Insulated coveralls shall be cleaned by the City.
- G. When requested, the City shall provide up to four (4) pairs of heavy duty work gloves per fiscal year.
- H. Part-time employees shall be provided paragraphs #b, c, d and g.

**Section 18.2.** The City agrees to provide employees, excluding administrative staff who perform only desk functions, in Engineering, Inspection Services, Code Enforcement Specialist, Facilities Maintenance, and any job classifications added at the discretion of the Department Director, the following items:

- A. One (1) pair of safety boots (shoes) not to exceed an amount \$150 per fiscal year. Safety boots or shoes will be replaced by the City when not serviceable, but not more than once per fiscal year.
- B. One (1) set of rain gear which will be provided and maintained by the City. Rain gear will be replaced by the City when not serviceable.
- C. One (1) heavyweight coat which is to be maintained by the employee and replaced by the City when not serviceable. The quality of the coat shall be mutually agreed to between the City and the Union.

**Section 18.3.** All employees who are provided with uniforms or work clothing, as set forth above, are required to wear these uniforms and work clothing and report to work with them being clean and neat in appearance, unless this requirement is expressly waived by the employee's supervisor.

**Section 18.4.** All clothing and uniforms provided in this article are considered City property and shall be returned to the City upon separation from employment, except for boots.

## ARTICLE 19 - PROBATION AND SENIORITY

**Section 19.1. – Initial Probationary Periods:** Employees in regular positions covered by this Agreement will serve an initial probationary period of six (6) months of employment. The initial probationary period may be extended up to six (6) months with the mutual written agreement of the City and the Union. Written agreement may be confirmed via email exchange. The employee shall be notified of any extension and the reasons for the extension. During this period, an employee may be discharged at the sole discretion of the City without reason or cause being shown and without recourse through the grievance procedure.

**Section 19.2. – Promotional and Transfer Probationary Periods:** An employee, who has been promoted or transferred into another bargaining unit classification, shall serve a probationary period of six (6) months in that job classification. The City may waive this probationary period for transferred employees. If an employee fails to satisfactorily complete probation as determined by the City, he/she shall be returned to their former classification without reason or cause being shown and without recourse to the grievance procedure. A promoted or transferred probationary employee who has completed his/her probationary period under Article 19.1 shall not be discharged without just cause.

**Section 19.3.** An employee's seniority is determined by his/her length of continuous service in the bargaining unit since last date of hire in a position represented by the Union. Time spent in military leave, paid leaves, OFLA, FMLA leave, whether paid or unpaid, and duty-connected disability leave and worker's compensation leave shall be included in determining length of service. If two employees have the same seniority date, seniority will be determined by the date of hire with the City. If two employees have the same date of hire with the City, the selection will be determined by the flip of a coin.

**Section 19.4. – Breaks in Seniority:** An employee shall lose all seniority and the employment relationship will be severed if any of the following events occur:

- A. Voluntary resignation or retirement;
- B. Discharge of an employee who has completed probation for just cause or discharge of a probationary employee at will;
- C. Layoff or absence from work due to off-the-job illness or off-the-job injury for more than twenty-four (24) months;
- D. Failure to notify the City of intent to return to work pursuant to a recall notice or by declining recall as set forth in Article 15;
- E. Failure to report to work upon expiration of an authorized leave of absence or, in the case of an absence due to off or on-the-job injury or illness, failure to report for available work within seven (7) business days of receipt of notice of a limited or a full medical release to return to work;
- F. Absence from work due to an on the job injury or on the job illness for up to three (3) years from original date of injury or illness in accordance with applicable law;
- G. Transfer or promotion to a position that is outside the bargaining unit, unless the employee is returned to a bargaining unit position during his/her probationary period, as set forth in Section 19.5; or
- H. Failure to return from military leave, in accordance with applicable law.

**Section 19.5.** Employees who are transferred or promoted to positions outside the bargaining unit, but are allowed by the City to return to their former position within six (6) months of the date of transfer or promotion will return with their bargaining unit seniority restored. Employees who are returned to the bargaining unit after a transfer or promotion outside the bargaining unit do not have the right to bump their replacements.

## ARTICLE 20 - DISCIPLINE AND DISCHARGE

**Section 20.1.** Except as set forth below, employees covered by this Agreement shall not be disciplined or discharged except for just cause. For the purpose of this Agreement, "discipline" shall be defined as actions that result in a written reprimand, the suspension of an employee, the reduction of an employee's pay, the demotion of an employee, or the discharge of an employee. Alleged violations of this Article shall be subject to the grievance procedure (Article 22) with the exception of the written reprimand which can only be grieved as far as Step 3. It is, however, understood and agreed that if the City relies on a written reprimand to establish progressive discipline to support more serious disciplinary action and the written reprimand has been grieved as far as Step 3, the reprimand may be arbitrated as part of any arbitration of the more serious disciplinary action. The City shall furnish to the employee and the Union a statement of disciplinary action taken and the reasons for such action.

This Article shall not apply to any employee on initial probation. (Moved to Article 19 – Probation, Seniority)

Disciplinary action shall be done in a manner which will not embarrass an employee before other employees or the public.

## ARTICLE 21 - SUBCONTRACTING

**Section 21.1.** The City shall have the exclusive right to subcontract work performed by employees; however, prior to the effective date of pending layoff, the City shall:

- A. Notify the Union ninety (90) days prior to its decision to contract out any work currently performed by bargaining unit members if the contracting of work results in a layoff of a bargaining unit member(s). The Union shall be provided with the City's rationale for contracting out the work including supporting economic justification for the proposal. The Union shall have sixty (60) days to submit a counter-proposal for consideration by the City.
- B. Give the affected employee(s) not less than six (6) months notice of possible layoff unless only seasonal and part-time employees are affected in which case a minimum of three (3) months notice shall be given.
- C. Following said notice, provide the employee with four (4) hours per month paid leave upon employee's attendance at formal vocational rehabilitation activities. Educational reimbursement may apply to cover the cost of such rehabilitation (see Article 17). Total paid leave shall not exceed twenty-four (24) hours.
- D. Attempt to relocate the employee to another position for which the employee is qualified within the City service.

## ARTICLE 22 - GRIEVANCE PROCEDURE

**Section 22.1.** It is the intention of the parties to this Agreement that all disputes involving the interpretation, application or violation of contract language be settled by their submission to the grievance procedure as set forth below.

**Step 1. Supervisor** - After first attempting to resolve the grievance informally, the Union, or any employee with notice to the Union, shall claim a breach of this Agreement by filing a grievance to the employee's immediate supervisor. Grievances must be in writing and must be submitted to the employee's supervisor within fifteen (15) days from the occurrence of the incident giving rise to the grievance or the employee's knowledge thereof, whichever occurs later. The written grievance shall include:

- A. A statement of the grievance and relevant facts;
- B. Identification of the provision(s) of the Agreement violated; and
- C. Remedy sought.

The supervisor shall respond to the grievance in writing within ten (10) days.

**Step 2. Department Head** - If, after ten (10) days from the date of the supervisor's response, the grievance remains unresolved, the grievance may be appealed to the Department Head. All appeals to the Department Head must be made in writing. The Department Head may, at his/her discretion, schedule a meeting with the aggrieved party, who may request representation at the meeting. The Department Head shall respond to the grievance in writing within ten (10) days of receipt of the appeal, or in the event a meeting is scheduled, within ten (10) days of the meeting.

**Step 3. City Manager** - If, after ten (10) days from the date of the Department Head's response, the grievance remains unresolved, the grievance shall be appealed to the City Manager or a person designated by the City Manager. All appeals to the City Manager or designee must be made in writing. The City Manager or designated representative shall meet with the grievant, if available, and his/her Union representative, or in the case of a "class action" grievance affecting more than one employee with the Union and shall respond to the grievance in writing within ten (10) days after the meeting. In the event the grievant is not available, the City may delay the Step 3 meeting.

**Step 4. Arbitration** - If the grievance is not resolved within ten (10) days the date the City Manager/designee's written response is received by the employee and the Union, the Union shall notify the City of its intent to arbitrate. Notice of intent to arbitrate must be submitted within ten (10) days of receipt of the City Manager/designee's response.

The arbitrator shall be selected by mutual agreement of the parties. If the parties cannot agree as to the arbitrator within ten (10) days, the arbitrator shall be chosen in the following manner:

- A. A list of five (5) arbitrators with offices in the States of Oregon and Washington shall be requested from the Employment Relations Board. The parties shall alternately strike one name from the list until only one is left. (The party designated to strike the first name will be determined by the flip of a coin.) The remaining name shall be the arbitrator. One day will be allowed to complete the striking of names.
- B. The arbitrator shall render a decision within thirty (30) days from the close of the hearing. The decision of the arbitrator shall be binding on both parties.
- C. The cost of the arbitrator shall be borne equally by the parties. Each party shall be responsible for costs of presenting its own case to arbitration.

- D. The powers of the arbitrator shall be limited to the interpretation and application of the specific provisions of this Agreement and determining if it has been violated. The arbitrator shall have no authority or jurisdiction to add to, amend, modify or revise the Agreement.
- E. The Union agrees that contract violation grievances shall be pursued either through the grievance procedure or as an unfair labor practice, but not both.

Any time limits specified in the grievances procedure may be waived by mutual consent of the parties. Failure of an employee or the Union to submit the grievance in accordance with these time limits without such waiver shall constitute abandonment of the grievance. Failure by the City to submit a response within the specified time will automatically move the matter to the next step in this procedure.

A grievance may be terminated at any time upon receipt of a signed statement from the Union or the employee that the matter has been resolved.

For purposes of this Article, "days" shall mean Monday through Friday, during normal City business hours, excluding holidays recognized under Article 10 of this Agreement. For the purpose of this Agreement, all references to "business days" shall have the same meaning.

### ARTICLE 23 - PERSONNEL FILE

**Section 23.1.** Each employee shall have the right, upon request, to review and obtain, at his/her own expense, copies of the contents of his/her personnel file, exclusive of materials received prior to the date of his/her employment by the City. There shall be only one personnel file and it shall be maintained by the City Manager or his/her designee.

**Section 23.2.** When an item is placed in an employee's personnel file, the City shall at that time provide a copy of the item to the employee. An employee may respond to any item placed in his/her personnel file and the employee's response shall become a part of the file. All formal disciplinary actions shall be recorded in the employee's personnel file.

**Section 23.3.** All employment inquiries from prospective employers of current employees shall be referred to the Human Resources Department for a response unless otherwise requested by the employee.

**Section 23.4.** A written reprimand shall be considered to have been expunged at the end of eighteen (18) months from the time the written reprimand was dated, provided there is no subsequent related reprimand or disciplinary action taken during the intervening period of time. Documents related to violation of the Drug and Alcohol Policy shall be retained for twenty-four (24) months but shall be considered to have been expunged after twenty-four (24) months absent a further violation. All other disciplinary documents, upon the request of the employee, shall be expunged from the employee's personnel file at the end of three (3) years from the date of the disciplinary action, provided no other disciplinary action has been taken; in which case, the documents shall be considered to have been expunged three (3) years from the most recent disciplinary action.

**Section 23.5.** Documents expunged pursuant to Section 23.4, shall be sealed in an envelope and not physically destroyed to comply with the Oregon Public Records Law. Such documents will be maintained by the Human Resources Department. Except as set forth below, such documents will not be used against an employee for the purpose of progressive discipline, but may be used in any civil proceedings.

The City may also use such documents in arbitration proceedings only if the union uses the argument that the City failed to be consistent in its disciplinary actions, lax enforcement of rules, make the employee aware of the policy or standard in question, or if the City discriminated against the employee. The City may also use such documents to show compliance with legal obligations if the Union claims non-compliance with a legal obligation.

The Union will have equal access, upon request, to these files for the same purposes.

**Section 23.6.** Where a performance evaluation contains direct references to disciplinary actions which have been expunged, pursuant to Section 23.4, such references shall be removed, at the same time intervals, from the evaluation upon request of the employee provided that the employee has the evaluation retyped at his/her own expense. The original evaluation shall be sealed and maintained as provided in Section 23.5.

**Section 23.7.** Any materials maintained by a supervisor or manager regarding an employee shall be dated and may be viewed by an employee at his/her request.

#### **ARTICLE 24 - TRAINING**

**Section 24.1.** Employees required to participate in any training during off-duty hours shall be compensated at the overtime rate for time spent in training. When an employee is required to participate in training, hours spent shall be considered hours worked.

Commuting time shall also be considered hours worked. When an employee is required to attend a training at a location that is closer to his/her home than the employee's regular work site, the employee may be directed by the employer to report directly to the training site. In this situation the employee will not be compensated for time spent commuting to and from their home and the training site, unless it is during the course of their working hours.

#### **ARTICLE 25 - MEAL ALLOWANCE**

**Section 25.1.** Any employee required to work unexpectedly (less than 24 hours notice) for four (4) hours or more beyond the employee's regular shift for a 5/8 shift or two (2) or more hours for a 4/10 shift, shall be provided a meal at the expense of the City, or at the option of the City shall be reimbursed up to Fifteen Dollars (\$15.00) for the actual cost of the meal. If an employee works a flexible schedule, the employee shall provide his/her own meal.

#### **ARTICLE 26 – LABOR-MANAGEMENT COMMITTEES**

**Section 26.1.** The City and the Union agree that labor-management committees are an important way of sharing information and resolving issues of mutual concern. The City and the Union agree to continue the Employee Benefits Committee which, in addition to its current concerns, will consider the purchase of health care plans, alternative health care, and benefits. At the request of either the City or the Union, the City and Union may form labor-management committees to consider changes, including but not limited to changes in City policy, work site safety issues, the implementation of salary studies, and other issues of importance to the City and the Union. Each labor-management committee will be established and meet as reasonably necessary to share and resolve issues of mutual concern in a collaborative manner.

## ARTICLE 27 - PERFORMANCE EVALUATIONS

**Section 27.1. – Initial Probation and Annual Evaluations:** Each employee shall receive a performance evaluation during the month in which they complete their initial probationary period and on an annual basis during the same month of each subsequent year of service.

The evaluation shall cover the preceding twelve (12) month period. If an employee does not receive an annual performance evaluation, the employee's performance during that year will be considered to be satisfactory.

**Section 27.2. – Promotion and Transfer Evaluations:** Employees who are promoted or transferred into another bargaining unit job classification shall receive a performance evaluation during the month in which they complete their probationary period in the new classification.

Employees who successfully complete their promotional or transfer probationary period shall have their annual performance evaluation date adjusted to be conducted during the same month of each subsequent year of service in that position.

## ARTICLE 28 - WORKING OUT OF CLASSIFICATION

**Section 28.1.** Employees assigned by the supervisor, Department Director or his/ her designee to perform the duties of a higher paid position shall be paid for all such work at a higher rate. The higher rate shall be a minimum of five percent (5%) of the employee's base salary or any step on the range of the classification to which temporarily assigned which gives a minimum of five percent (5%) but no more than a maximum of seven percent (7%).

**Section 28.2.** Acting in Capacity: Employees assigned by the Department Director or his/her designee to perform the duties of a higher paid "manager/supervisory" position in the manager/supervisor's absence shall be compensated at the first step in the salary range of the assigned position or 10% above their current salary, whichever is greater.

## ARTICLE 29 - UNION REPRESENTATION

**Section 29.1.** The Union agrees that its members will not solicit membership in the Union, or otherwise carry on Union activities or business during paid worktime, except as specifically provided in Section 29.2 of this Agreement. Union members are not allowed to use City vehicles to attend Union meetings, unless the employee is closer to the Union meeting location than he/she is to his/her normal office location or such use is approved in advance by the employee's supervisor.

**Section 29.2. - Union Activities On Duty:** Union representatives may perform the following activities during their working hours:

- A. The Union may identify seven (7) employees who may spend working time in negotiations with the City during the period of contract renewal for the purpose of negotiating the Agreement. The employee shall notify his/her supervisor prior to the expenditure of such time.
- B. The Union shall be entitled to five (5) shop stewards at any given time who may process grievances, attend grievance meetings and conduct investigations of potential violations of the Agreement. Only one (1) Union representative, in addition to AFSCME representative(s), will be entitled to be present with an

employee during an investigatory interview (Weingarten interview) and only two (2) union representatives, in addition to the AFSCME representative(s), during grievance meetings with the City.

Union representatives must report paid time spent in Union activities on their on-line time sheets under the pay code "Union Activities" computed to the nearest fifteen (15) minutes. All paid Union activities must be conducted during an employee's regular working hours, unless approved by the Human Resources Director.

**Section 29.3. - Bulletin Boards:** The City shall provide adequate space on one bulletin board in each work location for the posting of Union notices. Such notices shall be of a nonpolitical and non-inflammatory nature.

**Section 29.4. - Notification Obligations:** The Union agrees to notify the City's Human Resources Director in writing of any changes in the Union's Executive Board of shop stewards. Notice may be provided by email.

### ARTICLE 30 - FILLING OF VACANCIES

**Section 30.1.** The City agrees to post vacancies on the bulletin board in Operations and the Library and to announce vacancies on the City's website and, by e-mail where practical, to all regular full-time and part-time employees, except vacancies for department directors, and other positions not represented by Union.

Vacancies will be posted for a minimum of ten (10) working days prior to the closing of applications. Bargaining unit members who apply and meet the minimum qualifications for job vacancies shall receive an interview for the position. Upon request, bargaining unit members who received an interview, but were not selected for the vacant position, will be given the opportunity to discuss how they can become a stronger candidate.

Additional exceptions include personnel change actions as listed in Appendix B.

### ARTICLE 31 - SEASONAL EMPLOYEES GENERALLY

**Section 31.1.** A regular status seasonal employee shall be eligible for a salary increase upon returning to the City in the same job classification for the next season, up to and including step 6.

**Section 31.2.** A seasonal employee shall be given notice at the time of hire of the length of the season and the anticipated end of the season. A seasonal employee shall be given at least ten (10) calendar days advance notice of the end of the season, except when conditions are beyond the control of the City.

**Section 31.3.** Seasonal employees shall accrue all rights and benefits accrued by full-time employees during their employment season, except as otherwise modified by this Agreement.

**Section 31.4. - Seasonal Layoffs:** Seasonal employees who are laid off before the end of the season shall be laid off in the inverse order of seniority (least senior laid off first), provided the senior employee possesses the skills, ability and qualifications to perform the work remaining. At the completion of a season, all seasonal employees shall be laid off without regard to seniority. However, any extensions of the season shall be offered to employees based on seniority (most senior first), provided those retained possess the skills, ability and qualifications to perform the work remaining. Regular status seasonal employees laid off at the end of the season shall be



placed on the reemployment list in order of seniority and shall be recalled the following season in order of seniority (most senior first) to the extent that work is available to be performed. The City and Union agree that the provisions of this Section apply only to seasonal layoffs. Permanent or ongoing layoffs of bargaining unit employees are governed by Article 15 of this Agreement.

**Section 31.5.** All other provisions of this Agreement not specifically modified above shall apply to seasonal employees.

### **ARTICLE 32 - EMPLOYEE RECOGNITION**

**Section 32.1.** In appreciation for the service provided by long-term employees, the City shall present service pins to those employees who have been employed by the City at intervals of five (5), ten (10), fifteen (15) and twenty (20) year, twenty-five (25) and thirty (30) years. The presentation of these pins shall be by the Department Director or his/her designee.

### **ARTICLE 33 - SAVINGS CLAUSE**

**Section 33.1.** The provisions of this Agreement are declared to be severable. If any section, subsection, sentence, clause or phrase of this Agreement shall for any reason be held to be invalid or unconstitutional, the validity of the other provisions of this Agreement shall remain in effect, it being the intent of the parties that this Agreement shall stand, notwithstanding the invalidity of any part.

### **ARTICLE 34 - FUNDING CLAUSE**

**Section 34.1.** The City agrees to budget all monies necessary to fund this Agreement. However, in the event the City is unable to fund the economic requirements of this Agreement due to voter disapproval and/or legislative changes, the parties agree to reopen negotiations.

### **ARTICLE 35 - AMENDMENT AND CLOSURE CLAUSE**

**Section 35.1.** This Agreement is subject to amendment, alteration or addition only by subsequent written agreement between and executed by the City and the Union where mutually agreeable.

### **ARTICLE 36 - TERM OF AGREEMENT**

**Section 36.1.** This Agreement shall be effective July 1, 2012 and shall remain in full force and effect until June 30, 2015. The parties agree to reopen Article 9 of the Agreement no later than February 1, 2014 for the purpose of negotiating wage increases to be effective July 1, 2014 through June 30, 2015. In conjunction with this reopener, the parties further agree to reopen Article 16 of the Agreement. The Union may open two (2) additional articles by serving written notice to the Human Resources Department no later than February 1, 2014.

**Section 36.2.** This Agreement shall automatically reopen on February 1, 2015 for negotiation of a successor agreement. If negotiations of a successor agreement are not concluded within 150 days of the commencement of bargaining, the parties may avail themselves of the dispute resolution process as provided in ORS 243.712-732.

IN WITNESS THEREOF, said parties to this Agreement have set their hands and seals this 18<sup>th</sup> day of December, 2012.

CITY OF LAKE OSWEGO

LAKE OSWEGO MUNICIPAL  
EMPLOYEES' ASSOCIATION, LOCAL  
1456 OF AFSCME COUNCIL 75 AFL-CIO

By: \_\_\_\_\_  
David Donaldson  
City Manager

By: \_\_\_\_\_  
Stacy Chamberlain  
AFSMCE Council Representative

By: \_\_\_\_\_  
Scott Symer  
President

By: \_\_\_\_\_  
Bob Burgeson

By: \_\_\_\_\_  
Barb Dillinger

By: \_\_\_\_\_  
Gabrielle Hoffman

By: \_\_\_\_\_  
Patti Smith

**APPENDIX A – LOMEA SALARIES**

**APPENDIX A – LOMEA SALARIES**

**APPENDIX A – LOMEA SALARIES**

**APPENDIX A – LOMEA SALARIES**

**APPENDIX B**  
**Rationale**

**Personnel Change Action**

**Negotiate  
\$  
(Y/N)**

**Advertise  
(Y/N)**

1. Reclassifying a position

- A job is enlarged and given higher level tasks, duties and responsibilities; AND there is no higher level position within the job family to encompass these changes; OR
- The market for the classification demonstrates a significant shift.

Yes

Yes, when there is no incumbent or when there are more qualified candidates than positions.

2. Reclassifying an employee in a job family

- As a result of gradual changes:
- An employee has taken on responsibilities of a higher level position within a job family that is closely related to the employee's original duties and responsibilities; AND

No

No

NOTE: This is a typical reclassification scenario.

(no probation)

- The employee spends the greater percentage of his or her work time performing the higher level duties; AND
- The higher level duties will remain a part of the employee's regular job duties.

NOTE:  
Notify LOMEA of pending action early enough to give input

3. Reclassifying an incumbent in an enlarged position

(no probation)

- The employee's job is enlarged; AND the enlarged position replaces the original position; AND the employee has successfully undertaken the higher level responsibilities; AND the higher level duties will remain a part of the employee's regular job duties; AND there is no higher level position within the job family to encompass these changes; OR

Yes

No

- The market for the classification demonstrates a significant

<p>4. Promotional opportunity for new position (6 month probation)</p>	<ul style="list-style-type: none"> <li>• There is a new position; or,</li> <li>• The City needs to create a position which encompasses duties, responsibilities, skills and other job elements that have not been (or are not currently) aggregated into a City position; AND</li> <li>• There are a number of employees who would qualify for the position; AND</li> <li>• The position is not ‘waived’ from the City’s posting requirements under LOMEA.</li> </ul>	Yes	Yes
<p>5. Promotional opportunity for regular position (6 month probation)</p>	<ul style="list-style-type: none"> <li>• The job class exists; there is a vacancy; AND</li> <li>• There are employees who would qualify; AND</li> <li>• The position is not ‘waived’ from the City’s posting requirement</li> </ul>	No	Yes
<p><b>Personnel Change Action</b></p>	<p><b>Rationale</b></p>	<p><b>Negotiate \$ (Y/N)</b></p>	<p><b>Advertise (Y/N)</b></p>
<p>6. Changing regular position to regular part-time or full-time:</p>	<ul style="list-style-type: none"> <li>• The job class exists; the pay grade does not change; and</li> <li>• There is an incumbent in the position; and</li> <li>• The job requires more or less hours to perform greater or lesser duties within the class spec; and</li> <li>• The incumbent wants to remain in the position with the change in hours; and</li> <li>• There may or may not be other employees interested in the new hours.</li> </ul>	No	No



**APPENDIX C**  
**Holiday – Pay/Compensatory Time Schedule**

Employee Status	Designated Holiday on Employee's Workday		Designated Holiday Not on Employee's Workday	
	Holiday Not Worked	Holiday Worked	Holiday Not Worked	Holiday Worked
Full-time & Seasonal	8 hours pay	8 hours pay + 2 times regular pay for actual hours worked	8 hours Compensatory Time at straight time rate	8 Hours Compensatory Time at straight time rate + times regular pay for actual hours worked
Part-Time Employees	Pay equal to hours scheduled to work that day or pay proportional to total weekly scheduled hours, whichever is greater	Pay equal to hours scheduled to work that day + Pay for actual hours worked	Compensatory Time at straight time rate proportional to scheduled hours	Pay equal to hours worked that day + Either: a) Compensatory Time equal to the number of hours worked b) Compensatory time at straight time rate proportional to total weekly scheduled hours, whichever is greater.

## **APPENDIX D – ALCOHOL AND DRUG TESTING**

### **POLICY STATEMENT**

The City of Lake Oswego is committed to providing a workplace where employees and the general public can safely conduct business. To ensure these standards, the City will not tolerate employees reporting to work with their ability to perform impaired by alcohol, illegal drugs, or inappropriately used prescription or over-the-counter drugs.

#### **Section 1: Applicability**

This Policy applies to all AFSCME/LOMEA (the Union) represented employees.

Employees in safety-sensitive (Department of Transportation [DOT] and Non-DOT) positions must comply with this Policy, and the stricter standards incorporated in this Policy. (See Attachment A for criteria and list of employees in safety-sensitive positions.) DOT regulated employees must also comply with all DOT drug and alcohol testing rules and regulations.

#### **Section 2: Prohibited Conduct**

The following conduct is prohibited:

- (a) Consuming alcohol or using drugs while “on duty” (defined to include breaks or meal periods), operating City vehicles or using City equipment;
- (b) Buying, selling, manufacturing, distributing, dispensing or possessing illegal drugs, while on duty and/or on City property (City property includes all property rented, leased, owned or controlled by the City, including parking lots and adjacent areas. It also extends to City equipment and vehicles on or off City property.);
- (c) Reporting for work or being on duty with a prohibited level of alcohol or drugs present in the employee’s body as set forth in Attachment B;
- (d) Refusing to submit to a required drug or alcohol test; providing an invalid specimen, interfering with any testing procedures; or tampering with any test sample or otherwise failing to comply with rehabilitation conditions or other restriction imposed by a Substance Abuse Professional (SAP) consistent with this Policy (In addition, a safety-sensitive employee who refuses to test will be treated as if he/she had a breath alcohol concentration of 0.04 and/or tested positive for drugs.);
- (e) Consuming alcohol within four (4) hours prior to performing safety-sensitive job duties

for positions that require a commercial driver's license (CDL);

- (f) Consuming any amount of alcohol within eight (8) hours following an accident in which there is a fatality or a moving violation in connection with an injury or tow-away accident involving an employee with a commercial driver's license, or until the CDL employee undergoes a post-accident test (whichever is first);
- (g) Buying, selling, distributing or possessing alcohol while on the job or on City property, except as permitted under the "Exceptions for Moderate Consumption for Employees 21 Years or Older" section of this Policy;
- (h) Being on standby duty with a prohibited level of alcohol or drugs present in the employee's body, as set forth in Attachment B;
- (i) Consuming any amount of alcohol between the time notification of testing is issued and the time testing is actually conducted; and/or
- (j) Engaging in any other violation of this Policy.

For purposes of this Policy "drugs" includes all forms of narcotics, depressants, stimulants, hallucinogens, opiates, phencyclidine (PCP), cocaine and cannabis, or any other drug whose sale, purchase, transfer, use or possession is prohibited by law. See Attachment B for prohibited drug testing levels.

"Drugs" does not include lawful prescription and non-prescription medications obtained, used, transferred, possessed, and reported consistently with the label, physician instructions, applicable law and the Medications section of this Policy.

The City will apply this Policy in accordance with the Department of Transportation regulations and applicable law including the State medical marijuana law, as integrated with State disability discrimination law, and the Americans with Disabilities Act.

### **Section 3: Medical Marijuana**

The City will not excuse or accommodate recreational marijuana use. The City will also not excuse or accommodate medical marijuana use by employees in DOT or safety sensitive positions. With regard to employees in non-safety sensitive positions, medical marijuana will continue to be treated as a "drug" subject to the prohibitions in paragraphs (a), (b), and (d) of the Prohibited Conduct section of this Policy. Additionally, employees must comply with medication disclosure requirement under this Policy.

#### **Section 4: Notification of Alcohol Consumption for Unscheduled Work**

In the event an employee who is not on standby is called to report for unscheduled work without at least eight (8) hours advance notice and the employee has alcohol in his/her system in an amount that he/she feels may violate section (c) of the Prohibited Conduct section of the Policy, the employee must disclose that he/she is unable to report for the unscheduled work for that reason. Employees who make this disclosure will be excused from reporting for work.

#### **Section 5: Notification of Convictions**

Employees must notify Human Resources in writing of any conviction for a violation of a criminal drug or alcohol statute occurring in the workplace no later than five (5) calendar days after such conviction. Employees whose jobs require them to drive must also immediately notify the Human Resources Department of any restriction, suspension, or loss of their driver's license due to drugs or alcohol.

#### **Section 6: Medications**

It is not the intention of this Policy to prohibit the appropriate use of legally prescribed or authorized drugs or non-prescription medications. However, employees using prescribed drugs or authorized medical marijuana or non-prescription medications are responsible for carefully reviewing side effects warnings, including any warnings pertinent to the effects of use of a combination of substances, and for consulting with their doctor to determine whether there are any side effects that are affecting or will affect the employee's ability to safely and competently perform their job duties. If the employee or their doctor feels that the employee is experiencing any such side effects, the employee may discuss alternative treatment with their doctor and under doctor's instruction discontinue use of prescription, or the employee must notify the Human Resources Department of the substance(s) taken and their side effects before reporting to work or continuing to perform their job duties. Medical verification of the ability to safely perform job duties may be required before the employee is allowed to continue his/her work assignment. Marijuana is a federally controlled substance; employees in DOT safety-sensitive positions are not permitted to use it under any circumstance.

Although the lawful use of medication that has been prescribed to an employee is not grounds for disciplinary action by itself, failure to follow the reporting procedure discussed above will be a violation of this Policy. It is also a violation of this Policy for an employee to use medication inconsistent with the prescription or label, to unlawfully transfer prescription medication (including but not limited to selling or giving prescription medication to another person), and to use medication that is unlawfully obtained (including but not limited to using medication prescribed to another person).

## **Section 7: Consequences of Prohibited Conduct**

Any employee who violates this Policy is subject to discipline up to and including discharge. Violations of this Policy will, however, be evaluated on a case-by-case basis and the level of discipline imposed will be based on the seriousness of the offense, except as described below.

For violation of paragraphs (c), (g) above: for a first violation, the employee shall be referred to a Substance Abuse Professional (SAP) to evaluate the employee, and the employee shall complete treatment. The SAP determines if the employee has successfully complied with the recommended treatment. The employee shall have a written reprimand placed in his/her file with a notation that any further violations of the Policy within a four (4) year period following issuance of the written reprimand will result in the employee being subject to discharge. As a limited exception to Article 23.4 written reprimands for violations of this Policy shall be retained in the employee's personnel file for forty-eight (48) months.

In determining the appropriate action, the City shall consider an individual's work record, the seriousness of the violation, the safety-sensitivity of the individual's position, whether the individual's behavior violated any other City policy, whether a sanction or corrective action is permissible under applicable law and any other relevant factors.

Employees in CDL or other safety-sensitive positions whose alcohol test results are between 0.02 and 0.039 cannot be returned to their safety-sensitive position until at least 24 hours have elapsed from the time of their testing.

Employees in CDL or other safety-sensitive positions who test positive for controlled substances, or have a confirmed alcohol test result of 0.02 or above cannot return to their safety-sensitive job-duties until:

- A Substance Abuse Professional (SAP) evaluates the employee, and the employee undergoes education or seeks treatment as recommended by the SAP;
- The SAP determines the employee has successfully complied with the recommended education or treatment;
- The employee passes a return to duty test with an alcohol concentration below 0.02 and/or a negative drug test result.

For all other employees, the same return to duty Policy will apply, except the testing threshold will be .04 rather than .02.

## **Section 8: Exceptions for Moderate Consumption for Employees 21 Years or Older**

Alcohol may be consumed in moderation, i.e. to the cutoff levels references in Attachment B, at City sponsored events and professional functions (including receptions or dinners); at business entertainment meetings held during business hours; or at municipal locations where service of alcohol has been approved in advance by the City. In addition, it will not be considered a violation of this Policy for an employee to be in possession of unopened alcoholic beverages on the job.

Moderate alcohol consumption must not violate any other provisions of this Policy, including remaining professional and fit for duty.

If there is a possibility that employees' consumption of alcohol will render them in violation of laws regulating the operation of motor vehicles, the employees are prohibited from driving-following such meetings or events.

## **Section 9: Types of Tests**

The City will test employees for the substances listed in Attachment B.

### Pre-Employment and Pre-Placement

Applicants who are offered employment in a safety-sensitive position will be tested for drug use as a condition of employment.

Additionally, employees in safety-sensitive positions returning from layoff or seasonal employment will also be required to test for drugs prior to assuming their job duties.

Employment is contingent upon receipt of a verified negative test result from the City's authorized Medical Review Officer (MRO). To ensure validity, the City requires prompt recollection for negative dilute pre-employment tests.

### Reasonable Suspicion

Any employee of the City may be required to undergo testing for drugs and/or alcohol with 'reasonable suspicion'.

'Reasonable suspicion' is defined as cause based on specific and articulated observations concerning the appearance, unusual behavior, speech, breath odor, body symptoms or other reliable indicators that an employee has reported to work or returned to duty with alcohol or drugs present in his/her body. Whenever practicable, the decision to test for 'reasonable suspicion' will be made by the employee's supervisor and confirmed by another supervisory or management employee.

To ensure validity, the City requires prompt re-collection for negative dilute reasonable suspicion tests.

At the time an employee is tested, the employee shall be informed that the employee shall have the right to Union representative at the time the test results are shared with the employee and at any subsequent interviews regarding violations of the Policy. An employee shall also be told of his/her right to representation at the time test results are shared with the employee and told again at any subsequent interviews regarding violations of the Policy.

### Random

Employees in safety-sensitive positions that require a CDL will be tested for alcohol and illegal drugs on an unannounced, random basis in accordance with DOT regulations. Employees selected must immediately and directly proceed to the collection/testing site upon notification.

Random testing for drugs and alcohol will be limited to regular work hours.

### Return to Duty

Employees must submit to testing as set forth in the Consequences of Prohibited Conduct section of this Policy before being permitted to return to work. Employees who test positive in a return to duty test will be subject to discharge. A negative return to duty test is a condition for returning to work.

### Follow-up

Follow up tests will be required when an employee in a CDL or other safety-sensitive position has engaged in prohibited conduct under this Policy. These tests are performed after the employee has been evaluated by an SAP, and has followed the recommended treatment plan. The employee, upon returning to duty, will be subject to a minimum of six (6) unannounced follow-up tests over the first twelve (12) months following the employee's return to work. The SAP may recommend any number of tests over a period of up to sixty (60) months. Employees who test positive in any follow up test will be subject to discharge. The actual number and frequency of the tests are to be determined by the SAP.

Moreover, the City may require follow-up testing under its own authority pursuant to Rehabilitation and Return to Work Agreement.

### Post Accident

Both drug and alcohol testing will be performed on any employee with a CDL following any on-the-job accident involving a fatality, or vehicular accident in which he/she receives a citation for a moving violation arising from the accident AND there is an injury treated away from the scene OR a vehicle that must be towed away from the scene.

Employees who are in safety sensitive, but not CDL positions, will be tested for drugs, but not alcohol following any on-the-job accident involving a fatality, or vehicular accident in which the

driver in a safety-sensitive position receives a citation under state or local law for a moving violation arising from the accident AND there is an injury treated away from the scene OR a vehicle that must be towed away from the scene.

In addition, any employee may be required to undergo testing for alcohol and/or drugs following any type of accident when there is reasonable suspicion to believe the employee had alcohol or drugs in his/her system as described in the “Reasonable Suspicion” testing provisions set forth above. The accident by itself is not “reasonable suspicion” for testing.

Employees who are required to undergo testing for alcohol will be required to do so as soon as possible after the accident. Post-accident alcohol testing should take place within two (2) hours of the accident, but no later than eight (8) hours after the accident. If alcohol testing is not conducted within two (2) hours of the decision to test, the City will document the reasons the test was not promptly administered. Employees will be required to undergo testing for drugs as soon as possible after the accident, but in no case later than thirty-two (32) hours after the incident. An employee who is subject to post-accident testing is required to remain readily available for testing.

At the time an employee is tested, the employee shall be informed that the employee shall have the right to Union representative at the time the test results are shared with the employee and at any subsequent interviews regarding violations of the Policy. An employee shall also be told of his/her right to representation at the time test results are shared with the employee and told again at any subsequent interviews regarding violations of the Policy.

Employees who are injured as a result of an accident, but are unable to timely submit to testing as required under this Policy, due to the need to obtain emergency or other medical treatment, are required to release the results of all alcohol and drug tests conducted by law enforcement or medical authorities to the City.

### **Section 10: Rehabilitation and Treatment**

Employees who undergo rehabilitation in lieu of discharge or other disciplinary action will be required to submit to individualized testing pursuant to a Rehabilitation and Return to Work Agreement imposed by the City, and as otherwise required by the SAP.

### **Section 11: Transportation to Test Site**

Employees who are required to submit to either reasonable suspicion or post-accident testing are prohibited from transporting themselves to or from the collection site and/or home. A management or supervisory employee will transport the employee or arrange alternate transportation.

The time an employee spends traveling to and from the collection site, as well as time spent in testing and waiting for testing will be treated as “hours worked” for pay purposes except for split



sample testing requested by the employee.

## **Section 12: Testing Safeguards**

All testing will be conducted at a laboratory certified by the Department of Health and Human Services (DHHS) in accordance with the standards disseminated by the US Department of Transportation (DOT) (49 CFR Part 40). All drug tests will be conducted through collection of a split sample.

Urine specimens less than 45 mL in volume will be discarded by the collection facility. In such cases, the employee will be advised to drink up to forty (40) ounces of fluids and will have up to three (3) hours to produce a urine sample of adequate volume. Employees who do not provide a urine specimen of adequate volume within three (3) hours will be referred to a physician to determine whether there was a legitimate medical explanation for the apparent inability to provide a specimen, or the incident constitutes a refusal to test.

If a urine specimen shows a temperature outside the acceptable range (colder than 90 degrees or warmer than 100 degrees) or appears to have been adulterated, the collection facility will make a note on the custody and control form and notify the employee that he/she will need to provide a second urine specimen. In the case of DOT covered employees, the second collection must be conducted under direct observation. Any employee being instructed to provide a second urine specimen must remain at the collection facility until a new urine specimen is provided, or the incident will be considered a refusal to test.

All positive drug tests will be confirmed by a second confirming test from the same sample before the test result is reported as positive to the MRO. Individuals with positive tests will have an opportunity to discuss the results with the MRO before the result is reported to the City.

Drug and alcohol test results will be reported to the Human Resources Department and the Department Director.

Any employee who tests positive for drugs may request a test of the remaining portion of the urine sample (the split sample) within seventy-two (72) hours of notification of a positive test result. CDL drivers must direct requests to the MRO. All other requests for tests must be made to the Human Resources Department. The cost of split sample/retesting will be borne by the employee. In the event the split test result is negative, the employee shall be reimbursed for the cost of the split test.

## **Section 13: Administration of Testing**

To ensure this policy is applied consistently, the Human Resources Department will be responsible

for the coordination and administration of the Alcohol and Drug Testing Program. It will serve as a liaison with the collection facility, the laboratory, and the Substance Abuse Professionals, with support of the City's third-party administrator. Moreover, it will advise employees who have engaged in prohibited conduct of the resources available for evaluating and resolving the problems associated with the drug and alcohol usage.

#### **Section 14: Confidentiality**

All information associated with the drug and alcohol testing program including drug or alcohol test results or treatment procedures will be treated as confidential information and will be accessible only to those designated personnel and other designated representatives with a need to know, and as required under DOT regulations.

#### **Section 15: Rehabilitation Options**

The City attempts to provide employees the opportunity to deal with drug and alcohol related problems. Any employee who voluntarily requests assistance in dealing with a drug and/or alcohol problem is encouraged to seek professional counseling for an assessment with a licensed or certified alcohol and drug professional.

Professional counseling and treatment programs for drug and/or alcohol problems may be available through City provided health insurance or the City's Employee Assistance Program (EAP). Any cost not covered by the health insurance or the EAP is the employee's responsibility.

#### **Section 16: Before Committing a Policy Violation**

When an employee voluntarily reports a drug or alcohol dependency to his/her supervisor, Department Director or HR Director and seeks assistance *before* violating this Policy, that employee will be placed on a leave of absence or adjusted working hours as necessary to allow for in-patient or out-patient treatment.

Employees in safety-sensitive positions who voluntarily inform the City that they have a drug or alcohol-related problem prior to a Policy violation or testing requirement will be removed from their duties to allow for rehabilitation and treatment. The employee will not be permitted to return to their regular duties until such time as the SAP provides the City with written verification that the employee has substantially completed the recommended assistance, but may be returned to other available non-safety sensitive duties with approval from the City. Employees must authorize the SAP and treatment provider(s) to provide the Human Resources Director with information regarding his/her recommendations for education/treatment and follow up testing as well as the employee's compliance with those recommendations.

Employees may not self-refer for treatment or rehabilitation services in lieu of taking required tests.

#### **Section 17: After Committing a Policy Violation**

Employees who claim drug or alcohol dependencies *after* violating this Policy are subject to discipline consistent with this Policy, regardless of such dependencies.

The City may, however, at its discretion, allow an employee to undergo evaluation and rehabilitation in lieu of suspension, discharge or other disciplinary action, provided the employee agrees to all treatment, rehabilitation, testing and other conditions as set forth in a written Rehabilitation and Return to Work Agreement required by the City (see Attachment C). Any employee who violates the terms of the Agreement is subject to immediate termination.

An employee may be required to participate in a drug and/or alcohol treatment program and follow-up care because of disciplinary action arising from a drug and/or alcohol problem, or as a condition of continued employment. A SAP must first evaluate an employee who is so required and determine any necessary assistance.

### **Section 18: Absences from Work Related to Policy Enforcement**

The time an employee is absent from work while awaiting SAP evaluation; enrollment in rehabilitation treatment; completing treatment; and obtaining verification of ability to return to work, as well as the time an employee spends waiting to be returned to work is not considered disciplinary in nature. Consequently, employees who are absent from work for these reasons are eligible to use paid time off (vacation, sick, compensatory time and personal holiday pay) during such absences. Once an employee's paid time off benefits have been exhausted, an employee's time off for these purposes will be unpaid.

### **Section 19: Cost of Testing**

The City will be responsible for payment of all alcohol and drug tests required by the City. If an employee requests a split specimen test or decides to undergo a split test or any other test not required by the City, the employee will be responsible for the cost of the test. If the split test is negative, the employee shall be reimbursed for the cost of the split test.

The City may deduct payment for these tests from the employee's wages upon receipt of a written consent to deduct the cost of the test from the employee. Employees who do not provide written authorization must pay for the test directly.

## ATTACHMENT A

### SAFETY SENSITIVE POSITIONS

Safety-sensitive positions are those in which there is a higher chance of injury to the employee, his/her co-workers, and/or the public than in other City jobs. Safety-sensitive positions may or may not be covered under the DOT regulations.

DOT safety-sensitive positions represented by the Union include the following job classifications when a commercial driver's license is required:

- Utility Worker
- Senior Utility Worker
- Crew Leader
- Mechanic

Non-DOT safety sensitive positions represented by the Union include the following positions:

- Water Plant Operator I
- Water Plant Operator II
- Water Plant Operator III
- Code Enforcement Specialist
- Construction Inspector
- Engineering Technician I
- Engineering Technician II
- Engineering Technician III
- Water Conservation Specialist
- Inspector I
- Inspector II
- Inspector III
- Assistant Utility Worker
- Planning Aide
- Planning Technician
- Assistant Planner
- Associate Planner
- Electrician

**ATTACHMENT B**

**DRUG TESTING LEVELS**

The following initial and confirmatory cutoff levels shall be used when screening specimens to determine whether they are negative for the drugs or classes of drugs required for DOT testing:

Initial test analyte	Initial test cutoff concentration	Confirmatory test analyte	Confirmatory test cutoff concentration
Marijuana metabolites.....	50 ng/mL.....	THCA <sup>1</sup> .....	15 ng/mL
Cocaine metabolites.....	150 ng/mL.....	Benzoylcegonine.....	100 ng/mL
Opiate metabolites			
Codeine/Morphine <sup>2</sup> .....	2000 ng/mL.....	Codeine.....	2000 ng/mL
		Morphine.....	2000 ng/mL
6-Acetylmorphine.....	10 ng/mL.....	6-Acetylmorphine.....	10 ng/mL
Phencyclidine.....	25 ng/mL.....	Phencyclidine.....	25 ng/mL
Amphetamines <sup>3</sup>			
AMP/MAMP <sup>4</sup> .....	500 ng/mL.....	Amphetamine.....	250 ng/mL
		Methamphetamine <sup>5</sup> .....	250 ng/mL
MDMA <sup>6</sup> .....	500 ng/mL.....	MDMA.....	250 ng/mL
		MDA <sup>7</sup> .....	250 ng/mL
		MDEA <sup>8</sup> .....	250 ng/mL

- <sup>1</sup> Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA).
- <sup>2</sup> Morphine is the target analyte for codeine/morphine testing.
- <sup>3</sup> Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.
- <sup>4</sup> Methamphetamine is the target analyte for amphetamine/methamphetamine testing.
- <sup>5</sup> To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.
- <sup>6</sup> Methylenedioxymethamphetamine (MDMA).
- <sup>7</sup> Methylenedioxyamphetamine (MDA).
- <sup>8</sup> Methylenedioxyethylamphetamine (MDEA).

**ALCOHOL TESTING LEVELS**

For employees in CDL or safety sensitive positions, an initial Breath Alcohol Concentration (BrAC) screening result of less than 0.02 g/210 L will be considered negative. If the employee's BrAC is 0.02 or greater, a second confirmation test will be conducted using an Evidential Breath Test (EBT). An employee will be considered to be in violation of Prohibited Conduct, Section (c) whenever the employee has a BrAC of 0.02 g/210 L or greater. For non-CDL employees, the same screenings will be conducted with less than 0.04 percent considered negative.

These drug and alcohol testing levels are intended to be consistent with DOT standards. In the event that DOT testing substances and/or testing cutoff levels change, the above list shall be automatically adjusted to be consistent with DOT standards.

ATTACHMENT C

REHABILITATION AND RETURN TO WORK AGREEMENT

I, \_\_\_\_\_ [print name] understand that in lieu of discharge I am being allowed to continue in the employment of the City of Lake Oswego, subject to the following requirements:

1. I agree to be evaluated by an SAP, if necessary, and further agree to immediately enroll in and complete education or an inpatient or outpatient rehabilitation program as recommended by the SAP and approved by the City.

If inpatient treatment is recommended and approved, I will be placed on a leave of absence. During the period of my leave, I will be eligible to receive sick leave benefits, as allowed under the collective bargaining agreement. In the event, I do not have sufficient sick leave benefits to cover the period of my leave, I will be paid from my accrued compensatory time, followed by my vacation leave accruals until my paid leave banks are depleted, unless I request and receive approval from the City to take unpaid time. If outpatient treatment is approved, I will notify my supervisor of my treatment schedule and remain available for work assignments upon request. Employees may be returned to other available non-safety sensitive duties with approval from the City.

2. I agree to comply with and complete all conditions of treatment and any after-care or follow-up counseling recommended by my SAP.
3. The City has my permission to communicate with my physician(s) and SAP regarding my enrollment, progress and completion of rehabilitation recommendations. The City also has my permission to verify my attendance at meetings and compliance with all treatment, after-care and follow-up recommendations, including but not limited to testing commitments.
4. I agree to immediately notify Human Resources after I have completed my treatment program.
5.  **NON-DOT EMPLOYEES WHO TEST POSITIVE FOR DRUGS** - I understand that I will be subject to suspicionless testing for drugs for a period of twenty-four (24) months following the date of my signature and based on the SAP's recommendations and as allowed by applicable law.

**DOT EMPLOYEES** – I understand that I will be subject to follow up testing a minimum of six (6) times within the first twelve (12) month period after I sign this Agreement. The frequency and number of tests are determined by the SAP and may continue up to a maximum of sixty (60) months.

A positive test result or refusal to fully and immediately cooperate with a testing request may result in my immediate termination.

6. I understand that this Agreement constitutes a final warning, that my return to work and continued employment are contingent upon my compliance with all of the above terms. If I violate this Agreement or commit any subsequent violation of the City's Alcohol and Drug Policy within twenty-four (24) months, I will be subject to further discipline up to and including discharge in accordance with the Policy.
7. Should personal problems arise that may have an effect on my ability to remain in compliance with the City's Alcohol and Drug Policy and/or this Agreement, I understand that the City's Employee Assistance Program is available to assist me.
8. I agree to comply with the City's Alcohol and Drug Policy and specifically agree to refrain from the use of alcohol and/or drugs consistent with my rehabilitation program.

I understand that if I violate anything in this Agreement or commit any subsequent violation of the City's Alcohol and Drug Policy, within twenty-four (24) months, I will be subject to further discipline up to and including discharge in accordance with the Policy.

\_\_\_\_\_  
Employee's Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Representative

\_\_\_\_\_  
Date