

**MEMORANDUM OF UNDERSTANDING**

**By and Between**

**THE CITY AND COUNTY OF SAN FRANCISCO**

**And**

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS  
STATIONARY ENGINEERS, LOCAL 39**

**For Fiscal Years  
JULY 1, 2014 - JUNE 30, 2017**

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**ARTICLE I - REPRESENTATION**

**ARTICLE I -- REPRESENTATION**

1. This Memorandum of Understanding (hereinafter "MOU") is entered into by the City and County of San Francisco (hereinafter "City") through its designated representative and the Stationary Engineers, Local 39, International Union of Operating Engineers (hereinafter "Union").

**I.A. RECOGNITION**

2. The terms and conditions of this agreement shall apply to employees employed by the City and County of San Francisco in the classifications set forth herein. The parties recognize that neither the San Francisco Unified School District nor the San Francisco Community College District has authorized the City to bargain on their behalf.
3. The provisions of this agreement shall apply only to active covered employees.

<b>CLASS</b>	<b>BARGAINING UNIT</b>
5148 Water Operations Analyst	12
5149 Superintendent of Water Treatment Facilities	12
7120 Buildings and Grounds Maintenance Superintendent	12
7203 Buildings and Grounds Maintenance Supervisor	12
7205 Chief Stationary Engineer	12
7223 Cable Machinery Supervisor	12
7245 Chief Stationary Engineer, Water Treatment Plant	12
7252 Chief Stationary Engineer, Sewage Plant	12
7262 Maintenance Planner	12
7286 Wire Rope Cable Maintenance Supervisor	12
7333 Apprentice Stationary Engineer	12
7334 Stationary Engineer	12
7335 Senior Stationary Engineer	12
7339 Apprentice Stationary Engineer, Water Treatment Plant	12
7341 Stationary Engineer, Water Treatment Plant	12
7343 Senior Stationary Engineer, Water Treatment Plant	12
7372 Stationary Engineer, Sewage Plant	12
7373 Senior Stationary Engineer, Sewage Plant	12
7375 Apprentice Stationary Engineer, Sewage Plant	12
7420 Bridgetender	12
7472 Wire Rope Cable Maintenance Mechanic	12
7473 Wire Rope Cable Maintenance Mechanic Trainee	12
9232 Airport Mechanical Maintenance Supervisor	12

## **ARTICLE I - REPRESENTATION**

4. The Union shall be considered the recognized bargaining agent for any classes certified to it by the Civil Service Commission during the term of this MOU. However, application of the provisions of this MOU shall be extended only to classifications accreted to bargaining units already covered by the terms of this MOU pursuant to the procedures set forth in the Employee Relations Ordinance. Upon request of the Union, the City will meet and confer concerning proposed changes to bargaining units.
5. The City shall provide, upon request, a written list of all new hires and separations for all classes represented by the Union. This list shall be provided on a quarterly basis in written form, or in an agreed upon excel electronic format.

### **I.B. INTENT**

6. It is the intent of the parties signatory hereto that the provisions of this MOU shall not become binding until formally adopted by the Board of Supervisors acting in accordance with procedures, terms and provisions of the Charter applicable thereto.
7. Moreover, it is the intent of the Mayor acting on behalf of the City to agree to wages, hours, and other terms and conditions of employment as are within the Mayor's jurisdiction, powers, and authority to act as defined by the Charter, state law, California Constitution and other applicable bodies of the law. The Mayor does not intend or attempt to bind any board, commission or officer to any provisions of this agreement over which the Mayor has no jurisdiction.

### **I.C. NO STRIKE PROVISION**

8. During the term of this agreement the City will not lock out the employees who are covered by this MOU. This Union and the employees shall not strike, cause, encourage, or condone a work stoppage, slowdown, or sympathy strike as defined by Charter Section A8.346.

### **I.D. OBJECTIVE OF THE CITY**

9. It is agreed that the delivery of municipal services in the most efficient, effective, and courteous manner is of paramount importance to the City and County and its employees. Such achievement is recognized to be a mutual obligation of the parties to this MOU within their respective roles and responsibilities.
10. The Union recognizes the City and County's right to establish and/or revise performance standards or norms, notwithstanding the existence of prior performance levels, norms or standards. Such standards, developed by usual work measurement

## **ARTICLE I - REPRESENTATION**

procedures, may be used to determine acceptable performance levels, prepare work schedules, and to measure the performance of each employee or group of employees.

### **I.E. MANAGEMENT RIGHTS**

11. Except as otherwise provided in this Agreement, in accordance with applicable state law, nothing herein shall be construed to restrict any legal City rights concerning direction of its work force, or consideration of the merits, necessity, or organization of any service or activity provided by the City.
12. The City shall also have the right to determine the mission of its constituent departments, officers, boards and commissions; set standards of services to be offered to the public, and exercise control and discretion over the City's organization and operations. The City may also relieve city employees from duty due to lack of work or funds, and may determine the methods, means and personnel by which the City's operation are to be conducted.
13. It is understood and agreed that except as specifically set forth in this Agreement the City retains all of its powers and authority to manage municipal services and the work for performing those services. In no event shall the exercise of any of these rights conflict with any applicable Statute, Charter Provision, Civil Service Rule or any other pertinent provision of law.
14. The exercise of these rights shall not be subject to the grievance procedure. However, the exercise of such rights does not preclude employees from utilizing the grievance procedure to process grievances regarding the practical consequence of any such actions on wages, hours, benefits or other terms and conditions of employment specified in this Agreement.

### **I.F. OFFICIAL REPRESENTATIVES AND STEWARDS**

#### Official Representatives

15. The Union may select up to the number of employees as specified in the Employee Relations Ordinance for purposes of meeting and conferring with the City on matters within the scope of representation. If a situation should arise where the Union believes that more than a total of five (5) employee members should be present at such meetings, and the City disagrees, the Union shall discuss the matter with the Employee Relations Director. The parties shall attempt to reach agreement as to how many employees shall be authorized to participate in said meetings.

**ARTICLE I - REPRESENTATION**

16. 1. The organization's duly authorized representative shall inform, in writing, the department head or officer under whom each selected employee member is employed that such employee has been selected.
17. 2. No selected employee member shall leave the duty or work station, or assignment without specific approval of appropriate Employer representative.
18. 3. In scheduling meetings, due consideration shall be given to the operating needs and work schedules of the department, division, or section in which the employee members are employed.

Stewards

19. The Union shall, at least annually, furnish the City with an accurate, written list of stewards and alternate stewards to the appropriate department. The Union may submit amendments to this list at any time because of the permanent absence of a designated steward. If a steward is not officially designated in writing by the Union, none will be recognized for that area or shift.
20. The Union recognizes that it is the responsibility of the steward to assist the Business Representative in the resolution of grievances at the lowest level possible.
21. Upon notification of a designated management person, stewards or designated officers of the Union, subject to management approval which shall not be unreasonably withheld, shall be granted reasonable release time to assist the Business Representative in investigating and processing grievances and appeals. Stewards shall advise their supervisors of the area or work location where they will be so engaged. The Union will attempt to insure that steward release time will be equitably distributed.
22. Stewards shall be responsible for the performance of their work load, consistent with release time approved pursuant to rules established herein.
23. In emergency situations, where immediate disciplinary action is taken because of alleged violation of law or a City departmental rule (intoxication, theft, etc.), the steward shall not unreasonably be denied the right to leave his/her post or duty if requested by the Business Representative for purposes of representation.
24. Business Representatives and Stewards shall not interfere with the work of any employee. It shall not constitute interference with the work of an employee for Business Representatives and Stewards, in the course of investigating or processing a grievance, or disciplinary action, to interview an employee during an employee's duty time.

**ARTICLE I - REPRESENTATION**

**I.G. GRIEVANCE PROCEDURE**

25. The following procedures are adopted by the Parties to provide for the orderly and efficient disposition of grievances and are the sole and exclusive procedures for resolving grievances as defined herein.
26. A grievance is defined as an allegation by an employee, a group of employees or the Union that the City has violated, misapplied or misinterpreted a term or condition of employment provided in this Agreement.
27. A grievance does not include the following:
28. 1. Performance evaluations provided however, that employees shall be entitled to submit written rebuttals to unfavorable performance evaluations. Said rebuttal shall be attached to the performance evaluation and placed in the employee's official personnel file. Employees are required to submit a rebuttal to an unfavorable performance evaluation within twenty (20) working days from the date they received the performance evaluation.
29. 2. Written reprimands, provided however, that employees shall be entitled to append a written rebuttal to any written reprimand. The appended rebuttal shall be included in the employee's official personnel file. Employees are required to submit written rebuttals within twenty (20) working days from the date of the reprimand.

Time Limits

30. The time limits set forth herein may be extended by agreement of the parties. Any such extension must be confirmed in writing. For purposes of calculation of time a "day" is defined as a "calendar day," including weekends and holidays.
31. In the event a grievance is not filed or appealed in a timely manner it shall be dismissed. Failure of the City to timely reply to a grievance shall authorize appeal to the next grievance step.
32. Only the Union shall have the right to file a grievance on behalf of an employee(s).

**ARTICLE I - REPRESENTATION**

NON-DISCIPLINARY GRIEVANCES

Steps of the Procedure –

33. Except for grievances involving multiple employees or discipline, all grievances must be initiated at Step 1 of the grievance procedure.
34. A grievance affecting more than one employee shall be filed with the Appointing Officer or designee. Grievances affecting more than one department shall be filed with the Employee Relations Division. In the event the City disagrees with the level at which the grievance is filed it may submit the matter to the Step it believes is appropriate for consideration of the dispute.
35. The grievant may have a Union representative present at all steps of the grievance procedure.
36. Step 1: Immediate Supervisor
- An employee shall discuss the grievance informally with his/her immediate supervisor as soon as possible but in no case later than twenty (20) days from the date of the occurrence of the act or the date the grievant might reasonably have been expected to have learned of the alleged violation being grieved.
37. If the grievance is not resolved within seven (7) days after the informal discussion with the immediate supervisor, the grievant will submit the grievance in writing to the immediate supervisor on a mutually agreeable grievance form. The grievance will set forth the following:
1. facts of the grievance;
  2. the terms and conditions of employment claimed to have been violated, misapplied or misinterpreted, and
  3. the remedy or solution being sought by the grievant.
38. The immediate supervisor shall respond in writing within ten (10) days following receipt of the written grievance.
39. Step 2: Appointing Officer
- A grievant dissatisfied with the immediate supervisor's response at Step 1 may appeal to the Appointing Officer or designee, in writing, within fifteen (15) days of receipt of the Step 1 response. The Appointing Officer or designee shall respond in writing within fifteen (15) days of receipt of the grievance.

## ***ARTICLE I - REPRESENTATION***

### 40. Step 3: Employee Relations Director, ERD

A grievant dissatisfied with the Appointing Officer's response at Step 2 may appeal to the Employee Relations Director, in writing, within fifteen (15) days of receipt of the Step 2 response. The Director shall respond to the appeal in writing within fifteen (15) days of receipt of the appeal.

### Arbitration

41. If the Union is dissatisfied with the Step 3 response, it may invoke arbitration by notifying the Employee Relations Director, in writing, within thirty (30) days of the Step 3 decision.

### Selection of the Arbitrator

42. When a matter is appealed to arbitration, the parties shall first attempt to mutually agree upon an Arbitrator to hear the matter. In the event no agreement is reached within ten (10) working days, or any extension of time mutually agreed upon the parties shall request that the State Mediation and Conciliation Service ("SMCS") or the American Arbitration Association ("AAA") provide the parties with a list of seven (7) potential arbitrators. The parties, by lot, shall alternately strike names from the list, and the name that remains shall be the arbitrator designated to hear the particular matter.

43. The parties may, by mutual agreement, agree to an alternate method of arbitrator selection and appointment, including, the expedited appointment of an arbitrator from a list provided by the SMCS or AAA.

## **DISCIPLINE/DISCHARGE GRIEVANCES**

44. Permanent employees or employees who have satisfactorily completed the probationary period may grieve (appeal) suspensions, disciplinary demotions or discharges.

45. The Union may appeal the Appointing Officer's decision to the Employee Relations Director at the Employee Relations Division ("ERD") in writing within fifteen (15) days of the date of the written notice of discipline. The grievance shall set forth the basis of the appeal. The Director or his/her designee may convene a grievance meeting within twenty (20) days with the grievant and the grievant's Union. The Director or his/her designee shall respond to the grievance in writing within ten (10) days of the meeting, or if none is held within fifteen (15) days of receipt of the appeal

## ***ARTICLE I - REPRESENTATION***

46. If the decision of the Employee Relations Director is unsatisfactory, only the Union may file a written appeal to arbitration. Any written appeal must be filed with the Employee Relations Director at ERD no later than thirty (30) days following issuance of the Director's response.

### Discharge Grievances

47. The parties shall use their best efforts to arbitrate grievances challenging the termination of employment within ninety (90) days of the Union's appeal from the decision of the Employee Relations Director.

### Selection of the Arbitrator

48. Selection of an arbitrator shall be as outlined in the paragraph above.

### Authority of the Arbitrator

49. The arbitrator shall have no authority to add to, subtract from, modify or amend the terms of this Agreement. The decision of the Arbitrator shall be final and binding on all Parties.

### Fees and Expenses of Arbitrator

50. Each party shall bear its own expenses in connection with the arbitration, including, but not limited to, witness and attorney's fees, and any fees for preparation of the case. Transcripts shall not be required. Either party may, however, request a transcript provided that the party making such a request shall be solely responsible for the cost. All fees and expenses of the arbitrator and the court reporter, if any, shall be split equally between the parties.

### Hearing Dates and Date of Award

51. The parties shall make their best efforts to schedule hearings within forty (40) days of selection of an arbitrator. Awards shall be due within forty (40) days following the receipt of closing arguments. As a condition of appointment, arbitrators shall be advised of this requirement and shall certify their willingness to abide by these time limits.
52. Any claim for monetary relief shall not extend more than thirty (30) days prior to the filing of a grievance, unless considerations of equity or bad faith justify a greater entitlement. The arbitrator shall be required to deduct from any monetary awards all income derived from any subsequent employment or unemployment compensation received by the employee.

**ARTICLE I - REPRESENTATION**

**I.H. UNION SECURITY**

Authorization for Deductions

53. The City shall deduct Union dues, initiation fees, premiums for insurance programs and political action fund contributions from an employee's pay upon receipt by the Controller of a form authorizing such deductions by the employee. The City shall pay over to the designated payee all sums so deducted. Upon request of the Union, the controller agrees to meet with the Union to discuss and attempt to resolve issues pertaining to delivery of services relating to such deductions.

Dues Deductions

54. Dues deductions, once initiated, shall continue until the authorization is revoked in writing by the employee. For the administrative convenience of the City and the Union, an employee may only revoke a dues authorization by delivering the notice of revocation to the Controller during the two week period prior to the expiration of this Agreement. The revocation notice shall be delivered to the Controller either in person at the Controller's office or by depositing it in the U.S. Mail addressed to the Payroll/Personnel Services Division, Office of the Controller, One South Van Ness, 8<sup>th</sup> Floor, San Francisco, CA 94103; Attention: Dues Deduction. The City shall deliver a copy of the notices of revocation of dues deductions authorizations to the Union within two (2) weeks of receipt.

Union Access

55. The Union shall have reasonable access to all work locations to verify that the terms and conditions of this Agreement are being carried out and for the purpose of conferring with employees provided that access shall be subject to such rules and regulations immediately below, as well as to such rules and regulations as may be agreed to by the department and the union. Union access to work locations will not disrupt or interfere with a department's mission and services or involve any political activities.
56. Union representatives shall also have a reasonable right of access to non-work areas (bulletin boards, employee lounges and break rooms) and to hallways in order to reach non-work areas to verify that the terms and conditions of this Agreement are being carried out and for the purpose of conferring with employees.
57. Union representatives must identify themselves upon arrival at a City department. Union representatives may use meeting space with a reasonable amount of notice, subject to availability.

## ***ARTICLE I - REPRESENTATION***

58. In work units where the work is of a confidential nature and in which the department requires it of other non-employees, a department may require that union representatives be escorted by a department representative when in areas where said confidential work is taking place.
59. Nothing herein is intended to disturb existing written departmental union access policies. Further, departments may implement additional rules and regulations after meeting and conferring with the Union.

### Agency Shop Application

60. Except as provided otherwise herein, these provisions regarding Agency Shop shall apply to all employees of the City in all classifications, regardless of appointment type, that are represented by the Union in representation Unit 12 when on paid status.
61. These provisions shall not apply to individual employees of the City in representation Unit 12 who have been properly and finally determined to be management employees pursuant to the Employer-Employee Relations Ordinance and the Meyers-Milias Brown Act.
62. The Employee Relations Director shall give the Union no less than ten working days prior notice of any such proposed designation. Except when an individual employee has filed a challenge to a management, confidential, or supervisory designation, the Employee Relations Director and the Union shall meet as necessary for the purpose of attempting to make such determinations by mutual agreement. Disputes regarding such designations shall promptly be resolved pursuant to Section 16.208(b) of the Ordinance.

### Agency Shop Fee

63. All current and future employees of the City as described in Article I, Section H, "Union Security", except as set forth below, shall, as a condition of continued employment, become and remain a member of the Union in good standing or, in lieu thereof, shall pay a service fee to the Union. Such service fee payment shall not exceed the periodic dues of the Union. Service fees will be assessed as of the time the fees are set in accordance with applicable law, including: (1) the provision of sufficient financial information to gauge the propriety of the fees; (2) the provision of a reasonably prompt opportunity to challenge the amount of the fee before an impartial decision maker; and (3) provision for an escrow account of amounts reasonably in dispute during an appeal. A description of the actual fee setting procedure shall be added to this MOU as an addendum when established.

## ***ARTICLE I - REPRESENTATION***

64. The Union shall comply with the requirements set forth in *Chicago Teachers Union v. Hudson*, 475 U.S. 292 (1986) for the deduction of agency shop fees. Annually, the Union shall certify in writing to the City that the Union has complied with the requirements set forth in this section and in *Hudson*, 475 U.S. 292.

### Religious Exemptions

65. Any employee of the City in a classification described in Article I.A. hereof, who is a member of a bona fide religion, body or sect, which has historically held conscientious objections to joining or financially supporting a public employee organization and is recognized by the National Labor Relations Board to hold such objections to Union membership, shall, upon presentation of proof of membership and historical objection satisfactory to the City and the Union, be relieved of any obligation to pay the required service fee.

### Payroll Deductions

66. The Union shall provide the Employee Relations Director and the City Controller with a current statement of membership fees. Said statement of membership fees shall be amended as necessary. The Controller may take up to 30 days to implement such changes.
67. The Controller shall make membership fee or service fee deductions, as appropriate, from the regular periodic payroll warrant of each City employee described in Article I, Section H.
68. Service fees from nonmembers shall be collected by payroll deduction pursuant to Administrative Code Section 16.90, provided, however, that an employee may elect to make said service fee payments personally to the Union, and shall so inform the Controller on a form provided by the City. Employees shall receive and complete at the time of employment an authorization to deduct membership or agency fees. Said employees shall also be notified of their right to make direct payments to the Union. Failure to comply with this Section shall be grounds for termination, in accordance with applicable City procedures.
69. The Controller will promptly pay over to the Union all sums withheld for service fees, less the fee for making such deductions. The Controller shall also provide with each payment a list of the employees paying service fees. All such lists shall contain the employee's name, employee number, classification, department number, and amount deducted. A list of all employees in represented classes shall be provided to the Union monthly, at a cost not to exceed actual, to be determined by the Controller.

**ARTICLE I - REPRESENTATION**

70. Nothing in this Section shall be deemed to have altered the City's current obligation to make insurance program or political action deductions when requested by the employee.

Revocation of the Agency Shop Fee

71. The agency shop fee provision covering the bargaining unit herein may be rescinded as provided by state law. The Employee Relations Director shall consult with the Union and promulgate rules necessary for the conduct of said rescission elections.

Re-Implementation

72. In the event an agency shop provision is rescinded pursuant to the above paragraph an agency shop shall be re-implemented within representation units or subunits when any of the following occurs:

73. (1) Election: The Union has requested, in writing, an election on the issue, to be conducted by the State Mediation and Conciliation Service and 50% plus one of those voting favor agency shop, or
74. (2) 2/3 Membership: The Union makes a showing that two-thirds (2/3) of the employees within the unit or sub-unit are dues paying members of the Union, or
75. (3) New Employees: The Union requests, in writing, an agency shop be implemented for all employees hired after a date to be agreed to by the Union and the Employee Relations Division.

Financial Reporting

76. The Union shall annually provide the Employee Relations Director with copies of the financial report required pursuant to the Labor-Management Disclosure Act of 1959. Copies of such reports shall be made available to employees subject to the agency shop fee provisions of this Memorandum of Understanding upon request by such employee at the offices of the Union.

Indemnification

77. The Union agrees to indemnify and hold the City harmless for any loss or damage arising from the operation of this provision.

**ARTICLE II – EMPLOYMENT CONDITIONS**

**ARTICLE II - EMPLOYMENT CONDITIONS**

**II.A. NON DISCRIMINATION**

78. The City and the Union agree that this Agreement shall be administered in a nondiscriminatory manner and that no person covered by this Agreement shall in any way be discriminated against because of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, physical or mental disability, age, political affiliation or opinion or union membership or activity, or non-membership, nor shall a person be subject to sexual harassment.
79. Discrimination as used herein shall mean discrimination as defined by Title VII of the 1964 Civil Rights Act, as amended, the Civil Rights Act of 1991, the California Fair Employment and Housing Act, the Americans with Disabilities Act, the California and United States Constitutions, the Equal Pay Act of 1963, the Age Discrimination in Employment Act of 1967, the Civil Rights Acts of 1866, and any other laws and regulations relating to employment discrimination.
80. The parties are committed to the principles articulated in this provision and agree that the Non Discrimination provision shall not be grievable or arbitrable.

**II.B. CERTIFICATION FEES**

81. When the City and County of San Francisco or the State requires that employees working in classifications represented by the Stationary Engineers, Local 39 to possess a certificate as a condition of employment, or with the approval of the Appointing Officer, the employee receives certification for a related field, or receives certification higher than the minimum required, the City shall reimburse said employee for any fee involved in the issuance or renewal of said certificate. Employees shall suffer no loss in pay for time spent taking qualifying examinations for said certificate. Drivers' licenses are not covered by the provisions of this section.
82. When employees are required by the licensing agency, including CWEA, to obtain continuing education as a condition of maintaining their professional license, the attendance at the education training classes, during normal working hours, shall be recognized as work time and compensated as such. The department will make every effort to provide onsite training through approved vendors when the required classes are not offered by the department. When such classes are scheduled outside the employee's normal work hours, and the employee has received approval from the department to attend an off-site class, employees shall attend these classes on their own time. The department will cover the costs for approved training classes mandated by regulatory agencies.

**ARTICLE II – EMPLOYMENT CONDITIONS**

**II.C. PROBATIONARY PERIOD**

83. The probationary period, as defined and administered by the Civil Service Commission (“Probationary Period”), shall be as set forth herein:

2,080 hours for all new hires;

1,040 hours for a promotive appointment; and

520 hours for all other job changes, including but not limited to transfers and bumping. If the employee is returned to duty in the same department from which he/she was laid off, he/she shall serve the remainder of any probationary period.

84. The parties may extend, in writing, the duration of the Probationary Period by mutual consent.

**II.D. USE OF PRIVATE AUTOMOBILE ON CITY BUSINESS**

85. Employees whose class specification and/or job announcement does not require the possession and use of an automobile as a condition of employment shall not be required to use their private automobiles to accomplish City business.

86. Employees using their own vehicle for City business at the request of the employer or the employer's representative shall be reimbursed for mileage at the rate allowed by the United States Internal Revenue Service and for all necessary parking and toll expenses.

**II.E. PERSONNEL FILES**

87. Upon request of an employee to the Appointing Officer or designee, material relating to disciplinary actions in the employee’s personnel file which have been in the file for more than two (2) years of actual work shall not be used for disciplinary purposes provided the employee has no subsequent disciplinary action since the date of such prior action. Performance evaluations are excluded from this provision.

88. The above provision shall not apply in the case of employees disciplined due to misappropriation of public funds or property; misuse or destruction of public property; drug addiction or habitual intemperance; mistreatment of persons; immorality; acts which would constitute a felony or misdemeanor involving moral turpitude; acts which present an immediate danger to the public health and safety. In such cases, an employee’s request for non-consideration may be considered on a case

## **ARTICLE II – EMPLOYMENT CONDITIONS**

by case basis, depending upon the circumstances, by the Appointing Officer or designee. This section may be reopened at the request of either party.

### **II.F. CLASSIFICATION/REORGANIZATION**

89. Effects of Reclassification - Upon approval of the reclassification of an existing position by the Human Resources Director or the Civil Service Commission (“CSC”), the incumbent shall be separated from the position and shall be eligible to exercise seniority to fill another position in the class occupied prior to the reclassification or to otherwise move in accordance with the rules of the CSC or provisions of the MOU, whichever governs.
90. Transfer of Work between Bargaining Units/Incidental Employee Work Assignments  
The City shall have the right to assign work to any classification determined to be appropriate for the performance of said duties.

### **II.G. MEALS – SHERIFF’S DEPARTMENT ONLY**

91. Sheriff’s Department Only – The current practice of providing a meal per shift to covered employees assigned to the jails shall continue as long as this benefit is provided to the Deputy Sheriffs assigned to the jails.

### **II.H. SUBCONTRACTING**

1. Prop. J Contracts
92. a. The City agrees to notify the Union no later than the date a department sends out Requests for Proposals when contracting out of a City service and authorization of the Board of Supervisors is necessary in order to enter into said contract.
93. b. Upon request by the Union, the City shall make available for inspection any and all pertinent background and/or documentation relating to the service contemplated to be contracted out.
94. c. Prior to any final action being taken by the city to accomplish the contracting out, the City agrees to hold informational meetings with the Union to discuss and attempt to resolve issues relating to such matters including, but not limited to,
95. i. possible alternatives to contracting or subcontracting;
96. ii. questions regarding current and intended levels of service;

**ARTICLE II – EMPLOYMENT CONDITIONS**

- 97.           iii.     questions regarding the Controller's certification pursuant to Charter Section 10.104;
- 98.           iv.     questions relating to possible excessive overhead in the City's administrative-supervisory/worker ratio; and
- 99.           v.     questions relating to the effect on individual worker productivity by providing labor saving devices;
  
- 100.         d.     The City agrees that it will take all appropriate steps to insure the presence at said meetings of those officers and employees (excluding the Board of Supervisors) of the City who are responsible in some manner for the decision to contract so that the particular issues may be fully explored by the Union and the City.

2.     Personal Services Contracts

- 101.         a.     Departments shall notify the Union of proposed personal services contracts where such services could potentially be performed by represented classifications. Such notification shall occur no later than the date a department sends out requests for proposals.
  
- 102.         b.     If the Union wishes to meet with a department over a proposed personal services contract, the request must be made by the Union to the Human Resources Director with a copy forwarded to the appropriate department within two weeks after the receipt of notice by the Department.
  
- 103.         c.     Discussions shall include, but not be limited to, possible alternatives to contracting or subcontracting and whether the department staff has the expertise and/or facilities to perform the work. Upon request by the Union, the City shall make available for inspection any and all pertinent background and/or documentation relating to the service contemplated to be contracted out.

**ARTICLE III – PAY, HOURS AND BENEFITS**

**ARTICLE III - PAY, HOURS AND BENEFITS**

**III.A. WAGES**

104. Represented employees will receive the following wage increases:
105.           a.     Effective October 11, 2014    3%
106.           b.     Effective October 10, 2015    3.25%
107.           c.     Effective July 1, 2016, represented employees will receive a base wage increase between 2.25% and 3.25%, depending on inflation, and calculated as  $(2.00\% \leq \text{CPI-U} \leq 3.00\%) + 0.25\%$ , which is equivalent to the CPI-U, but no less than 2% and no greater than 3%, plus 0.25%.
108.           In calculating CPI-U, the Controller’s Office shall use the Consumer Price Index – All Urban Consumers (CPI-U), as reported by the Bureau of Labor Statistics for the San Francisco Metropolitan Statistical Area. The growth rate shall be calculated using the percentage change in price index from February 2015 to February 2016.

**III.B. WORK SCHEDULES**

109.           For all employees covered by the provisions of this MOU (except for classifications subject to the alternative work schedule within the Wastewater Enterprise who shall be compensated in conformity with the Work and Pay Rules attached hereto as Appendix "A") the normal work day shall be eight (8) consecutive hours for Watch Engineers and eight (8) hours within eight and one-half (8-1/2) hours for maintenance engineers. Watch Engineers shall be permitted sixteen (16) hours off between the end of his or her regular shift and the beginning of his or her next shift. Maintenance engineers shall be permitted fifteen and one-half (15-1/2) hours off between the end of his or her shift and the beginning of his or her next shift. The normal work week for such classes shall be forty (40) hours of five (5) consecutive days, except that engineers assigned to rotating shifts may work six (6) or seven (7) consecutive days before receiving their consecutive days off. Any work performed outside of this designated schedule shall be paid at the overtime rate of time-and-one-half (1-1/2). Except in emergency situations, the City and the Union agree that prior to any changes in unit work schedules, the Union will be given notice and an opportunity to meet with the appropriate department(s) regarding the proposed change.
110.           For all employees covered by the provisions of this MOU working a ten (10) hour schedule, the normal work day shall be ten (10) consecutive hours for watch engineers and ten (10) hours within ten and one-half (10-1/2) hours for maintenance

### **ARTICLE III – PAY, HOURS AND BENEFITS**

engineers. Watch engineers shall be permitted fourteen (14) hours off between the end of his or her regular shift and the beginning of his or her next shift. Maintenance engineers shall be permitted thirteen and one-half (13-1/2) hours off between the end of his or her shift and the beginning of his or her next shift. The normal workweek for such classes shall be forty (40) hours of four (4) consecutive days. Any work performed outside of this designated schedule shall be paid at the overtime rate of time and one-half (1-1/2). Except in emergency situations, the City and the Union agree that prior to any changes in unit work schedules, the Union will be given notice and an opportunity to meet with the appropriate department(s) regarding the proposed change.

111. Assignment from either a watch schedule to a maintenance schedule or from a maintenance schedule to a watch schedule will result in beginning a new count of consecutive workdays. The existing practice when one engineer relieves another engineer for shift change will continue.
112. Further, upon notification to an authorized representative of the Employee Relations Division, the Union and City may meet for the purpose of establishing alternate work schedules. Upon request of the Union, the City agrees to explore alternatives to existing eight (8) hour rotating shifts that meet the needs of employees while maintaining employee safety, attendance, plant productivity and cost neutrality with respect to the old schedule.

#### **III.C. NOTICE OF SHIFT**

113. When management initiates a change in an employee's shift schedule, forty-eight hours' notice will be given whenever possible. Failure to provide such notice will result in a penalty payment equal to two (2) hours of straight time compensation except when unanticipated operational needs precludes the giving of forty-eight hours' notice. The payment of the penalty shall not be construed as counting towards time worked for any purpose. There shall be no change in shift to avoid payment of overtime.

#### **III.D. ADDITIONAL COMPENSATION**

114. Each additional compensation provision under this section shall be separately calculated against an employee's base rate of pay and shall not be pyramided.

#### **NIGHT SHIFT DIFFERENTIAL**

115. Employees shall be paid eight-and-one-half percent (8.5%) more than the base rate for each hour regularly assigned between 5:00 p.m. and midnight (12:00 a.m.) if the employee works at least one (1) hour of his/her shift between 5:00 p.m. and midnight

### **ARTICLE III – PAY, HOURS AND BENEFITS**

(12:00 a.m.), except for those employees participating in an authorized flex-time program and who voluntarily work between the hours of 5:00 p.m. and midnight (12:00 a.m.). Shift pay of 8.5% shall be paid for the entire shift, provided at least five (5) hours of the employee's shift falls between 5:00 p.m. and midnight (12:00 a.m.).

116. Employees shall be paid ten percent (10%) more than the base rate for each hour regularly assigned between the hours of midnight (12:00 a.m.) and 7:00 a.m. if the employee works at least one (1) hour of his/her shift between midnight (12:00 a.m.) and 7:00 a.m., except for those employees participating in an authorized flex-time program and who voluntarily work between the hours of midnight (12:00 a.m.) and 7:00 a.m. Shift pay of 10% shall be paid for the entire shift, provided at least five (5) hours of the employee's shift falls between midnight (12:00 a.m.) and 7:00 a.m.
117. Classifications subject to the alternative work schedule within the Wastewater Enterprise (who shall be compensated in conformity with the Work and Pay Rules attached hereto as Appendix "A") are not eligible for night shift differential as specified in this provision.

#### **CALL BACK PAY**

118. Employees covered by the terms of this MOU who are called back to their work locations following the completion of their work day and departure from their place of employment or are called into work on their scheduled day off shall be granted a minimum of four (4) hours pay at the applicable rate of pay. When the number of hours actually worked reaches four (4) hours, the employee shall be compensated up to one (1) hour for the time spent traveling to or from the job location, except for employees residing in City-provided housing at that location. Employees who are called during their off hours to provide information or assistance over the telephone shall be compensated at the applicable rate for time so spent. Response to a page by telephone or response to an inquiry by telephone during off hours shall be paid at a minimum of one-half (1/2) hour worked or actual time spent, whichever is greater.

#### **STANDBY PAY**

119. Employees who, as part of the duties of their positions are required by the Appointing Officer to standby when normally off duty to be instantly available on call for immediate emergency service for the performance of their regular duties, shall be paid the Federal Minimum Wage per hour for the period of such standby service. During the standby period, employees are relieved from duty and such hours are not to be considered hours worked under the FLSA. The issuance of an electronic paging device does not in itself constitute eligibility for standby pay.

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120. When such employees are called on to perform their regular duties in emergencies during the period of such standby service, they shall be paid while engaged in such emergency service the usual rate of pay for such service as provided herein. Notwithstanding the general provisions of this section, standby pay shall not be allowed in classes whose duties are primarily administrative in nature.

**ACTING ASSIGNMENT PAY**

121. Any employee governed by the provisions of this MOU who is required to perform supervisory duties outside his/her classification in excess of fifteen (15) cumulative days during a rolling 12-month period shall be paid at the pay rate of the classification to which assigned.
122. Except for classes 7252, 7372, 7373, 7375, 7245, 7343, 7341, and 7339, Stationary Engineers and related classifications who perform the duties of classes 7252, 7372, 7373, 7375, 7245, 7343, 7341, or 7339 at a headworks facility or potable water treatment facility, or when operating or maintaining sewage pumps, shall receive, for the time spent in performing such duties, the equivalent rate of pay of the classification regularly assigned to such work.

**CORRECTIONAL FACILITY PREMIUM**

123. A premium of \$2.00 per hour shall be paid to all employees working in classifications represented by the Stationary Engineers, Local 39 Class 7334 and related classes working in a secured and restricted area of the correctional facilities listed below.
124. This premium shall not be added to the employee's base rate of pay for the purpose of calculating overtime.
125. Those facilities where this premium shall apply are listed below:
- 1) County Jail Facilities in San Bruno
  - 2) Juvenile Justice Center
  - 3) Log Cabin Ranch dormitory, recreation hall, school, auto shop and dining hall
  - 4) County Jail Facilities located at 425 7<sup>th</sup> Street
  - 5) San Francisco General Hospital – Acute Psychiatry (Wards 7A, 7B, 7C), Medical-Surgical Forensic (Ward 7D), and

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Forensic Psychiatry (Ward 7L) and Psychiatric Emergency Services (Ward 1B).

- 6) Behavioral Health Center – Mental Health Rehabilitation Center (MHRC).
- 7) Hall of Justice in San Francisco, when required to work in jail areas and prisoner holding cells.

**MULTIPLE LICENSE REQUIREMENT PREMIUM**

126. The Multiple License Premium will be rolled into the base wage for all unit members at a rate of 6% effective October 11, 2014 and will no longer be available as a separate premium. Unit members shall continue to be provided all training and hold all licenses and certifications that were provided by the City under the terms of the Multiple License Premium and as required by a regulating body having jurisdiction over the operations of facilities operated and/or staffed by unit members. Departments may also request that unit members obtain certifications that will increase skill levels and/or improve operational efficiency. All unit members will be provided, at the cost of the City, the opportunities for future enhancement of licenses and certifications as current or future regulatory bodies and regulations dictate, including any associated training, certification or licensing costs.

**SUPERVISORY DIFFERENTIAL ADJUSTMENT**

127. The Appointing Officer may adjust the compensation of a supervisory employee whose schedule of compensation is set herein subject to the following conditions:
128. 1. The supervisor, as part of the regular responsibilities of his/her class, supervises, directs, is accountable for and is in responsible charge of the work of a subordinate or subordinates.
  129. 2. The supervisor must actually supervise the technical content of subordinate work and possess education and/or experience appropriate to the technical assignment.
  130. 3. The organization is a permanent one approved by the appointing officer, chief administrative officer, Board or Commission, where applicable, and is a matter of record based upon review and investigation by the Department of Human Resources.
  131. 4. The classifications of both the supervisor and the subordinate are appropriate to the organization and have a normal, logical relationship to each other in

### **ARTICLE III – PAY, HOURS AND BENEFITS**

terms of their respective duties and levels of responsibility and accountability in the organization.

132. 5. The compensation schedule of the supervisor is less than one full step (approximately 5%) over the compensation schedule, exclusive of extra pay, of the employee supervised. In determining the compensation schedule of a classification being paid a flat rate, the flat rate will be converted to a bi-weekly rate and the compensation schedule the top step of which is closest to the flat rate so converted shall be deemed to be the compensation schedule of the flat rate classification.
133. 6. The adjustment of the compensation schedule of the supervisor shall not exceed 5% over the compensation, exclusive of extra pay, of the employee supervised.

#### **LEAD PAY - AIRPORT ONLY**

134. Covered employees employed at the San Francisco International Airport designated by their supervisor as a lead worker shall be entitled to a \$10.00 per day premium when required to take the lead on any job when at least two employees in the same classification are working together and one acts as lead.
135. Employees are not eligible to receive both Lead Pay and Acting Assignment Pay.

#### **CABLE MAINTENANCE MECHANIC**

136. When an employee in job code 7472 Wire Rope Cable Maintenance Mechanic at the MTA Cable Barn is assigned to direct the activities of co-workers, the employee shall receive a \$1.50 premium for hours actually worked. This assignment shall be limited to one (1) employee per shift.

#### **DIVE PAY**

137. Employees shall be paid \$10 per hour more than the base rate, exclusive of any additional compensation for other assignments, when assigned and actually engaged in duties and operations requiring underwater diving. Such assignments will be for an eight (8) hour minimum.

### **III.E. RETIREMENT**

138. Represented employees agree to pay their own employee retirement contribution to SFERS. For employees who became members of SFERS prior to November 2, 1976

### **ARTICLE III – PAY, HOURS AND BENEFITS**

(Charter Section A8.509 Miscellaneous Plan), the City shall pick up one-half (0.5%) of the employee retirement contribution to SFERS.

139. Any such contribution by the City shall not be considered as part of an employee's compensation for the purpose of computing straight time earnings, compensation for overtime worked, premium pay, or retirement benefits; nor shall such contributions be taken into account in determining the level of any other benefit which is a function of or percentage of salary.
140. The parties acknowledge that the San Francisco Charter establishes the levels, terms and conditions of retirement benefits for members of the San Francisco Employees Retirement System (SFERS). The fact that an MOU does not specify that a certain item of compensation is excluded from retirement benefits should not be construed to mean that the item is included by the Retirement Board when calculating retirement benefits.

#### Retirement Seminar Release Time

141. Subject to development, availability and scheduling by SFERS and PERS, employees shall be allowed not more than one day during the life of this MOU to attend a pre-retirement planning seminar sponsored by SFERS or PERS.
142. Employees must provide at least two-week advance notice of their desire to attend a retirement planning seminar to the appropriate supervisor. An employee shall be released from work to attend the seminar unless staffing requirements or other Department exigencies require the employee's attendance at work on the day or days such seminar is scheduled. Release time shall not be unreasonably withheld.
143. All such seminars must be located within the Bay Area.
144. This section shall not be subject to the grievance procedure.

### **III.F. HEALTH BENEFIT CONTRIBUTIONS**

#### **EMPLOYEE HEALTH CARE CITY CONTRIBUTION**

145. The level of the City's contribution to employee health benefits will be set in accordance with the requirements of Charter Sections A8.423 and A8.428.

**ARTICLE III – PAY, HOURS AND BENEFITS**

146. a. Health Coverage Effective January 1, 2014 Through December 31, 2014

1) MEDICALLY SINGLE EMPLOYEES

147. Effective January 1, 2014 through December 31, 2014, for “medically single employees” (Employee Only) enrolled in any plan other than the highest cost plan, the City shall contribute ninety percent (90%) of the “medically single employee” (Employee Only) premium for the plan in which the employee is enrolled; provided, however, that the City’s premium contribution will not fall below the lesser of: (a) the "average contribution" as determined by the Health Service Board pursuant to Charter Sections A8.423 and A8.428(b)(2); or (b), if the premium is less than the "average contribution", one hundred percent (100%) of the premium.

148. Effective January 1, 2014 through December 31, 2014, for “medically single employees” (Employee Only) who elect to enroll in the highest cost plan, the City shall contribute ninety percent (90%) of the premium for the second highest cost plan for such employees.

2) DEPENDENT HEALTH CARE

149. From January 1, 2014 through December 31, 2014, for Dependent Coverage (Employee Plus One; Employee Plus Two More), the City shall contribute the greater amount of up to \$225 per month or 75% of the dependent rate charged by the City to employees for Kaiser coverage at the dependent plus two level.

b. Health Coverage Effective January 1, 2015

150. Effective January 1, 2015, the contribution model for employee health insurance premiums will be based on the City’s contribution of a percentage of those premiums and the employee’s payment of the balance (Percentage-Based Contribution Model), as described below:

1) Employee Only

151. For medically single employees (Employee Only) who enroll in any health plan offered through the Health Services System, the City shall contribute ninety-three percent (93%) of the total health insurance premium, provided however, that the City’s contribution shall be capped at ninety-three percent (93%) of the Employee Only premium of the second-highest-cost plan.

**ARTICLE III – PAY, HOURS AND BENEFITS**

2) Employee Plus One:

152. For employees with one dependent who elect to enroll in any health plan offered through the Health Services System, the City shall contribute ninety-three percent (93%) of the total health insurance premium, provided however, that the City’s contribution shall be capped at ninety-three percent (93%) of the Employee Plus One premium of the second-highest-cost plan.

3) Employee Plus Two or More:

153. For employees with two or more dependents who elect to enroll in any health plan offered through the Health Services System, the City shall contribute eighty-three percent (83%) of the total health insurance premium, provided however, that the City’s contribution shall be capped at eighty-three percent (83%) of the Employee Plus Two or More premium of the second-highest-cost plan.

4) Contribution Cap

154. In the event HSS eliminates access to the current highest cost plan for active employees, the City contribution under this agreement for the remaining two plans shall not be affected.

5) Average Contribution Amount

155. For purposes of this agreement, and any resulting agreements under paragraph 155, to ensure that all employees enrolled in health insurance through the City’s Health Services System (HSS) are making premium contributions under the Percentage-Based Contribution Model, and therefore have a stake in controlling the long term growth in health insurance costs, it is agreed that, to the extent the City’s health insurance premium contribution under the Percentage-Based Contribution Model is less than the “average contribution,” as established under Charter section A8.428(b), then, in addition to the City’s contribution, payments toward the balance of the health insurance premium under the Percentage-Based Contribution Model shall be deemed to apply to the annual “average contribution.” The parties intend that the City’s contribution toward employee health insurance premiums will not exceed the amount established under the Percentage-Based Contribution Model.

c. Medically Single Employees Outside of Health Coverage Areas

156. If an employee’s work location reasonably requires him or her to reside in a county in which there is no City HMO available, then the City shall pay for medically-single/Employee-Only coverage under the City Plan.

**ARTICLE III – PAY, HOURS AND BENEFITS**

d. Agreement Not to Renegotiate Contributions in 2014

157. The terms described in paragraphs 148 through 153 above will be effective in calendar year 2015, and the parties agree not to seek to modify this agreement through the term of any MOU entered into prior to, or in the spring of, 2014.

e. Other Terms Negotiable

158. While the parties have agreed in paragraph 155 not to negotiate any changes to the Percentage-Based Contribution Model, the parties are free to make economic proposals to address any alleged impact of the health contribution levels described above or other health related issues not involving the percentage-based contribution model (e.g. wellness and transparency).

f. Other Agreements

159. Should the City and any recognized bargaining unit reach a voluntarily bargained agreement that results in City contributions to health insurance premiums exceeding those provided by the Percentage-Based Contribution Model, the City agrees to offer the entire alternate model to the Union as a substitute.

160. None of the provisions herein in any way alter the City's Health Service System's rules or policies regarding enrollment in or separation from any City Health Service System plan.

**PUC - HETCH HETCHY AND CAMP MATHER HEALTH STIPEND**

161. The City will continue to pay a stipend to eligible employees pursuant to the Annual Salary Ordinance Section 2.1.

**DENTAL COVERAGE**

162. Each employee covered by this agreement shall be eligible to participate in the City's dental program.

163. Employees who enroll in the Delta Dental PPO Plan shall pay the following premiums for the respective coverage levels: \$5/month for employee-only, \$10/month for employee + 1 dependent, or \$15/month for employee + 2 or more dependents.

**ARTICLE III – PAY, HOURS AND BENEFITS**

**CONTRIBUTIONS WHILE ON UNPAID LEAVE**

164. As set forth in Administrative Code section 16.701(b), covered employees who are not in active service for more than twelve (12) weeks shall be required to pay the Health Service System for the full premium cost of membership in the Health Service System, unless the employee shall be on sick leave, workers' compensation, mandatory administrative leave, approved personal leave following family care leave, disciplinary suspensions, or on a layoff holdover list where the employee verifies they have no alternative coverage.

**III.G. FAIR LABOR STANDARDS ACT**

165. To the extent that the Agreement fails to afford employees the overtime or compensatory time off benefits to which they are entitled under the Fair Labor Standards Act, the Agreement is amended to authorize and direct all City Departments to ensure that their employees receive, at a minimum, such Fair Labor Standards Act Benefits. No employee covered by this Agreement shall suffer any reduction in benefits as the result of the application of this language.
166. The City agrees that it will, at a minimum, compensate in a manner consistent with the Fair Labor Standards Act. No employee covered by this Agreement shall suffer any reduction in benefits as the result of the application of this language.

**III.H. HOLIDAYS AND HOLIDAY PAY**

167. A holiday is calculated based on an eight-hour day. The following days are designated as holidays:
- January 1 (New Year's Day)
  - The third Monday in January (Martin Luther King, Jr.'s Birthday)
  - The third Monday in February (President's Day)
  - The last Monday in May (Memorial Day)
  - July 4 (Independence Day)
  - The first Monday in September (Labor Day)
  - The second Monday in October (Columbus Day)
  - November 11 (Veteran's Day)
  - Thanksgiving Day
  - The day after Thanksgiving
  - December 25 (Christmas Day)
168. Provided further, if January 1, July 4, November 11 or December 25 falls on a Sunday, the Monday following is a holiday.

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169. In addition, any day declared to be a holiday by proclamation of the Mayor after such day has heretofore been declared a holiday by the Governor of the State of California or the President of the United States is a holiday.

**HOLIDAYS THAT FALL ON A SATURDAY**

170. For those employees assigned to a work week of Monday through Friday, in the event a legal holiday falls on Saturday, the preceding Friday shall be observed as a holiday provided, however, that except where the Governor declares that such preceding Friday shall be a legal holiday, each department head shall make provision for the staffing of public offices under his/her jurisdiction on such preceding Friday so that said public offices may serve the public during regular business hours. Those employees who work on a Friday which is observed as a holiday in lieu of a holiday falling on Saturday shall be allowed a day off in lieu thereof as scheduled by the appointing officer in the current fiscal year.

**HOLIDAY COMPENSATION FOR TIME WORKED**

171. Employees required by their respective appointing officers to work on any of the above specified or substitute holidays, excepting Fridays observed as holidays in lieu of holidays falling on Saturday, shall be paid extra compensation of one additional day's pay at time-and-one-half the usual rate for all regularly scheduled hours worked on such day (e.g.: 12 hours pay for 8 hours worked or a proportionate amount for more or less than 8 hours worked). At the employee's request and with the approval of the Appointing Officer, an employee may be granted compensatory time off in lieu of paid overtime pursuant to the provisions herein. The City shall make every effort to offer such work to permanent or provisional employees before as-needed employees.
172. Executive, administrative and professional employees designated in the Annual Salary Ordinance with the "Z" symbol shall not receive extra compensation for holiday work but may be granted time off equivalent to the time worked at the rate of one-and-one-half times for work on the holiday.

**HOLIDAYS FOR EMPLOYEES ON WORK SCHEDULES OTHER THAN MONDAY THROUGH FRIDAY**

173. Employees assigned to seven-day operation departments or employees working a five-day work week other than Monday through Friday shall be allowed another day off if a holiday falls on one of their regularly scheduled days off. Employees whose holidays are changed because of shift rotations shall be allowed another day off if a legal holiday falls on one of their days off. Employees regularly scheduled to work

**ARTICLE III – PAY, HOURS AND BENEFITS**

on a holiday which falls on a Saturday or Sunday shall observe the holiday on the day it occurs, or if required to work shall receive holiday compensation for work on that day. Holiday compensation shall not be paid for work on the Friday preceding a Saturday holiday or on the Monday following a Sunday holiday.

174. If the provisions of this section deprive an employee of the same number of holidays that an employee receives who works Monday through Friday, he/she shall be granted additional days off to equal such number of holidays. The designation of such days off shall be by mutual agreement of the employee and the appropriate supervisor with the approval of the appointing officer. Such days off must be taken within the fiscal year. In no event shall the provisions of this section result in such employee receiving more or less holiday entitlement than an employee on a Monday through Friday work schedule.

175. **HOLIDAY PAY SUPPLEMENT**

When an employee is assigned to an alternate work schedule, and an observed holiday falls on the employee's regularly scheduled work day, the employee may elect to use compensatory time, in-lieu time or vacation time to make up all hours beyond eight.

**HOLIDAY PAY FOR EMPLOYEES LAID OFF**

176. An employee who is laid off at the close of business the day before a holiday who has worked not less than five previous consecutive work days shall be paid for the holiday.

**EMPLOYEES NOT ELIGIBLE FOR HOLIDAY COMPENSATION**

177. Persons employed for holiday work only, or persons employed on a part-time work schedule which is less than twenty (20) hours in a bi-weekly pay period, or persons employed on an intermittent part-time work schedule (not regularly scheduled), or persons working on an "as-needed" basis who have not become eligible for benefits under Article III herein and who work on a designated legal holiday shall be compensated at the normal overtime rate of time and one-half the basic hourly rate, if the employee worked forty (40) hours in the pay period in which the holiday falls. Said employees shall not receive holiday compensation.

**PART-TIME EMPLOYEES ELIGIBLE FOR HOLIDAYS**

178. Part-time employees, including employees on a reduced work week schedule, who regularly work a minimum of twenty (20) hours in a bi-weekly pay period shall be entitled to holidays as provided herein on a proportionate basis.

**ARTICLE III – PAY, HOURS AND BENEFITS**

179. Regular full-time employees, are entitled to 8/80 or 1/10 time off when a holiday falls in a bi-weekly pay period, therefore, part-time employees, as defined in the immediately preceding paragraph, shall receive a holiday based upon the ratio of 1/10 of the total hours regularly worked in a bi-weekly pay period. Holiday time off shall be determined by calculating 1/10 of the hours worked by the part-time employee in the bi-weekly pay period immediately preceding the pay period in which the holiday falls. The computation of holiday time off shall be rounded to the nearest hour.
180. The proportionate amount of holiday time off shall be taken in the same fiscal year in which the holiday falls. Holiday time off shall be taken at a time mutually agreeable to the employee and the appointing officer.

**FLOATING HOLIDAYS**

181. Eligible employees are granted five (5) floating holidays in each fiscal year to be taken on days selected by the employee subject to the prior scheduling approval of the Appointing Officer or designee. Employees (both full-time and part-time) must complete six (6) months continuous service to establish initial eligibility for the floating holidays. Floating holidays received in one fiscal year but not used may be carried forward to the next succeeding fiscal year. The number of floating holidays carried forward to a succeeding fiscal year shall not exceed the total number of floating holidays received in the previous fiscal year. Floating Holidays may be taken in hourly increments up to and including the number of hours contained in the employee's regular shift.
182. Employees who have established initial eligibility for floating holidays and who subsequently separate from City employment may, at the sole discretion of the appointing authority, be granted those floating holidays to which the separating employee was eligible and had not yet taken.

**III.I. OVERTIME COMPENSATION**

183. Appointing officers may require employees to work longer than the normal work day or longer than the normal work week. Any time worked under proper authorization of the appointing officer or his/her designated representative or any hours suffered to be worked by an employee, exclusive of part-time employees, in excess of the regular or normal work day or week shall be designated as overtime and shall be compensated at one-and-one-half times the base hourly rate which may include a night differential if applicable; provided that employees working in classifications that are designated in this agreement as having a normal work day of less than eight (8) hours or a normal work week of less than forty (40) hours shall not be entitled to overtime compensation for work performed in excess of said specified normal hours

**ARTICLE III – PAY, HOURS AND BENEFITS**

until they exceed eight (8) hours per day or forty (40) hours per week, provided further, that employees working in a flex-time program or working on an alternative work schedule shall be entitled to overtime compensation as provided herein when required to work more than ten hours per day, forty hours per week, when working a four-day work week, eight or nine hours depending on the schedule for the day, or forty hours per FLSA designated workweek when working the 9/80 schedule. Overtime compensation so earned shall be computed subject to all the provisions and conditions set forth herein.

184. Employees subject to the alternative work schedule within the Wastewater Enterprise pursuant to Appendix "A" will receive overtime pursuant thereto.
185. The Department of Human Resources shall determine whether work in excess of eight (8) hours a day performed within a sixteen (16) hour period following the end of the last preceding work period shall constitute overtime or shall be deemed to be work scheduled on the next work day.
186. No appointing officer shall require an employee not designated by a "Z" symbol in the Annual Salary Ordinance to work overtime when it is known by said appointing officer that funds are legally unavailable to pay said employee, provided that an employee may voluntarily work overtime under such conditions in order to earn compensatory time off at the rate of time and one-half, pursuant to the provisions herein.
187. Employees occupying positions determined by the Department of Human Resources as being exempt from the Fair Labor Standards Act and designated by a "Z" shall not be paid for over-time worked, but may be granted compensatory time off at the rate of one hour for hour for time worked in excess of normal work schedules. Employees classified Z-symbol shall not accumulate a balance of compensatory time earned in excess of two hundred forty hours (240) hours.
188. Those employees subject to the provisions of the Fair Labor Standards Act who are required or suffered to work overtime shall be paid in salary unless the employee and the Appointing Officer mutually agree that in lieu of paid overtime, the employee shall be compensated with compensatory time off. Compensatory time shall be earned at the rate of time and one half. Employees occupying non "Z" designated positions shall not accumulate a balance of compensatory time earned in excess of 240 hours calculated at the rate of time and one half. When non- "Z" designated employees promote or transfer from one department to another, the department from which the employee is transferring or promoting shall cash out the employee's compensatory time balance.

**ARTICLE III – PAY, HOURS AND BENEFITS**

**RECORDATION OF OVERTIME**

189. All overtime worked which is authorized by the appointing officer shall be recorded on separate timerolls. Compensation for overtime worked as provided in this Section shall be paid on an hourly basis.
190. When improved methods of payroll processing are implemented and with the approval of the Human Resources Director and the Controller, such overtime may be recorded on the regular timerolls.

**PRE-SCHEDULED OVERTIME**

191. All employees covered by the provisions of this MOU that are pre-scheduled in advance to work overtime on a day off or at a time that does not overlap with their regular shift shall be paid for a minimum of four (4) hours at the overtime rate of time-and-one-half (1-1/2).

**OVERTIME DISTRIBUTION**

192. Voluntary overtime shall be offered equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.
193. Mandatory overtime shall be distributed equitably among employees covered under the provisions of this MOU within each work unit and/or work location, subject to departmental operational needs.

**III.J. LEAVES**

194. In accordance with Charter Section A8.409, the Leave of Absence provisions of Civil Service Commission Rule 120, as they exist on the effective date of this Agreement, will be calculated and administered as set forth in said Rule, except as modified herein.
195. The mandatory furlough provisions of CSC Rule 120 shall not apply to covered employees.

**ARTICLE III – PAY, HOURS AND BENEFITS**

**VOLUNTARY TIME OFF PROGRAM**

**1. General Provisions**

196. Upon receipt of a projected deficit notice from the Controller, an appointing officer shall attempt to determine, to the extent feasible and with due consideration for the time constraints which may exist for eliminating the projected deficit, the interest of employees within the appointing officer's jurisdiction in taking unpaid personal time off on a voluntary basis.

197. The Appointing Officer shall have full discretion to approve or deny requests for voluntary time off based on the operational needs of the department and any court decrees or orders pertinent thereto. The decision of the appointing officer shall be final except in cases where requests for voluntary time off in excess of ten (10) working days are denied.

**2. Restrictions of Use of Paid Time Off While On Voluntary Time Off**

198. All voluntary unpaid time off granted pursuant to this section shall be without pay.

199. Employees granted voluntary unpaid time off are precluded from using sick leave with pay credits, vacation credits, compensatory time off credits, floating holidays, training days or any other form of pay for the time period involved.

**3. Duration and Revocation of Voluntary Unpaid Time Off**

200. Approved voluntary time off taken pursuant to this section may not be changed by the Appointing Officer without the employee's consent.

**III.K. VACATION [For informational purposes only]**

201. All employees employed under the provisions of this MOU and who have been in the service of the Employer continuously shall be entitled to vacation as follows:

Years of Continuous Service:	Maximum Vacation Entitlement:
1 through 5	80 hours
more than 5 through 15	120 hours
more than 15	160 hours

202. Employees may take vacation in hourly increments with the approval of the Appointing Officer. Such requests shall not be unreasonably denied.

**ARTICLE III – PAY, HOURS AND BENEFITS**

**III.L. VOLUNTEER/PARENTAL RELEASE TIME**

203. Represented employees shall be granted paid release time to attend parent teacher conferences of up to four (4) hours per fiscal year (for children in kindergarten or grades 1 to 12).
204. In addition, an employee who is a parent or who has child rearing responsibilities (including domestic partners but excluding paid child care workers) of one or more children in kindergarten or grades 1 to 12 shall be granted unpaid release time of up to forty (40) hours each fiscal year, not exceeding eight (8) hours in any calendar month of the fiscal year, to participate in the activities of the school of any child of the employee, providing the employee, prior to taking the time off, gives reasonable notice of the planned absence. The employee may use vacation, floating holiday hours, or compensatory time off during the planned absence.

**III.M. SENIORITY**

205. Providing the employee has the qualifications and abilities as determined by management to perform the work, departmental seniority or, for the Public Utilities Commission (“PUC”), divisional seniority, will prevail in the following areas:
206. 1. In the filling of permanent vacancies (bidding of shifts):
- a. Due to the broad geographical area involved, for PUC Water Supply and Treatment Division, the bidding of shifts includes work location.
  - b. All permanent shift openings shall be posted for seven (7) days. Locations working the twelve-hour rotating watch shall post for twelve (12) days. New appointees will be assigned to the “no interest” positions. Provisional and as-needed employees do not have bidding rights.
  - c. The shift-bidding procedures used in June 1999 will continue provided that two positions at PUC Water Pollution Control Division, Oceanside Plant, Operations Section (one Class 7372 Stationary Engineer and one Class 7373 Senior Stationary Engineer) will be considered floating. These floating positions on each watch will be filled as vacancies at the Oceanside Plant arise. Class 7372 Stationary Engineers and Class 7373 Senior Stationary Engineers currently assigned to the Oceanside Plant will not be involuntarily reassigned.

### **ARTICLE III – PAY, HOURS AND BENEFITS**

207. 2. Temporary assignments of less than ninety (90) calendar days shall be excluded from bidding. The Union encourages the use of volunteers for temporary assignments, and, if no volunteers, the equitable distribution of involuntary assignments based on reverse seniority.
208. 3. In the selection of vacation time (at each location within the department).
209. Upon mutual agreement between the Union and the Department, the Department can make an assignment outside of the bidding procedure.

#### **III.N. ANTI-NEPOTISM POLICY (MTA Service-Critical Classifications Only)**

210. No employee of the Municipal Transportation Agency (“MTA”) shall knowingly sign up or bid for an assignment that reports directly to or directly supervises the employee’s spouse, domestic partner, parent or child. MTA management shall not knowingly assign an employee to such a position. If an employee is in such a position on July 1, 2001, or, if changes occur that cause an employee to be in such a position during the term of this agreement (including but not limited to organizational restructuring, changes in familial relationships or changes in reporting relationships caused by operation of the Civil Service Commission Rules) the following shall occur: the first represented employee of the two affected employees who has an opportunity to sign up, bid for, or be assigned to a different assignment shall be required to do so. This provision is not intended to affect the rights of any employee under the Civil Service Commission Rules.

#### **III.O. METHODS OF CALCULATION**

211. **Bi -Weekly:** An employee whose compensation is fixed on a bi-weekly basis shall be paid the bi-weekly salary for his/her position for work performed during the bi-weekly payroll period. There shall be no compensation for time not worked unless such time off is authorized time off with pay.
212. **Per Diem or Hourly:** An employee whose compensation is fixed on a per diem or hourly basis shall be paid the daily or hourly rate for work performed during the bi-weekly payroll period on a bi-weekly pay schedule. There shall be no compensation for time not worked unless such time off is authorized time off with pay.
- Daily Rates for Monthly and Bi-Weekly Employees**
213. A day's pay shall be determined by dividing the number of work days in a normal work schedule in a monthly payroll period (including specified holidays) into the monthly salary established for the position, or the amount of a day's pay shall be 1/10th of the compensation of a normal work schedule in a bi-weekly period (including specified holidays).

**ARTICLE III – PAY, HOURS AND BENEFITS**

**Conversion to Bi-Weekly Rates**

214. Rates of compensation established on other than bi-weekly basis may be converted to bi-weekly rates by the Controller for payroll purposes.

**III.P. STATE DISABILITY INSURANCE (“SDI”)**

215. Employees in the bargaining unit(s) covered by this agreement shall be enrolled in the State Disability Insurance Program. The cost of SDI will be paid by the employee through payroll deduction at a rate established by the State of California Employment Development Department.

**III.Q. USE OF SICK LEAVE WITH PAY CREDITS TO SUPPLEMENT STATE DISABILITY INSURANCE**

216. Sick leave with pay credits shall be used to supplement State Disability Insurance (SDI) at the minimum rate in units of one (1) hour.
217. SDI payments to an employee who qualifies and who has accumulated and is eligible to use sick leave with pay credits shall be supplemented with sick leave with pay credits so that the total of SDI and sick leave with pay calculated in units of one (1) hour provides up to, but does not exceed, the regular net salary the employee would have received for the normal work schedule excluding overtime.
218. An employee who wishes not to supplement, or who wishes to supplement with compensatory time or vacation, must submit a written request on the prescribed form to the appointing officer or designee within seven (7) calendar days following the first date of absence.
219. An employee who supplements SDI shall earn sick leave with pay credits at the normal rate only for those hours of sick leave pay credits used.

**III.R. WORKERS’ COMPENSATION SUPPLEMENTATION**

220. An employee who is absent because of disability leave and who is receiving disability indemnity payments may request that the amount of disability indemnity payment be supplemented with salary to be charged against the employee's sick leave with pay credits so as to equal the net amount the employee would have earned for a regular work schedule minus premium pay adjustments. If the employee wishes to exercise this option, the employee must submit a signed statement to the employee's department no later than thirty (30) days following the employee's release from disability leave.

**ARTICLE III – PAY, HOURS AND BENEFITS**

221. The failure of the employee to exercise the option to supplement disability indemnity payments within thirty (30) calendar days following release from disability leave shall preclude later requests.
222. Salary may be paid on regular time rolls and charged against the unused sick leave with pay credit balance during any period prior to the determination of eligibility for disability indemnity payment without requiring a signed option by the employee.
223. The City shall adjust the employee's sick leave with pay credit balance and reimburse the appropriate City fund for the amount of sick leave with pay credits charged and paid, when an employee has used sick leave with pay credits and the Department of Human Resources subsequently determines that the employee was entitled to disability indemnity payment for the period of absence.
224. Pursuant to Civil Service Rule 120.23, an employee returning from disability leave as defined by CSC Rule 120.23 will accrue sick leave and/or supplemental disability credits at an accelerated rate.

**III.S. LONG TERM DISABILITY (LTD)**

225. The City shall provide to employees with six months continuous service a Long Term Disability (LTD) plan that provides, after a one hundred eighty (180) day elimination period, sixty percent (60%) salary (subject to integration) up to age sixty-five. Employees who receive payments under the LTD plan shall not be eligible to continue receiving payments under the City's Catastrophic Illness Program.

**III.T. APPRENTICE SALARY STEP PLAN AND SALARY ADJUSTMENTS**

226. An employee who is a permanent appointee following completion of the probationary period or six months of permanent service, and who accepts a non-promotive appointment in a classification having the same salary schedule, or a lower salary schedule, the appointee shall enter the new position at that salary step which is the same as that received in the prior appointment, or if the salary steps do not match, then the salary step which is immediately in excess of that received in the prior appointment, provided that such salary shall not exceed the maximum of the salary schedule.
227. If the appointment is to an apprentice class, the employee shall be placed at the salary step in the apprentice class pursuant to this section. However, advancement to the next salary step in the apprentice class shall not occur until the employee

### **ARTICLE III – PAY, HOURS AND BENEFITS**

has served satisfactory time sufficient in the apprenticeship program to warrant such advancement.

#### **III.U. PAPERLESS PAY POLICY**

228. Effective on a date to be established by the Controller, but not sooner than September 1, 2014, the City shall implement a Citywide Paperless Pay Policy. This policy will apply to all City employees, regardless of start date.
229. Under the policy, all employees shall be able to access their pay advices electronically, and print them in a confidential manner. Employees without computer access shall be able to receive hard copies of their pay advices through their payroll offices upon request. Upon implementation of the policy, other than for employees described in the preceding sentence, paper pay advices will no longer be available.
230. Under the policy, all employees (regardless of start date) will have two options for receiving pay: direct deposit or bank card. Employees not signing up for either option will be defaulted into bank cards.
231. Prior to implementing this policy, the City will give all employee organizations a minimum of 30-days' advance notice.
232. The union hereby waives any further right to meet and confer over the Citywide Paperless Pay Policy or its implementation, including meet and confer over the effects of the policy.

#### **III.V. PAYROLL PROCEDURES**

233. In correcting all employee underpayment or nonpayment problems, the following guidelines will be used to correct the most significant problems first:
1. No payment on Pay Day for the Pay Period.
234. Highest priority. Full payment to be issued as quickly as possible, within four hours if PPSD or departmental payroll division is notified before noon on payday or before noon on any subsequent weekday. If PPSD or departmental payroll is notified after noon but before 4 p.m., the payment will be issued no later than noon on the following weekday.
2. Payment on Pay Day is 10% or More Short of the Total Due for the Pay Period.

**ARTICLE III – PAY, HOURS AND BENEFITS**

235. Second priority. Correcting payment to be issued as quickly as possible with the goal of three working days from the day PPSD or departmental payroll division is notified of the shortfall.

3. Payment on Pay Day is less than 10% Short of Total Due for Pay Period

236. Third priority. Correcting payment is to be issued as quickly as possible, with a goal of ten working days from the PPSD or departmental payroll division is notified of the shortfall.

**III.W. PAID SICK LEAVE ORDINANCE**

237. San Francisco Administrative Code, Chapter 12W, Paid Sick Leave Ordinance, is expressly waived in its entirety with respect to employees covered by this Agreement.

**III.X. AIRPORT EMPLOYEE TRANSIT PILOT PROGRAM**

238. The San Francisco International Airport will implement a pilot program to encourage employees to use mass transportation to commute to and from SFIA work locations. Under the Airport Employee Transit Pilot Program, the SFIA is authorized to provide incentives consistent with Internal Revenue Code 132(a)(5) for the purpose stated above. This pilot program will be evaluated 12 months after implementation to determine whether it shall be continued. The Union waives all meet-and-confer on this pilot program. This program is not subject to the grievance procedure.

**ARTICLE IV – TRAINING, CAREER DEVELOPMENT AND INCENTIVES**

**ARTICLE IV - TRAINING, CAREER DEVELOPMENT AND INCENTIVES**

**IV.A. EDUCATIONAL CLASSES - TUITION AND TRAINING REIMBURSEMENT**

239. 1. Where the appointing officer of a particular classification covered under the terms of this MOU requires an employee to attend retraining or educational classes during normal working hours, said employee will attend these classes without loss of wages or benefits. If the appointing officer requires an employees to attend retraining or educational classes during the employee's assigned off hours, the employee's work schedule shall be adjusted to cover the time required to attend the class. The appointing officer, to the extent possible and consistent with operational needs, shall equitably distribute employee participation in such retraining or educational classes. The Appointing Officer is to verify that the employee has satisfactorily completed the course with a passing grade.
240. 2. Pursuant to the provisions of the Employee Training Reimbursement Program herein, the City will reimburse full tuition for full-time employees for one course per semester for job-related college courses, correspondence courses, adult education courses, or other courses that may be advantageous to the City provided that attendance has been approved in advance and funds have been appropriated and are available. Reimbursement will be made after satisfactory completion of the course.
241. The City will contribute \$8,000 annually to the Employee Tuition Reimbursement Program for the exclusive use of employees covered under this MOU. The maximum annual allocation for each covered employee shall be one thousand dollars (\$1,000.00) per fiscal year for courses approved in accordance with guidelines established by the Department of Human Resources. Any non-allocated tuition or tuition allocated, but not used within the fiscal year, shall be applied to the Local 39 Apprentice Training Fund referenced in Article IV.B.

**TRAINING FOR PROMOTION OR ADVANCEMENT**

242. An eligible employee or officer may apply for reimbursement for a training course pertaining to the duties of a higher classification when such course is given outside of regular working hours by an accredited educational institution. Accredited educational institutions shall be defined as institutions whose courses offered for credit are acceptable for regular examination given by the Department of Human Resources. Subject to the budgetary and fiscal provisions of the Charter, the employee or officer shall be reimbursed one-half of the cost of tuition for said course if attendance has been approved in advance and funds have been appropriated and are available. The Civil Service Commission will verify that the employee has

#### **ARTICLE IV – TRAINING, CAREER DEVELOPMENT AND INCENTIVES**

satisfactorily completed the course with a passing grade. If the course is not graded, or is not a credited course, an official transcript or other official document from the accredited school certifying completion of the course shall be deemed evidence of satisfactory completion.

243. No reimbursement shall be made if the employee or officer is eligible to receive reimbursement for said tuition under a Federal or State Veterans' benefit program or from other public funds.
244. If the employee or officer's application for training reimbursement, under the provisions of this section, does not receive the appointing officer's recommendation, the employee may appeal to the Civil Service Commission. The Civil Service Commission shall then inquire into the reasons of the appointing officer's disapproval of such application, and the Commission shall thereupon make such order as it deems just, and said order shall be final.

#### **TRAINING FOR WORK IN PRESENT CLASSIFICATION**

245. An eligible employee or officer may apply to the Department of Human Resources through the appointing officer for reimbursement in a training course given by an accredited educational institution during or outside working hours for the purpose of improving performance in the present classification.
246. Accredited educational institutions shall be defined as institutions whose courses offered for credit are acceptable for regular examination given by the Department of Human Resources. The Department of Human Resources shall be the judge of whether such training meets the criteria of improving performance in the employee's present job, and whether the training can be provided through available in-service activities. Subject to the budgetary and fiscal provisions of the Charter, the employee or officer shall be reimbursed for tuition, supplies, books, and other fees for such course if attendance has been approved in advance, and funds have been appropriated and are available. If attendance is during regular hours, it shall be considered a duty assignment for the purpose of payment of salary. The Department of Human Resources will verify that the employee has satisfactorily completed the course with a passing grade. If the course is not graded, or is not a credited course, an official transcript or other official document from the accredited school certifying completion of the course shall be deemed evidence of satisfactory completion.
247. If the employee or officer's application for training reimbursement, under the provisions of this section, does not receive the appointing officer's recommendation, the employee may appeal to the Commission. The Commission shall then inquire into the reasons for the appointing officer's disapproval of such application, and the Commission shall thereupon advise the appointing officer as it deems just.

**ARTICLE IV – TRAINING, CAREER DEVELOPMENT AND INCENTIVES**

**ACCREDITED EDUCATIONAL INSTITUTION DETERMINATION**

248. The Department of Human Resources or Human Resources Director shall be the judge of whether an educational institution is properly accredited for the purpose of this rule. The Appointing Officer shall consider the employee's record of performance in making recommendations.

**IV.B. APPRENTICE TRAINING FUND**

249. Consistent with the established joint apprenticeship training program between the City and County of San Francisco and Stationary Engineers Local 39, the City shall make an annual contribution to the Local 39 Apprenticeship Training Fund to provide a training program for journey-level members who wish to improve their skills as well as apprentices entering the apprenticeship program.
250. The annual payments shall be made in January of each year of this agreement by the Department of Human Resources in the amount of \$500.00 for each person represented by the Union employed on a full time, paid status by the City on December 31, of the preceding year.
251. The parties agree that the funding described in this section is subject to the execution of an agreement between the parties consistent with the Civil Service Commission Rules, Apprenticeship Program, to maintain the apprenticeship program. The parties will execute such an agreement within 30 days of the effective date of this MOU.

**IV.C. BREAKS, MEAL PERIODS, AND CLEAN-UP**

252. All employees covered by the provisions of this MOU shall be provided with the following:
253. 1. Two (15) fifteen minute breaks, one during the first half of the shift and another during the second half of the shift.
254. 2. A meal period during the middle of the shift.
255. 3. A clean-up period at the end of the shift as required.
256. Employees on watch shall respond to the needs of the operation that occur during their break and meal periods. All breaks and meal periods of employees on watch shall be taken on site so that they can attend to their duties.

**IV.D. PROFESSIONAL ORGANIZATION FEES**

257. All employees in classification of Senior Stationary Engineer and above covered by the provisions of this MOU shall be entitled to reimbursement of the fees (not to

***ARTICLE IV – TRAINING, CAREER DEVELOPMENT AND INCENTIVES***

exceed \$100.00) for membership in one professional organization related to their job. The Appointing Officer shall determine if the professional organization is job related.

**ARTICLE V – WORKING CONDITIONS**

**ARTICLE V - WORKING CONDITIONS**

**V.A. MEDICAL EXAMINATIONS**

258. In instances when employees covered by the provisions of this MOU are exposed to conditions hazardous to health, said employees may voluntarily request and be entitled to a medical examination. In no event will more than one (1) medical examination be provided in any twelve (12) month period for any one employee. Medical examinations will be considered time worked.
259. Such medical examinations will be given by a City-designated physician. The employee agrees that the Appointing Officer is entitled to review the resulting information and will sign an authorization for release of information if so requested.

**V.B. HEALTH AND SAFETY**

260. 1. The promotion of health and safety is of mutual importance to the City and the Union. The City acknowledges its responsibility to provide a safe and healthful work environment for City employees.
261. 2. When an employee, in good faith, believes that a hazardous or unsafe condition exists, and that continuing to work under such conditions poses risks beyond those normally associated with the nature of the job, the employee shall so notify the Department's Safety Committee and/or Safety Officer. If the Department agrees the assignment is hazardous or unsafe, the employee shall be reassigned until the hazard is eliminated. While the employee is awaiting the arrival of the in-house officer and until the officer has made his/her determination, the employee shall not be required to perform the disputed assignment, and may be reassigned if other work is available. The matter may instead be submitted to the Grievance Procedure at Step 2 (Appointing Officer Level) for final resolution. The employee's assignment shall be continued until the dispute is resolved.

**V.C. WORK CLOTHING**

262. All employees covered by the provisions of this MOU shall be provided with changes of work clothing as deemed appropriate by and authorized by the appointing officer. At a minimum, employees will be provided with five (5) sets of work clothing as well as a work jacket and one pair of coveralls. Such work clothing will be replaced at least annually or more often, at the discretion of the appointing officer. Where the employee is regularly in contact with sewage or hazardous or contagious materials the employer will provide a clean change of clothing each working day. Supervisory classes 5148, 5149, 7120, 7205, 7203, 7223, 7262, and 9232 shall be excluded from

## **ARTICLE V – WORKING CONDITIONS**

this provision, unless, at the discretion of the Appointing Officer, it is deemed that a work situation requires the supervisor to work in the field and warrants providing work clothing. When the parties agree to provide reimbursement in lieu of providing work clothing, individual departments may, after consulting with the Union over the amount and method of payment, pay a cash uniform allowance which shall be no less than \$500 per year. This provision is not subject to the grievance process.

263. All employees covered by the provisions of this MOU shall be provided with foul weather gear (rain clothes and boots when required to work in the rain or other unreasonably wet conditions, jackets when required to work in cold conditions), as deemed appropriate by and authorized by the appointing officer.

### **V.D. SAFETY SHOES**

264. Where appropriate and authorized by the Appointing Officer or designee, employees covered by this MOU shall be provided safety shoes.
265. The City agrees to provide all required safety equipment (i.e., protective eyewear, protective footwear) in compliance with Cal-OSHA regulations.

### **V.E. SAFETY GOGGLES AND GLASSES**

266. All employees covered by provisions of this MOU who are determined by the Appointing Officer or designee, after meeting and conferring with the employee organization representing said classes, to require eye protection shall be provided safety goggles. Said employees who wear prescription glasses and are determined by the appointing officer to require eye protection shall be provided prescription safety glasses.

### **V.F. TOOL INSURANCE**

267. The City agrees to indemnify employees covered under this MOU for the loss or destruction of the employees' tools, subject to the following conditions:
268. 1. These provisions shall apply when an employee's tools are lost or damaged due to fire or theft by burglary while the tools are properly on City property or being used by the employee in the course of City business.
269. 2. The employee must demonstrate that he/she has complied with all of the tool safekeeping rules required by the City at the employee's particular work location.

**ARTICLE V – WORKING CONDITIONS**

270. 3. Upon approval of this MOU and prior to any losses, the employee must submit a list of his/her tools to his/her appointing officer and then later must acknowledge and verify said inventory both as to existence of said tools and their necessity as relates to the employee's job duties. Tools not enumerated on said list shall not be governed by these provisions.
271. 4. The employee shall be responsible for using all reasonable means to preserve and protect his/her tools. Failure to do so shall relieve the City from any and all obligations under this section. Any employee making false or inaccurate claims under this section shall be subject to disciplinary action by his/her appointing officer.
272. 5. In case of theft, the following procedures shall be followed in perfecting a claim:
273. a. The employee shall submit a written statement made under penalty of perjury of the tools stolen to his/her appointing officer, local police department and the Union.
274. b. The statement must contain the member's name, location and details of loss, date of loss and date reported to the police.
275. c. The statement must be submitted to the parties set forth in subsection (1) immediately above, within five (5) days of the loss, unless the employee is on authorized leave in which case the employee shall have five (5) days from the date of his/her return to report the loss.
276. 6. In case of damage due to fire, the requirements of subsection 5 (a) - (c) above shall be followed with the exception that verified reports need not be filed with the police.
277. 7. The first ten dollars (\$10.00) of any loss shall be borne by the employee. A "loss" is defined as the total dollar amount of tools of the employee lost or damaged in one incident. Approved claims shall be settled by the City paying to the employee the replacement cost of the tool(s) minus ten dollars (\$10.00).
278. 8. The replacement cost for tools governed hereunder shall be determined by agreement between the employee or his/her representative and the employee's appointing officer. Where possible, tools shall be replaced by tools of the same brand name and model. Any dispute resulting from attempts to determine tool replacement costs shall be submitted to the grievance procedure for resolution. In instances where the employee has suffered a loss

**ARTICLE V – WORKING CONDITIONS**

of a substantial number of tools which would jeopardize the employee's ability to perform his/her job duties and if there is a dispute as to tool replacement costs, the employee shall not lose any time from work as a result thereof.

**V.G. RETURN TO WORK POLICY**

279. The City will make a good faith effort to return employees who have sustained a temporary occupational injury or illness to temporary modified duty within the employee's medical restriction. Duties of the modified assignment may differ from the employee's regular job duties and/or from job duties regularly assigned to employees in the injured employee's class. Where appropriate modified duty is not available within the employee's classification, on the employee's regular shift, and in the employee's department, the employee may be temporarily assigned pursuant to this section to work in another classification, on a different shift, and/or in another department, subject to the approval of the appointing officer or designee. The decision to provide modified duty and/or the impact of such decisions shall not be subject to grievance or arbitration. Modified duty assignments may not exceed three (3) months. An employee assigned to a modified duty assignment shall receive their regular base rate of pay and shall not be eligible for any other additional compensation (premiums) and or out of class assignment pay as may be provided under this agreement.

**V.H. SUBSTANCE ABUSE PREVENTION POLICY**

280. Attached hereto as Appendix C, is the City's current Substance Abuse Prevention Policy; this policy shall remain in effect until the City implements the Substance Abuse Prevention Policy set forth in Appendix D. Appendix D will be implemented, upon notice to the Union, after acquisition of a vendor to provide oral fluid testing.

**V.I. EMPLOYEE ASSISTANCE PROGRAM (EAP) AND PEER COUNSELING PROGRAM**

281. Services provided to covered employees as outlined in Appendix B.

**V.J. PARKING**

282. Sufficient parking at DPH locations shall be provided to all employees who purchase a parking permit.

**ARTICLE VI – SCOPE**

**VI.A. CIVIL SERVICE RULES**

283. The parties agree that unless specifically addressed herein, those terms and conditions of employment which are currently set forth in the Civil Service Rules shall continue to apply to employees covered by this contract. No matter set forth in the Civil Service Commission Rules shall be subject to the grievance procedure. Changes to the Civil Service Commission Rules may be proposed during the term of this contract subject to meet and confer as appropriate. Changes to the Civil Service Commission Rules shall not be subject to arbitration.
284. The parties recognize that recodifications may change the references to specific Civil Service Commission Rules and Charter sections contained herein. Therefore, the parties agree that in this event, such terms will be read as if they accurately reference the same sections in their newly codified form.

**VI.B. SCOPE OF AGREEMENT**

285. This agreement sets forth the full and entire understanding of the parties regarding the matters herein.
286. Except in cases of health and safety emergencies or as otherwise provided in this MOU, the City shall give reasonable written notice to the Union of proposed changes directly relating to matters within the scope of representation as specified in Government Code Section 3504.5 not contained in this MOU. The Union shall be provided with the opportunity to meet and confer with regard to any such proposed change should it desire to do so.
287. In cases of health and safety emergencies when the City determines that a proposed change as described herein must be adopted immediately without prior notice or meeting with the Union, the City shall provide such notice and opportunity to meet at the earliest practicable time following the adoption of such change.
288. If the Union does not respond within ten (10) working days from the date of mailing of written notification of a proposed change as described in this section, the Union shall be deemed to have waived its opportunity to meet and confer on the proposed change.
289. If the Union timely requests the opportunity to meet and confer as provided herein, the City agrees to meet and confer with the Union over such proposed change or changes within ten (10) days of receipt of such timely request, unless a longer period of time is mutually agreed upon, in order freely to exchange information, opinions

**ARTICLE VI – SCOPE**

and proposals and to endeavor to reach agreement on the proposed change or changes.

290. This provision is not intended to bar any grievances submitted in accordance with the terms of this MOU.

**VI.C. SAVINGS CLAUSE**

291. Should any part hereof or any provision herein contained be declared invalid by reason of conflicting with a Charter provision or existing ordinances or resolutions which the Board of Supervisors had not agreed to alter, change or modify, or by any decree of a court of competent jurisdiction, such invalidation of such part or portion of this MOU shall not invalidate the remaining portions hereof and they shall remain in full force and effect for the duration of the MOU.

**VI.D. ZIPPER CLAUSE**

292. This Agreement sets forth the full and entire understanding of the parties regarding the matters herein. This Agreement may be modified, but only in writing, upon the mutual consent of the parties, except as otherwise provided herein.

**VI.E. DURATION OF AGREEMENT**

293. This Agreement shall be effective July 1, 2014, and shall remain in full force and effect through June 30, 2017.



**APPENDIX "A"**

**WORK AND PAY RULES**

Overview

In October of 1990, management and employees sought an alternative to the traditional 8-hour shift schedule at the Wastewater Enterprise. They developed the schedule in Appendix A as a means of providing a schedule that employees preferred over the traditional 8-hour shift schedule. The goals were to meet the needs of employees, while maintaining employee safety, attendance, plant productivity and at no increased cost over the old schedule to the City.

The old schedule was a traditional 8-hour shift, which worked as follows:

- 7 days on night shift (2200 to 0600) (shift differential paid on all hours)
- 2 days off
- 7 days on swing shift (1400 to 2200) (shift differential paid on hours between 1700 and 2200)
- 2 days off
- 6 days on day shift (0600 to 1400) (no shift differential paid)
- 4 days off

As a result of the cost-neutral provision of the project, the shift differential is adjusted downward to compensate for the added scheduled overtime in the 12-hour Appendix "A" schedule.

Effective July 1, 2014, the 12-hour schedule that had applied only to the Wastewater Enterprise, may be applied by Water Enterprise management at any of the following locations, provided the same goals necessary for the implementation of the alternative schedule at Wastewater Facilities (i.e., meets the needs of employees while maintaining employee safety, attendance, plant productivity and at no increased cost over the old schedule to the City) are met with regard to the Water Enterprise operations:

Harry Tracy Water Treatment Plant  
Sunol Valley Water Treatment Plant

All provisions of Appendix A shall apply to employees of the Water Enterprise at the locations listed above, effective six (6) months after notification to the affected employees and their union representative.

**1. 12 hour Shift Change Times**

D = 6:00 a.m. to 6:00 p.m. shift (Wastewater Facilities and the above identified Water Facilities)

**APPENDIX A**

N = 6:00 p.m. to 6:00 a.m. shift (Wastewater Facilities and the above identified Water Facilities)

t = 6:00 a.m. to 2:30 p.m. shift (see "t" shift section) for Wastewater Facilities

t = 7:00 a.m. to 3:30 p.m. shift (see "t" shift section) for the above identified Water Facilities

Various starts equal to 8.5-hour day without shift differential

d = 6:00 a.m. to 2:30 p.m. shift Watch 6 Crew

Various starts equal to 8.5-hour day without shift differential

**2. Work Week**

Employees continue to be paid bi-weekly. 12-hour shift work week begins and ends at 6:00 a.m. every Saturday.

**3. Straight Time Pay**

Under the 8-hour work shift schedule an employee received 40 hours of pay, for the first 40 hours worked in a work week (assuming no overtime is worked). For those employees that rotate shifts, the 12-hour shift work schedule rearranges the first forty hours worked such that some weeks an employee works less than 40 hours and some weeks works more than 40 hours. However, at the end of 5 weeks on the 12-hour schedule, an employee will have worked 200 hours or 40 hours per week (assuming no overtime was worked).

Under the 12-hour shift work schedules employees will earn and use comp time (i.e. overtime hours) to provide 40 straight time hours of pay each week.

WEEK	WORK HOURS	COMP USED	PAY HOURS	COMP EARNED
1	36	4	40	0
2	32	8	40	0
3	48	0	40	12
4	36	4	40	0
5	48	0	40	12
TOTAL	200	16	200	24

## **APPENDIX A**

In those weeks where an employee works more than 40 hours (i.e., weeks 3 and 5), comp time earned at the rate of 1.5 times the wage rate is applied for those hours in excess of 40. Therefore, an employee accumulates 12 hours of comp time and is paid 40 hours of pay for 48 hours of work in weeks 3 and 5.

In those weeks where an employee works only 36 hours, 4 comp time hours are used to provide 40 paid hours that week. Similarly, during the 32 hours work week, 8 comp time hours are used to provide 40 paid hours that week. An employee must have 40 paid hours per week to accumulate maximum retirement and sick leave benefits.

At the end of a five week cycle an employee earns a total of 208 paid and/or comp time pay or overtime hours for 200 hours of work on the new 12 hour shift schedules. This is equivalent to a 4% pay increase for each employee or 83.2 additional pay hours per year. To keep labor costs and employee earnings cost neutral under the new shift schedules, this pay increase (8 hours comp time every 5 weeks) is offset by changes in shift differential policies and holiday premium pay (see section #10).

At the discretion of the employee, accumulated overtime hours (comp time) may be received as cash as long as the employee maintains 16 comp time hours in his/her account at any one time. Employees who fail to maintain the minimum number of overtime hours necessary for use during any 32 or 36 hour scheduled work week will not receive a full 40 hours of pay for any such week.

### **4. Overtime Premium Pay**

The 12-hour schedule pays an overtime premium in the form of accrued comp time equal to 1.5 times the hourly wage rate anytime a shift employee works: (1) more than 8 hours if scheduled to work an 8-hour shift, (2) more than 12 hours if scheduled to work a 12 hour shift and (3) more than 40 paid hours on any work week.

### **5. Holiday Benefit Pay**

Holiday benefit pay remains the same. The City of San Francisco recognizes eleven holidays per year and provides either 8 hours of pay or 8 hours of time off (lieu day) per holiday. Each employee receives 88 hours of benefit per year.

All eleven holidays are designated days in the employee handbook and are moved to alternative days on the new schedule.

On the 8-hour work shift schedule an employee (on average) was scheduled to work approximately 71 percent of the 11 holidays each year. Therefore, on average, an employee is scheduled to work 8 holidays and is scheduled off 3 holidays each year. This provides 64 pay hours and 24 in lieu hours (or 88 total hours) of holiday benefit per year.

## **APPENDIX A**

Under the 12-hour work shift schedule, an employee is scheduled to work only 51 percent of the 11 holidays each year. Therefore, on average, an employee is scheduled to work 6 holidays and is scheduled off 5 holidays each year. This provides 48 pay hours and 40 in lieu hours (or 88 total hours) of holiday benefit per year.

A "t" shift (which is scheduled work day) that falls on a holiday is a day off with 8 hours pay.

### **6. Holiday Premium Compensation**

Holiday premium pay is paid at 1.5 times the hourly wage rate for the first 8 hours worked on a holiday. For pay purposes, a holiday begins at 6:00 a.m. the day of the holiday and ends at 6:00 a.m. the next day.

Employees who prefer to work holidays instead of having them off can volunteer to work additional holidays during their "t" shift week or on a day off

On the 8 hour work shift schedule, an employee was paid 1.5 times their wage rate for all hours worked on a holiday. On the 12-hour shift work schedule an employee is paid 1.5 times the wage rate for only the first 8 hours of a 12 hour shift. To the employee, this is a reduction of 2 pay hours per holiday worked or 8.8 pay hours per year compared to the old 8 hour shift work schedule (11 holidays per year X 14 shifts scheduled over 35 days X 2 pay hours per holiday).

### **7. Vacation Benefits and Pay**

Vacation benefits and pay remain the same under the new work shift schedule. However, these benefits and pay must be accumulated and used in hourly increments (not days).

For example, an employee with two years of continuous service has a maximum entitlement of 80 vacation hours. If that same employee uses 72 hours of vacation (i.e., six 12 hour shifts), he/she has 8 vacation hours left. These hours can be used or carried over into the next year.

Although each employee still receives the same number of vacation hours each year, the use of those hours can provide longer periods of time off. For example, on the new schedules it is possible to use 32 hours of vacation during the "t" shift week and get 15 consecutive days off.

Employees are still required to meet the minimum service and notification requirements along with any other current policies for vacation. Employees are also still entitled to use vacation in one-hour increments according to existing notification and approval policies.

**APPENDIX A**

Shift employees are encouraged to schedule vacation during "t" shifts. Vacation will only be restricted on "t" shifts if there is a conflict with scheduled training or operational necessity.

**8. Sick Leave**

Sick leave benefits and pay are also unchanged under these shift schedules. Employees can still earn up to 104 hours of paid sick leave per year. Under these schedules an employee uses 12 or 8 hours of benefit depending on the length of the shift scheduled to work on the day sick leave is taken.

**9. Shift Differential**

Under the 8-hour shift schedules, hours worked on second shift (8 hours swing) are paid at a 8.5 percent premium, and hours worked on third shift (8 hours night) are paid at a 10 percent premium.

On the 12-hour shift schedules, an effective 9.25 percent shift differential is paid for all 12 hours worked on a night shift (6:00 p.m. to 6:00 a.m.). (Although the shift differential is either 8.5 percent or 10 percent depending on the hours, for purposes of the calculation immediately below, the blended rate of 9.25 percent is used as both day and night shifts have equal numbers of second and third shift hours (i.e., six of each for a 12-hour night shift).

On the 8-hour shift schedules an employee worked 91 swing shifts (i.e., 8.5%) and 91 night shifts (i.e., 10%) every year and would be paid 134.7 pay hours in shift differential (182 shifts x 8 hours per shift x 9.25 percent per hour). On the 12 hour schedules, an employee works 72.8 night shifts every year and is paid 80.8 pay hours in shift differential (72.8 night shifts x 12 hour shift x 9.25 percent). Therefore, an employee loses 53.9 pay hours per year in shift differential on the new 12-hour shift schedules.

There are 3 factors that provide additional or less compensation under the new 12-hour shift schedules. The average difference in pay hours per year is summarized in the following table.

**AVERAGE ANNUAL PAY HOURS (per employee per year)**

Additional Overtime earned (comp time)	+	83.2
Reduction in shift differential	-	53.9
Reduction in holiday premium compensation	-	8.8
	+	20.5

## APPENDIX A

Annually an employee receives 20.5 pay hours of additional compensation. This pay/benefit increase can be made cost neutral by adjusting the shift differential to 6.9 percent [72.8 night shifts x 12 hour shifts x (9.25 – 6.9 percent)].

### 10. **Jury and Military Leave**

Under the new schedules, employees are paid for jury and military leaves up to 12 hours per day, if scheduled to work a 12-hour shift.

(1) Subject to existing departmental policies, employees who work a swing or evening shift and are required to report in person for jury duty shall be reassigned to a day shift for the duration of their obligation to report to jury duty.

(2) Employees who receive a summons to report for jury duty shall notify their supervisor as soon as possible upon receiving the summons.

### 11. **"t" Shifts**

"t" shifts are designed to be day shift training assignments. There are 333 hours per year of "t" shifts per employee with each of the new schedules. Since the current training workload at the plant does not require 333 hours, alternative uses of this time must be identified.

A "t" shift can be used for:

- a. Getting training - this is the highest priority for "t" shift hours. Can be in a classroom, on-the-job, at a conference, etc.
- b. Covering a vacancy - An employee can cover a vacancy on day shift or another shift. The Division agrees to use the following procedure when filling vacancies with employees on their "t" shift.

Step 1. Ask for volunteers from the "t" shift crew, first.

Step 2. If there are no volunteers, assign a "t" shift employee. If there is at least 48 hours notice and does not exceed the number of hours that an employee has taken off on other than "t" shifts.

- c. Work on special project.

For training to have the highest priority on a "t" shift it must be scheduled in advance so that employee vacations do not disrupt scheduled training. It will be the responsibility of each Chief to make sure that their crew schedules enough training during the "t" week to meet minimum training requirements. The start times for "t" shifts may be adjusted slightly to accommodate different training programs.

**12. Relief Coverage**

There are two ways to cover vacancies, either with a voluntary or mandatory coverage system. A voluntary system requires no one to be forced into work or on-call to cover for vacancies.

Under the new shift schedules, the Division would like to maintain a voluntary system for covering vacancies (i.e., those who want overtime volunteer to work and those who do not want to work overtime do not have to work). However, for a voluntary coverage system to work the employee at a plant must work together and be willing to come into work occasionally on their day off (at an overtime rate of pay).

Should this voluntary system fail to provide adequate coverage for vacancies, then the Bureau reserves the right to assign employees to cover vacancies using current practices or implement a mandatory relief system. Note that the voluntary system fails when employees have to work 18 consecutive hours to cover a vacant shift.

Every effort will be made to prevent an employee from working 18 consecutive hours.

Vacancies on 12-hour shift, in many cases, are filled by employees who come into work on their days off. Since it takes additional time to contact an employee and have them commute into work, employees on 12-hour shift schedules are expected to give at least 2 hours notice before the beginning of an assigned shift for any absence.

In the event there are more employees wanting to fill vacancies than there are vacancies, then an overtime equalization policy will be used to distribute the overtime. The goal of this policy is to ensure that every employee has opportunity to fill overtime vacancies. One way to accomplish this is to first make sure that all employees have an opportunity to volunteer for vacancies and in competitive situations, give priority to employee with the least amount of overtime.

**13. Other Work and Pay Rules**

All other work and pay rules not addressed by this implementation package are covered by the rules described in the Letter of Understanding between the City and County of San Francisco and the International Union of Operating Engineers, Stationary Local 39 (for fiscal Years 1990-1993). In addition, other rules are described in the Employee Handbook for all City and County of San Francisco employees.

**14. Uniforms**

The Port will provide employees Port-labeled shirts, including laundering.

**APPENDIX “B”**

**EAP AND PEER COUNSELING PROGRAM**

Transport Workers Union Locals 250A and 200, Automotive Mechanics Local 1414, Teamsters Local 853, International Brotherhood of Electrical Workers Local 6, Laborers Union Local 261, Service Employees International Union Local 790, Stationary Engineers Local 39, and Glazier and Glass Workers, Local 718, and the Municipal Transportation Agency (“MTA”) hereby agree to create an Employee Assistance Program as follows:

**A. Overview of EAP Program**

This Employee Assistance Program (“EAP”) shall cover employees only, and is designed to assist employees, in consultation with their families where clinically appropriate, with problems that may affect their ability to perform their jobs. The EAP shall offer counseling services, including assessment, referral, and follow-up services.

EAP’s offer assistance by helping employees assess and identify problems arising from a variety of personal areas.

EAP’s assist employees by referring them to services which lead to solutions.

EAP’s provide training and consultation services to management and union leadership regarding assisting troubled employees.

The primary goal of the EAP will be to maintain employee’s ability to be fully productive on the job. EAP’s help employees, management, and supervisors maintain a high level of service by:

Motivating employees to help;

Helping supervisors identify troubled employees with job performance problems that may be related to personal problems;

Assessing employees with alcohol abuse, drug abuse, family problems, depression, stress and other problems that can result in performance problems;

Providing easily accessible quality helping services which include short-term problem-solving and referrals to more intensive care;

Providing crisis intervention services;

Providing follow-up assistance to support and guide employees through the resolution of their problems; and by

## **APPENDIX B**

Acting as an education and training resource.

Employees shall be able to access the EAP through calling directly (self-referral), through the Peer Assistants, or through a supervisory referral based on job performance. Participation in the EAP is voluntary.

Establishing a voluntary EAP to compliment the mandatory testing program is intended to encourage employees to seek treatment early and on their own. The EAP will assist employees in obtaining information, guidance, and counseling to help them handle their problems before they become a drug testing or disciplinary issue.

An outside vendor has been selected and will perform the following duties:

- Maintain a toll-free telephone access for referrals and respond to calls in no more than sixty (60) seconds.
- Provide union/management consultation relative to the development and integration of organizational policies and procedures necessary for effective Employee Assistance Program implementation
- Orient employees regarding the purpose, scope, nature and use of the Employee Assistance Program.
- Train Union (including Division Chairpersons and any other Union officials), supervisory and management staff to develop the knowledge and skills necessary to effectively utilize the program in the performance of their responsibilities.
- Provide direct one-to-one counseling utilizing licensed professional staff for crisis management and to identify and evaluate personal concerns among Employer's employees and/or their immediate dependents. Such direct counseling shall provide for three (3) sessions per family per year. Fees for any counseling sessions exceeding three (3) will become the financial responsibility of the employee and/or dependent, unless otherwise arranged for by the employer. For non-urgent situations, an appointment will be offered within seventy-two (72) hours of request. For urgent situations, an appointment will be offered on the same day as the request for service.
- Provide legal consultation, medical advice, financial consultation; one (1) consultation per incident is provided for each service, up to three (3) incidents per service, per year.
- Provide referral services to professional community resources for treatment and/or assistance, as may be appropriate.
- Provide continuing liaison and contact, when appropriate, between the employee, treatment agent or agency, and Employer to determine case status.

## **APPENDIX B**

- Provide monthly statistical evaluation of program activity, and other reports, as needed.
- Send its principal or his designated representative to monthly meetings of the Municipal Railway Improvement Fund Board of Trustees, and any other meetings as reasonably required.
- Assess all employees involved in Critical Incidents (e.g., on the job assaults, threats and/or accidents) that occur while on duty.
- Provide up to three (3) counseling visits per employee involved in a Critical Incident.
- Develop Critical Incident Program Policies and Procedures.
- Provide Critical Incident Case management, including:
  - (a) Determination regarding an employee's ability to perform duties, including coordination with management and union personnel for employees who require time off work as a result of a Critical Incident;
  - (b) Assisting employees in securing additional counseling visits beyond the three (3) Critical Incident/trauma response visits described above, when necessary.

### **B. Organization**

- (1) The Joint Labor-Management Committee:
  - (a) Membership and Meetings: Five (5) Committee members and two (2) alternate members to be appointed by the Unions. Five (5) Committee members to be appointed by the City.

If the City chooses to appoint less than five persons, it shall still have voting strength equal to that of the Unions. On the matters that come before the Committee, the City shall have one vote and the Unions shall have one vote. The vote of each side shall be controlled by the votes of the Committee members present for each respective side.

The Committee shall elect from its ranks a Chairperson and a Co-Chair, one of whom shall be a City appointee and the other the Unions' appointee. The Chair shall be held by one side for a year, then relinquished to the other side for the next year. Either the City or the Unions may replace their named Chair or Co-Chair at any time. The Chair shall preside over meetings of the

## **APPENDIX B**

Committee. In the absence of the Chair, the Co-Chair shall so preside. The MTA Director of Transportation shall provide staff support to the Committee as appropriate.

A quorum for the transaction of business by the Committee shall consist of three (3) Union Committee members and a majority of the City-appointed Committee members.

- (b) Functions: To receive and review information regarding the Substance Abuse and Peer Assistance Programs.
- (c) Consolidation of Committees: The parties to this Agreement and to the Agreement concerning drug and alcohol testing and EAP between TWU Local 250A and the MTA may elect to combine the joint labor-management committee established here and in the Local 250A Agreement.

### (2) Substance Abuse Program:

The MTA Director of Transportation or designee will manage all aspects of the FTA-mandated Substance Abuse Program. He/she shall have appointing and removal authority over all personnel working for the Substance Abuse Program personnel, and shall be responsible for the supervision of the SAP.

### (3) EAP Services:

The City and the Unions have concluded that it is in the best interests of all concerned to establish a uniform EAP Program for all employees. On this basis, the parties agree that the City shall engage an outside contractor to provide these services.

### (4) The Peer Assistance System:

#### (a) Structure:

The outside contractor selected to provide EAP services shall also be directly responsible for the clinical and administrative management of the Peer Assistance Program. This Program shall be established on a 24-hour, seven-day a week basis. The peer assistants shall provide coverage during regular business hours (Monday - Friday, 8:30 a.m. - 5:00 p.m.) for all Muni worksites or sections. A system-wide EAP crisis hotline shall be established. Night, weekend and holiday crisis coverage shall be provided by one of the peer assistants and shall be rotated among the peer assistants, who shall be available on a pager. The full compensation of the Peer Assistant providing such night, weekend and holiday coverage shall be pager pay. Pager pay will not be provided for regular daily coverage.

**APPENDIX B**

(b) Peer Assistance Oversight Committee:

This Committee, composed of one representative from Locals 250A, 200, 6, 790 and 1414, shall be responsible for trouble-shooting and making decisions on program operations.

(c) MTA Liaison:

The MTA Liaison shall be an individual designated by the MTA Director of Transportation to serve as the City's emissary in matters such as labor relations and administrative issues.

(d) Qualifications:

- A MUNI employee who has previous counseling experience or is interested in peer counseling and is willing to make a two year commitment to pursue training and education toward certification as a drug and alcohol counselor
- OR
- A MUNI employee who was a former substance abuser who has been clean and sober for a least two years and who continues to participate in a twelve step program
- OR
- A MUNI employee who has had experience with family members' substance abuse and who had participated in a self-help group for co-dependency
- AND
- A MUNI employee who is respected by their peers, the union, and the management
- AND
- A MUNI employee who is committed to the goals of the Peer Assistance Program

(e) Duties:

- Assist employees in accessing the Voluntary Substance Abuse Program and EAP.
- Provide on-going support and case management for clients in the Voluntary Substance Abuse Program.
- Abide by state and federal confidentiality laws.
- Publicize the EAP verbally and through distribution of literature.

## **APPENDIX B**

- Provide employees with information regarding the EAP and Voluntary Substance Abuse programs and create a forum for employees to discuss their concerns.
- Assist in publication of Voluntary Substance Abuse Program newsletter.
- Seek out opportunities to participate in training programs to further develop knowledge and skills.
- Develop and implement new ideas to increase utilization and maximize the effectiveness of the EAP and Voluntary Substance Abuse Programs.
- Develop and maintain a professional environment in which to interact with clients.
- Develop a group of volunteers in the divisions to support the goals of the EAP and Voluntary Substance Abuse Programs.
- Assist in education and training sessions for new and existing employees.
- Keep accurate records of client contacts and promotional activities.

(f) Staffing:

There shall be a clinician employed by the outside contractor for EAP Services who will be on-site a minimum of 20 hours a week. The clinician shall report directly to the outside contractor, Peer Assistance Oversight Committee and the MIF liaison. There shall be three full-time Peer Assistants reporting to the outside contractor.

(g) Volunteer Peer Assistants:

1. Up to eight (8) Volunteer Peer Assistants.
2. Assist peer assistants upon request during their off-duty time.
3. They shall participate in designated training.
4. Their activities shall be within the limits of their training.
5. Volunteer peer assistants will receive no compensation for their services.

(h) Functions:

The outside contractor, in consultation with the Peer Assistance Oversight Committee, shall develop procedures for the Peer Assistance Program.

## **APPENDIX B**

(i) **Civil Service Commission Approval:**

The use of peer assistants shall be subject to the approval of the Civil Service Commission.

**C. Pay Status During Voluntary Self-Referral Treatment (Voluntary Substance Abuse Program)**

(1) An employee who has a drug and/or alcohol abuse problem and has not been selected for drug and/or alcohol testing can voluntarily refer him/herself to the EAP for treatment. The EAP will evaluate the employee and make a specific determination of appropriate treatment. An employee who has completed two rehabilitation programs may not elect further rehabilitation under this program.

(2) In the case of the up to two voluntary, employee-initiated referrals, the MTA will pay the employee the difference between his/her SDI benefits, use of accrued paid leaves, and any catastrophic illness benefits, and the employee's regular hourly base pay, for up to the eight hours per day for full-time employees and up to three hours per day for part-time employees, up to a maximum of 21 work days during a five-year period. This provision shall not apply in the event the employee does not receive SDI benefit payments or during the follow-up period established by the SAP after a positive test.

**D. Non-Paid Status During Treatment After Positive Test**

The employee will be in a non-pay status during any absence for evaluation or treatment, while participating in a rehabilitation program.

**E. Education and Training**

The foundation of this Program is education and voluntary compliance. It is recognized that alcohol and chemical dependency may make voluntary cessation of use difficult, and one of the Program's principal aims is to make voluntary steps toward ending substance abuse easily available.

The outside contractor shall review and develop on-going educational and training information on the adverse consequences of substance abuse and the responsibility to avoid being under the influence of alcohol or chemicals at work. Certain training required by the DOT Regulations shall be the responsibility of the Substance Abuse Program.

**F. Confidentiality**

Participation in the EAP shall be confidential and shall be conducted in accordance with DOT and DHHS standards.

## ***APPENDIX B***

### **G. Funding**

The Employee Assistance Program and the Peer Assistance Oversight Committee shall be funded by the City.

### **H. Special Provisions**

Any proposed discipline resulting from the FTA Drug and alcohol testing program shall be in accordance with the MOU's, as amended June 12, 1995. The MTA and the City recognize the rights of employees and/or the Unions, who may consider themselves aggrieved by any discipline proposed, to raise such grievance through the authorized grievance procedure. The MTA Director of Transportation will act in a fair and equitable manner, and shall prescribe that no personnel hired, contracted, selected or directly involved in the drug and alcohol testing program shall propose or render discipline.

**APPENDIX “C”**

**SUBSTANCE ABUSE PREVENTION POLICY**

The below Appendix C shall remain in effect until the City has met the conditions outlined in Article V.H. (paragraph 247).

1. **MISSION STATEMENT**

- a. Employees are the most valuable resource to the City’s effective and efficient delivery of services to the public. The parties have a commitment to foster and maintain a drug and alcohol free environment. The parties also have a mutual interest in preventing accidents and injuries on jobsites and, by doing so, protecting the health and safety of employees, co-workers, and the public. The City and Union agree that this Policy shall be administered in a non-discriminatory manner.
- b. The City wants a safe and healthy workforce and sees drug and/or alcohol addictions as treatable diseases.
- c. The City is committed to identifying needed resources, both in and outside of the City, for employees who voluntarily seek assistance in getting well. Those employees who voluntarily seek treatment prior to any testing shall not be subject to any repercussions or any potential adverse action for doing so. However, seeking treatment will not excuse prior conduct for which an investigation or disciplinary proceedings have been initiated.
- d. The City is committed to fostering and maintaining a safe work environment free from alcohol and prohibited drugs at all of its work sites and facilities.

2. **POLICY**

- a. To ensure the safety of the City’s employees, co-workers and the public, no employee may sell, purchase, transfer, possess, furnish, manufacture, use or be under the influence of alcohol or illegal drugs at any City jobsite, while on City business or in City facilities. Further, no employee shall use alcohol or illegal drugs while he/she is on paid status.
- b. Any employee, regardless of how his/her position is funded, who has been convicted of any drug-related crime that occurred while on City business or in City facilities, must notify his/her department head or designee within five (5) days after such conviction. Failure to report within the time limitation shall subject the employee to disciplinary action, up to and including termination.

## *APPENDIX C*

### 3. DEFINITIONS

- a. “Accident” means an occurrence associated with: (a) the operation of a vehicle (including, but not limited to, green machines, and any City owned vehicle or vehicles used during the course of the employee’s work day), power tools, or vessel; or (b) on equipment that is utilized to change the elevation of the employee.
- b. “Adulterated Specimen” means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.
- c. “Agreement” or “Policy” means “Substance Abuse Prevention Policy” between the City and County of San Francisco and the Union contained in this Appendix C.
- d. “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weights alcohol including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)
- e. “Cancelled Test” means a drug or alcohol test that has a problem identified that cannot be or has not been corrected. A cancelled test is neither a positive nor a negative test.
- f. “City” or “employer” means the City and County of San Francisco.
- g. “Covered Employee” means an employee in a represented classification covered by this Agreement.
- h. “CSC” means the Civil Service Commission of the City and County of San Francisco.
- i. “Day” means working day, unless otherwise expressly provided.
- j. “DHR” means the Department of Human Resources of the City and County of San Francisco.
- k. “Dilute Specimen” means a specimen with creatinine and specific gravity values that are lower than expected for human urine.
- l. “EAP” means the Employee Assistance Program offered through the City and County of San Francisco.
- m. “Illegal Drugs” or “drugs” refer to those drugs listed in Appendix C, except in those circumstances where they are prescribed by a duly licensed healthcare provider. Appendix C lists the illegal drugs and alcohol and the threshold levels for which a covered or prospective

## *APPENDIX C*

employee will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (“SAMHSA”) (formerly the National Institute of Drug Abuse, or “NIDA”) threshold levels, or U.S. government required thresholds where required, in effect at the time of testing. Appendix C will be updated periodically to reflect the SAMHSA or the U.S. Government threshold changes, subject to mutual agreement of the parties.

- n. “Invalid Drug Test” means the result of a drug test for a urine specimen that contains unidentified adulterant or an unidentified substance, has abnormal physical characteristics, or has an endogenous substance at an abnormal concentration that prevents the laboratory from completing or obtaining a valid drug test result.
- o. “MRO” means Medical Review Officer
- p. “Non-Negative Test” means a test result found to be adulterated, substituted, invalid, or positive for drug/drug metabolites.
- q. “Parties” means the City and County of San Francisco and the signatory unions to this Agreement.
- r. “Prescription Drug” means a drug or medication currently prescribed by a duly licensed healthcare provider for immediate use by the person possessing it that is lawfully available for retail purchase only with a prescription.
- s. “Refusing to Submit or Test” means a refusal to take a drug and/or alcohol test.
- t. “Safety-Sensitive Function” means the operation of a vehicle (including, but not limited to, green machines, and any City owned vehicle or vehicles used during the course of the employee’s work day), power tools, vessel, device(s), mechanism(s), or equipment that is utilized to change the elevation of the employee.
- u. “Substance Abuse Prevention Coordinator” means a licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.
- v. “Split Specimen” means a part of the urine specimen in drug testing that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.

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- w. “Substituted, Adulterated or Diluted Specimen” means a specimen submitted by a covered or prospective employee for which an approved testing laboratory reports the existence of an adulterant, interfering substance and/or masking agent or the sample is identified as a substituted specimen (as such terms are as defined in the DOT regulations, 49 C.F.R. Part 40), which shall be deemed a violation of this policy and shall be processed as if the test results were positive.

### 4. COVERED CLASSIFICATIONS/DEPARTMENTS

- a. Covered Classifications. All classifications listed in Article I.A of this Memorandum of Understanding shall be covered by this Policy. The parties may add or delete classifications by mutual agreement.

### 5. SUBSTANCES TO BE TESTED

- a. The City shall test, at its own expense, for alcohol and/or the following controlled substances for Pre-Employment, Reasonable Cause/Suspicion and Post-Accident:

- (1.) Amphetamines
- (2.) Barbiturates
- (3.) Benzodiazepines
- (4.) Cocaine
- (5.) Methadone
- (6.) Opiates
- (7.) PCP
- (8.) THC (Marijuana)<sup>1</sup>

- b. The City also recognizes that covered employees may at times have to ingest prescribed drugs or medications. If an employee takes any drug or medication known to have potential side effects that may interfere with job performance, the employee is required to immediately notify the designated Department representative of those side effects before performing his/her job functions.

- c. Upon receipt of a signed release from the employee’s licensed healthcare provider, the department representative may consult with healthcare provider to confirm specific job duties that the employee can perform while on prescribed medication. If the employee’s healthcare provider is not readily available or none is given, the department representative may consult with any City-licensed healthcare provider before making a final determination as to whether the employee may perform his/her job functions. However, if an employee, at the time of notification, brings in a medical note from the healthcare provider who prescribed the

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<sup>1</sup> Prescription marijuana is treated as a controlled substance and will be tested for Pre-Employment. The City, if deemed necessary, may also test for Reasonable Cause/Suspicion and Post-Accident.

## APPENDIX C

medication clearing the employee to work, then the City shall not restrict that employee from performing his/her job functions.

- d. If an employee is temporarily unable to perform safety sensitive functions because of any potential side effects caused by prescribed medication, the employee shall be reassigned to perform non-safety sensitive functions without loss of pay until either the employee is off the prescribed medication or is cleared by a licensed healthcare provider. This reassignment shall last for a period of no more than thirty (30) working days. If, after thirty (30) working days, the employee is still on said medication and/or not cleared by a licensed healthcare provider to perform safety sensitive functions, the City may extend this accommodation for a period not to exceed thirty (30) working days, provided that the healthcare provider certifies that the employee is anticipated to be able to resume safety sensitive functions after that thirty (30) day period. Employees required to submit to testing shall immediately identify all prescribed medication(s) that they have taken.
- e. The City reserves the right to test, at its own expense, for over-use, misuse or abuse of prescribed and over-the-counter drug or medication which had a direct job-related impact or played a role in an accident, pursuant to the testing procedures described below.

### 6. TESTING

#### A. Reasonable Cause/Suspicion

- a. Reasonable cause to test an employee for illegal drugs or alcohol will exist when specific, reliable objective facts and circumstances would create a good faith belief in a prudent person that the employee has used a drug or alcohol. Such circumstances include, but are not limited to, the employee's behavior or appearance while on any City jobsite, while on City business or in City facilities, and recognized and accepted symptoms of intoxication or impairment caused by drugs or alcohol, that are not reasonably explained by other causes such as fatigue, lack of sleep, proper use of prescription drugs, or reaction to noxious fumes or smoke.
- b. Any individual or employee can report an employee who may be under the influence of alcohol or drugs. Upon receiving a report of possible alcohol or illegal drugs on the job, two (2) trained employer representatives will verify and document the basis for the suspicion and request testing. The first employer representative shall verify and document the employee's appearance and behavior based on the above-stated indicators and, if necessary, recommend testing to the second employer representative. At work locations within the border of the City and County of San Francisco (including San Francisco International Airport), the second employer representative shall verify and document the appearance and behavior of the employee based on the above-stated indicators and has final authority to require the employee to be tested. At work locations outside the border of the City and County

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of San Francisco, the second employer representative shall confer with the first employer representative to verify the employee's behavior based on the above-stated indicators, and he or she has the final authority to require the employee to be tested.

- c. If the City requires an employee under reasonable cause or suspicion to be tested, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City may allow a reasonable amount (a maximum of one hour) of time for the employee to obtain representation. Such request shall not delay the administration of the tests, however.

Moreover, if the City has reason to believe or suspect that a prescription medication may have interfered with or may have had a direct impact on an employee's job performance, it may require that employee to be tested.

The department representative(s) shall be required to accurately document and file the incident and the employee shall be required to complete a consent form prior to any testing. If an employee refuses to be tested, then the City shall treat the refusal as having tested positive and shall immediately take appropriate disciplinary action pursuant to the attached discipline matrix.

The City shall bear the costs for any required testing for alcohol and/or drugs under this section. Any counseling and rehabilitation services shall be on the employee's time and at the employee's cost, except that employees may use accrued paid time off to attend treatment and may utilize any resources covered by insurance. Employees shall have the right to use any accrued but unused leave balances while enrolled in any counseling or rehabilitation program. Any request by an employee to re-test a specimen shall be at the employee's cost.

### B. Post-Accident

- a. The City may require a covered employee who was involved in an event meets any of the following criteria to submit to drug and/or alcohol testing:
  - (1.) Fatality;
  - (2.) Employee involved in an on duty vehicular accident resulting in death and/or injury requiring transport for medical treatment;
  - (3.) Disabling damage to vehicles;
  - (4.) Damage to machinery, moving parts, or other non-vehicular equipment or structures in excess of \$500.00 and
  - (5.) When reasonable cause/suspicion exists.
- b. Following an accident, all covered employees subject to testing shall remain readily available for testing. An employee may be deemed to have refused to submit to substance abuse testing if he/she fails to remain readily available, including notifying

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a supervisor (or designee) of the accident location or if (s)he leaves the scene of the accident prior to submitting for testing.

- c. Nothing in this section shall delay medical attention for the injured following an accident or prohibit an employee from leaving the scene of an accident for the period necessary to obtain assistance in responding to the accident or to obtain necessary emergency medical care.

### 7. TESTING PROCEDURES

#### A. Laboratory

- a. The testing shall be done at a certified laboratory in California. Upon advance notice, the parties retain the right to inspect the laboratory to determine conformity with the standards described in this policy. The laboratory will only test for alcohol and drugs identified in this policy. The City shall bear the cost of all required testing.
- b. Testing procedures, including substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs, established by the U.S. Department of Health and Human Services, as amended and the Federal Motor Carrier Safety Act regulations, where applicable. Drug tests shall be conducted by laboratories licensed and approved by SAMHSA, which comply with the American Occupational Medical Association (AOMA) ethical standards. Tests shall be by urine screening and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS). Alcohol tests shall be by breathalyzer.
- c. A covered or prospective employee presenting herself/himself at a Substance Abuse Prevention Coordinator-approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until (s)he has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee classified as “refusing to test.”
- d. Covered employees, who refuse to test, may be subject to disciplinary action, up to and including termination, pursuant to the attached discipline matrix.
- e. The specific required procedure is as follows:
  - (1.)Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee’s option in a wide-mouthed clinic specimen container that must remain in full view of

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the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.

- (2.) Immediately after the specimen is collected, it will be divided into two (2) urine bottles, which, in the presence of the employee, will be labeled and then initialed by the employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee's presence and the employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
  - (3.) A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
- f. The initial test of all urine specimens will utilize immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed utilizing gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3) ions. In order to be considered "positive" for reporting by the laboratory to the City, both samples must be tested separately in separate batches and must also show positive results on the GC/MS confirmatory test.
  - g. All positive drug, positive alcohol or substitute, adulterated or diluted specimens as defined herein must be reported to a Medical Review Officer (MRO). The MRO shall review the test results and any disclosure made by the covered or prospective employee and shall attempt to interview the individual to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive. The MRO shall make good faith efforts to contact the individual, but failing to make contact within two (2) working days, may deem the individual's result a "lab positive." After the issuance of a "lab positive," the covered employee may be placed on paid administrative leave pursuant to Administrative Code section 16.17, and will be barred from returning to work until (s)he makes a contact with the MRO and the MRO sends the Substance Abuse Prevention Coordinator a written confirmation of a negative result. New prospective employees, who receive a "lab positive" during a pre-employment test, shall be ineligible for any future City employment for six (6) months from the date of the positive test result unless the rules of the Civil Service Commission deem otherwise.
  - h. If the testing procedures confirm a positive result, as described above, the covered or prospective employee and the Substance Abuse Coordinator for the and departmental HR staff or designee City will be notified of the results in writing by the MRO,

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including the specific quantities. In the event the City proposes disciplinary action, the notice of the proposed discipline shall contain copies of all laboratory reports, forensic opinions, laboratory worksheets, procedure sheets, acceptance criteria and laboratory procedures.

- i. In the event of a positive drug or alcohol test, the testing laboratory will perform an automatic confirmation test on the original specimen at no cost to the employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the employee's request and expense. The same, or any other, approved laboratory may conduct re-tests. The laboratory shall endeavor to notify the MRO of positive drug, alcohol, or adulterant tests results within five (5) working days after receipt of the specimen. The employee may request a re-test within seventy-two (72) hours from notice of a positive test result by the MRO. The requesting party will pay costs of re-tests in advance.
- j. If the final test is confirmed negative, then the Employee shall be made whole, including, if any, the cost of the actual laboratory re-testing, provided that proper documentation is submitted to the City in a timely fashion.
- k. The Substance Abuse Prevention Coordinator shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
- l. All information from a covered or prospective employee's drug and/or alcohol test is confidential for purposes other than determining whether this policy has been violated. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the covered or prospective employee or as required by law. The results of a positive drug test shall not be released until the results are confirmed.

### B. On-Site

- a. The parties agree that for post-accident purposes, the City may conduct "on-site" tests (alcohol breathalyzer testing and "Quicktest" urine testing) and only if any of those tests is "non-negative" will a confirmation test be performed. This on-site test is to enable the covered employee and the City to know immediately whether that employee has been cleared for work.
- b. In order to facilitate the on-site urine testing, the parties agree that an individual's sample will be divided into three separate containers. One of the containers will provide a sample for the on-site test that will be read within 5 to 10 minutes of collection. The other two containers will be sealed and sent to the lab, in the event a

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confirmation is necessary due to a “non-negative” outcome of an on-site test. The laboratory will store the split sample in accordance with SAMHSA guidelines. One of the two samples will be used for a confirmation test and the other will be made available to the employee for testing by a certified laboratory selected by the employee at the employee’s expense.

**8. RESULTS**

(a) Any test revealing (i) a blood/alcohol level equal to or greater than 0.08 percent (or the established California State standard for non-commercial motor vehicle operations), or when operating a moving vehicle or performing a safety sensitive function as defined in this policy; or (ii) any test revealing a blood/alcohol level equal to or greater than that 0.04 percent (or the established California State standard for commercial motor vehicle operations) when operating a commercial motor vehicle, shall be deemed positive.

(b) Substance Abuse Prevention and Detection Threshold Levels

CONTROLLED SUBSTANCE *	SCREENING METHOD	SCREENING LEVEL **	CONFIRMATION METHOD	CONFIRMATION LEVEL
Amphetamines	EMIT	1000 ng/ml **	GC/MS	500 ng/ml **
Barbiturates	EMIT	300 ng/ml	GC/MS	200 ng/ml
Benzodiazepines	EMIT	300 ng/ml	GC/MS	300 ng/ml
Cocaine	EMIT	300 ng/ml **	GC/MS	150 ng/ml **
Methadone	EMIT	300 ng/ml	GC/MS	100 ng/ml
Opiates	EMIT	2000 ng/ml **	GC/MS	2000 ng/ml **
PCP (Phencyclidine)	EMIT	25 ng/ml **	GC/MS	25 ng/ml **
Propoxyphene	EMIT	300 ng/ml	GC/MS	100 ng/ml
THC (Marijuana)	EMIT	50 ng/ml **	GC/MS	15 ng/ml **
As outlined in the PUC Project Labor Agreement				
* All controlled substances including their metabolite components.				
** SAMHSA specified threshold				

**9. CONSEQUENCES OF POSITIVE TEST RESULTS**

a. For reasonable cause/suspicion or post-accident, a covered employee shall be immediately removed from performing her or his safety-sensitive functions and shall be subject to disciplinary action if any of the following takes place:

The covered employee:

1. Is confirmed to have tested positive for alcohol or drugs;
2. Refuses to be tested; or

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3. Has submitted a specimen for which an approved testing laboratory reports the existence of an “adulterant”, interfering substance, masking agent or the sample is identified as a substituted specimen (as defined herein).
- b. If the Union disagrees with the proposed disciplinary action, it may utilize the grievance procedure as set forth in the parties’ Memorandum of Understanding provided, however, that such an appeal must be initiated at the Employee Relations Director step, unless the parties otherwise mutually agree.
- c. All proposed disciplinary actions resulting from Consequences of Positive Drug/Alcohol Test(s) shall be administered pursuant to the disciplinary matrix contained herein.

### 10. RETURN TO DUTY

The Substance Abuse Prevention Coordinator will evaluate a covered employee who has tested positive. The Coordinator will evaluate what course of action, if any, and what assistance the employee needs, if any, and will communicate a return-to-work plan, if necessary, to the employee and department.

### 11. TRAINING

As soon as practicable but no later than thirty (30) days prior to the effective date of this policy, the City or its designated vendor shall provide training on this policy from first-line, working supervisors to the Deputy Director level. In addition, all covered employees shall be advised of this policy and receive appropriate training.

### 12. ADOPTION PERIOD

This Policy shall go into effect six months following the final adoption of this agreement by the parties.

### 13. JOINT CITY/UNION COMMITTEE

The parties agree to work cooperatively to ensure the success of this policy. As such, a Joint City/Union Committee shall be established with 2 members each from the City and the Union. The Committee shall meet at a minimum on a quarterly basis and, in addition, on an as-needed basis to address any implementation and other matters of mutual interests concerning this policy. The Committee may also discuss adding or deleting covered classification from this policy. The Director of Human Resources shall make a final decision based on the recommendations from the Committee.

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14. SAVINGS CLAUSE

Notwithstanding any existing substance abuse prevention programs, if any provision of an existing department policy, rule, regulation, or resolution is inconsistent with or in conflict with any provision of this policy, this policy shall take precedence. Should any part of this policy be determined contrary to law, such invalidation of that part or portion of this policy will not invalidate the remaining parts or portions. In the event of such determination, the parties agree to immediately meet and negotiate new provision(s) in conformity with the requirements of the applicable law and the intent of the parties hereto. Otherwise, this policy may be modified by mutual consent of the parties. Such amendment(s) shall be reduced to writing.

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Testing Types/Issues	First Positive/Occurrence	Second Positive/Occurrence
Pre-employment	Not hired. Can reapply for position in six mons.	N/A <sup>1</sup>
Reasonable Suspicion	Referred to Substance Abuse Prevention Coordinator (SAPC), SAPC Recommendation for Treatment <sup>2</sup> . Return to Duty Test <sup>3</sup> , Follow-up Testing, Subject to disciplinary action except where substantial mitigating circumstances exist. <sup>4</sup>	Will be subject to disciplinary action except where substantial mitigating circumstances exist.
Post Accident	Referred to Substance Abuse Prevention Coordinator (SAPC), SAPC Recommendation for Treatment <sup>2</sup> . Return to Duty Test <sup>3</sup> , Follow-up Testing, Subject to disciplinary action except where substantial mitigating circumstances exist. <sup>5</sup>	Will be subject to disciplinary action except where substantial mitigating circumstances exist.
Alteration of Specimen ("Substituted", "Adulterated" or "Diluted")	Subject to Termination except where substantial mitigating circumstances exist.	Will be subject to disciplinary action except where substantial mitigating circumstances exist.
Refusal to Test	Assumption is a positive result; Referred to Substance Abuse Prevention Coordinator (SAPC). SAPC Recommendation for Treatment. <sup>2</sup> Return to Duty Test <sup>3</sup> , Subject to disciplinary action except where substantial mitigating circumstances exist. <sup>6</sup>	Will be subject to disciplinary action except where substantial mitigating circumstances exist.
Failure to Comply with Treatment Program or Return to Work Agreement	Will be subject to disciplinary action except where substantial mitigating circumstances exist.	N/A

Pending results of test, an employee may be removed from duty with pay or assigned non-safety sensitive functions without loss of pay.

Any employee who is subsequently determined to be the subject of a false positive or in the event a department deems the mitigating record may have been altered shall be made whole for any lost wages and benefits and shall have their record expunged. The record of the positive result shall be placed in a sealed envelope and shall not be considered in subsequent disciplinary proceedings.

If the Union disagrees with the proposed disciplinary action, it may utilize the grievance procedure as set forth in the collective bargaining agreement, provided, however, that such an appeal must be initiated at the Employee Relations Director step, unless the parties otherwise mutually agree.

1: No Split Sample will be made available for re-test.

2: Employee may use accrued but unused leave balances to attend rehabilitation program.

3: Employee may not return to work until SAPC certifies that he/she has completed recommended rehabilitation program and has a negative test prior to returning to full duty.

4: Proposed disciplinary action for a first positive test or Refusal to Test to be no more than 15 working days, except in cases resulting in death or serious bodily injury discipline shall include termination of employment. Proposed disciplinary action for Alteration of Specimen shall be termination of employment.

5: Proposed disciplinary action for Reasonable Cause and Suspicion for a first positive test to be no more than 15 working days except in cases resulting in death or serious bodily injury discipline shall include termination of employment. A second positive test within three years may result in more severe proposed disciplinary action, up to and including termination of employment.

6: Proposed disciplinary action for Alteration of Specimen ("Substituted", "Adulterated", or "Diluted") and Refusal to Test for a first positive or occurrence to be no more than 15 working days, except in cases resulting in death or serious bodily injury discipline shall include termination of employment. A second positive test or occurrence within three years may result in more severe proposed disciplinary action, up to and including termination of employment.

**APPENDIX “D”  
SUBSTANCE ABUSE PREVENTION POLICY**

Pursuant to MOU Article V.H. (paragraph 247), the below Appendix D will be implemented after acquisition of a vendor to provide oral fluid testing. However, Appendix C shall remain in effect until the City has met the conditions outlined in Article V.H

1. **MISSION STATEMENT**

- e. Employees are the most valuable resource in the City’s effective and efficient delivery of services to the public. The City has a commitment to prevent drug or alcohol impairment in the workplace, foster and maintain a drug and alcohol free work environment. The City is also interested in preventing accidents and injuries on the job and, by doing so, protecting the health and safety of employees, co-workers, and the public.
- f. The City affirms its belief that substance abuse is a treatable condition. The City is committed to identifying needed resources, both in and outside of the City, for employees who voluntarily seek assistance in getting well. Those employees who voluntarily seek treatment prior to any testing shall not be subject to any repercussions or any potential adverse action for doing so. However, seeking treatment will not excuse prior conduct for which an investigation or disciplinary proceedings have been initiated.
- g. The City is committed to preventing drug or alcohol impairment in the workplace, and to fostering and maintaining a safe work environment free from alcohol and prohibited drugs at all of its work sites and facilities. In addition, the City maintains a drug and alcohol free workplace policy in its Employee Handbook.

2. **POLICY**

- c. To ensure the safety of the City’s employees, co-workers and the public, no employee may sell, purchase, transfer or possess, furnish, manufacture, use or be under the influence of alcohol or illegal drugs at any City jobsite, while on City business, or in City facilities. A City employee whose job duties requires him/her to handle alcohol or illegal drugs shall not be in violation of this Policy for carrying out such job duties.
- d. Any employee, regardless of how his/her position is funded, who has been convicted of any drug/alcohol-related crime that occurred while on City business or in City facilities, must notify his/her department head or designee within five (5) days after such conviction. Failure to report within the time limitation shall subject the employee to disciplinary action, up to and including termination.

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### 3. DEFINITIONS

- x. “Accident” (or “post-Accident”) means an occurrence associated with the Covered Employee’s operation of Equipment or the operation of a vehicle (including, but not limited to, City-owned or personal vehicles) used during the course of the Covered Employee’s work day where the City concludes that the occurrence may have resulted from human error by the Covered Employee, or could have been avoided by reasonably alert action by the Covered Employee, and:
  - a. There is a fatality, loss of consciousness, medical treatment required beyond first aid, medical transport, or other significant injury or illness diagnosed, or treated by, a physician, paramedic or other licensed health care professional; or
  - b. With respect to an occurrence involving a vehicle, there is disabling damage to a vehicle as a result of the occurrence and the vehicle needs to be transported away from the scene by a tow truck or driven to a garage for repair before being returned to service; or
  - c. With respect to an occurrence involving Equipment, there is damage to the Equipment exceeding three thousand dollars (\$3,000); or
  - d. With respect to an occurrence involving structures or property, there are damages exceeding ten thousand dollars (\$10,000) to the structures or property.
- y. “Adulterated Specimen” means a specimen that contains a substance that is not expected to be present in oral fluid, or contains a substance expected to be present but is at a concentration so high that it is not consistent with oral fluid.
- z. “Alcohol” means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weights alcohol including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)
- aa. “Cancelled Test” means a drug or alcohol test that has a problem identified that cannot be or has not been corrected or which 49 C.F.R. Part 40 otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
- bb. “City” or “employer” means the City and County of San Francisco.
- cc. “Collector” means an on-site employee trained to collect a drug or alcohol specimen, or the staff of the collection facility under contract with the City and County of San Francisco’s drug testing contractor.
- dd. “Covered Employee” means any miscellaneous employee employed by the City and County of San Francisco with the exception of: (a) employees of the SFMTA; and (b) employees in a

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non-MTA department currently subject to a departmental substance abuse testing program, as further described in section 4 below.

- ee. “CSC” means the Civil Service Commission of the City and County of San Francisco.
- ff. “Day” means working day, unless otherwise expressly provided.
- gg. “DHR” means the Department of Human Resources of the City and County of San Francisco.
- hh. “Diluted Specimen” means a specimen with creatinine and specific gravity values that are lower than expected for oral fluid.
- ii. “EAP” means the Employee Assistance Program offered through the City and County of San Francisco.
- jj. “Equipment” includes any vehicle (including, but not limited to any City-owned vehicle or personal vehicle used during the course of the employee’s paid work time); any water craft; powder-actuated tools; tools; heavy machinery or equipment; underwater equipment; equipment that is used to change the elevation of the Covered Employee more than five (5) feet; any other device(s) or mechanism(s) the use of which may constitute a comparable danger to the employee or others; firearms when a firearm is required, and approved by the Appointing Officer, to be carried and used by the Covered Employee; banding tools; band-it; power tools; bucket truck; or equipment that is used to change the elevation of the Covered Employee more than five (5) feet.
- kk. “Illegal Drugs” or “drugs” refer to those drugs listed in Section 5.f. Section 8.a. lists the drugs and alcohol and the threshold levels for which a Covered Employee will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (SAMHSA) (formerly the National Institute of Drug Abuse, or NIDA) threshold levels, or U.S. government required threshold levels where required, in effect at the time of testing, if applicable. Section 8.a. will be updated periodically to reflect the SAMHSA or U.S. government threshold changes, subject to mutual agreement of the parties.
- ll. “Invalid Drug Test” means the result of a drug test for an oral fluid specimen that contains an unidentified adulterant, or an unidentified substance, that has abnormal physical characteristics, or that has an endogenous substance at an abnormal concentration -preventing the laboratory from completing or obtaining a valid drug test result.
- mm. “MRO” means Medical Review Officer who is a licensed physician certified by the Medical Review Officers Certification Council or U.S. Department of Transportation responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.

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- nn. “Non-Negative Test” or “positive test” means a test result found to be Adulterated, Substituted, Invalid, or positive for alcohol or drug metabolites.
- oo. “Oral Fluid” means saliva or any other bodily fluid generated by the oral mucosa of an individual.
- pp. “Policy” means “Substance Abuse Prevention Policy” or “Agreement” attached to the parties’ Memorandum of Understanding (“MOU”).
- qq. “Prescription Drug” means a drug or medication currently prescribed by a duly licensed healthcare provider for immediate use by the person possessing it that is lawfully available for retail purchase only with a prescription.
- rr. “Refusal to Submit,” “Refusing to Submit,” “Refuse to Test,” or “Refusal to Test” means a refusal to take a drug and/or alcohol test and includes, but is not limited to, the following conduct:
- i. Failure to appear for any test within a reasonable time.
  - ii. Failure to remain at the testing site until the test has been completed.
  - iii. Failure or refusal to take a test that the Collector has directed the employee to take.
  - iv. Providing false information.
  - v. Failure to cooperate with any part of the testing process, including obstructive or abusive behavior or refusal to drink water when directed.
  - vi. Failure to provide adequate oral fluid or breath samples, and subsequent failure to undergo a medical examination as required for inadequate breath or oral fluid samples, or failure to provide adequate breath or oral fluid samples and subsequent failure to obtain a valid medical explanation.
  - vii. Adulterating, substituting or otherwise contaminating or tampering with an oral fluids specimen.
  - viii. Leaving the scene of an Accident without just cause prior to submitting to a test.
  - ix. Admitting to the Collector that an employee has Adulterated or Substituted an oral fluid specimen.
  - x. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
  - xi. Leaving work, after being directed to remain on the scene by the first employer representative, while waiting for verification by the second employer representative under section 6.I.b.
- ss. “Substance Abuse Prevention Coordinator” (SAPC) means a licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders. The SAPC will be chosen by the City.

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- tt. “Split Specimen” means a part of the oral fluid specimen in drug testing that is retained unopened for a confirmation test (if required) or in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified Adulterated or Substituted Specimen test result.
- uu. “Substituted Specimen” means a specimen with laboratory values that are so diminished that they are not consistent with oral fluid and which shall be deemed a violation of this policy, and shall be processed as if the test results were positive.

### 4. COVERED CLASSIFICATIONS

All classifications listed in Article I.A of this Memorandum of Understanding shall be subject to post-accident reasonable suspicion testing.

### 5. SUBSTANCES TO BE TESTED

- f. The City shall test, at its own expense, for alcohol and/or the following drugs:

- (9.) Amphetamines
- (10.) Barbiturates
- (11.) Benzodiazepines
- (12.) Cocaine
- (13.) Methadone
- (14.) Opiates
- (15.) PCP
- (16.) THC (Cannabis)

- g. Prescribed Drugs or Medications.

The City recognizes that Covered Employees may at times have to ingest prescribed drugs or medications. If a Covered Employee takes any drug or medication that a treating physician, pharmacist, or health care professional has informed the employee (orally or on the medication bottle) will interfere with job performance, including driving restrictions or restrictions on the use of Equipment, the employee is required to immediately notify the designated Department representative of those restrictions before performing his/her job functions.

- a. Upon receipt of a signed release from the Covered Employee’s licensed healthcare provider, the department representative may consult with Covered Employee’s healthcare provider to confirm specific job duties that the employee can perform while on prescribed medication. If the employee’s healthcare provider is not readily available, or none is given, the department representative may consult with any City-

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licensed healthcare provider before making a final determination whether the employee may perform his/her job functions. However, if an employee, at the time of notification, brings in a medical note from the healthcare provider who prescribed the medication clearing the employee to work, then the City shall not restrict that employee from performing his or her job functions.

- b. If a Covered Employee is temporarily unable to perform his or her job because of any potential side effects caused by prescribed medication, the employee shall be reassigned to perform a temporary modified duty assignment consistent with the employee's medical restrictions without loss of pay until either the employee is off the prescribed medication or is cleared by a licensed healthcare provider. This temporary modified duty reassignment shall last for a period of no more than thirty (30) working days. If, after thirty (30) working days, the employee is still on said medication and/or has not been cleared by a licensed healthcare provider to return to work without restrictions, the City may extend the temporary modified duty assignment for a period not to exceed thirty (30) working days, provided that the healthcare provider certifies that the employee is reasonably anticipated to be able to be able to return to work without restrictions after that thirty (30) day period. Employees who are unable to return to work under this provision shall be referred to the Department's human resources representative designated to engage with employees regarding possible reasonable accommodation under state and federal disability laws.

### **6. TESTING**

#### **I. Reasonable Suspicion Testing**

- a. Reasonable suspicion to test a Covered Employee will exist when contemporaneous, articulable and specific observations concerning the symptoms or manifestations of impairment can be made. These observations shall be documented on the Reasonable Suspicion Report Form attached to this Appendix as Exhibit B. At least three (3) indicia of drug or alcohol impairment must exist, in two (2) separate categories, as listed on the Reasonable Suspicion Report Form. In the alternative, the employer representatives must confirm direct evidence of drug or alcohol impairment as listed on the Reasonable Suspicion Report Form.
- b. Any individual or employee may report another employee who may appear to that individual or employee to be under the influence of alcohol or drugs. Upon receiving a report of possible alcohol or drug use or impairment in the workplace, two (2) trained supervisory employer representatives will independently verify the basis for the suspicion and request testing in person. The first employer representative shall verify and document the employee's appearance and behavior and, if appropriate, recommend testing to the second employer representative. The second employer representative shall verify the

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contemporaneous basis for the suspicion. If reasonable suspicion to test a Covered Employee arises between 11:00 p.m. and 7:00 a.m., or at a location outside the geographic boundaries of the City and County of San Francisco (excluding San Francisco International Airport), and where a second trained supervisory employer representative cannot reasonably get to the location within thirty (30) minutes, then the second employer representative shall not be required to verify the basis for the suspicion in person, but instead shall verify by telephone or email. After completing the verification, and consulting with the first employer representative, the second employer representative has final authority to require that the Covered Employee be tested.

- c. If the City requires an employee under reasonable suspicion to be tested, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time from the time the employee is notified that he or she will be tested (up to a maximum of one hour) for the employee to obtain representation. Such request shall not delay the administration of the tests for more than one hour from the time the employee is notified that he or she will be tested.
- d. Department representative(s) shall document the incident. If a Covered Employee Refuses to Submit to testing, then the City shall treat the refusal as a positive test, and shall take appropriate disciplinary action pursuant to the attached discipline matrix.

### **II. Post-Accident Testing**

- a. The City may require a Covered Employee who caused, or may have caused, an Accident, based on information known at the time of the Accident, to submit to drug and/or alcohol testing.
- b. Following an Accident, all Covered Employees subject to testing shall remain readily available for testing. A Covered Employee may be deemed to have refused to submit to substance abuse testing if he or she fails to remain readily available, including failing to notify a supervisor (or designee) of the Accident location, or leaving the scene of the Accident prior to submitting to testing.
- c. Nothing in this section shall delay medical attention for the injured following an Accident or prohibit an employee from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care.
- d. If the City requires a Covered Employee to be tested post-Accident, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time from the time the employee is notified that he or she will

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be tested (a maximum of one hour) for the employee to obtain representation provided that the union representative meet the employee at the Accident site, work location or testing center as determined by the City. Such request shall not delay the administration of the tests for more than one hour from the time the employee is notified that he or she will be tested.

### 7. TESTING PROCEDURES

#### I. Collection Site

- a. If there is a trained Collector available on site, the City may conduct “on-site” tests (alcohol breathalyzer testing and oral fluid testing). If any of those tests are “Non-Negative,” a confirmation test will be performed. The on-site tests may enable the Covered Employee and the City to know immediately whether that employee has been cleared for work.
- b. If a trained Collector is not available on-site, the staff of a collection facility under contract to the City, or the City's drug testing contractor shall collect oral fluid samples from Covered Employees to test for prohibited drugs.
  - i. A Covered Employee presenting herself/himself at the approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until (s)he has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee classified as a “Refusal to Submit.”
- c. Covered Employees who Refuse to Test may be subject to disciplinary action, up to and including termination, pursuant to Exhibit A.
- d. Alcohol and drug testing procedures.
  - (1.) Alcohol Testing Procedure. Tests for alcohol concentration on Covered Employees will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). Alcohol tests shall be by breathalyzer using the handheld Alco-Sensor IV Portable Breath Alcohol Analyzer device, or any other U.S. Department of Transportation (DOT) approved breath analyzer device.
  - (2.) Drug Testing Procedure. Tests for drugs shall be by oral fluid collection. The oral fluid specimens shall be collected under direct visual supervision of a Collector and in accordance with the testing device manufacturer’s recommended

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procedures for collection. Screening results may be provided by the Collector or by a laboratory. Confirmation tests shall be conducted at a laboratory.

- (3.) The Covered Employee being tested must cooperate fully with the testing procedures.
  - (4.) A chain of possession form must be completed by the Collector, hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
- e. After being tested for drugs, the Covered Employee may be barred from returning to work until the department is advised of the final testing result by the MRO. During that period, the Covered Employee will be assigned to work that is not safety-sensitive or placed on paid administrative leave for so long as the Covered Employee is eligible for such leave under the terms of the applicable provision of the City's Administrative Code. The test shall be deemed a negative test if the MRO has not advised of the final testing result by the time the Covered Employee's paid leave has expired under the terms of the applicable provision of the City's Administrative Code.

### II. Laboratory

- a. Drug tests shall be conducted by laboratories licensed and approved by SAMSHA which comply with the American Occupational Medical Association (AOMA) ethical standards. Upon advance notice, the parties retain the right to inspect the laboratory to determine conformity with the standards described in this policy. The laboratory will only test for drugs identified in this policy. The City shall bear the cost of all required testing unless otherwise specified herein.
- b. Tests for all controlled substances, except alcohol, shall be by oral fluid testing and shall consist of two procedures, a screen test and, if that is positive, a confirmation test.
- c. To be considered positive for reporting by the laboratory to the City, both samples must be tested separately in separate batches and must also show positive results on the confirmatory test.
- d. In the event of a positive test, the testing laboratory will perform an automatic confirmation test on the original specimen at no cost to the Covered Employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the Covered Employee's request and expense. The same, or any other, approved laboratory may conduct re-tests. The laboratory shall endeavor to notify the designated MRO of positive drug, alcohol, or adulterant tests results within five (5) working days after receipt of the specimen.

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### III. Medical Review Officer (MRO)

- a. All positive drug, or Substituted, Adulterated, positive-Diluted Specimen, or Invalid Drug Test, as defined herein, will be reported to a Medical Review Officer (MRO). The MRO shall review the test results, and any disclosure made by the Covered Employee, and shall attempt to interview the individual to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive.
- b. When the laboratory reports a confirmed positive, Adulterated, Substituted, positive-Diluted, or Invalid test, it is the responsibility of the MRO to: (a) make good faith efforts to contact the employee and inform him or her of the positive, Adulterated, Substituted, positive-Diluted, or Invalid test result; (b) afford the employee an opportunity to discuss the test results with the MRO; (c) review the employee's medical history, including any medical records and biomedical information provided by the Covered Employee, or his treating physician, to the MRO; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. Employees shall identify all prescribed medication(s) that they have taken. If the Covered Employee fails to respond to the MRO within three (3) days, the MRO may deem the Covered Employee's result as a positive result.
- c. The MRO has the authority to verify a positive or Refusal To Test without interviewing the employee in cases where the employee refuses to cooperate, including but not limited to: (a) the employee refused to discuss the test result; or (b) the City directed the employee to contact the MRO, and the employee did not make contact with the MRO within seventy-two (72) hours. In all cases, previously planned leaves may extend this time. The MRO's review of the test results will normally take no more than three (3) to five (5) days from the time the Covered Employee is tested.
- d. If the testing procedures confirm a positive result, as described above, the Covered Employee and the Substance Abuse Prevention Coordinator (SAPC) for the City and departmental HR staff or designee will be notified of the results in writing by the MRO, including the specific quantities. The results of a positive drug test shall not be released until the results are confirmed by the MRO. The Covered Employee may contact the SAPC, or the MRO, to request a drug or adulterant retest within seventy-two (72) hours from notice of a positive test result by the MRO. The requesting party will pay costs of re-tests in advance.
- e. A drug test result that is positive and is a Diluted Specimen will be treated as positive. All drug test results that are determined to be negative and are Diluted Specimens will require that the employee take an immediate retest. If the retest yields a second negative Diluted Specimens result, the test will be treated as a normal negative test, except in the case of subsection (f).

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- f. If the final test is confirmed negative, then the Employee shall be made whole, including the cost of the actual laboratory re-testing, if any. Any employee who is subsequently determined to be subject of a false positive shall be made whole for any lost wages and benefits, and shall have their record expunged.
- g. The City shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
- h. All information from a covered employee’s drug and/or alcohol test is confidential for purposes other than determining whether this policy has been violated or pursuing disciplinary action based upon a violation of this policy. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Covered Employee or as required by law.

**8. RESULTS**

a. Substance Abuse Prevention and Detection Threshold Levels.

For post-Accident or reasonable suspicion testing where the Covered Employee was operating a commercial motor vehicle, any test revealing a blood/alcohol level equal to or greater than 0.04 percent, or the established California State standard for commercial motor vehicle operations, shall be deemed positive. For all other post-Accident or reasonable suspicion testing, any test revealing a blood/alcohol level equal to, or greater than, 0.08 percent, or the established California State standard for non-commercial motor vehicle operations, shall be deemed positive. Any test revealing controlled substance confirmation level as shown in the chart below shall be deemed a positive test.

CONTROLLED SUBSTANCE *	SCREENING LEVEL	CONFIRMATION LEVEL
Amphetamines	25 ng/ml **	5 ng/ml**
Barbiturates	50 ng/ml***	20 ng/ml***
Benzodiazepines	20 ng/ml***	0.5 ng/ml***
Cocaine	12 ng/ml **	8 ng/ml**
Methadone	50 ng/ml***	10 ng/ml***
Opiates	20 ng/ml**	10 ng/ml **
PCP (Phencyclidine)	10 ng/ml **	5 ng/ml**
THC (Cannabis)	25 ng/ml and 2 ng/ml***	10 ng/ml and 2 ng/ml***
* All controlled substances including their metabolite components. ** SF Fire Department standards ***Industry standards		

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- b. The City reserves the right to discipline in accordance with the chart set forth in Exhibit A for abuse of prescribed and over-the-counter drugs or medications, pursuant to the testing procedures described above, as determined by the MRO.

### **9. CONSEQUENCES OF POSITIVE TEST RESULTS**

For post-Accident or reasonable suspicion, a Covered Employee shall be immediately removed from performing his or her job or, in the alternative, may be temporarily reassigned to work that is not safety-sensitive if such work is available. The Covered Employee shall be subject to disciplinary action, and shall meet with the SAPC, as set forth in Exhibit A, and section 10 below, if the Covered Employee:

1. Is confirmed to have tested positive for alcohol or drugs;
  2. Refuses to Submit to testing; or
  3. Has submitted a specimen that the testing laboratory report is an Adulterated or Substituted Specimen.
- a. If the Union disagrees with the proposed disciplinary action, it may use the grievance procedure as set forth in the MOU, provided, however, that such a grievance must be initiated at the Employee Relations Director step, unless the parties otherwise mutually agree.
  - b. All proposed disciplinary actions imposed because of a positive drug/alcohol test(s) shall be administered pursuant to the disciplinary matrix set forth in Exhibit A. Subject to good cause, the City may impose discipline for conduct in addition to the discipline for a positive drug/alcohol test. The positive test may be a factor in determining good cause for such additional discipline.
  - c. In the event the City proposes disciplinary action, the notice of the proposed discipline shall contain copies of all laboratory reports and any other supporting documentation upon which the City is relying to support the proposed discipline.

### **10. RETURN TO DUTY**

The SAPC will meet with a Covered Employee who has tested positive for alcohol and/or drugs. The SAPC will discuss what course of action may be appropriate, if any, and assistance from which the employee may benefit, if any, and will communicate a proposed return-to-work plan, if necessary, to the employee and department. The SAPC may recommend that the Covered Employee voluntarily enter into an appropriate rehabilitation program administered by the Covered Employee's health insurance carrier prior to returning to work. The Covered Employee may not return to work until the SAPC certifies that he or she has a negative test prior to returning to work. In the event that the SAPC does not schedule a return-to-work test before the Covered Employee's return-to-work date, the SAPC

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shall arrange for the Covered Employee to take a return-to-work test within three (3) working days of the Covered Employee notifying the SAPC in writing of a request to take a return-to-work test. If a Covered Employee fails a return-to-work test, he or she shall be placed on unpaid leave until testing negative but shall not be subject to any additional discipline due to a non-negative return-to-work test. The SAPC will provide a written release to the appropriate department or division certifying the employee's right to return to work.

### **11. TRAINING**

The City or its designated vendor shall provide training on this policy to first-line, working supervisors and up to the Deputy Director level as needed. In addition, all Covered Employees shall be provided with a summary description of the SAPP notifying them of their right to union representation in the event that they are required to be tested.

### **12. LABOR-MANAGEMENT MEETING**

To ensure the success of this Policy, the City shall meet with any union covered by this policy that seeks to meet to address any implementation issues regarding this policy, as follows: between June 1<sup>st</sup> and June 30<sup>th</sup>, any Union, covered under this Policy, may request to meet, and said meeting shall be scheduled to occur by July 31<sup>st</sup>.

### **13. ADOPTION PERIOD**

This Policy shall go into effect on July 1, 2014, or as soon as practicable. (See MOU Article V.H.)

**EXHIBIT A**

**CONSEQUENCES OF A POSITIVE TEST/OCCURRENCE**

Testing Types/Issues	First Positive/Occurrence	Second Positive/Occurrence within Three (3) Years
Post-Accident and Reasonable Suspicion	Suspension of no more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC); SAPC may Recommend Treatment; <sup>1</sup> Return to Duty Test.	Will be subject to disciplinary action greater than a ten (10) working- day suspension, up to and including termination except where substantial mitigating circumstances exist.
Refusal to Test or Alteration of Specimen ("Substituted," "Adulterated" or "Diluted")	Suspension of no more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC); SAPC may Recommend Treatment; <sup>1</sup> Return to Duty Test.	Will be subject to disciplinary action greater than a ten (10) working- day suspension up to and including termination except where substantial mitigating circumstances exist.

<sup>1</sup>. Employee may use accrued but unused leave balances to attend a rehabilitation program.

EXHIBIT B

REASONABLE SUSPICION REPORT FORM

This checklist is intended to assist a supervisor in referring a person for reasonable suspicion/cause drug and alcohol testing. The supervisor must identify at least three (3) contemporaneous indicia of impairment in two separate categories (e.g., Speech and Balance) in Section II, and fill out the Section III narrative. In the alternative, the supervisor must identify one of the direct evidence categories in Section I, and fill out the Section III narrative.

~Please print information~

Employee Name: \_\_\_\_\_

Department: \_\_\_\_\_; Division and Work Location: \_\_\_\_\_

Date and Time of Occurrence: \_\_\_\_\_; Incident Location: \_\_\_\_\_

Section I – Direct Evidence of Drug or Alcohol Impairment at Work

- \_\_\_ Smells of Alcohol
\_\_\_ Smells of Marijuana
\_\_\_ Observed Consuming/Ingesting Alcohol or Drugs at work.

Section II

Contemporaneous Event Indicating Possible Drug or Alcohol Impairment at Work: (Check all that apply)

1. SPEECH:

- \_\_\_ Incoherent/Confused
\_\_\_ Slurred

2. BALANCE:

- \_\_\_ Swaying
\_\_\_ Staggering
\_\_\_ Arms raised for balance
\_\_\_ Reaching for support
\_\_\_ Falling
\_\_\_ Stumbling

3. AWARENESS:

- \_\_\_ Confused
\_\_\_ Lack of Coordination
\_\_\_ Sleepy/Stupor/ Excessive Yawning or Fatigue
\_\_\_ Paranoid
\_\_\_ Cannot Control Machinery/Equipment
\_\_\_ An observable contemporaneous change in the Covered Employee’s behavior that strongly suggests drug or alcohol impairment at work. [Such observable change(s) must be described in Section III below.]

4. APPEARANCE:

- \_\_\_ Red Eyes
\_\_\_ Constricted (small) Pupils
\_\_\_ Dilated (large) Pupils
\_\_\_ Frequent Sniffing

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**Section III – NARRATIVE DESCRIPTION**  
**(MUST be completed in conjunction with Section I and/or Section II)**  
*~Please print information~*

Describe contemporaneous and specific observations regarding the Covered Employee’s symptoms or manifestations of impairment which may include: (a) any observable contemporaneous change in behavior suggesting drug or alcohol impairment; (b) any comments made by the employee; (c) specific signs of drug or alcohol use; (d) recent changes in behavior that have led up to your contemporaneous observations; and (e) the name and title of witnesses who have reported observations of drug or alcohol use. [Attach documentation, if any, supporting your reasonable suspicion determination]

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**Section IV**

In addition to completing the narrative in Section III above:

- For Section I, you will need to identify at least one (1) contemporaneous observations (**direct evident/sign(s) that occurs that causes you to test today**) regarding the manifestations of impairment to initiate a test; or
- For Section II, you will need to identify at least three (3) contemporaneous observations, (**signs that occur that causes you to test today**), in two (2) separate categories, regarding the manifestations of impairment to initiate a test.

Make note of date and time of the incident. Obtain concurrence of second supervisor and record their signature as noted.

**Conduct a brief meeting with the employee to explain why he or she must undergo reasonable suspicion drug and alcohol tests. Escort the employee to the collection site. DO NOT LET THEM DRIVE.**

Print name of first on-site Supervisor Employee Representative \_\_\_\_\_

Signature \_\_\_\_\_ DATE: \_\_\_\_\_

Print name of second Supervisor Employer Representative \_\_\_\_\_

Signature \_\_\_\_\_ DATE: \_\_\_\_\_

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