

MUNICIPAL BUILDING COMMISSION

and

**AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
Minnesota Council No. 5
Local Union 9, AFL-CIO
(CUSTODIAL & SECURITY UNIT)**

LABOR AGREEMENT

CUSTODIAL AND SECURITY UNIT

For the Period:

January 1, 2023 - through December 31, 2024

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ARTICLE 1: PREAMBLE

This Agreement, hereinafter referred to as the *Agreement* is entered into between the Municipal Building Commission, hereinafter called the *Employer*, and the American Federation of State, County and Municipal Employees, Minnesota Council No. 5 and its affiliated Local No. 9 Custodial and Security Unit, hereinafter called the *Union*. The Parties hereto agree as follows:

ARTICLE 2: RECOGNITION

Section 2.01 - Definition of Bargaining Unit and Recognition of Union

The Employer recognizes the Union as the exclusive representative for the following unit of Municipal Building Commission employees under the Minnesota Public Employment Labor Relations Act (Minnesota Statutes, Chapter 179A):

All employees in the classifications of Foreman, Utility Worker, Custodian and Security Officer, Office Support Specialist, who work more than fourteen (14) hours per week and more than sixty-seven (67) work days per year excluding supervisory, confidential and all other employees.

Section 2.02 - Recognition of Employer's Representative

The Union recognizes the labor relations representative designated by the Employer as the representative of the Employer and shall meet and negotiate exclusively with such representative, except as may be otherwise specifically provided in this Agreement. No agreement establishing terms and conditions of employment or other matters made between the Union and the Employer shall be binding upon the Employer unless the witnessed signature of the Employer's designated representative is affixed thereon.

Employees selected by the Council or Local Union to participate in negotiations, labor management committees, and/or meet and confer sessions that occur with both Union and Employer participation shall be considered to be on paid time provided such meetings occur during the employee's regularly scheduled hours of work. No overtime obligation shall accrue to the Employer.

As per Minnesota State law, Employees elected to any Council or Local Union office or selected by the Council or Local Union to do work or participate in meetings which takes them away from their employment duties may be granted a leave of absence without pay at the written request of Council or the Local Union and approval by the Employer.

Section 2.03 - Extra Contract Agreements Prohibited

The Employer, in accordance with the provisions of Minnesota Statutes §179.06, Subd. 1., agrees not to enter into any agreements establishing terms and conditions of employment with members of the bargaining unit, either individually or collectively, which in any way conflicts with the terms and conditions set forth in this Agreement, except through the certified exclusive representative.

Section 2.04 - Modification of Bargaining Unit

Subd. 1. Unit Clarification

Disputes which may occur between the Employer and the Union over the inclusion or exclusion of job classes, with respect to the bargaining unit defined in Section 2.01 of this article, may be referred to the Commissioner, Bureau of Mediation Services, State of Minnesota, for determination in accordance with applicable statutory provisions. Determination by the Commissioner shall be subject to such review and determination as provided by statute and rules and regulations promulgated there under.

Subd. 2. Accretion

If the Employer establishes new job classes within the bargaining unit identified in Section 2.01 of this article (Definition of Bargaining Unit and Recognition of Union), both Parties shall meet and negotiate on wages. All other terms and conditions of this Agreement shall apply.

ARTICLE 3: DEFINITIONS

The following terms used in this Agreement shall be defined as follows:

Section 3.01 - Base Pay Rate

The employee's basic hourly pay rate exclusive of overtime premium, shift premium, longevity or any other special allowances.

Section 3.02 - Compensated Payroll Status

Receipt of cash payment for scheduled time worked or for time on approved compensated leave.

Section 3.03 – Days

Unless otherwise indicated, means calendar day.

Section 3.04 - Emergency

An unforeseen crisis situation or condition so defined by the Employer

Section 3.05 - Employee

A member of the exclusively recognized bargaining unit as defined in the article herein entitled *Recognition*, who has been employed on the basis of permanent appointment to a continuing position.

Section 3.06 - Layoff

Separation from service with the Employer in excess of fifteen (15) calendar days necessitated by lack of work, lack of funds or other reasons without reference to incompetence, misconduct or other behavioral considerations.

Section 3.07 - Leave of Absence

An approved leave of absence from work duty during a scheduled work period with or without compensation.

Section 3.08 - Part - Time

An individual so designated by the Employer whose normal work schedule consists of fewer hours than the full-time schedule.

Section 3.09 – Permanent Employee

A member of the bargaining unit as defined in the article herein titled *Recognition* who has completed the required probationary period for newly employed, re-employed or reinstated employees, who has been employed on the basis of permanent appointment to a continuing position.

Section 3.10 - Probationary Period

Subd. 1. Newly Hired Employees

The first one thousand forty (1040) compensated regular hours of service of newly hired, rehired or reinstated employees.

The probationary period for reinstated employees may be modified or waived at the discretion of the Employer, provided such modification or waiver is stated in writing. A copy of the written waiver shall be sent to the Exclusive Union Representative.

Subd. 2. Promoted and Transferred Employees

The first one thousand forty (1040) compensated regular hours of service following a promotional appointment or a transfer.

Section 3.11 - Regular Hours

Time in compensated payroll status exclusive of overtime hours.

Section 3.12 - Reinstatement

Reemployment of a former permanent or probationary employee in a work classification to which he/she was assigned prior to termination.

Section 3.13 - Steward

An employee designated by the Union for the purposes of communicating with the Employer on matters of interest to either Party.

Section 3.14 - Temporary Employee

An individual designated by the Employer as temporary and whose employment is not to exceed six (6) months duration in temporary status in a calendar year.

Section 3.15 - Termination in Good Standing

Any termination other than dismissal for disciplinary reasons and for which the terminating employee has given the required minimum notice in advance of leaving.

Section 3.16 – MBC Seniority

Is defined as the length of continuous service from the employee's date of full time hire to the Municipal Building Commission.

Section 3.17 – Classification Seniority

Is defined as the length of continuous service from the employee's date of full time hire in a specific job classification.

ARTICLE 4: UNION SECURITY

Section 4.01 - Union Dues Payroll Deductions

In recognition of the Union as the exclusive representative:

Subd. 1. Amount

The Union shall certify to the Employer, in writing the current amount of regular dues to be withheld and any fair share assessments authorized by law.

Subd. 2. Payroll Deductions

The Employer shall once each month deduct an amount sufficient to provide the payment of regular dues established by the Union from the wages of all employees authorizing, in writing, such deduction on a form designated and furnished for such purpose by the Union. Such dues deductions shall be canceled by the Employer upon written request of the employee. Only the duly certified exclusive representative shall be granted payroll deduction of dues for employees covered by this Agreement.

Subd. 3. Remittance

The Employer shall remit such deductions monthly to the appropriate designated officer of the Union with a list of the names of the employees from whose wages deductions were made.

Subd. 4. Monthly Reports

The Employer shall, on a form furnished by the Union, make available to the Union the names of those employees who for any reason have terminated employment along with their mailing address of record, job classification, rate of pay and date of hire. Such report shall be filed by the Employer with the Union immediately after the end of any calendar month in which such changes in staff occur.

Subd. 5. Annual Report

The Employer shall on an annual basis, make available to the Union a report listing all employees in the bargaining unit showing their names, job classification, pay rate and last date of hire. The Union shall compensate the Employer for the cost of producing each such report at the rate of ten dollars (\$10.00) per copy.

Section 4.02 - Hold Harmless

The Union agrees to indemnify and holds the Employer harmless against any and all claims, suits, orders or judgments brought or issued against the Employer as a result of any action taken or not taken under the provisions of this article.

Section 4.03 - Union Stewards

Bargaining unit employees designated as Union Officers shall be permitted to adjust their hours of work when requesting time to attend regular monthly meetings of the Local Union. Such adjustments shall be of reasonable duration not to exceed three (3) hours per meeting. Advance notice and Supervisor approval is required.

The Union may designate certain employees from the bargaining unit to act as stewards and shall, within thirty (30) days of the execution of this Agreement and upon the occurrence of any change thereafter, certify to the Employer a current list of business representatives, officers and stewards who are authorized by the Union to investigate and present grievances to the Employer.

The Employer agrees to recognize such representatives for the purpose of investigating and presenting grievances to the Employer subject to the following stipulations:

Subd. 1. Number of Stewards

There shall be not more than four (4) bargaining unit employees designated as stewards,

subject to alteration upon mutual agreement between the Union and the Employer.

Subd. 2. Time Off With Pay

Not more than one employee representative (steward or officer) will be authorized time off with pay to investigate or present any one (1) grievance to the Employer. Nothing in this clause is intended to limit the number of Union stewards who may request to use their own time (vacation, compensatory, or time without pay) to investigate and present grievances.

Subd. 3. Absence From Work Area

Bargaining unit employee stewards and officers shall not leave their work stations without the concurrence of their designated supervisor(s) and they shall notify their designated supervisor(s) upon return to their work stations. Concurrence of the supervisor to leave a work station for Union business will be limited to the investigation and presentation of grievances to the Employer.

Section 4.04 - Visitation

Non-employee business representatives of the Union as previously designated to the Employer as provided herein may, with the concurrence of the Employer, come on the premises of the Employer for the purpose of investigating and presenting grievances. There shall be no solicitation of membership, signing up of members, and collection of initiation fees, dues, fines or assessments on the Employer's time. The Union may use the Employer's facilities for Union business with prior approval of the Employer.

Section 4.05 - Bulletin Boards

The Union may use designated bulletin boards for the purpose of posting notices of Union meetings, Union elections, Union election returns, Union appointments to office, Union recreational and social affairs, arbitration awards, decisions of the Bureau of Mediation Services, Public Employment Relations Board and the courts, and other items specifically approved by the Employer. It is agreed that items which reflect negatively on the Union, employees, or the Commission shall not be posted. All posted materials must be signed by an authorized Union representative.

Section 4.06 - Discrimination Prohibited

Employees have the right to join or to refrain from joining the Union. Neither the Employer nor the Union shall discriminate against or interfere with the rights of employees to become or not become members of the Union and thereafter there shall be no discrimination or coercion against any employee because of Union membership or non-membership. The Union shall, in its responsibility as exclusive representative of the employees, represent all employees without discrimination, interference's, restraint or coercion.

Section 4.07 - Veteran's Preference

Nothing in this Agreement shall be construed to affect the status of veterans in contravention

of existing veteran's preference laws relating to the employment, discharge or promotion of veterans.

ARTICLE 5: EMPLOYER AUTHORITY

Section 5.01 - Employer Authority

The Union recognizes the right of the Employer to operate and manage its affairs in all respects in accordance with applicable laws and regulations of appropriate authorities. All rights and authority which the Employer has not officially abridged, delegated or modified by this Agreement are retained by the Employer.

Section 5.02 - Contracting Permitted

Nothing in this Agreement shall prohibit or restrict the right of the Employer to contract with vendors or others for materials or services. In the event that existing employees are displaced as a result of the Employer engaging in a contract for services, the Employer agrees to make reasonable effort to relocate such employees in other available positions for which they are qualified. Further, the Employer shall discuss with the Union the effects, if any, upon members of the bargaining unit which may arise out of such decision to contract for services.

Section 5.03 - Bargaining Unit Work

Nothing in this Agreement shall be construed as a prohibition against supervisory performance of bargaining unit work provided no permanent full-time bargaining unit employee is terminated or laid off as a result. Nothing in this Agreement shall prohibit the rights of the Employer to cross train employees and assign employees to different job locations and tasks on a daily basis.

However, Grade 1 employees shall not normally be assigned work outside of Grade 1 other than emergency situations as defined in Section 3.04.

ARTICLE 6: SENIORITY

Section 6.01 - Seniority Defined

Seniority is defined as an employee's length of service for the Employer from the most recent date of employment, re-employment or reinstatement.

Subd. 1. Seniority During Leaves and Layoffs

Seniority is not interrupted during the period an employee is on approved leave, including leave for Union business or layoff, provided the employee returns to active work status and has complied with all the terms and conditions of this Agreement and other conditions established by the Employer.

Subd. 2. Seniority Outside the Scope of the Unit

Seniority for employees covered by this Agreement shall be retained and continue to accrue during the probationary period if an employee leaves a job classification covered by this Agreement for another position outside the bargaining unit with the Employer because of promotion, demotion or transfer.

Section 6.02 - Termination of Seniority

Seniority rights under this Agreement shall terminate upon the termination of an employee's employment, layoff in excess of a period equal to an employee's length of employment but not more than three (3) years, or upon an employee's failure to return to work in accordance with the terms and conditions of an approved leave of absence.

Section 6.03 - Seniority Lists

Seniority lists shall contain the names of bargaining unit employees their most recent date of hire and their job title arranged in the order of most to least senior.

Subd. 1. Seniority List

The report referenced by Article 4, Section 4.01, Subd. 5 (*Annual Report*) of this Agreement shall be considered to be the official seniority list for all purposes of this Agreement. A seniority list shall also be established at least fifteen (15) calendar days prior to the effective date of a layoff in excess of fifteen (15) calendar days.

Subd. 2. Certification of Lists

Employees and the Union shall be obligated to notify the Employer by certified mail of any error in the seniority list within thirty (30) days of the date the seniority list is furnished to the union's designated representative. If no error is reported within thirty (30) days after the date the seniority list is furnished to the Union's designated representative, the list will stand correct as posted.

Section 6.04 - Uses of Seniority

Except in those instances where senior employees are not qualified to perform remaining work duties, seniority shall determine the order of:

Subd. 1. Layoff

Layoffs in excess of fifteen (15) calendar days shall be in inverse order of seniority within the bargaining unit.

Subd. 2. Recall From Layoff

Recall from layoffs in excess of fifteen (15) calendar days shall be in order of seniority within the bargaining unit, provided that if an employee does not return to work upon a recall as directed by the Employer or on an extended date mutually acceptable to the employee and Employer, he/she shall automatically have terminated his/her employment.

Subd. 3. Bumping

If a senior employee requests exercise of seniority rights over a less senior employee for the purposes of layoff, the senior employee, as a condition of the Employer granting such a request, must accept the work schedule (days of week, work shift, and number of hours per shift) and work location of the less senior employee.

Section 6.05 - Notice of Layoff and Recall from Layoff

The Employer shall issue written notice of layoff or recall from layoff to affected employees at least fifteen (15) calendar days in advance of the effective date. Such notice shall be made by certified mail to the employee's last known address as shown by the Employer's records except when such employees are present at the work site to receive the notice.

ARTICLE 7: GRIEVANCE PROCEDURE

Section 7.01 - Grievance Defined

A *grievance* shall be defined as a dispute or disagreement raised by an employee against the Employer involving the interpretation for application of the specific provision of this Agreement.

Section 7.02 – Grievance Procedure

Grievances, as herein defined, shall be processed in the following manner:

Subd. 1. Informal

An employee claiming a violation concerning the interpretation or application of the express provisions of this Agreement shall, within twenty four (24) calendar days after the first occurrence of the event giving rise to the grievance, present such grievance, with or without the Union representative, to his/her supervisor who is designated for this purpose by the Employer. The supervisor shall give his/her oral or written answer within ten (10) calendar days after such presentation to the employee and his/her steward.

Subd. 2. Formal

If the grievance is not satisfactorily resolved in Step 1 and the employee and Union wish to appeal the grievance to Step 2 of the Grievance Procedure, it shall be referred, in writing, to the Building Director or his/her designated representative within seven (7) calendar days after

the designated supervisor's answer as provided for in Subd. 1. (Informal) of this section. The grievance appeal shall be initiated by means of a written grievance shall set forth the nature of the grievance, the facts on which it is based, the provisions of the Agreement allegedly violated, and the relief requested. The Building Manager and or his/her designated representative, shall discuss the grievance with the employee and the Union within seven (7) calendar days after the date presented at a time mutually agreeable to the parties.

If the grievance is resolved as a result of such a meeting, the settlement shall be reduced to writing and signed by the Building Manager or his/her designated representative, the employee and the Union representative. If no settlement is reached, the Building Manager or his/her designated representative, shall provide a written answer to the employee and the Union representative within fourteen (14) calendar days following their meeting.

Section 7.03 Arbitration

If the grievance is not settled in accordance with the foregoing procedure, the Union and employee may refer the grievance to arbitration within ten (10) calendar days after the employee and the Union's receipt of the Employer's written answer in Subd. 2, Section 7.02 (Formal) of this article. The Parties may mutually agree upon an arbitrator to hear and decide the dispute. If, however, the Parties are unable to so agree, either of them may request the Bureau of Mediation Services, State of Minnesota, to provide a list of seven (7) qualified arbitrators. The Employer and the Union shall alternately strike names from the list until only one (1) name remains; that of the selected arbitrator. Unless the Parties agree to the contrary, the Party who strikes the first name from the list shall be determined by the flip of a coin. The Arbitrator shall hear the grievance at a scheduled meeting subject to the availability of the Employer and the Union representatives. The Arbitrator shall notify the employee, the Union representative and the Employer of his/her decision as soon as possible following the close of the hearing or submission of briefs by the Parties, whichever is later. The fees and expenses for the Arbitrator's service proceedings shall be borne equally by the Employer and the Union, provided that each Party shall be responsible for compensating its own representatives and witnesses. If one of the Parties desires a verbatim record of the proceedings, it may cause such a record to be made, provided it pays for the record. If both be shared equally. The Arbitrator shall not have the right to amend, modify, nullify, ignore, add to or subtract from the provisions of this Agreement. The Arbitrator shall consider and decide only the specific issue(s) submitted, in writing, by the Employer and the employee-Union, and shall have no authority to make a decision on any other issue(s) not so submitted. The Arbitrator shall be without power to make decisions consistent to or inconsistent with or modifying or varying in any way the application of laws, rules or regulations having the force and effect of law. The decision shall be based solely upon the Arbitrator's interpretation or application of the express terms of this Agreement and on the facts of the grievance presented. If the Arbitrator determines that the grievance is covered by law or statute, or not covered by the express provisions of this Agreement, the Arbitrator shall refer the grievance back to the Parties without decision or recommendation. The Parties may, by mutual written agreement, agree to submit more than one (1) grievance to the Arbitrator provided that each grievance will be considered as a separate issue and each on its own merits.

Section 7.04 - Time Limits

If a grievance is not presented within the time limits set forth above, it shall be considered waived. If a grievance is not appealed to the next step within the specified time limit or any agreed extension thereof, it shall be considered settled on the basis of the Employer's last answer. If the Employer does not answer a grievance or an appeal thereof within the specified time limits, the employee and the Union may elect to treat the grievance as denied at that step and immediately appeal the grievance to the next step. The time limit in each step may be extended by mutual written agreement of the Employer and Union representatives involved in each step.

Section 7.05 - Application and Scope

Subd. 1. Probationary Employees

Employees serving an initial probationary period shall have right of appeal only through Step 2 (i.e., Section 7.02, Subd. 2. of this article) of this grievance procedure except for a grievance alleging an error in salary or benefits due.

Subd. 2. Temporary Employees

Temporary employees and employees serving in the unclassified service shall not have the right of appeal under this grievance procedure.

Subd. 3. Permanent Employees

Permanent employees serving a promotional probationary period shall have the right of appeal under this grievance procedure provided that such employee(s) shall not have the right to appeal beyond Step 2 (i.e., Section 7.02, Subd. 2. of this article) of this grievance procedure a demotion to his/her previous classification upon failure to satisfactorily complete the required promotional probationary period.

ARTICLE 8: NO STRIKE - NO LOCKOUT

Section 8.01 - Strikes Prohibited

In recognition of the provisions included in this Agreement for a grievance procedure to be used for resolution of disputes, the Union agrees that neither the Union, its officers or agents, nor any of the employees covered by this Agreement will engage in, encourage, sanction, support or suggest any strikes, slow downs, mass absenteeism, mass use of sick leave, the willful absence from one's position, the stoppage of work or the absence in whole or in part of the full, faithful and proper performance of the duties of employment.

Any violation of any provisions of this article may be cause for disciplinary action including discharge.

Section 8.02 - Lockouts Prohibited

No lockout shall be instituted by the Employer during the life of this Agreement provided Section 8.01 (Strikes Prohibited) of this article is not violated by employees or the Union.

ARTICLE 9: WORK SCHEDULES/PREMIUM PAY

Section 9.01 - General

This article is intended only to define the normal hours of work and to provide the basis for the calculation of premium pay, if any. Nothing herein shall be construed as a guarantee of hours of work per day or per week.

Section 9.02 - Payroll Period Defined and Hours of Work

A payroll period shall consist of eighty (80) hours of on duty time within a fourteen (14) calendar day period. Subd. 1 and Subd. 2 shall not take effect until an updated spot re-posting has been completed.

Subd. 1. Day Shift Staff

Employees shall normally be on duty within the meaning of this section for an eight (8) hour period each workday which shall be interrupted by a thirty (30) minute paid meal period and which shall include two (2) paid relief periods of fifteen (15) minutes each in duration.

Subd. 2. Security and Custodial Crew

Security staff employees shall normally be on duty within the meaning of this section for an eight (8) or twelve (12) hour period each workday which shall include a thirty (30) minute paid meal period and two (2) paid relief periods of fifteen (15) minutes each in duration. Custodial Crew shall normally be on duty within the meaning of this section for an eight (8) hour period each work day which shall include a thirty (30) minute paid meal period and two (2) paid relief periods of fifteen (15) minutes duration. Relief periods and meal periods shall be scheduled at times determined by the Employer. During relief and/or meal periods which, as defined above, are included in on duty time, employees will be required to remain on the Employer's premises. In some situations work demands may on occasion preclude the granting of an uninterrupted meal or relief period.

Section 9.03 - Overtime Work and Pay

Employees may be required to work a reasonable amount of overtime on a scheduled or unscheduled basis. Employees shall not, however, work overtime unless they have been directed to do so by their immediate supervisor or his/her designee. For purposes of this Agreement, the term *overtime* shall be defined as hours of work which exceed forty (40) in any work week or eight (8) in any work day provided that an employee whose normal work schedule includes ten (10) or twelve (12) hour work days shall be considered as working overtime only during the hours of work which exceed their regularly scheduled work day.

When an employee, in Security, calls in and notifies the MBC that they will not be able to work their assigned shift, and such notice is less than eight (8) hours in advance of their work shift, the overtime work shall first be offered to the employee(s) then on duty, in accordance with the current Security overtime list. In the event all capable employees, in the same shift, decline the overtime work, those offered overtime hours not worked shall be considered as "worked" for purposes of updating the Security Overtime List. The Employer then shall utilize the current security overtime list to fill the open work shift. Employer shall have the right to assign overtime based upon inverse order of classification seniority.

Subd. 1. Overtime Pay

Unless employees elect to be paid pursuant to the provisions of Subd. 2 (Compensatory Time Option) of this section, they shall be paid one and one-half (1 1/2) times their regular base rate of pay for all overtime work.

Subd. 2. Compensatory Time Option

In the event employees elect to be paid for overtime work at straight time rates of pay, they shall, in addition to such pay, receive one-half (1/2) compensatory time for the overtime work. (For example, an employee who worked two and one-half hours of overtime would receive two and one-half hours' pay at his/her regular base rate and one and one-fourth (1 1/4) hours of compensatory time under this option.) Employees must elect this option prior to the end of the payroll period in which the overtime work occurs. Employees may accumulate compensatory time to a maximum of eighty (80) hours and may take compensatory time off at times which are mutually agreed upon by the employee and the immediate supervisor.

Section 9.04 - Pyramiding and Duplication Prohibited

The base pay rate or premium compensation shall not be paid more than once for the same hours worked under any provisions of this Agreement.

Section 9.05 - Call-Back Pay Guarantee

Employees called to the work site by the Employer shall be paid for hours actually worked at their base pay rate but not less than three (3) hours. Such payment shall be either in cash or compensatory time off as determined by the Employer.

Section 9.06 - Flex-Time, Job Sharing and Work Tasking

Should the Employer intend to institute flextime, job sharing or work tasking, it shall first meet and confer on any of the above-mentioned items with the Union.

Section 9.07 - Pay When Working Out of Classification

Employees working the duties of a position allocated to a different classification, that is temporarily unoccupied, will be paid a 5% increase, and moved to the closest step of the unoccupied position in which the employee is working, regardless if that step amount is

higher or lower. Employees will be paid at that step rate for each hour of work in the unoccupied position.

Section 9.08 – On-Call Assignment

Employees may be assigned and scheduled to “on-call” status on weekday nights and over weekend periods at the discretion of the Employer. An employee assigned to “on-call” status will be required to respond within one hour. An employee assigned to “on-call” status will be compensated as follows: \$35.00 per day for each weekday and \$45.00 per day for each weekend day. The “on-call” pay is forfeited if the employee is called back. The Employer may cancel the on-call assignment with 24 hours or more notice with no obligation to compensate the employee for the cancelled on-call assignment.

The Employer will determine the order of placing employees on-call by first soliciting volunteers by order of seniority, provided that they are in the needed job classification and qualified to perform the required duties. Should no employees volunteer for the on-call assignment, the Employer will assign employees to on-call in order of inverse seniority.

ARTICLE 10: HOLIDAYS

Section 10.01 - Eligibility

Employees shall be entitled to compensated time off for designated holidays, provided the employee is on compensated payroll status the last work day preceding the holiday and the first work day following the holiday.

Section 10.02 - Holidays Defined

Designated *holidays* shall be one (1) normal work shift in duration and are identified as follows:

New Year's Day	January 1
Martin Luther King Day	Third Monday in January
President's Day	Third Monday in February
Memorial Day	Last Monday in May
Juneteenth	June 19
Independence Day	July 4
Labor Day	First Monday in September
Veterans Day	November 11
Thanksgiving Day	Fourth Thursday in November
Thanksgiving Friday	Day after Thanksgiving
Christmas Day	December 25
Personal Business Day (1)	

For employees whose regular work schedule is Monday through Friday, when a holiday, as designated in this article, falls on Sunday, the following day (Monday) shall be considered the official holiday for employees, or when such holiday falls on Saturday, the preceding day (Friday) shall be considered the official holiday for employees.

The following language shall not take effect until an updated spot re-posting has been completed:

For employees whose regular work schedule includes weekend shifts, the five (5) Monday holidays and Thanksgiving Day holiday will be given the day off and his or her job will be posted on an overtime basis. In the event that the employee is scheduled to be off on the given holiday, as a part of their normal work schedule, the employee shall receive the next work shift off, regardless of the day or length of shift, and receive holiday pay for the shift that is given off.

For employees whose regular work schedule includes weekend days, the actual day on which the holiday falls shall be the holiday. The weekend worker shall be given the actual holiday off, and his or her job will be posted on an overtime basis. The weekend worker will be required to work the city recognized holiday if his or her work schedule includes that particular day. No holiday pay shall be paid for the city recognized holiday when the employee receives the actual holiday off. An employee, regardless of his/her work schedule, shall receive the same number of holidays as an employee whose normal workweek is Monday through Friday.

Section 10.03 – Personal Business Day

All regular full-time employees shall be eligible to earn one (1) personal business day (8 compensated payroll hours) per payroll year. The personal business day shall be credited to the employee's available leave at the start of the payroll year and must be utilized prior to the end of the payroll year. The use of a personal business day shall be requested by the employee prior to the scheduled shift in which it is intended to be used. The personal business day shall be used on either a one day basis (8 compensated payroll hours) or two 4 (four) hour increments. If the Personal Business Day is split it must be used at the end of the work shift and not combined with any other type of leave.

Employees working regular shifts of over eight (8) hours will be allowed to supplement their leave request with vacation or compensatory time in order to receive compensation for their entire shift.

All newly employed, re-employed, or re-instated regular full-time employees hired during the payroll year shall be considered eligible to earn the personal business day if hired prior to June 30 of the calendar year and will be allowed to use the personal business day during the probationary period. Regular full-time employees hired after July 1 will not be eligible to earn a personal business day until the following payroll year.

Section 10.04- Holidays Worked

For employees whose regular work schedule is Monday through Friday for whom a holiday is a scheduled day of work shall be compensated at one and one-half times the employee's regular hourly rate of pay for all hours worked in addition to the holiday pay.

For employees whose regular work schedule includes weekend days for whom a holiday is a scheduled day of work shall be compensated at one and one-half times the employee's regular

hourly rate of pay for all hours worked.

Section 10.05 - Holidays During Vacations and Sick Leave

Holidays which occur within an employee's approved and compensated vacation or sick leave period will not be chargeable to the employee's vacation or sick leave time.

Section 10.06- Religious Holidays

Employees may observe a religious holiday on days which do not fall on Sunday or a legal holiday. Such days shall be taken off without pay unless 1) the employee has accumulated vacation and/or annual leave benefits available in which case the employee shall be required to take such days off as vacation and/or annual leave, or 2) the employee obtains supervisory approval to work an equivalent number of hours (at straight-time rates of pay) at some other time during the calendar year. The employee must notify the Employer at least ten (10) days in advance of the religious holiday of his/her intent to observe such holiday. The Employer may waive this ten (10) day requirement if the Employer determines that absence of such employee will not substantially interfere with its operation.

ARTICLE 11: VACATIONS

Section 11.01 - Eligibility

All full-time employees shall be eligible for vacation leave benefits at their current base pay rate including newly employed, re-employed or reinstated employees.

Section 11.02 - Accruals

All employees shall accrue vacations (i.e., their vacations shall be calculated) on a direct proportion basis for all hours of credited work other than overtime and without regard to the calendar year. Benefits may be cumulative up to and including fifty (50) days. Accrued benefits in excess of fifty (50) days shall not be recorded and shall be considered lost. Such employees shall not be permitted to take vacations in excess of their current account balances.

Section 11.03 - Vacation Accrual Schedule

Eligible employees shall accrue vacation benefits in accordance with the following schedule: Effective July 1, 2006, employees shall accrue vacation benefits as follows. Upon conversion from the previous schedule to the new schedule below, no employee will lose vacation time.

Continuous Service

Annual Accrual in Days

0 -- 4	12 Days
5 -- 7	15 Days
8 -- 9	16 Days
10 - 15	18 Days
16 - 17	21 Days
18 - 20	22 Days

Section 11.04 - Vacation Scheduling

All vacations must be scheduled and approved in advance. In the spring of each calendar year, employees shall be provided an opportunity to request vacations for the year in the order of their relative seniority. After the spring vacation schedule process has been completed, vacation requests shall normally require a minimum advance notice of forty-eight (48) hours and they shall be considered on a first come-first served basis. The number of vacation book "slots" available, shall remain constant throughout the entire year, as they pertain to each vacation book group. The vacation book shall cover May 1st through April 30th of the following year. The vacation book signing process shall begin before March 15th of each year. Throughout the year, the Employer reserves the right to determine the maximum number of employees to be scheduled on vacation at any one time. Vacation requests, once approved, shall not be canceled by the Employer except for unforeseen circumstances.

Section 11.05 - Vacation Pay at Termination

Upon the complete termination of employment, permanent employees shall a) be eligible to receive their unused accumulated vacation as a severance payment, and b) be required to reimburse the Employer for any vacations taken in excess of the Employer's accruals. Vacation severance or reimbursement shall be paid at the employee's base pay rate at the time termination.

Section 11.06 - Use of Vacation Leave Benefits as Sick Leave

Employees may use accumulated vacation leave benefits as an extension of sick leave, provided all sick leave benefits have been exhausted by a long-term, continuous sick leave absence. Vacation leave benefits utilized as an extension of sick leave shall be subject to the same conditions regulating the use of sick leave.

Section 11.07 - Compensatory Time Usage

Employees may use accumulated compensatory time with twelve (12) hours notice for full or partial shifts off. The use of compensatory time will be administered the same as vacation. There must be an open "slot" in the vacation book on the desired shift. Employees may also use up to two (2) hours of compensatory time at the end of their work shift, without regard to the vacation book, and with minimal notice. Compensatory time used at the end of shift may only be used with the employee's immediate supervisor's approval, and shall not be denied except for legitimate staffing emergencies.

ARTICLE 12: SICK LEAVE

Section 12.01 - Sick Leave Accruals

Sick leave shall be earned by full-time, newly hired, re-employed or reinstated employees at the rate of ninety-six (96) hours per calendar year. Sick leave pay benefits shall be calculated on a direct proportion basis for all hours of credited work time other than overtime. Sick leave

benefits shall only accrue when an employee is on compensated regular hours or, in accordance with State and Federal laws, is on approved military leave.

Section 12.02 - Utilization of Accrued Sick Leave Benefits

Accumulated sick leave benefits may be used under the circumstances described below.

- a. When employees are unable to work because they are ill or injured, sick leave benefits may be used to the extent available.
- b. When an employee's dependent child is ill or injured and requires the employee's care or attendance, sick leave benefits may be used for reasonable amounts of time.
- c. When an employee's spouse or parent who resides in the employee's household is ill or injured and requires the employee's care or attendance, sick leave benefits may be used for periods not to exceed two (2) days.
- d. When an employee is unable to obtain routine dental or medical care for themselves during off duty hours, (I) up to two (2) hours of sick leave may be used at the beginning or at the end of the employee's scheduled work shift or (II) the first full half or the last full half of the employee's scheduled work shift may be used. Absences at other times for such purposes shall not be approved.

Sick leave usage shall be subject to approval and verification by the Employer who may, upon three (3) consecutive days absence, or after the sporadic use of twelve (12) days sick leave in any calendar year, require the employee to furnish a report from recognized physical or mental authority attesting to the necessity of the leave, and other information the Employer deems necessary, as provided in the article herein entitled Fitness for Duty. The patterned use of sick leave benefits may also require the submission of such reports for absences of less than three (3) days duration at the discretion of the Employer.

Section 12.03 - Sick Leave Pay Rate

Sick leave benefits when authorized shall be paid at the employee's current base rate.

Section 12.04 - Notification Required

To be eligible for sick leave payment, an employee must notify his/her supervisor or his/her designee as soon as possible but not later than the starting time of his/her scheduled shift. This notice may be waived if the employee can conclusively establish that he/she could not reasonably have been expected to comply with this requirement because of circumstances beyond the control of the employee.

Section 12.05 - Medical Leaves of Absence

A disabled employee who because of illness or injury, has exhausted all sick leave benefits, may be granted a medical leave of absence without pay. The seniority status of a disabled employee who is granted a medical leave of absence shall be determined in accordance with the provisions of the article herein entitled *Seniority*. An employee requesting a medical leave of absence without pay shall be required to furnish conclusive evidence of disability to the Employer. If the employee fails to furnish conclusive evidence that the absence from duty is necessary or if the employee fails to undergo an evaluation or furnish a medical report as requested by the Employer in accordance with the article herein entitled *Fitness for Duty*, the Employer shall have the right to require the employee to return to work on a specified date. Should the employee not return to work on a specified date, the employee may be considered to have resigned in accordance with the article herein entitled *Absence Without Leave*.

Section 12.06 - Sick Leave at Termination

All sick leave that has been accumulated by an employee shall be canceled upon the date of separation from the Municipal Building Commission subject only to the express provisions of the article herein entitled *Sick Leave Credit Pay and Severance Pay Plans*.

Section 12.07 - Sick Leave Accrual Incentive

Employees shall receive one (1) Personal Business Day if ninety-six (96) hours of sick time is accumulated during the payroll year. Employees shall receive 1/2 Personal Business Day if forty-eight (48) hours of sick time is accumulated during the payroll year. All Personal Business Days earned during the current payroll year will be credited and shall be used in the following payroll year.

ARTICLE 13: ANNUAL SICK LEAVE CREDIT PAY AND ACCRUED SICK LEAVE RETIREMENT PLAN

Section 13.01 - Annual Sick Leave Credit Pay Plan

An Employee who satisfies the eligibility requirements of this Section, shall be entitled to make an election to receive payment for sick leave accrued but unused under the terms and conditions set forth below.

(a) Eligibility. An employee who has an accumulation of sick leave of forty-eight (48) days or more on December 1 of each year (hereafter an "Eligible Employee") shall be eligible to make the election described below.

(b) Election. On or before December 10 of each year, the Employer shall provide to each Eligible Employee a written election form on which the Eligible Employee may elect whether he/she wants to receive cash payment for all or any portion of his/her sick leave that is accrued but is unused during the calendar year immediately following the election (the "Accrual Year"). The employee shall deliver the election form to the Employer on or before December 31. Such election is irrevocable. Therefore, once an Eligible Employee transmits his/her election form to the Employer, the employee may not revoke the decision to receive cash payment for sick leave or change the amount of sick leave for which payment is to be made. If an Eligible

Employee does not transmit an election form to the employer on or before December 31, he/she shall be considered to have directed the Employer to NOT make a Cash payment for sick leave accrued during the Accrual Year.

(c) **Payment.** Within sixty (60) days after the end of the Accrual Year, an Eligible Employee who has elected to receive cash payment shall be paid as follows:

- i. *At Least Sixty (60) Days, But Less Than Ninety (90) Days.* Payment shall be made for the lesser of: the amount of sick leave indicated by the employee on his/her election form; or the amount of unused sick leave earned during the Accrual Year in excess of sixty (60) days. The amount of the payment shall be based on fifty percent (50%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.
- ii. *At Least Ninety (90) Days, But Less Than One Hundred Twenty (120) Days.* Payment shall be made for the lesser of: the amount of sick leave indicated by the employee on his/her election form; or the amount of unused sick leave earned during the Accrual Year in excess of ninety (90) days. The amount of the payment shall be based on seventy-five percent (75%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.
- iii. *At Least One Hundred Twenty (120) Days.* Payment shall be made for the lesser of: the amount of sick leave indicated by the employee on his/her election form; or the amount of unused sick leave hours earned during the Accrual Year in excess of one hundred twenty (120) days. The amount of the payment shall be based on one hundred percent (100%) of the employee's regular hourly rate of pay in effect on December 31 of the Accrual Year.

(d) **Adjustment of Sick Leave Bank.** The number of hours for which payment is made shall be deducted from the Eligible Employee's sick leave bank at the time payment is made.

(e) **Deferred Compensation.** Employees, at their sole option, may authorize and direct the Employer to deposit sick leave credit pay under paragraph (c) to a deferred compensation plan or other tax qualified plan administered by the Employer provided such option is exercised at the same annual time as regular changes in deferred compensation payroll deductions are normally permitted.

Section 13.02 – Accrued Sick Leave Retirement Plan

Employees who retire from positions in the qualified service and who meet the requirements set forth in this section shall be paid a severance pay allowance in the manner and amount set forth herein.

(a) Payment for accrued but unused sick leave shall be made only to retired former employees who:

- i. have separated from service; and

ii. as of the date of retirement had accrued sick leave credit of no less than sixty (60) days; and

iii. as of the date of retirement had:

1. no less than twenty (20) years of qualified service as computed for retirement purposes, or
2. who have reached sixty years of age, or
3. who are required to retire early because of either disability or having reached mandatory retirement age.

(b) When an employee having no less than sixty (60) days of accrued sick leave dies prior to retirement, he/she shall be deemed to have retired because of disability at the time of death, and payment for his/her accrued sick leave shall be paid to the designated beneficiary as provided in this Section.

(c) The amount payable to each employee qualified hereunder shall be one-half ($\frac{1}{2}$) the daily rate of pay for the position held by the employee on the day of retirement, notwithstanding subsequent retroactive pay increases, for each day of accrued sick leave subject to a minimum of sixty (60) days.

(d) The amount payable under this Section shall be paid in a lump sum following separation from employment but not more than sixty (60) days after the date of the employee's separation.

(e) If an employee entitled to payment under this Section dies prior to receiving the full amount of such benefit, the payment shall be made to the beneficiary entitled to the proceeds of his or her Municipal Building Commission group life insurance policy or to the employee's estate if no beneficiary is listed.

ARTICLE 14: LEAVES OF ABSENCE

Section 14.01 - General Administration

Except as may otherwise be provided in this Agreement, written requests for leaves of absence shall be made by employees prior to the beginning of the absence and no payment for any absence shall be made until the leave is properly approved. All leaves of absence without pay shall be granted at the discretion of the Employer and must be approved by the Employer in advance. Upon application by an employee, leaves of absence may be extended or renewed at the discretion of the Employer. Authorization for or denial of requested leave of absence without pay of more than ten (10) working days duration shall be furnished to the employees in writing by the Employer within seven (7) working days of its receipt. All leave of absence requests shall be given reasonable consideration by the Employer.

Subd. 1. Deductions from Leave Accumulations

Deductions from leave accumulations for an employee on leave with pay shall be made on a work shift basis, and no such deductions shall be made from leave accumulations for holidays or non-work days falling within such leave with pay, subject to the provisions set forth in the article herein titled *Holidays*.

Subd. 2. Effect on Vacation and Sick Leave Accruals

Accrual of vacation leave and sick leave benefits during the period of leave of absence with pay shall continue. If an employee is granted leave without pay, he/she will not be credited with vacation pay or sick leave with the exception of approved military leave.

Subd. 3. Cancellation

All leaves of absence without pay shall be subject to the condition that the Employer may cancel the leave at any time upon prior notice to the employee specifying a date of termination of the leave. Military leave, leave for purposes of Union business or educational leave approved by the Employer in writing as non-cancelable for a specific duration shall not be subject to such cancellation.

Notwithstanding the above, the Employer, upon prior notice to the employee, may cancel any approved leave of absence at any time the Employer has evidence that the employee is using the leave for purposes other than those specified at the time of approval.

Subd. 4. Reinstatement after Leave

Any employee returning from an approved leave of absence as provided for by this article who has complied with all the conditions upon which the leave was approved shall be reinstated in the position held at the time the leave was granted if the leave was for a period of less than six (6) months duration, or in the event the position held at the time the leave was granted has been filled or abolished, the employee shall be reinstated to a vacant position for which qualified in the class, bargaining unit and department from which leave was granted. In the event no vacancy exists in the involved job classification or in the bargaining unit, the employee may either exercise Municipal Building Commission seniority to replace the least senior employee in the bargaining unit provided the employee is qualified to perform the work of the less senior employee, or, if mutually agreeable to the employee and the Employer, be placed on a layoff list for the involved job classification.

Subd. 5. Pay Upon Reinstatement

The salary rate for an employee reinstated following the leave of absence shall be the rate the employee held at the time the leave was granted or such rate as adjusted by a general adjustment to the class.

Subd. 6. Absence Without Leave

Any absence of an employee from scheduled duty that has not been previously authorized by the Employer may be deemed an absence without leave. Any employee absent without leave will be subject to disciplinary action and any employee absent without leave for three (3) consecutive days may be deemed to have resigned his/her employment, provided that the Employer may grant approval for leave subsequent to the unauthorized absence if the

employee can conclusively establish to the Employer that the circumstances surrounding the absence and failure to request leave were beyond the employee's control.

Subd. 7. Effect on Workers' Compensation Benefits

Any employee who by reason of sickness or injury receives workers' compensation benefits may retain the workers' compensation benefits and request to be placed on a medical leave of absence without pay, or retain the workers' compensation benefit and receive from the Municipal Building Commission any available earned accumulated sick leave, or other accumulated leave benefit.

The total weekly compensation including leave and workers' compensation benefits shall not exceed the regular weekly base rate of an employee.

Section 14.02 - Leaves for Union Business

Where applicable, employees may be granted a leave of absence for purposes of Union business in accordance with the provisions of Minnesota Statutes §179A.07, Subd. 6.

Section 14.03 - Funeral Leave

A leave of absence of three (3) working days shall be granted in conjunction with the death or funeral of an employee's parent, stepparent, spouse, *registered domestic partner* within the meaning of Minneapolis *Code of Ordinances* Chapter 142, child, stepchild, brother, sister, stepbrother, stepsister, fatherinlaw, motherinlaw, son-in-law, daughter-in-law, grandparent, grandchild, great grandparent, great grandchild or members of employees' households. Bereavement Leave may be used intermittently; however, the three (3) working days must be used within five (5) working days from the time of death or funeral unless an extension is required for individually demonstrated circumstances. For purposes of this subdivision, the term's *father-in-law* and *mother-in-law* shall be construed to include the father and mother of an employee's domestic partner. Additional time off without pay shall be granted in accordance with current approval practices. Accrued and available leave balances (vacation, sick leave or compensatory time) can be used using current approval practices.

Section 14.04 - Military Leave of Absence

Subd. 1. Military Leaves Without Pay

In accordance with the requirements and provisions of State and Federal laws, employees shall be entitled to military leaves of absence without pay for services in the armed forces of the United States and reinstatement at the expiration of such leave. Such leave shall be authorized only in cases where the employee has been officially called to active duty in the military service and shall be authorized only as long as employee is in the service as required by government.

Subd. 2. Military Reserve Training

In accordance with state and federal laws, any employee who is a member of any reserve component of the military forces of the United States required by official military orders or

related authority to attend military reserve training shall receive full wages at his/her current base pay rate for the period of the active duty required for such training and not to exceed fifteen (15) working days per calendar year.

Section 14.05 - Jury and Court Duty

After due notice to the Employer, employees subpoenaed to serve as a witness or called and selected for Jury duty, shall be allowed their regular compensation rate for the period the court duty requires their absence from work duty, plus any expenses paid by the court. Such employees, so compensated, shall not be eligible to retain jury duty pay or witness fees and shall turn any such pay or fees received over to the Employer.

If an employee is excused from jury duty prior to the end of his/her work shift, he/she shall return to work as directed by the Employer or make arrangements for a leave of absence. Any absence whether voluntary or by legal order to appear or testify in private litigation, not in the status of an employee but as a plaintiff or defendant, shall not qualify for leave under this section and shall be charged against accumulated leave or be without pay.

Section 14.06 - Parental Leave

Leaves of absence without pay of up to six (6) weeks for purposes associated with the birth of a child. To be eligible for such leaves, employees must have been employed for at least twelve (12) consecutive months preceding the request for the leave of absence and they must have worked an average of twenty (20) or more hours per week during the twelve (12) month period and they must provide, in writing to their immediate supervisor, an advance notice of their request for such leaves of at least six (6) weeks. The advance notification requirements of this subdivision may be waived by the Employer for good cause shown and longer periods of leave may be granted by the Employer in its sole discretion. Such leaves must begin within six (6) weeks after the birth of the child or within six (6) weeks after the child is discharged from the hospital, whichever is later.

Subd. 1. Adoptive Parents

The provisions of this subdivision shall, in addition to their applicability to biological mothers and fathers, be applicable to adoptive mothers and fathers. When such leaves are granted to adoptive mothers or fathers, however, they shall commence before or at the time a child is placed in the adoptive home.

Subd. 2. Use of Sick Leave and Vacation Benefits

Employees who are eligible for parental leaves may use accumulated sick leave or vacation benefits or accumulated compensatory time during such leaves. When used, such payments shall not effect the maximum allowable duration of such leaves.

Section 14.07 - School Conference and Activities Leave

Leaves of absence without pay of up to a total of sixteen (16) hours during any twelve (12) month period for the purpose of attending school, preschool or child care provider conferences

and classroom activities of the employee's child, provided that such conferences and classroom activities cannot be scheduled during non-work hours. When the need for the leave is foreseeable, the employee shall provide reasonable effort to schedule the leave so as not to disrupt the operations of the Employer. Employees may use accumulated vacation benefits or accumulated compensatory time for the duration of such leaves.

Section 14.08 - Bone Marrow Donor Leave

Pursuant to applicable Minnesota statutes, employees who work twenty (20) or more hours per week shall, upon advance notification to their immediate supervisor and approval by the Employer, be granted a paid leave of absence at the time they undergo medical procedures to donate bone marrow. At the time such employees request the leave, they shall provide to their immediate supervisor written verification by a physician of the purpose and length of the required leave. The combined length of leaves for this purpose may not exceed forty (40) hours unless agreed to by the Employer in its sole discretion.

Section 14.09 - Absences Due to Inclement Weather

The Employer may temporarily suspend all or a portion of its normal operation in response to inclement weather or other emergency conditions. Official closure announcements shall be made by the Employer. Employees shall be permitted to draw upon accumulated vacation or sick leave benefits or accumulated compensatory time, at their option, to the full extent of the lost compensation due to such closures.

Section 14.10 - Time Off to Vote

Employees who are entitled to vote in any statewide general election or at any election to fill a vacancy in the office of representative in Congress, may absent themselves from work for the purpose of voting during such election day for a period not to exceed two (2) hours without deduction from salary on account of such absence, provided prior arrangements for the absence have been made with the Employer. Any employee making a claim for time off for voting and not casting a ballot or utilizing the time off for unauthorized purposes shall be subject to disciplinary action. The Employer reserves the right to schedule requested time off under the provisions of this section.

Section 14.11 - Time Off for Testing

Employees who have applied for promotional or transfer opportunities are scheduled to participate in an examination process scheduled during the employee's work time will be granted time off for such purpose if the Employer determines its services will not be unduly affected by the employee's absence. Employees granted such time off will normally be scheduled to make up the time either before or after the absence provided the makeup time shall not qualify the employee for any premium compensation for which the employee would not otherwise have been eligible. If the Employer determines it is not practical to arrange for the time to be made up, the employee shall use earned leave for the absence or, if not available, take it without pay.

ARTICLE 15: GROUP INSURANCE

Section 15.01 - Hospitalization and Medical Insurance

Eligible employees and their dependents may be enrolled in one of the health plans offered by the Employer during an open enrollment period conducted once each year. The Employer shall contribute the amounts specified pursuant to the attached Letter of Agreement.

Coverage under the selected plan shall become effective no later than the first of the month following one full month of employment, provided they are actively employed. Where the employees meet eligibility requirement when they are not on active status, they will be eligible to enroll upon their return to active status. Eligible employees may waive coverage under the Employer's available indemnity insurance plans and its available HMO plans by providing written evidence satisfactory to the Employer that they are covered by health insurance or have HMO coverage from another source at the time of open enrollment and sign a waiver of coverage under the Employer's available plans. Subsequent coverage eligibility for such employees, if desired, shall be governed by the provisions of the contracts of insurance and/or HMO contracts between the Employer and the providers of such coverage.

The premium split is 90% paid by employer and 10% paid by employee.

Effective January 2023, the Employer's VEBA contribution shall increase by \$10 per month.

Section 15.02 - Group Life Insurance

The Employer shall pay the full cost of a ten thousand dollar (\$10,000) individual term life insurance policy for each eligible employee.

Coverage shall become effective no later than the first of the month following one full month of employment, provided they are actively employed. Where the employees meet eligibility requirements when they are not on active status, they will be eligible to enroll upon their return to active status. The Employer shall pay the required premiums for the above amounts and shall continue to provide arrangements for employees to purchase additional amounts of life insurance.

Section 15.03 -Group Dental Insurance

Eligible employees and their dependents will be enrolled in the dental plan offered by the Employer.

Coverage shall become effective no later than the first of the month following one full month of employment, provided they are actively employed. Where the employees meet eligibility requirements when they are not on active status, they will be eligible to enroll upon their return to active status. The Employer shall pay the required premiums for the policy on a single/family *composite* basis.

Section 15.04 - Flexible Spending Plan

Employees who have established eligibility for hospitalization and medical insurance under the provisions of this article, shall be provided an opportunity to participate in the Employer's Flexible Spending Plan Plan - a qualified plan which provides special tax advantages to employees under IRS Code Section 125. The Plan Document shall control all questions of eligibility, enrollment, claims and benefits.

Section 15.05 – Long Term Disability Insurance

Effective January 1, 2002, eligible employees shall be enrolled in the Employer's group long term disability insurance policy and shall be provided with the coverage specified therein. Coverage shall become effective no later than the first of the month following one full month of employment, provided they are actively employed. Where the employees are not on active status, they will be eligible to enroll upon their return to active status. The Employer shall pay the required premiums for the policy.

Section 15.06 - Employer's Obligation

The Employer's obligation under the provisions of this article is limited to the payment of specified premium charges for the group insurance coverage described.

Section 15.07 - Insurance Carriers

The Employer reserves the right to change insurance carriers or self-insurance. If such change of carriers or self-insurance results in a change in the level of employee benefits, the Employer shall meet and confer with the Union regarding the change.

Section 15.08 – Effective Coverage Date – Newly Hired, Re-employed, Reinstated

The effective coverage date for newly hired, re-employed or reinstated employees shall be the first of the month following one full month of employment.

ARTICLE 16: PART-TIME/TEMPORARY EMPLOYEES

Section 16.01 -Part-Time Employees Benefits

An employee working less than the full-time schedule shall not participate in any benefits provided by this Agreement except those working a schedule of twenty (20) hours or more per week shall participate in benefits in the same ration that his/her actual hours worked bears to the full-time work schedule.

Section 16.02 - Temporary Employees Benefits

Temporary employees shall not participate in any benefits provided by this Agreement.

ARTICLE 17: WORK UNIT VACANCIES

Section 17.01 - Job Postings and Applications

A vacant position which is to be filled by the employer will normally be posted for not less than seven (7) calendar days. The vacant position posting shall set forth the class title, salary range, nature and location of the work to be performed, the minimum qualifications, applicable work schedule, the place and manner of making application and the closing date that applications will be received. Permanent employees may indicate to the employer, by signing the job posting, their interest in being considered for reassignment to fill the vacant position.

Vacant positions in all bargaining unit classifications except Foreman shall be filled by the most senior qualified employee who has made application. The employer reserves the right to select applicants for the Foreman job classification without regard to the seniority of applicants for the position.

Section 17.02 Application for Promotion

Employees who have successfully completed their initial probationary period, may make application for any job posting provided they meet the minimum, stated qualifications for the involved position; provided however, that employees who have failed a promotional probationary period in a classification shall not be permitted to take an examination for promotion to that classification within twelve (12) months of the date of such failure. An applicant's eligibility for promotion begins on the date their name was added to an eligibility list. Promotional positions, for the scope of this agreement shall include: Utility Worker and Foreman positions.

Subd. 1 Eligibility Lists

The Eligibility List for promotional positions shall remain in effect for the duration of this agreement. To be included on the Eligibility List, the employee must; apply for the promotional position, meet the minimum required qualifications of the position, successfully pass the initial window washing test, and pass an oral exam with the employer. Once these requisites have been met satisfactorily, the employee shall be placed on the Eligibility List in order of their seniority. An employee whose name does not appear on the Eligibility List, shall not be considered for promotional positions.

ARTICLE 18: WORK RULES

The Employer reserves the right to promulgate, and change from time to time, work rules which do not conflict with the express provision of this Agreement.

ARTICLE 19: EDUCATIONAL ASSISTANCE

Where courses are required and certified by the Employer as essential to current job performance, the Employer shall grant one hundred percent (100%) reimbursement for tuition, required fees and required study materials.

ARTICLE 20: FITNESS FOR DUTY

Section 20.01 - General

When question exists related to appropriate leave administration or work safety to individuals, coworkers or others, the Employer may require employees to under go a medical evaluation that will enable the Employer to determine the employee's fitness for performance of his/her duties. When the Employer requires an evaluation or report from a medical authority, either the employee's persona, or an authority or the medical authority of the Employer's section, the Employer shall pay the fee charged for such evaluation report if such is not covered through the health insurance program made available to employees by the Employer. The Employer shall also compensate the employee at he/her base pay rate for regularly scheduled work time the employee was unable to work due to obtaining the evaluation if the evaluation result is that the employee is found full fit to perform his/her work duties and responsibilities.

Section 20.02 -Drug and Alcohol Testing

No employee shall be tested for drugs and/or alcohol except pursuant to the provision of the Employer's Drug and Alcohol Testing Policy which is attached hereto and made a part of this Agreement as if more fully set forth herein.

ARTICLE 21: DISCIPLINE

Section 21.01 - Just Cause

The Employer will discipline employees only for just cause.

Section 21.02 - Forms of Disciplines

Discipline, when administered, will be in one or more of the following forms and normally in the following order: oral reprimand, written reprimand, suspension, discharge or disciplinary demotion.

Section 21.03 - Reprimands in Private

If the Employer has reason to reprimand any employee, it shall normally not be done in the presence of other employees of the public.

Section 21.04 - Appeal Procedure

Written reprimands, disciplinary suspensions, disciplinary demotions or discharge or permanent employees are appealable up to and through the arbitration step of the grievance procedure contain in this Agreement.

Section 21.05 - Discovery

The Employer and Union shall make available to each other all information and evidence that will be used to support a suspension or discharge or defense against such action no later than

the Step 2 meeting of the grievance procedure.

Section 21.06 - Personnel Records

Subd. 1. Records Required

Investigations which do not result in disciplinary actions shall not be entered into the above employee's personnel records. A written record of all disciplinary actions other than oral reprimands shall be entered into the employee's personnel record and the employee shall be furnished with a copy of the notice of such disciplinary action. All disciplinary entries in the employee's Personnel file shall normally state the corrective action expected of the employee.

Subd. 2. Employees Access to Records

Employee shall have access to information contained in their personnel records in accordance with the provisions of the Data Practices Act, as amended.

Subd. 3. Removal

Upon written request of the employee, a written reprimand shall be removed from the employee's personnel record if no further disciplinary action has been taken against the employee with two (2) years following the date of the reprimand, or if no disciplinary action has been taken against the employee for the same or related offenses within three (3) years following the date of the reprimand.

Section 21.07 - Union Representation

Employees will not be questioned concerning an administrative investigation of disciplinary action unless the employee has been given an opportunity to have a Union representative present at such questioning. When mutually agreeable, the Union shall have the right to take up a suspension, demotion, and/or discharge as a grievance at the second step of the grievance procedure, and the matter shall be handled in accordance with the procedure through the arbitration step if deemed necessary.

Section 21.08 - Timely Imposition Required

Disciplinary action shall be taken in a reasonably timely manner.

ARTICLE 22: WORK CLOTHING

Newly hired Security Officers, during their 1040 hours of probationary period, shall be provided uniform clothing items of the quality, type and style prescribed by the Employer.

Officers are required to maintain uniforms in a serviceable condition free from wear and tear. Uniforms must appear clean and pressed at all times. After the initial issue, it will be the responsibility of the individual officer to replace worn uniform items using the allotted annual uniform allowance. At no time should uniform items be altered to change its appearance or function. All uniform items must meet the standards set forth by the MBC.

Effective January 1, 2017, a uniform allowance in the amount of \$550.00 will be provided to non-probationary officer on January 1st of each year. Uniforms and equipment purchases must conform to uniform standards. The \$550.00 annual security uniform allowance will be on a Voucher System whereby the employee will have that amount placed onto an account in his or her name with the currently authorized uniform vendor. Officers MUST purchase all uniform items from the authorized security uniform vendor for it to be counted against their uniform allowance. Officers will be responsible for paying for any uniform item purchases made at any other retailer other than the currently authorized uniform vendor. In the event an officer exceeds their uniform allowance, the currently authorized uniform vendor shall provide an invoice for the overage amount to the officer and the officer will be responsible for payment at the time of purchase. Officers are allowed to carryover up to \$200.00 annually of their uniform allowance.

Employees are required to exercise reasonable diligence in the use and care of uniform items. The uniform shall be worn only when performing official duties as directed by the Employer. Upon submission of resignation, the uniform allowance will be suspended. Officer must successfully complete their probationary period to be eligible for the uniform allowance.

The MBC shall initially provide five (5) tee shirts; two (2) sweatshirts and one (1) baseball variety cap to each Custodian, Custodian Foreman, and Utility Worker. MBC will provide the initial issue outlined above in the color and quality determined by MBC. MBC shall issue these items as soon as they are obtained from the vendor, which shall be chosen by MBC. It is specifically understood that upon issuance of these clothing items such items (tee shirt and/or sweatshirt) must be worn by employees while at work and kept in a condition which is acceptable to MBC. The number of clothing items issued by MBC subsequent to this initial issue and procedures for the replacement of work clothing damaged at work shall be assessed and discussed during our next round of negotiations.

For the Custodial/Utility Unit, a Labor/Management Committee shall be formed to determine implementation guidelines, including appropriate appearance, replacement, and cost issues.

Employees who are required to wear safety shoes as a condition of employment shall be eligible to participate in the Employer's Safety Shoe Expense Reimbursement program. Such program shall provide annual reimbursement amount up to one-hundred dollars (\$100) per year for purchase or repair of safety shoes, with a rollover of one (1) year. Employees shall be required to submit adequate proof of purchase or repair before reimbursement are made.

Employees who are required to remove snow/shovel snow shall be provided appropriate winter clothing for such use. Such clothing shall remain the property of the MBC and be stored on the work site. Employees are not permitted to remove or wear such winter clothing for personal use.

ARTICLE 23: NO DISCRIMINATION

In the application of this Agreement's term and provisions, no bargaining unit employee shall be discriminated against in unlawful manner as defined by applicable city, state and/or federal law or because of an employee's political or Union affiliation or activities. The Parties to the Agreement recognize that sexual harassment as defined by city, state and/or federal regulations is unlawful discrimination within the meaning of this article.

ARTICLE 24: COLLECTIVE BARGAINING

Section 24.01 - Complete Agreement

This Agreement shall represent the complete agreement between the Union and Employer. The Parties acknowledge that during the negotiations which resulted in this Agreement, each had the unlimited right and opportunity to make requests and proposals with respect to any subject or matter not removed by law from the area of collective bargaining, and that the complete understandings and agreements arrived at the Parties after the exercise of that right and opportunity are set forth in the Agreement. Therefore, the Employer and the Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter referred to or covered in the Agreement or with respect to any subject or matter not specifically referred to or covered in this Agreement, even though such subject or matter may not have been within the knowledge or contemplation of either or both of the Parties at the time that they negotiated or signed this Agreement.

Section 24.02 -Separability and Savings

This Agreement is subject to applicable Federal, State and Local laws. In the event any provision of the Agreement shall be held to be contrary to law by a court of competent jurisdiction from whose final judgment or decree no appeal has been taken within the time provided, such provisions shall be voided. All other provisions shall continue in full force and effect.

Section 24.03 - Labor-Management Committee

The Employer and the Union shall each appoint three (3) representatives to a standing Labor Management Committee which shall meet on a regularly scheduled basis in an effort to identify and facilitate the implementation of policies and practices which improve the quality and efficiency of the Employer's operation and for the additional purpose of maintaining effective relationship between all people in the Employer's organization at all levels and with its clients. The Committee shall not negotiate terms and conditions of employment and it shall not serve as a substitute of the grievance or arbitration procedure outlined elsewhere in this Agreement.

ARTICLE 25: TERMS OF AGREEMENT

This Agreement shall be in full force and effect from January 1, 2020 through December 31, 2022. Need new term dates and shall be automatically renewed from year to year thereafter unless either party shall notify the other, in writing, ninety (90) calendar days prior to the

expiration date of this Agreement that it desires to modify or terminate the Agreement. In witness thereof the Parties have caused this Agreement to be executed by their duly authorized representatives whose signatures appear below.

SIGNATORY PAGE

MUNICIPAL BUILDING
COMMISSION

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES

MINNESOTA COUNCIL 5
LOCAL NO. 9, AFL-CIO

 12/13/23


Irene Fernando
Chair, MBC Board

Date

 12/11/23

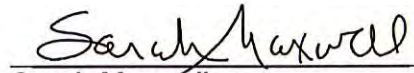
David Bard
Field Representative
AFSCME Council 5

Date

 12/13/2023


Erin Delaney
Director

Date

 12/11/2023

Sarah Maxwell
President, AFSCME Local 9

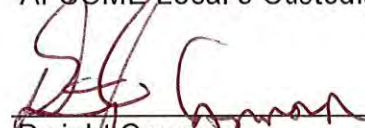
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 12/13/23

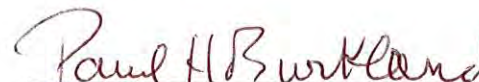
Matt Buechner

Date

Negotiations Member
AFSCME Local 9 Custodial & Security


 _____
Dwight Cannon
Negotiations Member
AFSCME Local 9 Custodial & Security

Date

 12-13-23

Paul Burkland
Negotiations Member
AFSCME Local 9 Custodial & Security

Date


Don Kimball
Negotiations Member
AFSCME Local 9 Custodial & Security

12/13/2023
Date

APPENDIX A – PAY SCHEDULE

Hourly rates effective January 1, 2023 (2.5% increase from 2022)

Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
Labor Grade I - Custodians	\$18.07	\$19.25	\$20.50	\$21.83	\$23.25	\$24.86	\$26.36	Not Appl.	Not. Appl.
Security Officer	\$ 19.17	\$ 20.33	\$ 21.55	\$ 22.84	\$ 24.20	\$ 25.66	\$ 27.19	\$ 28.82	\$ 29.69
Labor Grade II - Utility	\$ 20.51	\$ 21.74	\$ 23.04	\$ 24.43	\$ 25.89	\$ 27.44	\$ 29.09	\$ Not Appl	Not. Appl.
Labor Grade III - Foreman	\$30.64								

Security Officer Hourly rates effective the last pay period in 2023:

Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7
Security Officer	24.06	25.3	26.59	27.86	29.28	30.744	32.28

Hourly rates effective January 1, 2024 (3% increase for Security and 4% for Custodian, Utility and Foreman)

Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8	Step 9
Labor Grade I - Custodians	\$ 18.79	\$ 20.02	\$ 21.32	\$ 22.71	\$ 24.18	\$ 25.85	\$ 27.42	Not Appl	Not. Appl.
Security Officer	\$ 24.78	\$ 26.06	\$ 27.39	\$ 28.70	\$ 30.16	\$ 31.67	\$ 33.25	Not Appl	Not Appl
Labor Grade II - Utility	\$ 21.33	\$ 22.61	\$ 23.96	\$ 25.40	\$ 26.93	\$ 28.54	\$ 30.25	Not Appl	Not. Appl.
Labor Grade III - Foreman	\$31.86								

Section A.1 – Weekend-Day Shift Differential

A shift differential of one dollar and sixteen cents (\$1.25) per hour shall be paid to all employees who work on an assigned shift where a majority of the regular shift's hours occur between the hours of 6:00 A.M. and 6:00 P.M. on a Saturday or Sunday. Shift differential pay shall be provided, where applicable, in addition to the employee's regular base earnings and in addition to any compensation for which the employee may qualify. The weekend-day shift differential shall only be paid for actual hours worked. The weekend-day shift differential shall not be paid for vacation, holiday, sick, personal business day, compensatory time used, funeral leave, family medical leave, injured on duty, or when the night shift differential is earned.

Section A.2 – Night Shift Differential

A shift differential of one dollar and sixteen cents (\$1.25) per hour shall be paid to all employees who work on an assigned shift where a majority of the regular shift's hours occur between the hours of 6:00 P.M. and 6:00 A.M. Shift differential pay shall be provided, where applicable, in addition to the employee's regular base earnings and in addition to any compensation for which the employee may qualify. The night shift differential shall only be paid for actual hours worked. The night shift differential shall not be paid for vacation, holiday, sick, personal business day, compensatory time used, funeral leave, family medical leave, injured on duty, or when the weekend-day shift differential is earned.

Section A.3 – ADC Premium

Premium pay of seventy (70) cents per hour shall be paid to:

1. All employees who work on an assigned shift where the majority of the regular shift's duties are performed in the Adult Detention Center shall receive premium pay of \$0.70 per hour.
2. Custodian and Utility workers, who perform blood and bodily fluid clean-up shall receive premium pay of \$2 per hour. The premium pay is only for time spent on blood and bodily fluid clean-up and must be documented by the Utility employee to receive the premium. Employees who receive this premium pay will forfeit the \$0.70 premium for that time.

Premium pay shall be provided, when applicable, in addition to the employee's regular base earnings and in addition to any compensation for which the

employees may qualify. The premium pay shall only be paid for actual hours worked. Premium pay shall not be paid for vacation, holiday, sick, personal business day, compensatory time used, funeral leave, family medical leave, or injured on duty.

Section A.4 – Longevity Pay

Employees shall be eligible to receive annual Longevity Pay payments after 7 years of service, at the beginning of the 8th year of service, based upon their number of years of complete service as of December 1 of each year in accordance with the following schedule:

Years Completed	2023 and 2024
7	\$661.84
14	\$850.76
19	\$1,040.96
24	\$1,227.27

In order to qualify for the longevity payment, eligible employees must have worked at least 1040 hours during the calendar year and be actively employed on December 1. Eligible employees who have retired during the calendar year, however, may receive a prorated longevity payment based upon the number of full months of employment for the year in which actual retirement occurs. Prorated longevity pay may also be paid to an eligible employee's beneficiary (as determined by such employee's life insurance beneficiary designation) in the event of the death of the eligible employee. The Employer will disperse the longevity payment on the pay date closest to, but not prior to December 1 of each year.

ATTACHMENT "A"
LETTER OF AGREEMENT (LOA)
REASONABLE SUSPICION DRUG AND ALCOHOL TESTING

1. **PURPOSE STATEMENT** - Abuse of drugs and alcohol is a nationwide problem. It affects persons of every age, race, sex and ethnic group. It poses risks to the health and safety of employees of the Municipal Building Commission and to the public. To reduce those risks, the MBC has adopted this LOA concerning drugs and alcohol in the workplace. This LOA establishes standards concerning drugs and alcohol which all employees must meet and it establishes a testing procedure to ensure that those standards are met.

This drug and alcohol testing LOA is intended to conform to the provisions of the Minnesota *Drug and Alcohol Testing in the Workplace Act* (Minnesota Statutes §181.950 through 181.957), as well as the requirements of the federal *Drug-Free Workplace Act of 1988* (Public Law 100-690, Title V, Subtitle D) and related federal regulations. Nothing in this LOA shall be construed as a limitation upon the Employer's obligation to comply with federal law and regulations regarding drug and alcohol testing.

The MBC Human Resources Director is directed to develop and maintain procedures for the implementation and ongoing maintenance of this LOA and to establish training on this LOA and applicable law.

2. **WORK RULES**

A. No employee shall be under the influence of any drug or alcohol while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery, or equipment, except pursuant to a legitimate medical reason or when approved by the Employer as a proper law enforcement activity.

B. No employee shall use, possess, sell or transfer drugs, alcohol or drug paraphernalia while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery or equipment, except pursuant to a legitimate medical reason, as determined by the Medical Review Officer, or when approved by the Employer as a proper law enforcement activity.

C. No employee, while on duty, shall engage or attempt to engage or conspire to engage in conduct which would violate any law or ordinance concerning drugs or alcohol, regardless of whether a criminal conviction results from the conduct.

D. As a condition of employment, no employee shall engage in the unlawful

manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace.

E. As a condition of employment, every employee must notify the Employer of any criminal drug statute conviction no later than five (5) days after such conviction.

F. Any employee who receives a criminal drug statute conviction, if not discharged from employment, must within thirty (30) days satisfactorily participate in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency.

G. The Employer shall notify the granting agency within ten (10) days after receiving notice of a criminal drug statute conviction from an employee or otherwise receiving actual notice of such conviction.

3. PERSONS SUBJECT TO TESTING

Unless otherwise specified, all employees are subject to testing under applicable sections of this LOA. However, no person will be tested for drugs or alcohol under this LOA without the person's consent. The Employer can request or require an individual to undergo drug or alcohol testing **only under the circumstances described in this LOA.**

4. CIRCUMSTANCES FOR DRUG OR ALCOHOL TESTING

A. **Reasonable Suspicion Testing.** The Employer may, but does not have a legal duty to, request or require an employee to undergo drug and alcohol testing if the Employer or any supervisor of the employee has a reasonable suspicion (a belief based on specific facts and rational inferences drawn from those facts) related to the performance of the job that the employee:

1. Is under the influence of drugs or alcohol while the employee is working or while the employee is on the Employer's premises or operating the Employer's vehicle, machinery, or equipment; or
2. Has used, possessed, sold, purchased or transferred drugs, alcohol or drug paraphernalia while the employee was working or while the employee was on the Employer's premises or operating the Employer's vehicle, machinery or equipment; or
3. Has sustained a personal injury as that term is defined in *Minnesota Statutes* §176.011, Subd. 16, or has caused another person to die or sustain a personal injury; or
4. Was operating or helping to operate machinery, equipment, or vehicles involved in a work-related accident resulting in property damage or personal injury and the Employer

or investigating supervisor has a reasonable suspicion that the cause of the accident may be related to the use of drugs or alcohol.

Whenever it is possible and practical to do so, more than one Agent of the Employer shall be involved in reasonable suspicion determinations under this LOA.

B. Treatment Program Testing – The employer may request or require an employee to submit to drug and alcohol testing if the employee is referred for chemical dependency treatment by reason of having a positive test result under this LOA or is participating in a chemical dependency treatment program under an employee benefit plan. In such case, the employee may be required to submit to drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following notification that he/she will be subjected to Treatment Program Testing.

C. Unannounced Testing by Agreement. The employer may request or require an employee to submit to drug and alcohol testing without prior notice on terms and conditions established by a written “last-chance” agreement between the Employer and employee’s collective bargaining representative.

D. Testing Pursuant to Federal Law. The employer may request or require an employee to submit to testing as may be necessary to comply with federal law and regulations. It is the intent of this LOA that federal law preempts both state drug and alcohol testing laws and MBC policies and agreements. If this LOA conflicts with federal law or regulations, federal law and regulations shall prevail. If there are conflicts between federal regulations and this LOA, attributed in part to revisions to the law or changes in interpretations, and when those changes have not been updated or accurately reflected in this policy, the federal law shall prevail.

5. REFUSAL TO UNDERGO TESTING

A. Right to Refuse Employees have the right to refuse to undergo drug and alcohol testing. If an employee refuses to undergo drug or alcohol testing requested or required by the Employer, no such test shall be given.

B. Consequences of Refusal If any employee refuses to undergo drug or alcohol testing requested or required by the Employer, the Employer may subject the employee to disciplinary action up to and including discharge from employment.

C. Refusal on Religious Grounds No employee who refuses to undergo drug or alcohol testing of a blood sample upon religious grounds shall be deemed to have refused unless the employee also refuses to undergo alternative drug or alcohol testing methods.

D. Failure to Provide a Valid Sample with a Certified Result – Includes but is not limited to: 1) failing to provide a valid sample that can be used to detect the presence of

drugs and alcohol or their metabolites; 2) providing false information in connection with a test; 3) attempting to falsify test results through tampering, contamination, adulteration, or substitution; 4) failing to provide a specimen without a legitimate medical explanation; and 5) demonstrating behavior which is obstructive, uncooperative, or verbally offensive, and which results in the inability to conduct the test.

6. PROCEDURE FOR TESTING

- A. **Notification Form** Before requesting an employee to undergo drug or alcohol testing, the Employer shall provide the individual with a form on which to (1) acknowledge that the individual has seen a copy of the Employer's *Drug and Alcohol Testing LOA*, and (2) indicate consent to undergo the drug and alcohol testing.
- B. **Collecting the Test Sample** The test sample shall be obtained in a private setting, and the procedures for taking the sample shall ensure privacy to employees to the extent practicable, consistent with preventing tampering with the sample. All test samples shall be obtained by or under the direct supervision of a health care professional.
- C. **Testing the Sample.** The handling and testing of the sample shall be conducted in the manner specified in Minn. Stat. §181.953 by a testing laboratory which meets, and uses methods of analysis which meet, the criteria specified in subdivisions.1, 3, and 5 of that statute.
- D. **Thresholds.** The threshold of a sample to constitute a positive result alcohol, drugs, or their metabolites is contained in the standards of one of the programs listed in MN Statute §181.953, subd 1. The employer shall, not less than annually, provide the unions with a list or *access to a list* of substances tested for under this LOA and the threshold limits for each substance. In addition, the employer shall notify the unions of any changes to the substances being tested for and of any changes to the thresholds at least thirty (30) days prior to implementation.
- E. **Positive Test Results** – In the event an employee tests positive for drug use, the employee will be provided, in writing, notice of his/her right to explain the test results. The employee may indicate any relevant circumstance, including over the counter or prescription medication taken within the last thirty (30) days, or any other information relevant to the reliability of, or explanation for, a positive test result.

7. RIGHTS OF EMPLOYEES

Within three (3) working days after receipt of the test result report from the Medical Review Officer, the Employer shall inform in writing an employee who has undergone drug or alcohol testing of:

- A. A negative test result on an initial screening test or of a negative or positive test result on a confirmatory test;
- B. The right to request and receive from the Employer a copy of the test result report;
- C. The right to request within five (5) working days after notice of a positive test result a confirmatory retest of the original sample at the employee's expense at the original testing laboratory or another licensed testing laboratory;
- D. The right to submit information to the Employer's Medical Review Officer within three (3) working days after notice of a positive test result to explain that result; indicate any over the counter or prescription medications that the employee is currently taking or has recently taken and any other information relevant to the reliability of, or explanation for, a positive test result;
- E. The right of an employee for whom a positive test result on a confirmatory test was the first such result for the employee on a drug or alcohol test requested by the Employer not to be discharged unless the employee has been determined by a Minnesota Licensed Alcohol and Drug Counselor (LADC) or a physician trained in the diagnosis and treatment of chemical dependency to be chemically dependent and the Employer has first given the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with a Minnesota LADC or a physician trained in the diagnosis and treatment of chemical dependency, and the employee has either refused to participate in the counseling or rehabilitation program or has failed to successfully complete the program, as evidenced by withdrawal from the program before its completion;
- F. The right to not be discharged, disciplined, discriminated against, or requested or required to undergo rehabilitation on the basis of a positive test result from an initial screening test that has not been verified by a confirmatory test;
- G. The right, if suspended without pay, to be reinstated with back pay if the outcome of the confirmatory test or requested confirmatory retest is negative;

H. The right to not be discharged, disciplined, discriminated against, or required to be rehabilitated on the basis of medical history information revealed to the Employer concerning the reliability of, or explanation for, a positive test result unless the employee was under an affirmative duty to provide the information before, upon, or after hire;

I. The right to review all information relating to positive test result reports and other information acquired in the drug and alcohol testing process, and conclusions drawn from and actions taken based on the reports or acquired information;

J. The right to suffer no adverse personnel action if a properly requested confirmatory retest does not confirm the result of an original confirmatory test using the same drug or alcohol threshold detection levels as used in the original confirmatory test.

K. The right to suffer no adverse personnel action based solely on the fact that the employee is requested to submit to a test.

8. ACTION AFTER TEST

The Employer will not discharge, discipline, discriminate against, or request or require rehabilitation of an employee solely on the basis of requesting that an employee submit to a test or the existence of a positive test result from an initial screening test that has not been verified by a confirmatory test.

A. **Positive Test Result.** Where there has been a positive test result in a confirmatory test and in any confirmatory retest (if the employee requested one), the Employer will do the following unless the employee has furnished a legitimate medical reason for the positive test result:

1. First Offense The employee will be referred for an evaluation by an LADC or a physician trained in the diagnosis and treatment of chemical dependency.

a. If that evaluation determines that the employee has a chemical dependency or abuse problem, the Employer will give the employee an opportunity to participate in, at the employee's own expense or pursuant to coverage under an employee benefit plan, either a drug or alcohol counseling or rehabilitation program, whichever is more appropriate, as determined by the Employer after consultation with an LADC or a physician trained in the diagnosis and treatment of chemical dependency.

b. If the employee either refuses to participate in the counseling or rehabilitation program or fails to successfully complete the program, as evidenced by withdrawal or discharge from the program before its completion, the Employer may impose discipline, up to and including discharge.

2. Second Offense Where an employee tests positive, and the employee has previously participated in one program of treatment required by the Employer, the Employer may discharge the employee from employment.

B. Suspensions and Transfers.

1. Pending Test Results From an Initial Screening Test or Confirmatory Test.

While awaiting the results from the Medical Review Officer, the employee shall be allowed to return to work unless the Employer reasonably believes that restrictions on the employee's work status are necessary to protect the health or safety of the employee, other City employees, or the public, and the conduct upon which the employee became subject to drug and alcohol testing would, independent of the results of the test, be grounds for discipline. In such circumstances, the employer may temporarily suspend the tested employee with pay, place the employee on paid investigatory leave or transfer the employee to another position at the same rate of pay.

2. Pending Results of Confirmatory Retest. Confirmatory retests of the original sample are at the employee's own expense. When an employee requests that a confirmatory retest be conducted, the employer may place the employee on unpaid leave, place the employee on paid investigatory leave or transfer the employee to another position at the same rate of pay provided the Employer reasonably believes that restrictions on the employee's work status are necessary to protect the health or safety of the employee, other City employees, or the public. An employee placed on unpaid leave may use his/her accrued and unused vacation or compensatory time during the time of leave. An employee who has been placed on unpaid leave must be made whole if the outcome of the confirmatory retest is negative.

3. Rights of Employee in Event of Work Restrictions. In situations where the employee is not allowed to remain at work until the end of his/her normal work day pursuant to this paragraph B, the Employer may not prevent the employee from removing his/her personal property, including but not limited to the employee's vehicle, from the Employer's premises. If the employer reasonably believes that upon early dismissal from work under this paragraph the employee is about to commit a criminal offense by operating a motor vehicle while impaired by drugs or alcohol, the Employer may advise the employee that 911 will be called if the employee attempts to drive or call 911 before dismissing the employee from work so that a law enforcement officer may determine whether the employee is able to operate a motor vehicle legally. This LOA is not applicable with regard to any such determination by a law enforcement officer.

C. Other Misconduct Nothing in this LOA limits the right of the Employer to discipline or discharge an employee on grounds other than a positive test result in a confirmatory test, subject to the requirements of law, the rules of the Civil Service Commission, and the terms of any applicable collective bargaining agreement. For example, if evidence other than a positive test result indicates that an employee

engaged in the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance in the Employer's workplace, the employee may receive a warning, a written reprimand, a suspension without pay, a demotion, or a discharge from employment, depending upon the circumstances, and subject to the above requirements.

D. Other Consequences – Other actions may be taken pursuant to Civil Service Rules, collective bargaining agreements or laws.

E. Treatment Program Testing – The Employer may request or require an employee to undergo drug and alcohol testing if the employee has been referred by the employer for chemical dependency treatment or evaluation or is participating in a chemical dependency treatment program under an employee benefit plan, in which case the employee may be requested or required to undergo drug or alcohol testing without prior notice during the evaluation or treatment period and for a period of up to two years following completion of any prescribed chemical dependency treatment program.

9. DATA PRIVACY

The purpose of collecting a body component sample is to test that sample for the presence of drugs or alcohol or their metabolites. A sample provided for drug or alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample are requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result is requested to ensure that the test is reliable and to determine whether there is a legitimate medical reason for any drug or alcohol in the sample. All data collected, including that in the notification form and the test report, is intended for use in determining the suitability of the employee for employment. The employee may refuse to supply the requested data; however, refusal to supply the requested data may affect the person's employment status. The Employer will not disclose the test result reports and other information acquired in the drug or alcohol testing process to another employer or to a third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law or court order.

10. APPEAL PROCEDURES

A. Employees may appeal discipline imposed under this LOA through the Dispute Resolution Procedure contained in the Collective Bargaining Agreement (i.e. grievance procedure) or to the Minneapolis Civil Service Commission.

B. Concerning disciplinary actions taken pursuant to this drug and alcohol testing LOA, available Civil Service Commission appeal procedures are as follows:

- 1) Non-Veterans on Probation: An employee who has not completed the probationary period and who is not a Veteran has no right of appeal to the Civil Service Commission.
- 2) Non-Veterans After Probation: An employee who has completed the probationary period and who is not a Veteran has a right to appeal to the Civil Service Commission only a suspension of over thirty (30) days, a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within ten (10) calendar days of the date of mailing by the Employer of notice of the disciplinary action.
- 3) Veterans: An employee who is a Veteran has a right to appeal to the Civil Service Commission a permanent demotion (including salary decreases), or a discharge, if the employee submits a notice of appeal within thirty (30) calendar days of the date of mailing by the Employer of notice of the disciplinary action. This protection is not provided until employee passes their initial probationary period. An employee who is a Veteran has a right to appeal to the Civil Service Commission a suspension of over thirty (30) days if the employee submits a notice of appeal within ten (10) calendar days of the date of mailing by the Employer of notice of the disciplinary action. An employee who is a Veteran may have additional rights under the Veterans Preference Act, *Minnesota Statutes* §197.46.

C. All notices of appeal to the Civil Service Commission must be submitted in writing to the Minneapolis Civil Service Commission, 250 South 4th Street - Room #100, Minneapolis, MN 55415-1339.

D. An employee may elect to seek relief under the terms of his/her collective bargaining agreement by contacting the appropriate Union and initiating grievance procedures in lieu of taking an appeal to the Civil Service Commission.

11. **EMPLOYEE ASSISTANCE**

Drug and alcohol counseling, rehabilitation, and employee assistance are available from or through the Employer's employee assistance program provider(s) (E.A.P.).

12. **DISTRIBUTION**

Each employee engaged in the performance of any federal grant or contract shall be given a copy of this LOA.

13. **DEFINITIONS**

- A. **Confirmatory Test** and **Confirmatory Retest** mean a drug or alcohol test that uses a method of analysis allowed by the Minnesota *Drug and Alcohol Testing in the Workplace Act* to be used for such purposes.
- B. **Controlled Substance** means a drug, substance, or immediate precursor in Schedules I through V of [Minnesota Statute § 152.02](#).
- C. **Conviction** - means a finding of guilt (including a plea of nolo contendere (no contest)) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug statutes.
- D. **Criminal Drug Statute** means a federal or non-federal criminal statute involving the manufacture, distribution, dispensing, use or possession of any controlled substance.
- E. **Drug** means a controlled substance as defined in *Minnesota Statutes* §152.01, Subd. 4.
- F. **Drug and Alcohol Testing, Drug or Alcohol Testing, and Drug or Alcohol Test** mean analysis of a body component sample approved according to the standards established by the Minnesota *Drug and Alcohol Testing in the Workplace Act*, for the purpose of measuring the presence or absence of drugs, alcohol, or their metabolites in the sample tested.
- G. **Drug-Free Workplace** means a site for the performance of work done in connection with any federal grant or contract at which employees are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance.
- H. **Drug Paraphernalia** has the meaning defined in *Minnesota Statutes* §152.01, Subd. 18.
- I. **Employee** for the purposes of this LOA means a person, independent contractor, or person working for an independent contractor who performs services for the Municipal Building Commission for compensation, in whatever form, including any employee directly engaged in the performance of work pursuant to the provisions of any federal grant or contract.
- J. **Employer** means the Municipal Building Commission acting through a department head or any designee of the department head.
- K. **Federal Agency** or **Agency** means any United States executive department,

military department, government corporation, government controlled corporation, any other establishment in the executive branch or any independent regulatory agency.

L. **Grant** means an award of financial assistance - including a cooperative agreement - in the form of money, or property in lieu of money, by a federal agency directly to a grantee. The term *grant* includes block grant and entitlement grant programs. The term does not include any benefits to veterans or their families.

M. **Grantee** means a person who applies for or receives a grant directly from a federal agency. The place of performance of a grant is wherever activity under the grant occurs.

N. **Individual** means a grantee/contractor who is a natural person. This wording emphasizes that an individual differs both from an organization made up of more than one individual and from corporations, which can be regarded as a single "person" for some legal purposes.

O. **Initial Screening Test** means a drug or alcohol test which uses a method of analysis allowed by the Minnesota Drug and Alcohol Testing in the Workplace Act to be used for such purposes.

P. **Legitimate Medical Reason** means (1) a written prescription, or an oral prescription reduced to writing, which satisfies the requisites of *Minnesota Statutes* §152.11, and names the employee as the person for whose use it is intended; and (2) a drug prescribed, administered and dispensed in the course of professional practice by or under the direction and supervision of a licensed doctor, as described in *Minnesota Statutes* §152.12; and (3) a drug used in accord with the terms of the prescription. Use of any over the counter medication in accord with the terms of the product's directions for use shall also constitute a *legitimate medical reason*.

Q. **Medical Review Officer** means a physician certified by a recognized certifying authority who reviews forensic testing results to determine if a legitimate medical reason exists for a laboratory result.

R. **Positive Test Result** means a finding of the presence of alcohol, drugs or their metabolites in the sample tested in levels at or above the threshold detection levels as published by the employer pursuant to Section 6 D of this LOA.

S. **Reasonable Suspicion** means a basis for forming a belief based on specific facts and rational inferences drawn from those facts.

T. **Under the Influence** means having the presence of a drug or alcohol at or above the level of a positive test result.

U. **Valid Sample with a Certified Result** means a body component sample that may be measured for the presence or absence of drugs, alcohol or their metabolites.

NOW, THEREFORE, the Parties have caused this *Letter of Agreement* to be executed by their duly authorized representatives whose signatures appear below:

MUNICIPAL BUILDING
COMMISSION

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL
EMPLOYEES


MINNESOTA COUNCIL 5
LOCAL NO. 9, AFL-CIO

 12/13/23


Irene Fernando Date
Chair, MBC Board

 12/12/23

David Bard Date
Field Representative
AFSCME Council 5

 12-13-2023

Erin Delaney Date
Director

 12/11/2023

Sarah Maxwell Date
President, AFSCME Local 9

**MUNICIPAL BUILDING COMMISSION
NOTIFICATION AND CONSENT FORM FOR DRUG AND ALCOHOL TESTING
(REASONABLE SUSPICION)
AND DATA PRACTICES ADVISORY**

I acknowledge that I have seen and read the Municipal Building Commission *Drug and Alcohol Testing LOA*. I hereby consent to undergo drug and/or alcohol testing pursuant to said LOA, and I authorize the Municipal Building Commission through its agents and employees to collect a sample from me for those purposes.

I understand that the procedure employed in this process will ensure the integrity of the sample and is designed to comply with medicolegal requirements.

I understand that the results of this drug and alcohol testing may be discussed with and/or made available to my employer, the Municipal Building Commission. I further understand that the results of this testing may affect my employment status as described in the LOA.

The purpose of collecting a sample is to test that sample for the presence of drugs and alcohol. A sample provided for drug and alcohol testing will not be tested for any other purpose. The name, initials and social security number of the person providing the sample may be requested so that the sample can be identified accurately but confidentially. Information about medications and other information relevant to the reliability of, or explanation for, a positive test result will be requested by the Medical Review Officer (MRO) to ensure that the test is reliable and to determine whether there is a legitimate medical reason for any drug, alcohol, or their metabolites in the sample.

The MRO may only disclose to the Municipal Building Commission test result data regarding presence or absence of drugs, alcohol, or their metabolites, in a sample tested. The Municipal Building Commission or laboratory may not disclose the test result reports and other information acquired in the drug testing process to another employer or to a third party individual, governmental agency, or private organization without the written consent of the person tested, unless permitted by law or court order. Evidence of a positive test result on a confirmatory test may be: (1) used in an arbitration proceeding pursuant to a collective bargaining agreement, an administrative hearing under Minnesota Statutes, Chapter 43A or other applicable state or local law, or a judicial proceeding, provided that information is relevant to the hearing or proceeding; (2) disclosed to any federal agency or other unit of the United States government as required under federal law, regulation, or order, or in accordance with compliance requirements of a federal government contract; and (3) disclosed as required by law, court order, or subpoena. Positive test results may not be used as evidence in a criminal action against the employee tested.

Name (Please Print or Type)

Social Security Number

Signature

Date and Time

Witness

Date and Time