

**COLLECTIVE BARGAINING AGREEMENT**

**Between**

**TUALATIN EMPLOYEES ASSOCIATION**

**And**

**CITY OF TUALATIN**



**Upon execution to June 30, 2017**

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## **PREAMBLE / RECOGNITION**

**Section 1.** The City of Tualatin (City) recognizes the Tualatin Employees' Association (Association) as the sole and exclusive bargaining agent for all regular full-time, and part-time employees of the City of Tualatin, excluding casual, temporary and seasonal employees, employees represented by the Tualatin Police Officers Association, or employees defined as supervisory or confidential by state statute.

Regular part-time is defined as an employee employed on a regular basis at least twenty (20) hours per week. Temporary, casual, or seasonal employee is defined as an employee appointed by the City to an assignment limited to a period not to exceed 180 consecutive calendar days or 1039 hours in any calendar year. The City may use casual, seasonal, temporary, or supervisory employees to cover ongoing work loads of bargaining unit employees when a regular full-time or part-time employee is on leave, or while the City is making a good faith attempt to fill a vacant position. Ongoing workload shall be defined as year round part-time or full-time work, not including work done by interns or pages such as high-school students or retirees.

If a new classification is added to the bargaining unit by the City, the Association shall be provided with the City's proposed rate of pay and a copy of the job description. That rate will be adopted unless the Association files written notice of its desire to negotiate the rate within 14 calendar days from notification. If a request for negotiations is filed by the Association, the parties shall begin negotiations within fifteen (15) calendar days, subject to ORS 243.698.

In the event the City creates a new position that is supervisory or confidential, the City will provide 14 calendar days notice. If the Association disagrees with the designation of the position, the Association is encouraged to review the job description and duties with the City. The Association may otherwise follow the procedures of the Employment Relations Board regarding bargaining unit designation. The City reserves the right to create job positions and assign duties as directed by the City and the 14 day notice provided does not waive any management rights.

**Section 2.** Unless otherwise indicated, any reference to "days" herein for purposes of computation of time refers to "business days", which excludes Saturdays, Sundays and Holidays. Where physical receipt of notice is required, the date of receipt is not included for purposes of computation of time.

## **ARTICLE 1 – NONDISCRIMINATION**

**Section 1.** The City and the Association shall exercise the terms of the bargaining agreement without regard to race, sex, age, creed, marital status, disability, national origin, religious affiliation, sexual orientation, membership or non-membership to the Association, or political affiliation of all members of the bargaining unit. Sexual harassment shall be

considered a form of sex discrimination. Disputes arising under this provision may be submitted to the City Manager for review or submitted as a grievance.

**Section 2.** Nothing in this Article shall be construed to abridge any employee's right of appeal of alleged discrimination to the Oregon Bureau of Labor and Industries (BOLI) and/or the Equal Employment Opportunity Commission (EEOC), or other state or federal agency charged with enforcing laws on civil, human, and employment rights.

**Section 3.** Inasmuch as both State and Federal law include mechanisms for the resolution of discrimination issues, the Association and City agree that the City may not in any way discriminate against a bargaining unit member for filing a complaint or grievance alleged to be a violation of any statute or regulation, or of the terms of this Agreement.

**Section 4.** The City will provide a work environment that is fair, just, and equal for all employees. If there is no avenue of remedy stated elsewhere in this Agreement and an employee feels that they are being treated contrary to this guarantee, they may initiate the following procedure: The employee may file either a written or oral complaint with Human Resources or the City Manager, and shall be entitled to Association representation of their choice. The complaint will be reviewed for resolution and the employee will receive written notice on any action taken within seven (7) calendar days, not including the day of presentation by the employee. This time limit may be waived or extended by mutual agreement. This complaint procedure shall not be subject to the grievance and arbitration provisions in this Agreement.

## **ARTICLE 2 – STATUS OF AGREEMENT**

The use of article titles, sections or paragraph headings throughout this Agreement are intended for easy reference only and shall not be interpreted and/or implied so as to eliminate or substantially reduce, increase, or in any way modify the terms or conditions thereof.

This agreement shall not be modified in whole or in part by the parties except by an instrument in writing duly executed by both parties.

## **ARTICLE 3 – COMPLETE AGREEMENT/PAST PRACTICES/SEVERABILITY**

This bargaining agreement incorporates the sole and complete Agreement between the Employer and the Association resulting from negotiations held pursuant to the provisions of ORS 243.650 et seq. It is acknowledged that during negotiations which resulted in this Agreement, each and all had the unlimited right and opportunity to make demands and proposals with respect to any subject matter appropriate for collective bargaining and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement.

Therefore, the City and the Association, for the life of this Agreement, each voluntarily and unqualifiedly waive the right, if any, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter contained in this agreement. This agreement shall not be modified in whole or in part except by another written instrument duly executed by the parties. The parties acknowledge the bargaining obligations of ORS 243.698.

If any Article or Section of this Agreement or any amendment thereto should be held invalid by operation of the law, or by any lawful tribunal having jurisdiction, or if compliance with or enforcement of any Article or Section should be restricted by such tribunal, the remainder of this Agreement and addenda shall not be affected thereby, and the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement for such Article or Section, consistent with ORS 243.702.

#### **ARTICLE 4 – MANAGEMENT RIGHTS**

The Association recognizes that the City retains all the customary and exclusive rights, decision-making prerogatives, functions, and authority connected with, or in any way incidental to, its responsibility to manage the affairs of the City or any part of it. The City retains all prerogatives, functions, and rights not specifically limited by the terms of this Agreement.

Without limitation, but by way of illustration, the exclusive prerogatives, functions, and rights of the City shall include the following:

- (A) To direct and supervise all operations, functions, and policies of the City;
- (B) To close or liquidate an office, branch, operation or facility, or combination of facilities, or to relocate, reorganize or combine the work of divisions, offices, branches, operations or facilities for budgetary or other reasons;
- (C) To determine the need for a reduction or an increase in work force and implementation of any decision with regard thereto;
- (D) To establish, revise, and implement standards for hiring, promotion, quality of work, safety, materials, equipment, uniforms, appearance, methods, and procedures;
- (E) To implement new, and to revise or discard, wholly or in part, old methods, procedures, materials, equipment, facilities and standards.
- (F) To assign and distribute work;
- (G) To contract or subcontract work;

- (H) To assign shifts, workdays and work locations;
- (I) To direct the activities of the department;
- (J) To determine the need for and the qualifications of new employees, transfers, and promotions;
- (K) To properly discipline or discharge; and
- (L) To determine the need for additional educational courses, training programs, on-the-job training, and to assign employees to such duties for periods to be determined by the City.

The exercise of any management prerogative, function or right set forth in this Article, which is not specifically modified, limited, or abridged by this Agreement is not subject to the grievance procedure or to bargaining during the term of this Agreement. Nothing herein shall be considered a waiver of the Association's rights to collectively bargain any changes in the status quo that are mandatorily negotiable.

Discretionary Practices: Both parties acknowledge that certain discretionary practices exist within the employer/employee relationship, which do not have a material effect on the conditions of employment and are de minimis, such as the providing of picnic lunches, holiday gift cards, prizes from wellness programs and employee appreciation events, etc. The parties agree that such practices shall continue to exist at the sole discretion of the City.

## **ARTICLE 5 – CONTRACTING/SUBCONTRACTING**

**Section 1.** The Association recognizes that the City retains the right to contract and subcontract work; provided that, before the City may contract work presently and regularly performed by members of the bargaining unit, and provided such contracting will result in the layoff or demotion of current members of the bargaining unit, the City agrees to afford an opportunity to the Association to meet and discuss the effect of such action on the employment of the bargaining unit prior to finalizing and implementing a decision.

**Section 2.** When the City is considering contracting or subcontracting work which will result in the layoff or demotion of current members of the bargaining unit, the City agrees to provide notice to the Association and its President at least thirty (30) calendar days prior to consideration of such action. The City will provide the Association with all relevant information affecting the decision. In this case, the Association shall have the opportunity to submit an alternative proposal to the City Manager for presentation to the City Council. Should the City Council decide to give the issue further consideration, the City will advise the Association President of its timetable for decision-making. Discussion times will be set by the parties in accordance with the City's timetable. Such agreement by the City to meet and discuss shall constitute full and complete satisfaction of any City duty to bargain the decision and/or impact on employees of subcontracting required under ORS Chapter 243.

**Section 3.** The City agrees to give full consideration to all information and recommendations submitted by the Association in a timely manner, prior to making a final decision. Under no circumstances will the City make a final decision to contract out bargaining unit work without meeting with the Association and considering the Association's input.

**Section 4.** If the City makes a decision to contract out, it will place employees displaced by the contracting in vacant City positions, provided, in the City's judgment, they meet the qualifications established by the City.

**Section 5.** When the City considers contracting or subcontracting work currently and regularly performed by members of the bargaining unit, it will provide employees with an opportunity for discussion within the division/department affected. However, the City retains the right to make the final decision as to contract/subcontract work.

## **ARTICLE 6 – CONTINUITY OF SERVICES**

For the purposes of this Agreement, the word "strike" shall be defined as any interruption or cessation of services or other sanctions brought by the Association which the City, in its judgment, decides affects the operations of the City.

**Section 1.** During the term of this Agreement, the Association and the employees, as individuals or as a group, guarantee they will not authorize, initiate, cause, aid, condone, permit, participate in, or join in, any strike, work stoppage, slowdown, sick-out, picketing (except informational picketing), or any other concerted interruptions of City operations and services by employees, so long as the City abides by the terms and conditions of this Agreement.

**Section 2.** In the event of a strike, work stoppage, slowdown, observance of a picket line, picketing (except informational picketing), or any unauthorized work interruption, either on the basis of individual choice or collective employee conduct, the Association agrees that it shall join the City in requiring employees to return to work immediately.

**Section 3.** In the event of a violation of this Article by the Association and/or the employees, the City may selectively, in addition to other lawful remedies, discipline such employees up to, and including, discharge.

**Section 4.** There will be no lockout of employees in the bargaining unit by the City during the term of this Agreement. A lockout is defined as a concerted action by the City to refuse to allow employees to report to the work place as a direct result of a labor dispute arising out of the terms and conditions of this Agreement.

## **ARTICLE 7 - ASSOCIATION SECURITY**

**Section 1.** All employees covered by the terms and conditions of this Agreement shall become members of the Association or shall make payments in-lieu-of-dues to the Association. The City shall notify all newly hired employees of this requirement at the time of employment. The City will deduct Association dues, or in-lieu of dues, from the wages of employees. Any authorization for payroll deductions may be canceled by any employee upon written notice to the City and the Association prior to the fifteenth (15<sup>th</sup>) day of each month, to be effective on the first (1<sup>st</sup>) day of the following month.

**Section 2.** The City agrees to notify the Association of all new hires in the bargaining unit within two (2) weeks after their date of hire, furnishing the Association with the new employee's name, mailing address, telephone number and position for which they were hired.

**Section 3.** Any regular employee who is a member of the bargaining unit and has not joined the Association within thirty (30) calendar days of becoming a regular employee, or who has joined within such time and withdrawn from membership after such thirty (30) calendar days, shall have deducted from their pay by the City a monthly service fee in the uniform amount of the payment in lieu of dues to the Association.

## **ARTICLE 8 - ASSOCIATION REPRESENTATIVES**

**Section 1.** The City agrees that authorized representatives of the Association, who are currently certified in writing with the City by name, and who have notified Human Resources in advance, may have access to those areas of the premises as designated by the City for the purpose of conducting official Association business. Use of any City location deemed a public facility shall be available to the Association on the same basis as any other organization.

**Section 2.** Employees of the City designated as authorized Association representatives shall not conduct, discuss, or otherwise engage in Association business during duty hours unless express permission is received from Human Resources and/or the employee(s) immediate supervisor(s). However, where such representative(s) meet with representatives of the City for the purpose of the procedural processing and resolution of grievances, they shall do so without loss of pay.

Paid time may be granted to employees on the Association negotiations team, the team to be comprised of no more than four (4) members and Association representative(s), when the parties mutually agree to meet during duty hours for the purpose of obtaining a successor agreement. In the event that the majority of workers in any division were chosen to serve on the Association's negotiating team, then negotiating sessions will be scheduled in order to minimize any negative impact on the operational needs of the division.

**Section 3.** The City shall provide and allow use of reasonable bulletin board space for the Association to communicate with employees. The Association shall be entitled to the use

of one (1) bulletin board in each building of the City, for display of Association information. It shall be the responsibility of the Association to maintain the bulletin board space in a neat and orderly fashion. The City shall continue to provide a reasonable space for the Association to maintain their Association filing cabinet.

**Section 4.** The City agrees to allow the executive board of the Association to use designated City equipment for the purpose(s) of conducting Association business under the terms of this Collective Bargaining Agreement, including but not limited to, phones, computers, printers, fax machines and copy machines. The Association agrees to reimburse the City for the use of any and all of the above-listed City equipment according to the City of Tualatin's fee schedule. The Association understands they have no expectation of privacy while using City equipment in this manner.

## **ARTICLE 9 – DISCIPLINARY ACTION**

**Section 1.** The City reserves the right to discipline any employee, provided that no employee shall be disciplined without just cause. For purposes of this Agreement, "just cause" shall be defined as a cause reasonably related to the employee's ability to perform required work including, but not limited to, competence as an employee, violations of work rules, regulations or written policies, and such other factors as are commonly held by arbitrators to comprise just cause. This Article shall not apply to disciplinary action involving probationary employees. (note: all days here are business days)

The City recognizes that just cause requires that any allegation, which may result in an economic sanction or termination, will be investigated by an uninvolved person who is not a witness to the facts of the allegation.

**Section 2.** It is recognized by the parties that each situation calling for possible disciplinary action is unique to its particular circumstances and that appropriate disciplinary action will be considered in the context of such circumstances. Disciplinary action may include termination, demotion, reduction in pay, suspension without pay, or written reprimand, but does not include matters of routine supervisory counseling or verbal warning. A supervisor can levy discipline up to discharge. Disciplinary actions placed in a personnel file will be clearly marked as such.

Note: Verbal warnings, even if reduced to writing, or similar supervisory counseling, are not considered official disciplinary action and therefore, shall not be placed in the employee's personnel file. They may be maintained in supervisory files for yearly evaluations and are not subject to the grievance procedure. Supervisory files will be purged or considered stale upon completion of the yearly evaluation.

**Section 3.** Disciplinary action is usually progressive in nature, but may be imposed at any level if supported by just cause and based upon the seriousness of the offense and the particular circumstances of the employee.

- (A) Disciplinary actions will be levied in a manner that is least likely to embarrass the employee before other employees and the public, and in compliance with the due process steps outlined below.
- (B) Any employee may be immediately suspended with pay pending an investigation and completion of the due process steps if the employee's continued presence on the job will constitute a safety hazard to them or to other employees, or if there is an accusation of criminal conduct.
- (C) If suspension without pay is the progressive disciplinary action chosen to be administered by the City, the City and the Association on behalf of the employee, by mutual agreement, may choose to accept a reduction in pay equivalent to the economic impact of the suspension without pay.
- (D) The reduction in pay option shall be agreed to in writing and shall set out the amount of reduction, the term of reduction and the limits of the reduction.

**Section 4. Due Process.**

- (A) In the event the City intends to interview an employee alleged of misconduct that could result in a potential disciplinary action, the City will provide the employee and the Association at least 48 hours written notice prior to the interview. The notice will include facts sufficient, including the alleged date, time and place of any complaint or allegation under investigation. Employee will be permitted to have an Association representative and/or Association attorney present, such that attendance does not unreasonably delay the scheduled interview.
- (B) Due process shall require the following: Before the City imposes disciplinary action on an employee, the employee will be served with a written notice as follows:
  - (1) The employee shall be advised that disciplinary action is being considered;
  - (2) The specific charges or performance deficiencies will be identified; and
  - (3) The employee will be advised of his or her right to meet with the Supervisor and respond to the charges.
  - (4) The employee is entitled to an Association representative and/or Association attorney of the employee's choice at this meeting.
  - (5) A meeting shall be scheduled upon written request of the employee or the Association within ten (10) days after receipt by the employee of the notice. Failure to request a meeting within such period shall constitute waiver of the right to hearing. At the hearing the employee shall have the opportunity to present written and/or oral evidence, which may refute and/or mitigate the reasons for the disciplinary action.

- (6) After the above referenced meeting and any additional investigation (by the Supervisor as may be deemed appropriate based on the employee's response) has been completed, the Supervisor shall provide the employee with written notice of such decision. This written decision shall be provided within twenty (20) days following completion of the meeting.
  - (7) Nothing in this Article shall be construed to prevent or prohibit the City from discussing operational matters informally with employees.
- (B) If the supervisor's decision is to recommend discharge of the employee, the following procedure will apply:
- (1) The Supervisor shall present the facts and findings with recommendation to the Department Manager. The Department Manager will review the materials and concur or remand the Supervisor's recommendation. If the Department Manager concurs with the Supervisor's recommendation, it will be so noted and the materials will be sent to the City Manager.
  - (2) The employee shall be provided with written notice by the City Manager of the charges or reasons for separation. Said notice shall also inform the employee that he or she has the right to a hearing concerning the reasons for separation prior to the discharge becoming final. A copy of the notice will be provided to the Association.
  - (3) If the employee desires a pre-dismissal hearing, he or she shall submit a written request for same to the City Manager within ten (10) days after receipt of the separation notice.
  - (4) The City Manager shall schedule a pre-dismissal hearing within ten (10) days after receipt of the employee's written request.
  - (5) The employee shall have the right to an Association representative at such hearing.
  - (6) At the hearing, the employee or representative shall have the opportunity to present written or oral evidence, which may refute the reasons for separation. A recording may be made of the hearing by mutual agreement of the parties.
  - (7) Within ten (10) days after the hearing, the City Manager shall provide the employee with a written decision concerning the separation.

## **ARTICLE 10 - GRIEVANCE PROCEDURE**

**Section 1.** This procedure shall be the exclusive means of resolving disputes arising under this Agreement. For the purpose of this Agreement, a grievance is defined as any of the following:

- (A) A claim by an employee covered by this Agreement concerning the meaning or interpretation of a specific provision or clause of this Agreement as it affects such employee;
- (B) A claim by the Association concerning the interpretation or application of a specific provision or clause of this Agreement as it affects a specific member of the Association.
- (C) All disciplinary grievances shall be initiated, within the time limit prescribed in Section 3, at Step 2 of this procedure.

In the event of a grievance concerning a disciplinary issue, an individual employee who does not wish the Association to pursue a grievance (under Section 1(b) hereof) may notify the Association in writing at any time. A grievance which is resolved by an individual's exercise of the right to not pursue a grievance shall not constitute a precedent with regard to the substance of the discipline and/or grievance in question.

**Section 2.** The City and the Association desire to adjust grievances informally -- both supervisors and the grieving party(ies) are expected to resolve problems as they arise. If not resolved informally between the grieving party and the supervisor, the grievance shall be put in writing which shall include:

- (A) statement of the grievance and relevant facts;
- (B) provision of the bargaining agreement violated; and
- (C) remedy sought.

**Section 3. Grievance Steps.** The following steps shall be followed in submitting and processing a grievance: (note: all days here are business days)

Step 1 The aggrieved employee or the Association shall present the grievance in writing and identify it as a grievance to the immediate supervisor within ten (10) days of its occurrence, or the employee's knowledge thereof, not including the day of the occurrence. The supervisor shall give a reply in writing within five (5) days of the day of presentation of the grievance, not including the day of presentation.

Step 2 If the grievance is not settled at Step 1, the employee and/or the Association shall submit the grievance in writing to the department manager, within ten (10) days following the supervisor's reply, not including the day of reply, or within 10 days from issuance of a discipline. The department manager shall issue a response in writing within ten (10) days from the date of presentation, not including the day of presentation, after attempting to resolve the matter.

Step 3 If the grievance is not settled at Step 2, the employee and/or the Association shall present the grievance to the City Manager or designee within ten (10) days from the date of response from the department manager, not including the date of response. The City Manager or designee shall attempt to resolve the grievance and report in writing the decision within ten (10) days from the date it is submitted to the City Manager, not including the date of presentation.

Step 4 If the grievance is not settled in Step 3, the Association may file a written notice of intent to arbitrate the grievance with the City Manager within ten (10) days of the date the decision of the City Manager is received, not including the date of receipt. The parties shall request a list of eleven (11) Oregon and/or Washington arbitrators from the Employment Relations Board. If the parties cannot mutually agree to an arbitrator, they will alternately strike names and the last one (1) will be the arbitrator.

**Section 4.** The arbitrator shall set a hearing date and shall render a decision within one month of the conclusion of the hearing. The power of the arbitrator shall be limited to interpreting this Agreement, determining if it has been violated, and to resolve the grievance within the terms of this Agreement. The arbitrator has no authority to add to, delete from, amend, modify any terms of this Agreement or make a finding in violation of law. The decision of the arbitrator shall be final and binding on both parties. The arbitrator's remedy shall be limited to a period of ninety (90) calendar days prior to the filing of the grievance. Each party shall be responsible for costs of presenting its own case to arbitration. Costs incurred in connection with the arbitration hearing will be divided equally, provided that the losing party shall be responsible for the arbitrator's fee and expenses.

**Section 5.** If at any step of the grievance procedure the grievant fails to comply with the time limits or procedures set forth in this Article, the grievance shall be deemed abandoned and non-arbitrable. If at any step of the grievance procedures the City fails to issue a response within the time limits set forth in this Article the grievance will be advanced to the next step. Time limits referred to in this Article may be waived or extended by mutual Agreement in writing. In the event the parties dispute timeliness issues of the grievance process, the arbiter must decide the timeliness issue first, as ruled from the bench, before the merits of the grievance can be heard.

**Section 6.** An authorized Association representative and employee(s) who are directly involved in a particular grievance shall be allowed to attend meetings with representatives of the City without loss of regular pay. The Association shall advise the City as to which employee(s) will attend such meeting. It shall be the responsibility of each individual employee to provide advance notice of the meeting to his/her immediate supervisor.

## **ARTICLE 11 – SENIORITY**

**Section 1.** For the purpose of this Agreement, seniority shall be defined as an employee's length of continuous service with the City from the last date of hire less any adjustments due to leaves of absence without pay for more than thirty (30) calendar days, excluding leaves protected under State and Federal law.

**Section 2.** If an employee has a break in service due to layoff or other unilateral City action and that break does not exceed twenty-four (24) months or the employee's length of service, whichever is less, all previous seniority and rates of vacation accrual shall be restored.

## **ARTICLE 12 - PROBATIONARY PERIODS**

**Section 1.** All original appointments shall be tentative and subject to a probationary period of not less than six (6) consecutive months service. Promotional appointments and lateral transfers shall be subject to a probationary period of six (6) months.

**Section 2.** In unusual cases where the responsibilities of a position are such that a longer period is necessary to demonstrate an employee's qualifications, the probationary period may be extended; however, no initial or promotional probationary period shall be extended beyond nine (9) months total. The employee shall be notified in writing of any extension and the reasons therefore.

**Section 3.** Upon satisfactory completion of the probationary period, the employee shall be considered as having satisfactorily demonstrated qualifications for the position, shall gain regular status, and shall be so informed by the appropriate supervisor.

**Section 4.** During the initial probationary period, an employee may be terminated at the discretion of the City. Termination of employment during the probationary period is not subject to the grievance process under this agreement or under City policy.

**Section 5.** In the case of promotional appointments or lateral transfers, the promoted employee may be returned at any time during the probationary period to his or her former classification without grievance rights or may elect to return to their previous classification and rate of pay, subject to the following conditions:

When an existing employee moves from a higher classification to a lower or new classification, and this move is a result of:

- (A) the City's decision to return a promoted employee, whether still in the bargaining unit during his or her probationary period, or in a management position, to the employee's previous position, or if no longer available, a vacant position, the employee's pay shall be returned to the original rate of pay prior to the promotion.

(B) a promoted employee, whether still in the bargaining unit during his or her probationary period, or in a management position, choosing to return to a previous position, if still available, or requesting transfer to a vacant position, the employee's rate of pay shall be returned to the original rate of pay prior to the promotion, or the rate of any requested vacant position.

## **ARTICLE 13 - ASSIGNMENT, PROMOTION AND TRANSFER**

**Section 1.** Bargaining unit vacancies that are to be filled on other than a temporary basis shall be posted on departmental bulletin boards for at least ten (10) days prior to filling, and a copy of such openings provided to the Association President. Such notice shall include a statement of all job-related qualifications required for the position by the City.

Based upon mutual agreement between the Association President and Human Resources, the posting period may be waived whenever the position is posted in-house only and all qualified employees have been provided an opportunity to apply. Employees wishing to be considered for such posted positions shall submit the application materials required of all applicants. All applicants will continue to receive points for current status and seniority as an employee of the City. Eligibility lists may be utilized, at the discretion of the City, to fill future vacancies for up to one (1) year, provided the vacancy is posted internally for at least five (5) days prior to filling the position.

**Section 2.** Employees in the bargaining unit may request reassignment and/or a transfer to another position in the City. Such requests for transfers shall be in writing and shall be submitted to the City Manager or designee. Such requests for transfer shall not take precedence over those who apply in accordance with Section 1.

**Section 3.** Bargaining Unit employees who apply for transfer or promotion to another position shall receive an interview, if qualified, according to the City's standard criteria.

**Section 4.** Any employee who is denied an interview or a position will be given written specific reasons for such denial as soon as feasible after the recruitment notice closing date.

**Section 5.** When an employee is promoted to a classification with a higher salary range, that employee will receive a salary increase equal to at least 7.5%, so long as it does not exceed the top of the regular salary range of the higher classification.

**Section 6.** When an employee is demoted or chooses to transfer to a classification with a lower salary range, that employee's salary shall be either the maximum of the regular range of the new classification or the employee's current rate of pay, whichever is lower.

## **ARTICLE 14 – WORKING OUT OF CLASSIFICATION**

**Section 1.** Whenever the City assigns an employee the majority of duties in a higher classification for one full work day or more, that employee shall be paid at the minimum of the salary range of the higher classification or premium pay of seven and one-half percent (7-1/2%) over his or her current salary rate of pay, whichever is more. Out of classification time will be designated on the employee's timesheet.

**Section 2.** An employee voluntarily performing duties out of classification for training or developmental purposes shall be informed in writing, and it shall be mutually agreed to by the supervisor and the employee. The notice shall state the purpose and length of the assignment. During the training there shall be no extra pay for the work for the first thirty (30) consecutive or non-consecutive workdays. A copy of the notice shall be placed in the employee's personnel file.

## **ARTICLE 15 – ON-THE-JOB TRAINING**

Whenever a position is temporarily vacant, the City, if filling the vacancy, will give consideration to utilizing other City employees to fill the vacancy to the extent deemed by the City to be practical and efficient.

The City will make efforts to provide on-the-job training opportunities within and between departments to the extent the City determines such on-the-job training to be efficient and practical.

## **ARTICLE 16 - HOURS OF WORK**

**Section 1.** The regular workweek schedule shall normally be five (5) eight (8) hour days or four (4) ten (10) hour days, exclusive of lunch periods as designated by the City. Other workweek schedules may be implemented when mutually agreed, based upon parameters established by management. Regular part-time employees shall be scheduled to work a portion of any of the above-specified schedules.

**Section 2.** Except for the Library, and to the extent consistent with the operational needs and requirements of the City, the City shall normally schedule work on a Monday through Friday basis. Other work schedules may be implemented. Employees who are assigned other work schedules shall be provided a minimum of two (2) consecutive days off except when mutually agreed otherwise, based upon parameters established by management.

Library schedules shall be posted semi-annually (with established days off) and employees shall bid their schedules on the basis of seniority. Employees shall have five (5) days to complete the bidding process. Except in cases of emergency or mutual agreement of the employee, employees shall not have their schedule changed during the bid cycle.

**Section 3.** All regular employees shall be scheduled to work on a regular work shift, and each shift shall have regular starting and quitting times. Employees shall be notified of their work schedule, including the employee's workdays and hours.

Shift change notice: The regular work schedule shall not be varied unless the affected employee is given ten (10) days notice of the schedule change except in situations where a state of emergency is declared by the City. In the event the City changes a work schedule with less than ten (10) days notice and more than one employee within the classification is qualified to do the work, the assignment shall be offered to volunteers on the basis of seniority, and if no volunteers, assigned to the least senior qualified employee within the classification. In the event a one-day change in schedule is necessary for attendance to an "All City employee event", only a minimum of five (5) days notice is necessary. For the engineering and building division, the City may adjust an employee's schedule with at least 48 hours notice for special circumstances related to meeting operational need for inspections.

In the event the City changes a work schedule with less than the above required notice, employees will be paid at the rate of one and one-half (1½) times their regular rate for all hours worked outside of their regular work schedule. (i.e. regular shift is 8 am – 5 pm; shift changed to 12 pm – 9 pm; paid at 1½ times regular rate for 5 pm – 9 pm.) For regular, part-time employees, if the regular work schedule is changed with less than the above required notice and mutually agreed upon in writing, the hours outside of the regular work schedule will be paid at straight time, subject to FLSA overtime and Article 17, section 1 if applicable.

For the purposes of this Section, an emergency is defined as an unforeseen combination of circumstances calling for immediate action, which requires additional personnel resources. Use of paid leave by an employee, including sick leave, shall not be considered an emergency.

**Section 4. Alternate Work Schedule.** Employees may request in writing an alternative work schedule subject to Department Head approval. An "alternate" work schedule shall be equal in total hours worked in the pay period to that of a regular work schedule, subject to FLSA overtime provisions. Additionally, an "alternate" work schedule may include a number of hours in a day or days per week in which the employee performs work at a location separate from City facilities through telecommuting or other methods. Alternate work schedules are not subject to daily overtime provisions or Article 17.1

An "alternate" work schedule shall not be in effect unless mutually agreed upon in writing in advance by the individual and the affected employee's supervisor and/or department manager. If the City denies the request, the employee will be given written notice of the reasons. Denial of a flex schedule is not subject to the grievance process.

**Section 5.** The parameters discussed in this Article are the days and hours of operations as well as the number of employees and any special skills or service levels necessary to meet the operations.

**Section 6. Rest Periods.** All employees shall be granted a paid rest period of fifteen (15) minutes in every four (4) hours working time or major fraction thereof. Breaks will be scheduled in such a manner that operations of the City will not be disrupted. Employees in the Operations Department who are routinely assigned field work may schedule their rest periods at the beginning and/or end of their meal period.

Employees who are requested to work through their breaks or do so based on operational necessity as approved by their supervisor have the option of taking such break at another time during the day or being paid at time and one-half (1½) or receiving compensatory time for that time in addition to all regular pay for that day.

**Section 7. Lunch Periods.** Regular full-time employees shall be granted an unpaid lunch period of at least one-half (½) hour and no more than one (1) hour each work shift except in emergency situations. Within the above time limit, the duration of the lunch period will be determined by each department in accordance with scheduling needs. The lunch period shall be granted during the middle of the work shift to the extent consistent with the operating requirements of the City. Employees who are requested to work through their designated lunch period, or do so based on operational necessity as approved by their supervisor and are unable to take an earlier or later lunch period and work more than eight (8) hours in one day (ten (10) hours if working a 4/10 schedule) have the option of being paid at time and one-half (1½) or receiving compensatory time for that time.

If a supervisor cannot schedule an employee's lunch period prior to two (2) hours before the end of the shift, and overtime is not approved, the employee shall be allowed to apply his or her allotted lunch period to the end of his or her work shift, and therefore leave early.

## **ARTICLE 17 – OVERTIME**

**Section 1.** Unless an employee is working an alternate work schedule as defined in Article 16, time assigned by the City in excess of an eight (8) or ten (10) hour day (where the City has initiated a 4/10 work schedule) or forty (40) hours in a work week shall be considered as overtime and shall be compensated at one and one-half (1½) times the employee's regular rate of pay as shown on the salary schedule. Paid leaves, such as sick, vacation, holiday, and compensatory time off, count as hours worked.

Operations Department: Evening and Weekend overtime shifts: Evening and weekend shifts shall be offered first to employees who volunteer within the division. If there is an excess of volunteers in the division, the most senior volunteers qualified to do the work within the Division will be assigned to the shift. If there is a lack of volunteers in the Division, the shifts will be offered next to qualified employees who volunteer within the Department, by seniority. Thereafter, if there is a lack of volunteers, the least senior employees(s) qualified to do the work within the division will be assigned to the shift. Overtime for evening and weekend shifts are subject to Section 1 above.

**Section 2.** Overtime shall be computed to the nearest fifteen (15) minutes. Personal clean-up time shall not count for purposes of overtime compensation.

**Section 3.** Employees shall receive double time for all hours worked beyond sixteen (16) consecutive hours.

**Section 4.** An employee may be directed and assigned by the City to work in addition to the employee's regular work schedule. The City will attempt to assign overtime to volunteer employees qualified within their classification within their Division to do the work on a seniority basis. Mandated overtime shall be in inverse order of seniority among qualified employees within their classification within their Division.

**Section 5.** An employee may elect to be compensated for overtime worked as compensation or by accruing compensatory time off. Compensatory time shall be earned at one and one-half (1½) times the overtime hours worked but shall not exceed a maximum of sixty (60) hours. Accrued compensatory time in excess of sixty (60) hours shall be paid at the employee's regular rate of pay. At the conclusion of the fiscal year, the City will pay each employee's accrued compensatory time in excess of forty (40) hours. A maximum of forty (40) hours compensatory time may be carried forward into the following fiscal year.

Upon termination of employment, an employee shall be paid for unused compensatory time at a rate of compensation not less than: 1) the average regular rate received by the employee during the prior three years; or 2) the employee's final regular rate of pay whichever is higher.

Scheduling the use of compensatory time shall be by mutual agreement of the employee and the supervisor in accordance with the Fair Labor Standards Act or controlling court cases:

- (A) Requests to use compensatory time will be granted within a reasonable time of the request, provided it does not unduly disrupt the Department's operation or result in the need to fill the opening with overtime.
- (B) The reasonableness of the request for compensatory time off will be judged on a case-by-case basis, considering such factors as normal work schedule, anticipated workloads, emergency requirements and the availability of qualified other staff.
- (C) The request may be considered unduly disruptive if it would impose an unreasonable burden on the Department's ability to provide services of an acceptable quality and quantity for the public during the time period requested.

## **ARTICLE 18 – SPECIAL COMPENSATION CONSIDERATIONS**

**Section 1. Stand-By Duty.** Stand-by time is defined as any time an employee is required to carry a mobile device and to remain in the City-prescribed Portland metropolitan area, for the purpose of being called to duty while off duty. Standby procedures are attached to this Agreement and incorporated herein.

- (A) Stand-by duty normally will be rotated among Utility Technician II's and Parks Maintenance Technician II's on a weekly basis;
- (B) No assignment of pager duty will exceed one (1) calendar week, except in emergencies.
- (C) Two (2) employees may agree to trade pager duty assignments by mutual agreement and advance approval of the appropriate supervisor.
- (D) Employees will be paid an additional ten (10) hours pay (which may be accrued as compensatory time), at the employee's regular rate for each seven (7) day assignment on the mobile device and an additional ten (10) hours pay (which also may be accrued as compensatory time), at the employee's regular rate if a recognized holiday as provided by Article 36, Section 1, A-J occurs during the assignment. Payments will be through regular payroll, subject to IRS regulations.
- (E) For the Network Administrator, when assigned to standby, the employee will be paid an additional \$100 per week or as prorated. Any time the employee is called back to work the employee will be paid a minimum of (1) hour pay at the rate of one and one-half (1½) times their regular rate for all time spent working outside of their regular work schedule. The provisions of this section will not result in the pyramiding of overtime.

**Section 2. Call-Back.** Call-back is defined to be when an employee has completed the workday and departed the City's premises upon completion of said day and is then called back to work earlier than two (2) hours before the start of the employee's next regular shift.

**Section 3. Compensation.** Any time an employee is called back to work he or she shall be paid a minimum of two (2) hours pay at the rate of one and one-half (1½) times his or her regular rate for all time spent working outside of their regular work schedule. This minimum shall not apply more than once when an employee is paged out or called back more than once within a two (2) hour period. The provisions of this section will not result in the pyramiding of overtime.

**Section 4. Meal Allowance.** If an employee is called back to work for at least four (4) hours before the regular work shift, they will be paid a meal allowance of six (\$6.00) dollars. If any employee is required to work for at least four (4) hours after the regular work shift, the employee will be paid a meal allowance of ten (\$10.00) dollars. If an employee in the Operations Department works overtime on the weekend or a Holiday, the employee will be paid a meal allowance of six (\$6.00) dollars if they work at least four (4) hours. If the

employee works past eight (8) hours, the employee will be paid a meal allowance of ten (\$10.00) dollars.

**Section 5. Split Shift.** Any employee whose regular work shift is consecutive hours and is required to split his or her work shift will be paid time and one half (1½) for all hours worked until return to complete a full shift.

The City may create new positions regularly scheduled to work a "split shift." In such instances, the employee filling that position shall not be eligible for the time and one half (1½) provision of this section.

**Section 6. Bilingual Premium** An employee who is fluent in reading and speaking Spanish or another language deemed needed (based on customer's being served) and appointed by their department to provide the service shall receive an additional five (5%) percent of regular base pay. The City will determine what constitutes satisfactory proof of certification for fluency in reading and speaking.

**Section 7. Public Transportation Incentive** For those employees electing to utilize public transportation to commute to and from work, the City shall reimburse fifty percent (50%) of the cost of a monthly pass or for a "multi-punch pass" for Tri-Met services. This provision does not apply to individual tickets or packets.

## **ARTICLE 19 – ATTENDANCE**

**Section 1.** Employees shall be in attendance at their work in accordance with provisions regarding hours of work, holidays and leave of absence.

**Section 2.** An employee shall not be absent from work for any reason other than those specified in this bargaining agreement without making prior arrangements with his or her supervisor. Unless such prior arrangements are made, an employee, who for any reasons fails to report to work, shall make a sincere effort to immediately notify his or her supervisor of the reason for being absent. If the absence continues beyond the first day, the employee shall notify the supervisor on a daily basis unless other arrangements have been made with the supervisor.

**Section 3.** Any unauthorized absence of an employee from duty shall be deemed to be an absence without pay and may be cause for disciplinary action.

**Section 4.** As an essential source of emergency staffing during bad weather or other emergencies, employees shall be required to be at work at their usual working time or a schedule determined by the City. In addition, employees should be prepared to report to work at the earliest possible time during non-working hours when requested to assist in case of emergencies or system malfunctions.

## **ARTICLE 20 – MISCELLANEOUS**

**Section 1. Personal Business.** Only essential personal business may be conducted during working hours and then only in a manner, which does not disrupt the operations of the division or department. Employees should endeavor to conduct such business on their lunch or break periods.

**Section 2. Employee Payments.** Employees shall be responsible to make timely payment of any moneys owed to the City.

**Section 3. Inclement Weather.** The parties agree to rely on the City's Inclement Weather Policy. To the extent that a provision of the City's policy conflicts with a specific provision of this contract, the specific provision of this contract shall apply.

**Section 4. Outside Employment.** The parties agree to rely on the City's Outside Employment Policy. To the extent that a provision of the City's policy conflicts with a specific provision of this contract, the specific provision of this contract shall apply.

**Section 5. Residence Requirement.** Residency with the City shall not be a condition of initial appointment or continued employment. Due to the type of assignment, certain employees may be required to maintain a telephone. Such employees will be given ten (10) days written notice by the City if such a requirement will be instituted. Each employee will provide a current telephone number and residence address to the City where the employee may be contacted on an emergency basis.

**Section 6: Fitness Incentive:** Employees who wish to join a health club or organization of any type will be reimbursed once per lifetime up to a maximum amount of \$100 towards their initial membership fee. It shall be the responsibility of the employee to keep their monthly dues/fees current. If the employee fails to keep the membership current, the City will not reimburse another membership payment.

## **ARTICLE 21 – RESIGNATION**

To resign in good standing, an employee shall give the City Manager or designee not less than ten (10) working days notice prior to such resignation unless the City Manager or designee agreed to permit a shorter period of notice because of extenuating circumstances. The notice of resignation shall be in writing and shall contain the reasons for leaving the City service.

Failure to comply with this section shall be entered in the employee's service record and may be cause for denying future employment by the City.

## **ARTICLE 22 - PAY ADMINISTRATION**

**Section 1.** The City will make good faith efforts to pay employees on a bi-weekly basis.

**Section 2.** Additional pay advances may be approved by the City Manager or designee, subject to applicable withholdings.

**Section 3.** On no less than two (2) months advance written notice, the City may modify the existing payroll system, provided that employees will be paid no less frequently than each month.

## **ARTICLE 23 – TRAVEL EXPENSES**

Association members shall comply with the City's Travel Policy as in effect December 18, 2012. To the extent that a provision of the City's Travel Policy conflicts with a specific provision of this contract, the specific provision of this contract shall apply.

## **ARTICLE 24 - CLOTHING AND EQUIPMENT**

**Section 1.** The City agrees to continue its current practice of providing protective clothing and equipment. Employees who are required to wear uniforms shall be furnished such uniforms by the City.

**Section 2.** Each fiscal year the City will provide a safety shoe/boot reimbursement of up to one hundred fifty dollars (\$150.00) for employees regularly assigned to non-field crew classifications identified below and up to two hundred fifty dollars (\$250.00) for employees regularly assigned to field crew classifications requiring special footwear, in accordance with the following:

- (A) Classifications eligible for the \$150 reimbursement are:
  - Associate Planner (Architectural Review)
  - Assistant Planner (Architectural Review)
  - Engineering Associate (non water quality facility)
  - Project Engineer
  - Parking Enforcement Attendant
  - Property Evidence Technician
  
- (B) Classifications eligible for the \$250 reimbursement\* are:
  - Building Construction Inspector I and II
  - Community Services Officer
  - Engineering Associate (water quality facility)
  - Engineering Technician I and II
  - Facilities Maintenance Technician
  - Fleet Technician I & II
  - Operations Maintenance Technician
  - Parks Maintenance Technician I & II
  - Utility Technician I & II
  - Warehouse/Inventory Control Technician

\* For classifications under section (B) and upon reimbursement for shoes/boots, an employee may use any remainder of the yearly amount, if any, for the purchase of work related shirts, jeans or socks.

- (C) The City Safety Committee shall develop guidelines for shoes/boots appropriate for each classification. Employees must purchase shoes/boots, which meet these guidelines and present a paid receipt to be eligible for reimbursement. This reimbursement may also be used for repair of existing approved shoes/boots, again requiring a paid receipt to be eligible for reimbursement.
- (D) The purpose of this provision is to provide safer working conditions. The City may require employees in these classifications to limit the use of these shoes/boots to City working hours and may require their use as a condition of employment. The City will arrange for a vendor to bring safety boot selections to the City and will allow employees City time to select their footwear. Employees are responsible for their own purchases. If an employee chooses to purchase footwear elsewhere it will be done on their own time.
- (E) Any yearly reimbursement amounts provided in this Article will not be carried over from year to year.

**Section 3.** The City shall furnish suitable rain gear and safety clothing for classifications requiring this clothing.

<b><u>Utility Technician I &amp; II, Parks Maintenance Technician I &amp; II</u></b>	<b><u>Fleet Technician I &amp; II</u></b>
hazardous chemical/waste protective clothing ear and eye protection gloves reflective vest rain jacket, pants and boots hard hat	ear and eye protection reflective vest rain jacket, pants gloves hard hat
<b><u>Building Construction Inspectors I &amp; II</u></b>	<b><u>Associate Planner (A/R) Parking Enforcement Attendant</u></b>
rain jacket, pants and boots hard hat	rain jacket, pants and boots

<b><u>Engineering Technicians I &amp; II Project Engineer Community Services Officer</u></b>	<b><u>Warehouse/Inventory Control Technician Property Evidence Technician Facilities Maintenance Technician</u></b>
reflective vest	hard hat

rain jacket, pants, and boots hard hat	gloves ear and eye protection
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**Section 4.** The City will furnish coveralls for all Utility Technicians, Park Maintenance Technicians, Property Evidence Technicians and Fleet Technicians. Each employee will receive two (2) pairs and the City will have the coveralls cleaned once each week. Where the current practice is that more than two (2) pairs of coveralls are provided, the current practice will continue.

**Section 5.** The City will make available to all Operations employees a computer, located in a convenient location of the City's choice, so that employees may have access to the City intranet for work related purposes.

**Section 6.** Parks Maintenance Tech II and Utility Technician workers will be provided City issued cell phones to be utilized in the performance of their job. Use of phones are subject to City Policy.

**Section 7.** The City shall provide and replace as needed, but no more than once annually, umbrellas to those employees required to park their personal vehicles in the Green Lot.

**ARTICLE 25 - PERSONNEL RECORDS**

**Section 1.** The City, upon twenty-four (24) hours advance written notice, shall provide an employee, and if so indicated in the request, a representative of the employee, the opportunity to review his or her personnel file. Copies of the contents of this file requested by the employee shall be provided at his or her own expense.

**Section 2.** Human Resources shall maintain the official personnel file. Supervisors may maintain working files, which contain information necessary for them to properly and fairly evaluate an employee's performance.

**Section 3.** A disciplined employee shall receive a copy of any written disciplinary action placed in that employee's personnel file. The disciplined employee shall also sign the disciplinary notice, provided the following disclaimer appears on the notice:

"Employee's signature confirms only that the supervisor or City representative has given a copy of the material to the employee. The employee's signature does not indicate agreement or disagreement with the contents of this material."

An employee may include an explanatory statement for the personnel file in answer to any disciplinary action imposed.

**Section 4.** Disciplinary notices and any response written by the employee shall be removed at the end of twenty four (24) months, provided there is no subsequent disciplinary action either over the same or a similar issue taken during the intervening period of time. To the extent such disciplinary notices are required to be retained by Administrative Rule after the expiration of the 24 months stated above, they shall be removed from the personnel file, sealed and destroyed in accordance with the Administrative Rule and shall not be used for the purposes of progressive discipline, but may be used to defend against a claim of disparate treatment.

**Section 5.** Employees shall receive a copy of any commendation placed in their personnel files. Commendations shall remain a part of the files for at least twenty-four (24) months.

**Section 6.** Employees shall notify Human Resources immediately of any changes in address, telephone number or record of immediate family. The Employer agrees to give copies of such notices to the Association President if requested.

## **ARTICLE 26 – CLASSIFICATION DESCRIPTION**

**Section 1.** Each position will be assigned to the appropriate classification on the basis of its knowledge, skills, and abilities.

**Section 2.** The City reserves the right to determine and modify the assignment of duties to individual positions, decide allocation of individual positions to classifications, and develop, modify, and abolish classifications.

**Section 3.** The City will maintain written classification descriptions for each position in the City and make available a copy to the incumbent and the Association. The City will also provide an assignment addendum identifying job duties to employees as assigned.\* The City reserves the right to assign employees within their classification at the City's discretion. Employees, upon City request, shall review their classification descriptions and/or assignment addendum and notify their immediate supervisors in writing of any discrepancies they feel exist.

*\* City will make best efforts to provide the addendums within 24 months of execution of this agreement.*

**Section 4.** An employee may request a review of his or her classification description or assignment addendum if the employee feels the description no longer fits the duties of the position. The employee and the supervisor will develop appropriate changes.

**Section 5.** The employee shall submit the classification description or assignment addendum showing the desired changes to his or her supervisor and Department Manager (if other than the employee's supervisor). If approved, it will be forwarded to Human Resources for review. After review by Human Resources, the revised classification description or assignment addendum shall be submitted to the City Manager for consideration. If the revision is approved by the City Manager, a copy of the revised

classification description will be sent to the Association. If the matter is not resolved between the employee and supervisor, the employee may, within thirty (30) days following the employee's initial written classification description or assignment addendum review request, submit a written classification or assignment addendum review request to Human Resources. The City will have thirty (30) days to review and respond in writing to the request. Should an employee disagree with the decision of the City, the employee may submit a rebuttal for consideration by the City Manager. The City Manager will in good faith review the rebuttal and provide a timely response. Revisions are not subject to the grievance process.

**Section 6.** Should there be disagreement regarding the contents of the classification description, the employee has the right to attach written comments to the classification description, to be kept in the employee's personnel file. Classification descriptions will be signed by the employee, indicating only that the employee has read the document, and shall be signed by the supervisor.

## **ARTICLE 27 – RECLASSIFICATION**

**Section 1.** Reclassification is defined as movement of an employee from one classification to another classification. Reclassification may occur where the City, in its judgment, determines the duties being performed by an employee more closely match a classification other than the one which the employee currently occupies and the City decides to reclassify rather than restructure the duties the employee is performing.

**Section 2.** Any incumbent employee may request reclassification of his or her position by submitting a written request to the employee's supervisor and Department Manager (if other than the employee's supervisor) which includes the reason the employee believes he or she is improperly classified, and a copy of an existing classification description which the employee believes more accurately reflects the current duties and responsibilities the employee is performing. If the matter is not resolved between the employee and supervisor, the employee may within thirty (30) days following the employee's written classification review request submit a written classification review request to Human Resources. The City will have thirty (30) days to review and respond in writing to the classification review request.

**Section 3.** When an employee is reclassified to a classification with a higher salary range the employee will be moved to the new classification salary scale and be placed at the step closest to their current salary while receiving at least a 3% increase not to exceed the top of the scale. The employee's prior anniversary date for performance evaluation shall remain the same. Notification of the employee's reclassification will be sent to the employee and Association at least ten (10) days before it is established.

**Section 4.** When an employee is reclassified to a classification with a lower salary range, he or she will continue to receive his or her existing rate of pay, but shall not be eligible for any cost of living or merit pay increases until such time as the established maximum pay

rate for the new classification exceeds his or her rate of pay. (The employee's prior anniversary date for performance evaluation shall remain the same). Notification of the employee's reclassification will be sent to the Association.

**Section 5.** Disputes regarding reclassification shall be subject to the grievance procedure as outlined in Article 10 of this Agreement up to Step 3 of the grievance procedure and shall not be subject to arbitration.

**Section 6:** In the event an employee seeks a voluntary reduction in hours (eg: from full time to part time FTE status), the City will meet with the employee and Association to discuss possible adjustments.

## **ARTICLE 28- PERFORMANCE EVALUATION**

The City reserves the right to determine an appropriate evaluation system, and modifications to, or elimination of, such system and the Association agrees to waive further bargaining during the term of this Agreement on this subject. Within that broad authority however, any evaluation system the City chooses to utilize will contain the following procedures:

- (A) New or promoted employees will be evaluated at the end of their probationary periods. Such employees who are not evaluated in accordance with the time lines specified herein shall have their performance deemed acceptable and receive any appropriate merit adjustment.
- (B) Regular employees will be evaluated on an annual basis per their review dates. Except in the case of an approved leave for the employee or the supervisor, the evaluation session shall be conducted within one pay period of the employee's review date.
- (C) Each evaluated employee will receive a copy of the final evaluation after it is completed. In order to enhance communications and provide discussion, employees will receive a copy of the completed evaluation form at least twenty four (24) hours in advance of the evaluation session in order to prepare questions or comments. Employees will not be requested to complete a draft of their own evaluations or be required to participate in a meeting to discuss the evaluation of another employee.
- (D) Any employee may submit a statement of rebuttal, which will be attached to the evaluation.
- (E) Each employee shall sign his or her own evaluation, indicating only that the employee has read the evaluation.
- (F) The Association shall be provided a copy of the current written evaluation procedure and may submit any comments or suggested changes to the City Manager for review.

- (G) Employees who are dissatisfied with an evaluation may grieve that evaluation, up to the City Manager step of the grievance procedure only. The decision of the City Manager shall be final and binding. The City evaluation system, any individual evaluation, and this entire Article shall not be subject to arbitral, judicial, or ERB review.

## **ARTICLE 29 – EDUCATION**

The parties agree to rely on the City's Educational Assistance Policy. To the extent that a provision of the City's policy conflicts with a specific provision of this contract, the specific provision of this contract shall apply.

## **ARTICLE 30 - SICK LEAVE**

**Section 1.** All full-time City employees shall earn sick leave with full pay at the rate of eight (8) hours for each calendar month of service. Part-time employees will earn sick leave on a pro-rata basis. Sick leave shall accrue on a bi-weekly basis, from the date of employment.

**Section 2.** Employees are eligible for sick leave for the following reasons:

- (A) Non-occupational personal illness or physical disability;
- (B) Quarantine of an employee by a health care provider for non-occupationally related disability;
- (C) Personal medical and dental appointments;
- (D) Illness of an immediate family member;
- (E) Other leaves in which use of accrued sick leave is mandated by federal or state law.

"Immediate family" for purposes of this section is defined as\*:

- spouse
- domestic partners
- children
- grandchildren
- parents
- parents of the employee's domestic partner
- grandparents
- brother
- sister
- mother-in-law
- father-in-law
- sister-in-law
- brother-in-law
- any relative residing in the employee's immediate household

\* Or as provided by FMLA/OFLA.

**Section 3.** Sick leave shall be charged on an hour per hour basis for each hour absent on the basis of a forty (40) hour workweek. If an employee exceeds his or her accumulated

sick leave, it will be the responsibility of the employee, upon request from the employer, to note on the time sheet that the overage is to be charged against his or her accumulated compensatory time or vacation time.

Any employee who exceeds accumulated sick leave and refuses to indicate that the balance is to be charged to his or her accumulative compensatory time or vacation time, will not be paid for such excess time. Such time will be considered leave without pay. An employee who marks a time sheet for vacation or accumulative compensatory time in excess of his or her accumulated vacation will not be paid for the excess time. Such time will be considered leave without pay.

**Section 4.** Abuse of the sick leave privilege as determined by the City may be cause for discipline. An employee who is unable to report to work because of any of the reasons set forth in Section 2 above shall report before his or her start time unless unreasonable to do so, and provide the reason to his or her supervisor. Sick leave with pay shall not be allowed unless such report has been made.

The City reserves the right to require a written statement from a health care provider certifying that the employee's condition prevented the employee from appearing for work when the employee is absent for three (3) or more consecutive days or where the City has evidence that the employee is abusing sick leave. If the City is dissatisfied with the report of illness, the City may require a medical exam from a health care provider selected by the City at the expense of the City. This section shall not be applicable to employees who are on a parental leave of absence.

**Section 5.** The employee's supervisor or Department Manager shall have the authority to send the employee home on sick leave if the employee is actually sick and either cannot perform his or her duties accurately or endangers the health of others.

**Section 6.** Employees must inform the Department Manager of any anticipated medical treatment so that the department may plan for the employee's absence.

**Section 7.** When an employee is absent from work because of an on-the-job injury, time off will not be charged to sick leave except as provided below.

The employee may select one of the following options:

- (A) the employee may elect to receive only his or her worker's compensation payments.
- (B) the employee may voluntarily turn in his or her first and all subsequent workers' compensation payments and will, in turn, receive his or her regular paycheck and benefits, and the following will occur:
  - (1) no sick leave will be deducted from the accruals for 180 calendar days;

- (2) after 180 calendar days employees shall use available sick leave for integration with their worker's compensation payments in order to receive their gross wages. In this situation a full check will only be received if the employee has available sick leave. Deduction to sick leave shall be proportional to the difference between worker's compensation payments and gross wages; and
- (3) in the event an employee withholds any of his or her worker's compensation payments, compensation will fall into the integration of sick leave formula described above from the first day of injury. In the event this occurs, the City can automatically deduct any overpayment in full from the employee's next paycheck or any subsequent checks if there is not a sufficient amount in the next pay check.

**Section 8.** Unused sick leave shall not be paid to any employee upon termination, whether voluntarily or involuntarily, except in the manner prescribed in ORS 238.350.

**Section 9.** The City may require a health care provider's approval for an employee to return to work after any sickness or illness which warrants such an approval.

**Section 10.** Regular employees who work three (3) consecutive months without use of sick leave shall be allowed to convert 8 hours (prorated if part time) of their sick leave to vacation with use of such time subject to the provisions of Article 31.

**ARTICLE 31 – VACATIONS**

**Section 1.** Regular employees shall be granted annual leave with pay according to the following schedule. A vacation “day” earned is the equivalent of eight (8) hours for a full-time employee. Accrual rates for part-time employees shall be prorated.

<u>YEARS OF SERVICE</u>	<u>VACATION DAYS PER YEAR</u>
Less than 3 years continuous service	12 days
3 to less than 5 years continuous service	14 days
5 to less than 10 years continuous service	17 days
10 to less than 15 years continuous service	20 days
15 to less than 20 years continuous service	22 days
20 or more years of continuous service	24 days

**Section 2.** Vacation leave shall accrue from the beginning of employment. Vacation may not be taken until after the pay period it is accrued.

**Section 3.** Annual vacation leave shall accrue on a bi-weekly basis, not to exceed the employee's annual accrual. Vacation leave accrued and used shall be recorded on a bi-weekly basis, not to exceed the employee's annual accrual, and reflected on each employee's payroll check stub.

**Section 4.** Vacation leave can accrue from year to year with a maximum accrual limit of thirty-five (35) days. Employees with thirty (30) or more days of accrued vacation will be provided memorandum notice of accrued vacation balances as well as the maximum accrual limit on a month-to-month basis. Upon such notice, the Department Manager and employee will make efforts to agree upon a plan to reduce accrued vacation to a manageable level.

The maximum amount of vacation taken at one continuous time shall not exceed fifteen (15) working days unless approval for a longer period of time has been granted by the Department Manager. Vacation earned beyond the thirty-five (35) day limit, and not so utilized, will be lost.

**Section 5.** Vacation periods shall be scheduled at the mutual agreement of the City and the individual employee. The City shall circulate within each department and in order of seniority, with the most senior employee afforded the first selection, a vacation sign-up roster for the calendar year. Each employee shall be allowed to select one continuous vacation period.

After the seniority vacation selection as provided for above, all additional vacation requests shall be approved in advance of making any arrangements as such leave will be scheduled subject to the operational needs of the City with the first request received having priority basis. Vacation schedules may be amended to allow the department to meet emergency situations. However, where such changes are initiated, the City will explore other alternatives where non-recoverable deposits are involved.

**Section 6.** Upon separation of an employee from City employment, all accrued unused vacation leave shall be paid in a lump sum. Such accrued time will be paid at the rate of pay applicable at the time of termination.

**Section 7.** Any employee may sell back to the City up to five (5) days of accrued vacation time during any fiscal year, limited to the following conditions:

- (A) a minimum of a like number of vacation days is taken as vacation within two pay periods of any check issued to that employee for vacation reimbursement;
- (B) vacation reimbursement shall occur only once during any fiscal year for each employee, regardless of how many days are used;
- (C) any check issued for vacation reimbursement shall be in increments of eight hours only or as prorated for part time employees;
- (D) the Finance Department shall receive two (2) weeks prior written notice from any employee requesting vacation reimbursement.
- (E) Part time employees may sell back vacation limited to their proration.

**Section 8.** Return of Vacation accrual level: Employees with five or more years of continuous service with the City who resign from employment and return to work for the City may be eligible for a one-time option to accrue vacation at their previous tier as provided in Section 1 prior to resignation under the following conditions:

- Resignation from employment must have been under good terms, including no prior disciplinary actions within previous five years, and
- Employee is reemployed with the City within 180 days from the previous resignation. This is a one-time option throughout an employee's complete tenure with the City.

## **ARTICLE 32 – OTHER LEAVES**

**Section 1. Bereavement Leave.** Employees shall be allowed up to three (3) days of paid bereavement leave, or five (5) days where travel in excess of 200 miles from the employee's residence is required for a death in the employee's immediate family. Longer paid or unpaid bereavement leave may be approved by the City Manager. There shall be no compensation for unused bereavement leave at the time of termination of employment. Bereavement leave in excess of the above limits, approved by the City Manager, will be deducted from accrued sick leave, or in the absence of accrued sick leave, from the employee's accrued vacation, compensatory time, accrued in-lieu of holiday time, or may be taken as leave without pay. If all accrued time is or will be exhausted, the employee may then request a donation of leave from other employees or may take the time off as leave without pay.

Leave for the purpose of this section shall be defined as sick leave, compensatory time or vacation time. Bereavement leave provided is concurrent to any leaves provided by OFLA.

"Immediate family" for purposes of this section is defined as spouse, children, grandchildren, parents, grandparents, brother, sister, mother-in-law, father-in-law, sister-in-law or brother-in-law, domestic partners (by affidavit for the contractual benefit provided herein), parents of the employee's domestic partner, or any relative residing in the employee's immediate household.

### **Section 2. Donated Leave:**

Donating Time: At the beginning of each calendar year, Human Resources will elicit donations to a donated leave bank for this bargaining unit, to be received by January 31st.\* An employee may donate up to forty (40) hours of their accrued sick, vacation, compensatory, or personal holiday time per calendar year to a donated leave bank administered by Human Resources for use by other eligible employees who have exhausted their sick leave and other paid leave accounts due to a major illness, injury or other medical conditions. Employees donating sick, vacation or compensatory time to the donated leave bank must maintain a minimum of ninety-six (96) hours in their sick leave bank, and forty (40) hours in their vacation leave bank. Donated time shall not be used to

extend employment. There shall be an overall cap of 2,000 hours in the donated leave bank. If more than 2,000 aggregate hours are donated by employees, donations shall be taken proportionally from all submissions up to the maximum of 2,000 hours. Hours donated and applied to the bank are then forfeited by the employee and may not be retrieved at a later date. *\*If donations in January 2016 result in less than 1000 hours, the City agrees to reopen a donation period during April 2016.*

Applying for Donated Hours: To be eligible to apply for donated leave, an employee must have a major illness, injury or medical condition or be caring for a family member with a major illness, injury or medical condition that requires a prolonged absence, or intermittent leave as described under FMLA, from work; must have exhausted or will exhaust all accumulated leave in their paid leave banks; and must not be receiving or eligible to receive social security disability or long term disability benefits. Employees are also eligible to apply for donated leave for bereavement leave.

Approval of Applications: Applications for donated leave must be made to Human Resources, in writing, and must describe the major illness, injury, or medical condition necessitating the leave. All applications for donated leave must be approved by Human Resources. Employees who are seeking donations may apply and obtain approval to receive donated leave before they deplete their paid leave banks. Employees may only be approved for up to 160 hours of leave annually.

Use of Approved Donated Leave: The employee's donation to the bank will be converted to money based on the donator's hourly rate. When a request for a donation is approved by Human Resources, the money is paid out at the receiving employee's current rate of pay.

**Section 3. Military Leave.** Military leave shall be granted in accordance with state and federal law.

**Section 4. Jury/Witness Leave.** If an employee is called for jury duty or is subpoenaed as a witness in a matter that is not personal to the employee, the employee shall be granted leave with pay. Employees will accurately complete their timesheet to reflect the paid leave. Employee will waive the juror's fee. (ORS 10.061). Upon being excused from such duty for a portion of any day, the employee shall immediately contact their supervisor, who at the supervisor's discretion may assign the employee for the remainder of their regular working day.

**Section 5. Leave Of Absence.** In the sole discretion of the City, an employee may be granted leave of absence without pay not to exceed six months if the City finds there is reasonable justification to grant such leave and if it does not create an undue hardship or unduly interfere with the normal operations of the department. The City may interrupt or terminate such leave by twenty (20) calendar days written notice by Certified Mail to the address given by the employee on their written application for such leave to the City Manager. After actually being made aware that the City desires their return to work, the employee shall respond within five (5) days or be subject to disciplinary action, including

termination. Such leave shall not be approved for the purpose of accepting employment outside the service of the City.

Employees on leave of absence without pay shall not accrue vacation or sick leave during the absence and will be required to reimburse the City for continued insurance premiums.

Effective the first of the month following thirty (30) calendar days of unpaid leave, the cost of insurance will become the responsibility of the employee. When the employee returns to work, the insurance premium will be prorated for that month, with the days not worked being the responsibility of the employee and the City paying beginning the date of return. If the City, in its sole judgment, does not require an employee to reimburse the City for insurance premiums, such action will not be deemed a binding precedent on the City, nor will the bargaining unit maintain that such action establishes a past practice. The leave shall not prejudice an employee's seniority accrued to the date of leave.

**Section 6. Family Medical Leave.** Family Medical Leave shall be granted in accordance with state and federal law.

### **ARTICLE 33 – LAYOFF**

**Section 1.** A layoff is defined as a separation of an employee from the City for involuntary reasons not reflecting discredit on the employee. The City reserves the right to temporarily separate an employee(s) for emergency reasons such as fire, flood or other natural disasters without evoking the bumping provisions contained within this article.

**Section 2.** If the City should reduce its workforce, layoffs shall be made within each job classification in a Department on the following basis: Temporary, seasonal or probationary employees in a job classification where layoffs are to occur will be terminated prior to regular employee layoffs. Regular employees will be laid off in inverse order of seniority within their classification within their department. For purposes of determining order of layoff within a classification, seniority shall be based on continuous service within that classification. However, for purposes of Sections 4, 6 and 7 seniority shall be as defined in Article 11. Where seniority is equal, ties will be broken by lot.

**Section 3.** Advance notice will be provided to the Association and the employees that the City intends to lay off. Such notice shall normally be provided as soon as plans are finalized, but not less than fifteen (15) working days prior to such layoff.

**Section 4.** When an employee is notified of layoff the employee will be given a minimum of forty-eight (48) hours to decide either to accept the layoff, or if it is an option, to displace the least senior employee in a classification within the employee's job family, (as defined in Section 5), with a lower pay range as long as the bumping employee has greater seniority as defined in Article 11. An employee who displaces an employee in a classification with a lower or different salary range shall move to the step closest to the employee's current

salary rate. If the employee's salary is above the top step of the new range, the employee's salary rate shall be determined as follows:

- (A) if the employee bumps into the available position with a salary range closest to his or her existing rate, then the employee's pay shall not be lowered. The employee's rate of pay will be frozen until such a time as the maximum pay rate for the lower or different classification equals or exceeds the employee's current rate of pay; or
- (B) if the employee chooses to bypass the available position with a salary range closest to his or her existing rate, for a position with a lower salary range, the employee's rate of pay shall be the maximum step of the new classification.

Regular employees shall be recalled by inverse order of their layoff, and shall remain eligible for recall for twenty-four (24) months.

**Section 5.** For purposes of this Article, the following definitions shall apply:

- (A) Classification: The group of positions within one of the classifications listed in Appendix A.
- (B) Job Family: A group of classifications requiring similar knowledge, skills and abilities.

For purposes of this Article, the City's Job Families are:

- Office Assistant I, Office Assistant II, Office Coordinator.
- Library Assistant, Senior Library Assistant, Public Services Assistant, Librarian I, Librarian II
- Utility Technician I, Utility Technician II
- Parks Maintenance Technician I, Parks Maintenance Technician II
- Volunteer Specialist, Volunteer Coordinator
- Accounting Technician, Accountant
- GIS Technician, GIS Coordinator
- Desktop Support Technician (formerly IT Tech), Network Administrator
- Assistant Planner, Associate Planner, Senior Planner
- Engineering Technician I, Engineering Technician II, Engineering Associate

-Building Construction Inspector I, Building Construction Inspector II.

-Fleet Services Technician I, Fleet Services Technician II

-Police Services Technician, Property Evidence Technician

-Program Specialist, Recreation Program Specialist, Library Program Specialist (lateral position family, bumping based solely on seniority)

-Permit Technician, Permit Coordinator

Operations Maintenance Technician, Facilities Maintenance Technician

Management Analyst I, Management Analyst II, Business Systems and Data Analyst

**Section 6.** Where a laid off employee does not have sufficient seniority to bump into another classification within his or her job family, the employee may bump the least senior employee in a classification in a different job family or a classification listed in Section 7, when the bumping employee is from a classification with a higher or equal pay range, has greater seniority and, in the judgment of the City, has the skills, knowledge and abilities as defined in the position description. An employee exercising their rights under this section shall be limited in pay to the top step of the new classification.

**Section 7.** The classifications of Parking Enforcement Attendant, Warehouse Inventory Control Technician, Facilities Maintenance Technician, Special Events Coordinator, Community Services Officer, Court Clerk, Project Engineer, Deputy City Recorder, Business Systems and Data Analyst, Economic Development Program Manager, Human Resources Specialist, and Program Coordinator may only be "bumped" into when the bumping employee is from a classification with a higher or equal pay range, has greater seniority and, in the judgment of the City, has the skills, knowledge, and abilities as defined in the position description. Employees in these classifications shall have bumping rights in accordance with Section 6.

**Section 8.** Employees laid off for a period of twenty-four (24) months lose all seniority credits and shall be removed from the recall list. Employees recalled within twenty-four (24) months of their date of layoff shall be recalled to positions in a lower classification within their job family or to their prior classifications on a seniority basis.

Employees recalled to a lower classification shall remain on the recall list for their regular job classification until such time as an opening becomes available to them. No new employees shall be hired for a classification until employees laid off from that classification have been notified of an offer of an opportunity to return to work.

The City shall notify a laid off employee, who is still on the recall list, of a regular position opening within his or her prior classification, or in a lower classification within their job

family. It shall be the employee's responsibility to ensure that his or her current address and phone/email are on file at the time the recall occurs. The employee shall have five (5) days from receipt of such notice, to notify the City of his or her intent to return within fifteen (15) days of the date of receipt of such notice. If the employee fails to so respond to a recall notice within the time herein specified, all rights to recall shall be terminated.

**Section 9.** When a regular vacancy occurs in a job family or classification where no employee remains on the recall list, the vacancy shall be posted in accordance with Article 13.

Employees on the recall list from other classifications shall be notified of such vacancies in writing by certified letter, return receipt requested. Such employees shall notify the City within five (5) days from receipt of such notice if they believe they are qualified and wish to be considered for the position. If the City determines, the employee has the skills, knowledge and ability as defined in the position description, the employee's recall shall take precedence over all but a more senior qualified employee.

**Section 10.** A refusal of recall to one's former classification shall constitute voluntary termination and such employee shall lose her or her layoff status privileges and his or her seniority. However, an employee on layoff status may have the right of refusal where the position offered by the City is in a lower salary range.

## **ARTICLE 34 – COMPENSATION**

**Section 1.** Effective and retroactive to July 1, 2015, wage scale will be increased by 2.0% across the board.

Effective July 1, 2016, the wage scale will be increased by 2.0% across the board.

Steps are approximately 3% apart.

**Section 2. Wage Step Scale.** Steps are approximately 3% apart. Upward movement within the salary range will be automatic approximate 3% increments based upon a satisfactory rating on the employee's performance evaluation. Annual wages are based on a 2,080 hours per year schedule.

**Section 3.** If the City decides to conduct a formal classification and compensation study during the term of this agreement, the City will consider the Association information along with information received from other sources. If an employee is reclassified to a new classification that is not on the existing wage scale, the City will follow the preamble regarding new classifications.

## **ARTICLE 35 – INSURANCE**

**Section 1. Health Insurance.** For 2015, employees may select either Blue Cross Plan V (C),-PPO (\$300 ded.) Medical, which includes Well Baby Care, and VSP Vision; or Kaiser Medical, which includes Vision, and Drug (co-payment for Kaiser coverage based on Plan provided by carrier). The employees may also select their dental coverage: either MODA Plan II, Kaiser, or Willamette (all of which include orthodontia).

Effective January 1, 2016, employees may select either Regence/Blue Cross Co-Pay A,, including Alternative Care rider, Hearing Aid rider and VSP Vision; or Kaiser Medical, which includes Vision, Alternative Care rider, Hearing Aid rider and Drug Plan (co-payment for Kaiser coverage based on Plan provided by carrier). The employees may also select their dental coverage: MODA Plan II, Kaiser, or Willamette (all of which include orthodontia).

Health insurance coverage provided in this Article for domestic partners is limited to Registered Domestic Partners under ORS 106.300 et seq. and is subject to applicable imputed taxes. *(note: Effective January 1, 2016, City is discontinuing coverage for new non-registered domestic partners)*

Subject to conditions of the broker, employees have the option of mixing their medical and dental providers. Plan availability is determined by the broker; broker selection is determined by the City.

Premium Cost Share: For 2015, the City will continue the current premium cost share schedule as calculated.

Effective January 1, 2016 through December 31, 2016, the City will contribute 90% to the aggregate (medical, dental, vision, drug and other riders) monthly health care premiums. The employee will pay the remaining 10% through payroll deductions.

Effective January 1, 2017, the City will contribute up to 90% of the aggregate (medical, dental, vision, drug and other riders) monthly health care premiums up to a maximum of \$1,915.78. The employee will pay the remaining aggregate monthly health care premiums through payroll deductions.

City payment of health insurance premiums will be prorated based on budgeted FTE for part time employees hired after 7/1/00.

City agrees to offer an opt-out provision for regular employees. A regular employee wishing to opt-out of the City provided health insurance plan shall designate their choice to opt-out during the City's open-enrollment period for health insurance (generally the Fall). In addition, within thirty (30) days of the closure of the open enrollment period, the employee must provide the City with information proving that the employee has health insurance coverage through an alternate provider (e.g., spouse's/domestic partner's employer). Upon selecting to opt-out of the City provided health insurance and proof of alternate insurance, the full-time employees shall be entitled to \$50 per month beginning on the effective date of the insurance plan (January 1) for twelve (12) months. The opt-out period

is only good for twelve (12) months and not continuous. An employee wishing to continue to opt-out must go through the opt-out process during each open enrollment period. The City shall make the \$50 payment to eligible full-time employees on the second pay period of the month.

The Association and the City agree to continue a management/labor committee whose scope of work will be to work collaboratively in researching insurance designs, options and funding arrangements, meeting as either party determines is necessary. Their work product will serve as the basis of a recommendation to their respective constituents of the best and most cost - effective means of providing quality health insurance to employees. This recommendation and any resulting implementation plan may affect the plan coverage selections stated in Section 1, paragraphs 2 & 3.

**Section 2. Life Insurance.** During the life of this Agreement, the City will provide a term life insurance policy equal to one and one-half times the employee's annual salary up to a maximum benefit of \$200,000 for employees, subject to the provisions of the broker's administrative policies.

**Section 3. Long Term Disability.** The City shall provide employees with a long-term disability insurance program that provides, after a waiting period and subject to the provisions of the broker's administrative policies, 66-2/3% of their monthly salary to a maximum monthly benefit of \$7000.

**Section 4.** The City reserves the right to select the insurance carrier of the above programs so long as the coverage provided is substantially equivalent to current benefits.

## **ARTICLE 36- HOLIDAYS**

**Section 1.** All employees of the City shall be entitled to the holidays listed below with pay. The benefited value of a holiday is 8 hours for full time employees. Full-time employees shall receive regular compensation; compensation for part-time employees will be prorated based on budgeted FTE. Holidays falling on Sunday shall be taken on the following Monday, and those falling on Saturday shall be taken on the preceding Friday. If the library is open on the day the holiday is observed, it may be closed on the actual holiday.

- |                            |  |
|----------------------------|--|
| (A) New Year's Day         | (F) Labor Day                                  |
| (B) Martin Luther King Day | (G) Veteran's Day                              |
| (C) President's Day        | (H) Thanksgiving Day                           |
| (D) Memorial Day           | (I) Day after Thanksgiving                     |
| (E) Independence Day       | (J) Christmas Day                              |
|                            | (K) (1) Floating Holiday<br>per calendar year. |

Effective January 1, 2016, the City will add one additional floating holiday for a total of two floating holidays per calendar year.

*Note: City will cease the past practice of providing the "safety incentive" paid time off hours effective upon execution.*

**Section 2.** Every day mandated by the President or the Congress of the United States or by the Governor or Legislature of the State of Oregon or by the City Council of Tualatin as a legal holiday for Oregon municipal employees shall be observed by the City as a paid holiday.

**Section 3.** Holidays that occur during an employee's vacation or sick leave shall not be charged against the vacation or sick leave.

**Section 4.** If an employee is required to work on any of the holidays listed above (with the exception of Floating Holiday), the employee shall, in addition to any regular holiday pay paid in Section 1 for which the employee may be eligible, be compensated at time and one-half for all hours worked on the holiday. If an employee volunteers or is assigned by the City to work outside of their regular shift during a workweek which includes a non-floating holiday, the holiday will be considered hours worked towards the calculation of overtime compensation.

**Section 5.** If a holiday falls on an employee's regularly scheduled day off, that employee shall have the choice of scheduling another day off within one pay period, either before or after, in which the holiday falls, or receiving one (1) day's pay at the regular rate. If an employee is assigned to work the holiday (whether observed or actual, but not both) they will be compensated at one and one-half times their regular rate.

**Section 6.** Floating holidays shall be scheduled at the mutual agreement of the City and the individual employee. The City shall circulate within each department and in order of seniority, with the most senior employee afforded the first selection, a floating holiday sign-up roster for the calendar year. Each employee shall be allowed to select one date.

After the seniority holiday selection as provided for above, all additional floating holidays on requests shall be approved in advance of making any arrangements as such leave will be scheduled subject to the operational needs of the City with the first request received having priority basis. Floating holiday schedules may be amended to allow the department to meet emergency situations. However, where such changes are initiated, the City will explore other alternatives where non-recoverable deposits are involved.

Floating holidays are earned for the calendar year and are use it or lose it in the same year. Employees are responsible for scheduling floating holidays in a timely manner to avoid forfeiture at the end of the year. Floating holidays have no cash value upon separation of employment.

**Section 7:** Employees who work a regular shift day of more than 8 hours and who use holiday time, will be required to use additional paid leaves to account for a full day.

## **ARTICLE 37 – RETIREMENT**

Effective July 1, 2000, the classifications covered by this bargaining agreement will become members of the Public Employees Retirement System. The City shall be responsible for the required employer's contribution rate, established by PERS, with a mandatory employee contribution of six percent (6%). The City has implemented tax-sheltered status, to the extent legally allowable, for employee contributions as defined under IRS 414(h)(2).

Effective in the payroll period following ninety (90) days after execution of this agreement and subject to PERS rules and regulations, the City agrees to "pick-up" the 6% contribution normally paid by employees, and at the same time, the salary scale will be reduced by 5% for all positions.

Specified employees as noted on attached Exhibit C shall remain in the ICMA Retirement Plan until their separation from City service. The plan components will remain active for full participation by the named employees. The City's contribution rate shall be ten percent (10%) of each employee's gross monthly salary, with an employee contribution of six percent (6%)\* for a total contribution of sixteen percent (16%). The City has implemented tax-sheltered status, to the extent legally allowable, for employee contributions as defined under IRS 414(h)(2). If the employee's listed on attached Exhibit C are not fully vested in this plan by the date the new participation plan agreement with ICMA is drafted, the vesting schedule shall remain as follows:

3 years	30%
4 years	60%
5 years	100%

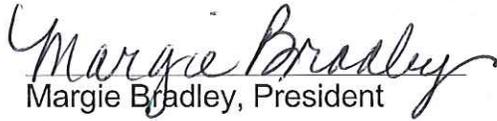
\* Note: City agrees to make the same equitable adjustment as with employees on PERS.

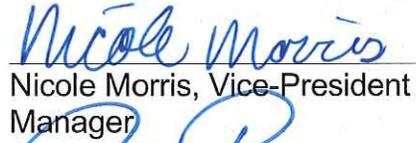
## **ARTICLE 38 - TERM OF AGREEMENT**

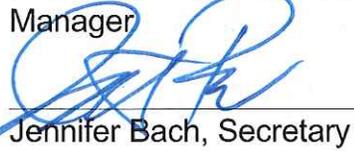
This Agreement shall be effective upon its execution and shall remain in full force and effect until the 30th of June 2017. On the 30th day of June 2017, this Agreement shall expire and all of its terms and conditions shall become null and void. However, it shall be automatically renewed from year to year thereafter unless either party notifies the other by letter prior to December 31, 2016, that it desires to modify this Agreement. In the event such notification is given, negotiations shall begin not later than February 1, 2017. This Agreement shall remain in full force and effect during negotiations for a successor agreement.

TUALATIN EMPLOYEES' ASSOCIATION

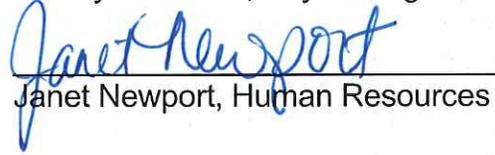
CITY OF TUALATIN

  
Margie Bradley, President

  
Nicole Morris, Vice-President  
Manager

  
Jennifer Bach, Secretary

  
Sherilyn Lombos, City Manager

  
Janet Newport, Human Resources

## **EXHIBIT A - ASSOCIATION CLASSIFICATIONS**

ACCOUNTANT	NETWORK ADMINISTRATOR
ACCOUNTING TECHNICIAN	OFFICE ASSISTANT I
ASSISTANT PLANNER	OFFICE ASSISTANT II
ASSOCIATE PLANNER	OFFICE COORDINATOR
BUILDING CONSTRUCTION INSPECTOR I	MANAGEMENT ANALYST I
BUILDING CONSTRUCTION INSPECTOR II	OPERATIONS MAINTENANCE TECH
BUSINESS SYSTEMS & DATA ANALYST	PARKS MAINTENANCE TECHNICIAN I
COMMUNITY SERVICE OFFICER	PARKS MAINTENANCE TECHNICIAN II
COURT CLERK	PARKING ENFORCEMENT
DEPUTY CITY RECORDER	ATTENDANT
DESKTOP SUPPORT TECHNICIAN	PERMIT COORDINATOR
ECONOMIC DEVELOPMENT PROGRAM MGR	PERMIT TECHNICIAN
ENGINEERING ASSOCIATE	POLICE SERVICE TECHNICIAN
ENGINEERING TECHNICIAN I	PROGRAM COORDINATOR
ENGINEERING TECHNICIAN II	PROGRAM SPECIALIST
FACILITIES MAINTENANCE TECH	PROJECT ENGINEER
FLEET SERVICES TECHNICIAN I	PROPERTY EVIDENCE TECHNICIAN
FLEET SERVICES TECHNICIAN II	PUBLIC SERVICES ASSISTANT
GIS COORDINATOR	RECREATION PROGRAM SPECIALIST
GIS TECHNICIAN	SENIOR LIBRARY ASSISTANT
HUMAN RESOURCES SPECIALIST	SENIOR PLANNER
LIBRARY ASSISTANT	UTILITY TECHNICIAN I
LIBRARY PROGRAM SPECIALIST	UTILITY TECHNICIAN II
LIBRARIAN I	VOLUNTEER COORDINATOR
LIBRARIAN II	VOLUNTEER SPECIALIST
MANAGEMENT ANALYST II	WAREHOUSE/INV CONTROL TECH.

# EXHIBIT B – SALARY SCHEDULE

FY 2015/16 SALARY SCHEDULE  
EFFECTIVE 7/1/2015

TUALATIN EMPLOYEES ASSOCIATION

Annual Salaries are based on 2080 Hours

Grade	TITLE	RATE	STEP 1	STEP 2	STEP 3	STEP 4	STEP 5	STEP 6	STEP 7	STEP 8	STEP 9
O4	Parking Enforcement Att	Hourly	15.20	15.64	16.12	16.61	17.11	17.62	18.15	18.69	19.25
		Annual	31,616.00	32,531.20	33,529.60	34,548.80	35,588.80	36,649.60	37,752.00	38,875.20	40,040.00
O5	Vacant	Hourly	16.39	16.88	17.39	17.90	18.44	19.00	19.57	20.17	20.77
		Annual	34,091.20	35,110.40	36,171.20	37,232.00	38,355.20	39,520.00	40,705.60	41,953.60	43,201.60
O6	Library Assistant Office Assistant I Operations Maintenance Tech	Hourly	17.20	17.72	18.25	18.80	19.37	19.95	20.55	21.17	21.81
		Annual	35,776.00	36,857.60	37,950.00	39,104.00	40,289.60	41,496.00	42,744.00	44,053.60	45,364.80
O7	Vacant	Hourly	18.05	18.59	19.16	19.73	20.33	20.93	21.56	22.22	22.87
		Annual	37,544.00	38,667.20	39,852.80	41,038.40	42,286.40	43,534.40	44,844.80	46,217.60	47,569.60
O8	Office Assistant II Senior Library Asst.	Hourly	18.95	19.53	20.11	20.73	21.34	21.98	22.65	23.33	24.02
		Annual	39,416.00	40,622.40	41,828.80	43,118.40	44,387.20	45,718.40	47,112.00	48,526.40	49,961.60
O9	Court Clerk Police Service Tech Public Service Assistant Utility Tech I Volunteer Specialist	Hourly	19.92	20.51	21.13	21.76	22.41	23.09	23.79	24.49	25.26
		Annual	41,433.60	42,660.80	43,950.40	45,260.80	46,612.80	48,027.20	49,483.20	50,993.20	52,540.80
O10	Engineering Tech I Park Maintenance Tech I Warehouse/Inv Ctrl Tech	Hourly	21.23	21.87	22.52	23.21	23.89	24.60	25.36	26.10	26.91
		Annual	44,158.40	45,489.60	46,841.60	48,276.80	49,691.20	51,168.00	52,748.80	54,288.00	55,972.80
O11	Accounting Tech Human Resource Specialist Library Prgm Specialist Office Coord Park Maint. Tech II Permit Tech Program Specialist Property Evidence Tech Rec Prgm Specialist Utility Tech II Volunteer Coordinator	Hourly	22.46	23.13	23.83	24.53	25.30	26.04	26.85	27.63	28.48
		Annual	46,716.80	48,110.40	49,566.40	51,022.40	52,624.00	54,163.20	55,848.00	57,470.40	59,238.40
O12	Facilities Maint Tech Fleet Service Tech I GIS Technician Permit Coordinator	Hourly	23.58	24.30	25.01	25.79	26.54	27.35	28.15	29.02	29.87
		Annual	49,046.40	50,544.00	52,020.80	53,643.20	55,203.20	56,908.80	58,552.00	60,361.60	62,129.60
O13	Assistant Planner Community Serv Officer Librarian I	Hourly	24.78	25.50	26.29	27.05	27.87	28.70	29.58	30.45	31.37
		Annual	51,542.40	53,040.00	54,683.20	56,264.00	57,969.60	59,696.00	61,526.40	63,336.00	65,249.60
O14	Accountant Building Inspector I Engineering Tech II Fleet Service Tech II GIS Coordinator Librarian II	Hourly	26.29	27.05	27.87	28.70	29.58	30.45	31.37	32.31	33.27
		Annual	54,683.20	56,264.00	57,969.60	59,696.00	61,526.40	63,336.00	65,249.60	67,204.80	69,201.60
O15	Associate Planner	Hourly	27.93	28.74	29.62	30.49	31.41	32.35	33.32	34.32	35.35
		Annual	58,094.40	59,779.20	61,609.60	63,419.20	65,332.80	67,288.00	69,305.60	71,385.60	73,528.00
O16	Building Inspector II Engineering Associate	Hourly	29.28	30.18	31.08	32.01	32.97	33.97	34.98	36.03	37.11
		Annual	60,902.40	62,774.40	64,646.40	66,580.80	68,577.60	70,657.60	72,758.40	74,942.40	77,188.80
O17	Vacant	Hourly	31.60	32.34	33.11	34.31	35.34	36.40	37.50	38.62	39.78
		Annual	65,312.00	67,267.20	69,284.80	71,364.80	73,507.20	75,712.00	78,000.00	80,329.60	82,742.40
O18	Project Engineer Senior Planner	Hourly	32.96	33.96	34.97	36.02	37.10	38.21	39.36	40.53	41.76
		Annual	68,556.80	70,636.80	72,737.60	74,921.60	77,168.00	79,476.80	81,868.80	84,302.40	86,860.80
M4	Management Analyst I	Hourly	24.93	25.66	26.45	27.22	28.05	28.89	29.75	30.64	31.58
		Annual	51,854.40	53,372.80	55,016.00	56,617.60	58,344.00	60,091.20	61,880.00	63,731.20	65,686.40
M5	Desktop Support Technician	Hourly	25.92	26.67	27.49	28.29	29.16	30.04	30.93	31.85	32.81
		Annual	53,913.60	55,473.60	57,179.20	58,843.20	60,652.80	62,483.20	64,334.40	66,248.00	68,244.80
M6	Business Systems & Data Analyst Deputy City Recorder Management Analyst II Program Coordinator	Hourly	27.21	28.04	28.88	29.74	30.63	31.56	32.50	33.47	34.48
		Annual	56,996.80	58,323.20	60,070.40	61,859.20	63,710.40	65,644.80	67,600.00	69,617.60	71,718.40
M8	Information Tech Coordinator	Hourly	30.00	30.89	31.81	32.77	33.77	34.78	35.82	36.90	38.01
		Annual	62,400.00	64,251.20	66,164.80	68,161.60	70,241.60	72,342.40	74,505.60	76,752.00	79,060.80
M10	Network Administrator	Hourly	33.05	34.02	35.05	36.10	37.18	38.31	39.46	40.65	41.86
		Annual	68,744.00	70,761.60	72,904.00	75,088.00	77,334.40	79,684.80	82,076.80	84,552.00	87,068.80
M13	Econ Development Prog Mgr	Hourly	37.22	38.33	39.48	40.67	41.90	43.15	44.44	45.78	47.15
		Annual	77,417.60	79,726.40	82,118.40	84,593.60	87,152.00	89,752.00	92,435.20	95,222.40	98,072.00

\* italicized positions are not filled.

**EXHIBIT C – ICMA RETIREMENT**

**ERNEST D. CASTRO III  
MIKE DARBY  
WILLIAM G. SCHNEIDER**

## **EXHIBIT E – DRUG TESTING**

### **ALCOHOL/DRUG USE, ABUSE AND TESTING All Employees**

The City of Tualatin is committed to maintaining high standards of safety, productivity, and reliability for employees and the public we serve. In order to promote these standards and provide a safe working environment, the following Policy has been adopted and sets the City's drug and alcohol abuse program, and the testing and reporting guidelines for employees in non-safety-sensitive positions.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate employees. However, all persons covered by this policy should be aware that violations of the policy will result in discipline, up to and including termination, and in accordance with any applicable collective bargaining agreement.

#### **PROHIBITED SUBSTANCES**

As used in this policy, "Drugs" includes all controlled substances regulated under the federal Controlled Substances Act as well as other substances that have mind-altering or function-altering effects on a person's system. For the purposes of this policy, "Drugs" generally does not include lawfully prescribed medications, other than Marijuana, which is unlawful under federal law and is prohibited by this policy regardless of state recreational and medical use laws. For additional information on the requirements that apply to employees using prescribed or over-the-counter medications, please see the "Prescription Drug Use" section below.

#### **PROHIBITED BEHAVIOR**

The use, possession, distribution, sale, manufacture, dispensation of or intoxication by alcoholic substances or beverages, intoxicants, illegal drugs, controlled substances not medically authorized, related drug paraphernalia, or other substances including prescription drugs which impair the employee's job performance or mental or motor function by any employee or any other person to whom this policy applies while on City premises (including City vehicles) or in the course of conducting City business (including operating any motor vehicle on behalf of the City) during regular business hours, including while subject to being on-call in a paid status, at lunch or on breaks, is strictly prohibited. "City premises" includes all property rented, leased, owned or controlled by the City, including job sites and parking lots, etc. It also includes all City equipment and vehicles on or off our property.

Employees who are reasonably suspected of engaging in a prohibited activity, or of not being fit for duty due to drug or alcohol misuse will be placed on paid administrative leave pending an investigation and verification. Employees who fail to pass a drug or alcohol test, or who engage in a prohibited activity may be subject to disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement.

## ALCOHOL

### *Adverse Effects*

It is recognized that alcohol is a legal, socially acceptable drug when consumed in moderation. However, when consumed primarily for its physical and mood-altering effects, it is a substance that is subject to abuse. As a depressant, it slows physical responses and progressively impairs mental functions, including the ability to safely operate a motorized vehicle or machinery. The chronic consumption of alcohol over time may result in critical health issues, including dependency, fatal liver disease, ulcers, and increased possibility of cancers. Slurred speech, poor coordination, inability to walk straight, rapid eye movement, impaired attention or memory, stupor or coma are all signs of alcohol use and problems.

If an alcohol problem is suspected, the Employee Assistance Program should be contacted.

### *Use*

A confirmed alcohol concentration of 0.02 or greater is considered a positive alcohol test and may result in paid administrative leave and disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement for violation of this policy.

## PRESCRIPTION DRUG USE

The appropriate use of legally prescribed drugs and nonprescription medication is not prohibited. However, it is the policy of the City that any employee who uses a prescription or over-the-counter medication is responsible for consulting with his or her healthcare provider and pharmacist to determine whether there are any side effects that may be affecting the employee's ability to safely and competently perform his/her job duties. If the employee or his/her healthcare provider feels that he/she is experiencing any of such side effects, the employee must notify their supervisor or Human Resources before performing or continuing to perform the job duties. Medical verification of the ability to safely perform job duties may be required before the employee is allowed to continue his/her work assignment. The employee need not disclose the medical condition for which the medication is being taken unless the City determines that this is necessary to comply with its legal obligations (e.g. properly designating leave or evaluating reasonable accommodations).

Although the lawful use of prescription or over-the-counter medications (other than marijuana) is not grounds for disciplinary action by itself, failure to report the use of such drugs which employee believes will impair job performance, failure to provide proper evidence of medical authorization, or using medication that is unlawfully obtained, or for use that is inconsistent with the prescription or label (including but not limited to using medication prescribed to another person) may

result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement.

#### MEDICINAL MARIJUANA

As noted above, marijuana use remains unlawful under federal law and is considered to be a violation of this policy, regardless of whether the use is permitted under state medical and/or recreational marijuana laws. Employees who test positive for marijuana or otherwise violate this Policy may be subject to disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement, regardless of whether they have been issued a prescription for marijuana use or have used marijuana recreationally under state law. The City does not excuse violations of this Policy to accommodate marijuana use. Employees who believe they need some other accommodation for a disability should contact Human Resources to discuss available options.

#### SEARCHES

The City will not search an employee's person, and no employee will be forcibly searched or detained. Reasonable efforts are made to respect an employee's integrity and privacy during searches; however, refusal to cooperate with lawful searches and investigations will be considered a violation of this policy and may result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement. All illegal drugs or drug paraphernalia found in or on the City's property may be released to law enforcement.

City property such as desks, equipment, lockers, etc., will remain the property of the City and will be subject to general access and search at our discretion.

#### COMPLIANCE WITH TESTING

Any employee who refuses to comply with a request for testing, who provides false information in connection with a test, who modifies or alters test forms, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution may result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement.

Refusal will include

- An inability to provide a specimen or breath sample without a valid medical reason (confirmed by a physician);
- Tampering, adulterating, or substituting specimen;
- Delaying arrival at a designated collection site;
- Leaving the collection site prior to test completion;
- Failure to permit an observed or monitored collection when required;

- Failure to take a second test when required;
- Failure to undergo a medical evaluation when required;
- Failure to cooperate with any part of the testing process;
- Once test is underway, failing to remain at site and provide a specimen;
- Failure to sign Step 2 of alcohol test form; and
- Leaving the scene of an accident without cause prior to submitting to a test.

Such refusals will be treated as insubordination and recorded as a non-negative test, unless otherwise justified by reasonable explanation. The employee will be referred to the substance abuse professional, and will be subject to disciplinary action, up to and including termination, and in accordance with an applicable collective bargaining agreement.

#### GENERAL PROVISIONS FOR DRUG AND ALCOHOL TESTING

In order to promote and maintain a drug and alcohol-free workplace, the City will utilize a program of drug and alcohol screening. It is the City's policy that this program applies to all non-safety-sensitive employees.

The City uses qualified supervisory personnel and makes arrangements with a certified laboratory/testing organization to administer this policy. Procedures for specimen collection, chain of custody of specimens, laboratory analysis procedures, and quality control requirements will be in accordance with the United States Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, Final Guidelines, and the provisions set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs to assure a high degree of accuracy and reliability. If applicable, medication use and other medical information is screened by a qualified Medical Review Officer (MRO). Lawful medication used consistent with a prescription is treated as a negative test under this policy, and employee medical information is not disclosed to the City by the testing organization. A positive test for alcohol is any confirmed alcohol concentration of .02 or above. Test results and other information concerning drug and or alcohol investigations are treated confidentially and released only when there is a legitimate business needs to know, or as otherwise required or authorized by law.

#### *Types of Testing*

- Reasonable Suspicion: It is the City's policy that all employees are subject to fitness-for-duty evaluation consisting of a drug and alcohol test when there is reason to suspect the employee is under the influence of alcohol or drugs on duty. A referral for testing will be made when a trained supervisor can articulate and substantiate physical, behavioral and performance indicators of probable drug use or alcohol misuse by observing the appearance, behavior, speech or body odors of the employee.

Upon conclusion of the specimen collection, the City, with the employee, will make arrangements for the employee's transportation home and if necessary, pay for transportation. Under no circumstances will the employee be permitted to operate a motor vehicle for the trip home.

- Post-Accident: Post-accident testing may be required if the circumstances give rise to reasonable suspicion that the employee is under the influence or impaired at the time of the accident. If an employee is injured due to an accident, the City's first concern will be appropriate medical treatment for the employee. However, if there is a basis for testing as stated above, the employee will be required to authorize testing as part of their medical treatment and must also authorize the release of appropriate medical records to enable the City to determine whether drugs or alcohol were present in their system.

Upon conclusion of the specimen collection, the City, with the employee, will make arrangements for the employee's transportation home and if necessary, pay for transportation. Under no circumstances will the employee be permitted to operate a motor vehicle for the trip home.

- Return-to-Duty: All employees who test positive for drugs and/or alcohol, and who are allowed to return to work, must be evaluated for drug and alcohol use by a Substance Abuse Professional (SAP), must complete all disciplinary actions, SAP requirements and must test negative prior to being released for duty.
- Follow-Up: Employees permitted to return to duty following a positive test for drugs and/or alcohol may be subject to unannounced follow-up testing as determined by the SAP. Follow-up testing may be required for up to 48 months after returning to safety sensitive duty dependent upon the SAP recommendation.

### *Substance Abuse Professional Evaluations*

An employee who tests positive for drugs or alcohol or refuses a test, will be evaluated by a City-designated Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with substance abuse. The evaluation will consist of a clinical assessment, treatment recommendations, and referrals, as appropriate. At a minimum, the employee must participate in a substance abuse education and prevention class. The SAP will inform the City, in writing, of the clinical-assessment-based treatment recommendations, which must be complied with. In addition, the SAP will specify the duration and frequency of follow-up drug and/or alcohol tests. The SAP's evaluations, assessment, treatment recommendations, referrals and follow-up testing recommendations will be in accordance with 49 CFR 40

### *Confidentiality*

Confidentiality will be maintained throughout the drug and alcohol testing process. To assure confidentiality, all test results will be sent only to the Designated Employee Representative (DER) by means of a secure communication system.

The Human Resources Department will maintain results in a medical file separate from the official personnel file.

The employee has an unqualified right, upon written request, to obtain copies of any records pertaining to his or her drug or alcohol tests.

Test results will be released without written consent only:

- To those City personnel directly involved in the decision for the tested employee's dismissal or disciplinary action;
- To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;

The City will carry out this policy in a manner that respects the dignity and confidentiality of those involved.

### *Notification of Criminal or Driving While Intoxicated Conviction*

The Drug Free Workplace Act of 1988 requires all employees to notify the Human Resources Department of any conviction under a criminal drug statute for violations occurring on City property within five (5) days of conviction. This notification must occur within five (5) days of conviction or violation. Within 30 days, the City will make a determination of action based on the incident and employees will be subject to disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement, depending upon the circumstances. Failure to report such conviction, or violation, will result in disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement.

### EMPLOYEE ASSISTANCE PROGRAM

The City recognizes its commitment and its responsibility to its employees by seeking to provide, through the Employee Assistance Program (EAP) and/or Substance Abuse Professional (SAP), an opportunity for employees to deal with drug and alcohol-related problems. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through the EAP and /or SAP in complete confidence and without jeopardizing his/her employment with the City solely because of the request for assistance. Telephone numbers for the EAP and SAP are available from the DER and/or the Human Resources Department. Other treatment programs for drug and alcohol

problems are available through the health and welfare providers selected by individual employees and may be covered by benefits programs offered by the City.

Although employees are encouraged to receive help for drug and alcohol problems, participation in an Employee Assistance Program and/or SAP will not excuse an employee's failure to comply with the requirements of this policy.

#### EDUCATION AND TRAINING

Supervisors of non-safety-sensitive employees will receive the same training as required of supervisors of FMCSA covered safety-sensitive employees.

Employees will receive this policy, and afforded access to educational materials and/or training which include information on the effects and consequences of prohibited drug use on personal health, safety, the work environment, and indicators of prohibited use. Employees will also be afforded access to information on the effects of alcohol misuse on personal health, safety, the work environment, and available methods of intervention.

#### DISCIPLINE

##### *Probationary employees*

Probationary employees who violate any provision of this policy shall be subject to immediate disciplinary action, up to and including termination.

##### *Regular employees*

Any regular status, covered employee who violates any provision of this policy may be subject to disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement. This may include a requirement to fully comply with the Employer Return-To-Work/ Last Chance Agreement. Such an agreement shall include the conditions under which the employee shall be allowed to continue his or her employment with the City. It may also include a requirement for continued compliance and satisfactory completion of any treatment prescribed by the substance abuse professional including after-care programs and special requirements by the City, or any other requirements deemed appropriate by the parties involved, including termination if the conditions of the agreement are not met. The City shall decide on a case-by-case basis, taking into consideration performance, other employment factors and the nature of the violation when determining the degree of disciplinary action or if the covered employee is eligible to participate in a last chance agreement.

#### RETURN-TO-WORK REQUIREMENTS

Prior to being allowed to return to work, all employees that test positive for drugs or alcohol, as defined under the terms of this policy, and who, under the discipline

policy, are allowed to return to work, will be required to successfully complete the following:

1. Meet with a Substance Abuse Professional (SAP) for assessment. The employee is financially responsible for any and all costs associated with the SAP process and required follow-up drug/alcohol testing.
2. Abide by the treatment recommendations made by the SAP, including successful completion of any treatment program or substance abuse prevention class, as applicable, and monitoring for a minimum of one year (but up to five years) by the SAP to assure compliance with the aftercare plan.
3. Undergo return-to-duty drug and alcohol tests. A verified negative result must be obtained before the employee will be permitted to return to work.
4. Accept a Return-To-Work/Last Chance Agreement, in conjunction with the employee's manager, outlining the terms for returning to work. At the discretion of the City, the City may consider alternatives to a Last Chance Agreement subject to the totality of the circumstances. The Agreement will include the following requirements:
  - a. Successful compliance with, and completion of the treatment program and/or substance abuse prevention class, as applicable; and
  - b. Compliance with the after-care plan; and
  - c. Participation in, and compliance with, the requirements of a follow-up testing program;
  - d. Termination of employment for a positive drug or alcohol test under any testing circumstances within the Return-To-Work/Last Chance Agreement time period. For the purposes of the Return-To-Work/Last Chance Agreement, a positive test is any confirmed alcohol concentration of .02 or greater; refusal to test or any confirmed positive drug test, verified by a Medical Review Officer (MRO) and such positive test is mutually considered just cause for termination. Employer will provide due process rebuttal opportunity prior to termination, and
  - e. Employee signature on the Return-To-Work/Last Chance Agreement, acknowledging the acceptance and understanding of the conditions set forth within the agreement, in consideration of continued employment.

Failure to sign the Return-To-Work/Last Chance Agreement or failure to adhere to any of the aforementioned requirements will result in termination of the employee.

#### PAYMENT OF COSTS ASSOCIATED WITH THE TESTING PROGRAM

##### *Pre-employment*

The City will pay the costs associated with pre-employment testing. The City will not pay the candidate's time for a pre-employment test.

##### *Regular and Probationary Employees*

The City will pay testing costs including paid time reasonable suspicion and post-accident testing. Additional costs, which result from an employee who voluntarily admits use or violates any of the provisions of this policy, will be the responsibility of the employee unless those costs are covered by insurance, otherwise covered by any of the City's programs for which the employee is eligible or are the responsibility of the City based on any applicable local, state or federal law. Such costs may include the dependency evaluation, treatment, return-to-duty testing and follow-up testing. An employee who requests to have a test performed on a split specimen following a positive drug result on the primary specimen must make the arrangements and pay for the test through the MRO. The City will reimburse the employee for the testing cost if the test result does not re-confirm the non-negative test. Time loss incurred while seeking an evaluation or participating in treatment programs as well as the time needed to submit to follow-up testing shall be allowed through the use of accrued leave or leave without pay as outlined in City policy or an applicable collective bargaining agreement.

CERTIFICATE OF RECEIPT

Each covered employee will be required to sign a certificate of receipt certifying that he or she has not only received a copy of this policy but understands the policy.

QUESTIONS REGARDING THIS POLICY

The following City representatives are available to answer questions regarding the information contained in this policy:

Human Resources Director or City Attorney

## **ALCOHOL/DRUG USE, ABUSE AND TESTING:**

Employees with Commercial Driver's License and Safety Sensitive Positions

### INTRODUCTION

The City of Tualatin works to maintain a safe and efficient work environment. Employees who misuse controlled substances, prescription or illegal drugs, or alcoholic beverages pose a risk both to themselves and to everyone who comes into contact with or depends upon them and risks damage to the City's reputation.

This policy applies to all employees and applicants for employment in safety sensitive positions requiring the compliance with all applicable regulations issued by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) mandated urine drug testing and alcohol abuse program and the testing and reporting guidelines for such safety-sensitive positions. This policy revises and supersedes all previous drug and alcohol testing policies and practices. Safety sensitive employees include those required to have a commercial driver's license. The positions of Property Evidence Technician, Police Services Supervisor, and Community Services Officer are also considered safety sensitive due to handling of firearms, ammunition and controlled substances and are subject to the terms of this policy.

### PURPOSE

The purpose of this policy is to assure employee fitness for duty and to protect City employees, customers, and the public from risk posed by worker use of drugs or alcohol. This policy is intended to comply with all applicable regulations issued by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) mandated urine drug testing and alcohol abuse program and the testing and reporting guidelines for safety-sensitive positions. This policy sets the City's drug and alcohol abuse program and the testing and reporting guidelines for safety-sensitive employees as required by those regulations.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate employees. However, all persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination, and in accordance with any applicable collective bargaining agreement, or in not being hired.

Compliance with DOT/FMCSA drug and alcohol regulations and this policy is a condition of employment.

### PROHIBITED SUBSTANCES

The FMCSA regulations prohibit the consumption of the following drugs and drug metabolites: marijuana, amphetamines, opiates, phencyclidine (PCP), and cocaine. In addition to the aforementioned drugs, it is the City's policy to prohibit use of any illegal controlled substance, as well as any drug not approved for medical use by

the USDA or the USFDA. Illegal use includes use of, or impairment by, any illegal drug, misuse of legally prescribed or over-the counter drugs, or illegally obtained prescription drugs.

The FMCSA prohibits the consumption of any alcoholic substance, beverage, or mixture, including any medication containing alcohol within four (4) hours of the employee's scheduled time to report for work, while on duty or within eight (8) hours following an accident or until the employee takes a post-accident alcohol and/or drug test, whichever occurs first.

#### PROHIBITED BEHAVIOR

The use, possession, distribution, sale, manufacture, dispensation of or intoxication by alcoholic substances or beverages, intoxicants, illegal drugs, controlled substances not medically authorized, related drug paraphernalia, or other substances including prescription drugs which impair the employee's job performance or mental or motor function by any employee or any other person to whom this policy applies while on City premises (including City Vehicles) or in the course of conducting City business (including operating any motor vehicle on behalf of the City) during regular business hours, including while subject to being on-call in a paid status, at lunch or on breaks, is strictly prohibited. "City premises" includes all property rented, leased, owned or controlled by the City, including job sites and parking lots, etc. It also includes all City equipment and vehicles on or off our property.

Safety-sensitive employees on call are prohibited from using alcohol during hours they are on on-call paid status. Any time an employee (not on paid status) is called to report for duty, and the employee has used alcohol within four (4) hours of the call, the employee must turn down the work or acknowledge the use of alcohol and the inability to perform the safety-sensitive function.

Employees who are reasonably suspected of engaging in a prohibited activity or of not being fit for duty due to drug or alcohol misuse will be placed on paid administrative leave pending an investigation and verification. Employees who fail to pass a drug or alcohol test, or who engage in a prohibited activity will be removed from duty and may be subject to disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement.

#### ALCOHOL

##### *Adverse Effects*

It is recognized that alcohol is a legal, socially acceptable drug when consumed in moderation. However, when consumed primarily for its physical and mood-altering effects, it is a substance that is subject to abuse. As a depressant, it slows physical responses and progressively impairs mental functions, including the ability to safely operate a motorized vehicle or machinery. The chronic consumption of alcohol

over time may result in critical health issues, including dependency, fatal liver disease, ulcers, and increased possibility of cancers. Slurred speech, poor coordination, inability to walk straight, rapid eye movement, impaired attention or memory, stupor or coma are all signs of alcohol use and problems.

If an alcohol problem is suspected, the Employee Assistance Program should be contacted.

#### *Use*

FMSCA requires that no safety-sensitive employee shall report for duty within four (4) hours of using any alcoholic substances or beverages, including medications, or use alcohol while subject to being on-call in a paid status. An employee who has a confirmed alcohol concentration of 0.02 or greater, but less than 0.04, on an evidentiary breath testing device, may result in paid administrative leave and a disciplinary investigation. An employee could be subject to disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement. A confirmed alcohol concentration of 0.04 or greater is considered a positive alcohol test and may result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement for violation of this policy.

#### SAFETY-SENSITIVE FUNCTIONS –COMMERCIAL DRIVER'S LICENSE:

In addition to the City's drug and alcohol testing program, employees who are required to carry a commercial driver's license and who perform safety-sensitive functions on behalf of the City on or off City property, are required to participate in the federally mandated drug and alcohol testing program.

A safety-sensitive function, as defined by the FMCSA, means all time from the time a driver begins to work or is required to be in readiness to work until the time he/she is relieved from work and all responsibility for performing work. Safety-sensitive functions shall include:

- (1) All time at an employer or shipper plant, terminal, facility, or other property, or on any public property, waiting to be dispatched, unless the driver has been relieved from duty by the employer;
- (2) All time inspecting equipment as required by §§ 392.7 and 392.8 of this subchapter or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
- (3) All time spent at the driving controls of a commercial motor vehicle in operation;
- (4) All time, other than driving time, in or upon any commercial motor vehicle except time spent resting in a sleeper berth (a berth conforming to the requirements of § 393.76 of this subchapter);
- (5) All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded,

- remaining in readiness to operate the vehicle, or in giving or receiving receipts for shipments loaded or unloaded; and
- (6) All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

A safety-sensitive employee, under the FMCSA, is considered to be performing a safety-sensitive function when he or she is actually performing, ready to perform, or immediately available to perform such functions.

A list of all safety-sensitive positions is attached (Exhibit A).

#### PRESCRIPTION DRUG USE

The appropriate use of legally prescribed drugs and nonprescription medication is not prohibited. However, it is the policy of the City that each safety-sensitive employee who uses a prescription or over-the-counter medication is responsible for consulting with his or her healthcare provider and pharmacist to determine whether there are any side effects that may be affecting the employee's ability to safely and competently perform his/her job duties. If the employee or his/her healthcare provider feels that he/she is experiencing any of such side effects, the employee must notify their supervisor or Human Resources before performing or continuing to perform job duties. A fitness for duty exam may be required to verify the employee's ability to safely perform job duties before the employee is allowed to continue his/her work assignment. The employee need not disclose the medical condition for which the medication is being taken unless the City determines that this is necessary to comply with its legal obligations (e.g. properly designating leave or evaluating reasonable accommodations).

Although the lawful use of prescription or over-the-counter medications (other than marijuana) is not grounds for disciplinary action by itself, failure to report the use of such drugs which employee believes will impair job performance, failure to provide proper evidence of medical authorization, or using medication that is unlawfully obtained, or for use that is inconsistent with the prescription or label (including but not limited to using medication prescribed to another person) may result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement.

#### MEDICINAL OR RECREATIONAL MARIJUANA

The City of Tualatin, as well as the DOT, views Marijuana as a Schedule 1 controlled substance and prohibits employees from having any detectable level in their system while performing a safety-sensitive function. Being on duty or operation of a Commercial Motor Vehicle is prohibited while using or under the influence of Marijuana.

#### SEARCHES

The City will not search an employee's person, and no employee will be forcibly searched or detained. Reasonable efforts are made to respect an employee's integrity and privacy during searches; however, refusal to cooperate with lawful searches and investigations will be considered a violation of this policy and may result in disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement. All illegal drugs or drug paraphernalia found in or on the City's property may be released to law enforcement.

City property such as desks, equipment, lockers, etc., will remain the property of the City and will be subject to general access and search at our discretion.

#### COMPLIANCE WITH TESTING

Any employee or applicant who refused to comply with a request for testing, who provides false information in connection with a test, who modifies or alters test forms, or who attempts to falsify test results through tampering, contamination, adulteration, or substitution may be subject to disciplinary action, up to and including termination, and in accordance with any applicable collective bargaining agreement, or barred from employment.

Refusal will include:

- An inability to provide a specimen or breath sample without a valid medical reason (confirmed by a physician);
- Tampering, adulterating, or substituting specimen;
- Delaying arrival at a designated collection site;
- Leaving the collection site prior to test completion;
- Failure to permit an observed or monitored collection when required;
- Failure to take a second test when required;
- Failure to undergo a medical evaluation when required;
- Failure to cooperate with any part of the testing process;
- Once test is underway, failing to remain at site and provide a specimen;
- Failure to sign Step 2 of alcohol test form; and
- Leaving the scene of an accident without good cause prior to submitting to a test.

Such refusals will be treated as insubordination and recorded as a non-negative test, unless otherwise justified by reasonable explanation. The employee will be referred to the substance abuse professional, and may be subject to disciplinary action, up to and including termination, and in accordance with an applicable collective bargaining agreement.

#### GENERAL PROVISIONS FOR DRUG AND ALCOHOL TESTING

In order to promote and maintain a drug and alcohol-free workplace, the City will utilize a program of drug and alcohol screening. It is the City's policy that this program applies to employees in, and applicants for, safety sensitive positions

requiring the compliance with all applicable regulations issued by the U.S. Department of Transportation (DOT) and the Federal Motor Carrier Safety Administration (FMCSA) mandated urine drug testing and alcohol abuse program. The program also applies to the Property Evidence Technician, Police Services Supervisor, and Community Services Officer due to handling of firearms, ammunition and controlled substances.

All drug and alcohol testing will be in accordance with 49 CFR Part 40 (Procedures for Transportation Workplace Drug Testing Programs Sections), Part 655 (Prevention of Alcohol Misuse and Prohibited Drug Use in Transit Operations), and Part 382 (Controlled Substances and Alcohol Use and Testing). These regulations may be obtained from the Human Resources Department

### *Types of Testing*

#### a. Post-Offer/Pre-Employment

Following a conditional offer of employment, applicants for all safety-sensitive positions will undergo urine drug testing as a condition of employment. As mandated by the FMCSA, applicants will be screened for the presence of marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines. Applicants will be notified of the testing requirement during the application process. Failure to appear, failure to remain at the site prior to commencement of the test and aborting the collection before the test commences is considered a refusal of a pre-employment test.

A verified negative test result is required prior to performing any safety-sensitive functions and is a condition of employment. If the test is cancelled, the applicant must re-take the test and pass before being hired.

Failure to pass will result in the disqualification of the applicant and a rescinding of the conditional job offer.

Current City employees transferring into safety-sensitive positions will not be allowed to perform safety-sensitive duties until the employee takes a pre-employment drug test with a verified negative result. Additionally, current City employees returning to a safety-sensitive position after a period of 90 days or more must take a pre-employment drug test with a verified negative result before performing safety-sensitive duties.

#### b. Reasonable Suspicion

The FMCSA requires that all employees in safety-sensitive positions be tested for drug and/or alcohol use when there is reasonable suspicion of such impairment or use. A referral for testing will be made when a trained supervisor can articulate and

substantiate specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, body odors, or direct observations of drug or alcohol use.

The FMCSA drug testing regulations require that all supervisors must undergo 60 minutes of training on alcohol misuse and 60 minutes on controlled substances use (120 minutes total) before they are qualified to make a reasonable suspicion determination.

The City provides and encourages refresher training for supervisory personnel.

Upon conclusion of the specimen collection, the City, with the employee, will make arrangements for the employee's transportation home and if necessary, pay for transportation. Under no circumstances will the employee be permitted to operate a motor vehicle for the trip home.

c. Post-Accident

All surviving safety-sensitive employees who have a direct or possible involvement in an accident while in the course and scope of their employment will be tested for the presence of drugs and alcohol based on the applicable FMCSA requirements as outlined below.

*Under the FMCSA:*

A covered employee involved in an accident which involves a commercial motor vehicle shall be tested for alcohol and controlled substance as soon as practicable when the accident criteria meet the following DOT requirements:

- Covered employee was performing safety-sensitive functions with respect to the vehicle if the accident involved the loss of human life or;
- Covered employee receives a citation under State or local law for a moving traffic violation arising from the accident, AND
- Any vehicle involved was towed away OR anyone involved in the accident was immediately transported from the scene for emergency medical care.

Testing Guidelines

If the alcohol test is not administered within two (2) hours of the accident, the City will follow the requirements of 49 CFR 382.

If the drug test is not administered within thirty-two (32) hours or the alcohol test within eight (8) hours of the accident, the City will cease attempts to administer the test and follow the requirements of 49 CPR 382.

It is the responsibility of any covered employee who is subject to post-accident testing to remain readily available for such testing. If the covered employee is not readily available, he/she will be deemed by the City to have refused to submit to testing. This provision shall not be construed to require the delay of necessary medical attention for injured people, to prohibit the employee from leaving the scene of an accident to obtain assistance in responding to the accident, or to obtain necessary emergency medical care.

Upon conclusion of the specimen collection, the City, with the employee, will make arrangements for the employee's transportation home and if necessary, pay for transportation. Under no circumstances will the employee be permitted to operate a motor vehicle for the trip home.

d. Random

Random testing of safety-sensitive employees will be conducted in a manner consistent with the requirements of 49 CFR 382 (Controlled Substances and Alcohol Use and Testing) and 49 CFR part 40 (Procedures for Transportation Workplace Drug and Alcohol Testing Programs).

The City will maintain a listing of the names of all employees in safety-sensitive positions. During the calendar year, drug and alcohol tests will be administered to these employees on a random-selection basis. The City shall ensure that random drug and alcohol tests conducted will be unannounced, immediate and that the dates for administering random tests are spread reasonably throughout the calendar month and year. Testing will be conducted on all days and hours during which safety-sensitive work is performed. All random test notifications will occur while the employee is on the clock. In the event the random test collection extends beyond the end of the shift, the employee will be paid overtime for the additional time, in accordance with the applicable collective bargaining agreement. There is no discretion on the part of management or operations in the selection and notification of individuals for testing.

A computer based random number generator, which is a scientifically valid method, is used for random selections. All safety-sensitive employees shall have an equal chance of being selected each time selections are made.

The minimum annual percentage rates for these tests are set, and can be modified, by the FMCSA. The required testing rate shall be based on the average number of driver positions.

The positions of Property Evidence Technician, Police Services Supervisor, and Community Services Officer are not subject to random testing.

e. Return-to-Duty

All employees who test positive for drugs and/or alcohol, and who are allowed to return to work, must be evaluated for drug and alcohol use by a Substance Abuse Professional (SAP), must complete all disciplinary actions, SAP requirements and must test negative prior to being released for duty as outlined in 49 CFR Part 40.

It is the goal of this policy to prevent substance abuse and rehabilitate rather than terminate employees. However, all persons covered by this policy should be aware that violations of the policy may result in discipline, up to and including termination, in accordance with the applicable collective bargaining agreement, or in not being hired.

f. Follow-Up

Employees permitted to return to duty following a positive test for drugs and/or alcohol will be subject to unannounced follow-up testing as determined by the SAP. The testing will be in accordance with 49 CFR Part 40, subpart O and will be in addition to the employee's selection for testing under the random testing program. Follow-up testing may be required for up to 60 months after returning to safety sensitive duty dependent upon the SAP recommendation.

*Methodology*

Procedures for specimen collection, chain of custody of specimens, laboratory analysis procedures, and quality control requirements will be in accordance with the United States Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs, Final Guidelines, and the provisions set forth in 49 CFR Part 40, Procedures for Transportation Workplace Drug and Alcohol Testing Programs to assure a high degree of accuracy and reliability.

*Substance Abuse Professional Evaluations*

An employee who tests positive for drugs or alcohol or refuses a test, will be removed immediately from his or her safety-sensitive functions and evaluated by a City-designated Substance Abuse Professional (SAP). The SAP will evaluate each employee to determine what assistance the employee needs in resolving problems associated with substance abuse. The evaluation will consist of a clinical assessment, treatment recommendations, and referrals, as appropriate. At a minimum, the employee must participate in a substance abuse education and prevention class. The SAP will inform the City, in writing, of the clinical-assessment-based treatment recommendations, which must be complied with. In addition, the SAP will specify the duration and frequency of follow-up drug and/or alcohol tests. The SAP's evaluations, assessment, treatment recommendations, referrals and follow-up testing recommendations will be in accordance with 49 CFR 40.

*Confidentiality*

Confidentiality will be maintained throughout the drug and alcohol testing process. To assure confidentiality, all test results will be sent only to the Designated Employee Representative (DER) by means of a secure communication system.

The Human Resources Department will maintain results in a medical file separate from the official personnel file.

The employee has an unqualified right, upon written request, to obtain copies of any records pertaining to his or her drug or alcohol tests.

Test results will be released without written consent only:

- To those City personnel directly involved in the decision for the tested employee's disciplinary action or dismissal;
- To the decision-maker in a lawsuit, grievance, or other proceeding initiated by or on the behalf of the employee tested;
- When an accident investigation is performed by the National Transportation Safety Board; or, when records are requested by the DOT or any DOT agency with regulatory authority.

The City will carry out this policy in a manner that respects the dignity and confidentiality of those involved.

Prospective employers are required to obtain records from previous employers, pursuant to a written, signed request from the employee, regarding the drug and alcohol testing of the applicant, including any refusals to be tested, during the preceding two (2) years, or the current federal time length requirement of the date of application for employment. As directed by the specific, written consent of the employee, information regarding the employee's record will be released to an identified person. The background check also applies to employees transferring from a non-safety sensitive position into a covered position.

As mandated by state statute in Oregon, licensed commercial drivers applying for a safety sensitive position will be asked to consent to a check of their drug and alcohol testing records from the Oregon Department of Motor Vehicles. Applicants will also be asked to disclose if they have failed any DOT pre-employment tests for the past 2-years, or the current federal time length requirement. If the applicant refuses to consent to the federal or state history checks or refuses to disclose the necessary information, the offer for employment shall be withdrawn.

#### *Notification of Criminal or Driving While Intoxicated Conviction*

The Drug Free Workplace Act of 1988 requires all employees to notify the Human Resources Department of any conviction under a criminal drug statute for violations occurring on City property within five (5) days of conviction. This notification must occur within five (5) days of conviction or violation. Within 30 days, the City will

make a determination of action based on the incident and employees may be subject to disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement, depending upon the circumstances. Failure to report such conviction, or violation, may result in disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement.

#### EMPLOYEE ASSISTANCE PROGRAM

The City recognizes its commitment and responsibility to its employees by seeking to provide, through the Employee Assistance Program (EAP) and/or Substance Abuse Professional (SAP), an opportunity for employees to deal with drug and alcohol-related problems. Any employee who voluntarily requests assistance in dealing with a personal drug and/or alcohol problem may do so through the EAP and /or SAP in complete confidence and without jeopardizing his/her employment with the City solely because of the request for assistance. Telephone numbers for the EAP and SAP are available from the DER and/or the Human Resources Department. Other treatment programs for drug and alcohol problems are available through the health and welfare providers selected by individual employees and may be covered by benefits programs offered by the City.

Although employees are encouraged to receive help for drug and alcohol problems, participation in an Employee Assistance Program and/or SAP will not excuse an employee's failure to comply with the requirements of this policy.

#### EDUCATION AND TRAINING

FMCSA regulations require that all supervisors of safety-sensitive employees receive 60 minutes of training on alcohol misuse and 60 minutes on controlled substances use (120 minutes total). Supervisors who make reasonable suspicion determinations must have training on physical, behavioral, and performance indicators of probable drug and alcohol misuse.

Safety-sensitive employees will receive this policy, educational materials and/or training which include information on the effects and consequences of prohibited drug use on personal health, safety, the work environment, and indicators of prohibited use. Employees will also receive information on the effects of alcohol misuse on personal health, safety, the work environment, and available methods of intervention.

#### DISCIPLINE

##### *Probationary employees*

Probationary employees who violate any provision of this policy will be subject to disciplinary action, up to and including termination.

##### *Regular employees*

Any regular status, covered employee who violates any provision of this policy may be subject to disciplinary action, up to and including termination, and in accordance with the applicable collective bargaining agreement. This may include voluntary compliance with the Employer Return-To-Work/ Last Chance Agreement. Such an agreement shall include the conditions under which the employee shall be allowed to continue his or her employment with the City. It may also include a requirement for continued compliance and satisfactory completion of any treatment prescribed by the substance abuse professional including after-care programs and special requirements by the City, or any other requirements deemed appropriate by the parties involved, including termination if the conditions of the agreement are not met. The City shall decide on a case-by-case basis, taking into consideration performance, other employment factors and the nature of the violation when determining the degree of disciplinary action or if the covered employee is eligible to participate in a last chance agreement.

#### RETURN-TO-WORK REQUIREMENTS

Prior to being allowed to return to work, all safety sensitive employees that test positive for drugs or alcohol, as defined under the terms of this policy, and who, are allowed to return to work, will be required to successfully complete the following:

1. Meet with a Substance Abuse Professional (SAP) for assessment. The employee is financially responsible for any and all costs associated with the SAP process and required follow-up drug/alcohol testing.
2. Abide by the treatment recommendations made by the SAP, including successful completion of any treatment program or substance abuse prevention class, as applicable, and monitoring for a minimum of one year (but up to five years) by the SAP to assure compliance with the aftercare plan.
3. Undergo return-to-duty drug and alcohol tests. A verified negative result must be obtained before the employee will be permitted to return to work.
4. Accept a Return-To-Work/Last Chance Agreement, in conjunction with the employee's manager, outlining the terms for returning to work. At the discretion of the City, the City may consider alternatives to a Last Chance Agreement subject to the totality of the circumstances. The Agreement will include the following requirements:
  - a. Successful compliance with, and completion of the treatment program and/or substance abuse prevention class, as applicable; and
  - b. Compliance with the after-care plan; and
  - c. Participation in, and compliance with, the requirements of a follow-up testing program;
  - d. Termination of employment for a positive drug or alcohol test under any testing circumstances within the Return-To-Work/Last Chance Agreement time period. For the purposes of the Return-To-Work/Last Chance Agreement, a positive test is any confirmed alcohol concentration of .02 or greater; refusal to test or any confirmed positive drug test, verified by a Medical Review Officer (MRO) and such positive test is mutually considered

just cause for termination. The City will provide due process rebuttal opportunity prior to termination, and

- e. Employee signature on the Return-To-Work/Last Chance Agreement, acknowledging the acceptance and understanding of the conditions set forth within the agreement, in consideration of continued employment.

Failure to sign the Return-To-Work/Last Chance Agreement or failure to adhere to any of the aforementioned requirements will result in termination of the employee.

#### PAYMENT OF COSTS ASSOCIATED WITH THE TESTING PROGRAM

##### *Pre-employment*

The City will pay the costs associated with pre-employment testing. The City will not pay the candidate's time for a pre-employment test.

##### *Regular and Probationary Employees*

The City will pay testing costs including paid time for random, reasonable suspicion and post-accident testing. Additional costs, which result from an employee who voluntarily admits use or violates any of the provisions of this policy, will be the responsibility of the employee unless those costs are covered by insurance, otherwise covered by any of the City's programs for which the employee is eligible or are the responsibility of the City based on any applicable local, state or federal law. Such costs may include the dependency evaluation, treatment, return-to-duty testing and follow-up testing. An employee who requests to have a test performed on a split specimen following a positive drug result on the primary specimen must make the arrangements and pay for the test through the MRO. The City will reimburse the employee for the testing cost if the test result does not re-confirm the non-negative test. Time loss incurred while seeking an evaluation or participating in treatment programs as well as the time needed to submit to follow-up testing shall be allowed through the use of accrued leave or leave without pay as outlined in City policy or an applicable collective bargaining agreement.

#### CERTIFICATE OF RECEIPT

Each covered employee will be required to sign a certificate of receipt certifying that he or she has not only received a copy of this policy but understands the policy, which is the basis for implementing the requirements of the U.S. Department of Transportation Federal Motor Carrier Safety Administration rules and regulations pertaining to alcohol and controlled substances testing of covered employees.

#### QUESTIONS REGARDING THIS POLICY

The following City representatives are available to answer questions regarding the information contained in this policy:

Human Resources Director  
City Attorney

**EXHIBIT A – To Testing Policy**

**SAFETY-SENSITIVE POSITIONS**

Safety Sensitive Under FMCSA Authority/Commercial Driver's License

Park Maintenance Technician I  
Park Maintenance Technician II  
Utility Technician I  
Utility Technician II  
Fleet Services Technician I  
Fleet Services Technician II  
Facilities Maintenance Technician  
Parks Maintenance Division Manager  
Water Division Manager  
Street/Sewer/Storm Division Manager  
Maintenance Services Manager

Other Safety Sensitive Positions: (not subject to random testing)

Property Evidence Technician  
Police Services Supervisor  
Community Service Officer

## **EXHIBIT F – STANDBY PERSONNEL PROCEDURE**

### **OPERATIONS DEPARTMENT STANDBY PERSONNEL PROCEDURE**

This procedure is for public works related emergencies only. Public works related emergencies are items dealing with streets, street signs, storm drainage and sanitary sewer problems and domestic water problems. Utility Technician II's and Park Maintenance Technician II's will be assigned to work the emergency standby system. Assignment of these employees to the emergency standby system will be executed by the Water, Street/Sewer/Storm and Park Maintenance Supervisors, and subject to the approval of the Public Works Director.

1. The standby period will be one (1) week in length. The period will begin at 8:30 a.m. on Tuesday and continue until 8:30 a.m. on Tuesday of the following week. The standard shift will be 8:30 a.m. to 5:00 p.m. including two 15 minute breaks and ½ hour lunch.
2. The Technician II on standby will be given a pager and/or cell phone so that they may be reached at any time, 24 hours a day.
3. If a Utility Technician I is assigned with the Utility Technician II he/she will assume the standby period shift change as stated in item number 1 above.
4. Employees on standby will not be allowed to use intoxicating substances during their given standby week.
5. Employees on standby will be required to stay within the greater Portland Metropolitan area.
6. Standby employees must respond to a call out within 15 minutes, and then report to the Operations Center or problem site as soon as possible.
7. If employees are called out while on standby, they will receive compensation in accordance with the collective bargaining agreement.
8. If the emergency is of significant nature, or if additional assistance is necessary, the appropriate supervisor will be notified. If the supervisor is unavailable, the Public Works Director will be notified. If at this point neither the supervisor nor the Public Works Director can be contacted, the Technician II can call in what additional assistance they deem necessary. If at the judgment of the Technician the emergency is of significant nature, either the City Engineer or the City Manager will be advised of the situation.
9. It will be the responsibility of the scheduled standby employee to make arrangements for either another Technician II (or their supervisor when necessary)

to cover their shift if they are unable to work for such reasons as sickness or personal emergency. The supervisor is to be notified of such a change.

