

Amendment No. 1
TO THE 2012-2014 MEMORANDUM OF UNDERSTANDING
BETWEEN
THE CITY AND COUNTY OF SAN FRANCISCO
AND
SAN FRANCISCO CITY WORKERS UNITED (PAINTERS)

The parties hereby amend the Memorandum of Understanding as follows:

V.I. SUBSTANCE ABUSE TESTING PROGRAM SUBSTANCE ABUSE PREVENTION POLICY

The City and Union agree to continue to meet and confer in good faith to establish a mutually agreed upon substance abuse testing program to be implemented during the term of the Agreement, for safety sensitive employees in positions that are not currently covered by the federal Department of Transportation testing regulations. If the parties cannot reach agreement on or before January 15, 2013, Arbitrator Robert Hirsch shall be retained by the parties to issue an advisory arbitration decision on or before March 15, 2013. Attached as Appendix B is the Substance Abuse Prevention Policy.

APPENDIX B
SUBSTANCE ABUSE PREVENTION POLICY

1. MISSION STATEMENT

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

2. POLICY

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

3. DEFINITIONS

- a. "Accident" (or "Post Accident") means an occurrence associated with the Covered Employee's operation of Equipment or the operation of a vehicle (including, but not limited to, any City owned or personal vehicles) used during the course of the Covered Employee's work day if, as a result:
 - (1) There is a fatality, loss of consciousness, medical treatment required beyond first aid, medical transport, or other significant injury or illness diagnosed or treated by a physician, paramedic or other licensed health care professional; or
 - (2) With respect to an occurrence involving a vehicle, there is disabling damage to a vehicle as a result of the occurrence and the vehicle needs to be transported away from the scene by a tow truck or driven to a garage for repair before being returned to service; or
 - (3) With respect to an occurrence involving Equipment, there damage to the Equipment equivalent to the above.
- b. "Adulterated Specimen" means a specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.
- c. "Alcohol" means the intoxicating agent in beverage alcohol, ethyl alcohol or other low molecular weights alcohol including methyl or isopropyl alcohol. (The concentration of alcohol is expressed in terms of grams of alcohol per 210 liters of breath as measured by an evidential breath testing device.)
- d. "Cancelled Test" means a drug or alcohol test that has a problem identified that cannot be or has not been corrected or which otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test.
- e. "City" or "employer" means the City and County of San Francisco.
- f. "Collector" means the staff of the collection facility under contract with the City and County of San Francisco's drug testing contractor.

- g. “Covered Employee” means an employee in a represented classification covered by this Appendix.
- h. “CSC” means the Civil Service Commission of the City and County of San Francisco.
- i. “Day” means working day, unless otherwise expressly provided.
- j. “DHR” means the Department of Human Resources of the City and County of San Francisco.
- k. “Diluted Specimen” means a specimen with creatinine and specific gravity values that are lower than expected for human urine.
- l. “EAP” means the Employee Assistance Program offered through the City and County of San Francisco.
- m. “Equipment” includes, but is not limited to, the operation of a vehicle (including, but not limited to any City-owned vehicle(s) and personal vehicle(s) used during the course of the employee's work day), painting equipment, rigging and use of scaffolding, spray gun, pressure washer, grinder, blow torch, chemicals and hazardous materials, power and motorized tools, hand tools, machine tools, heavy machinery or equipment that is used to change the elevation of the employee.
- n. “Illegal Drugs” or “drugs” refer to those drugs listed in Section 5.a., except in those circumstances where they are prescribed to the Covered Employee by a duly licensed healthcare provider. Section 8.a. lists the illegal drugs and alcohol and the threshold levels for which a Covered Employee will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (“SAMHSA”) (formerly the National Institute of Drug Abuse, or “NIDA”) threshold levels, or U.S. government required thresholds levels where required, in effect at the time of testing. If applicable, Section 8.a. will be updated periodically to reflect the SAMHSA or U.S. government threshold changes, subject to mutual agreement of the parties.
- o. “Invalid Drug Test” means the result of a drug test for a urine specimen that contains an unidentified Adulterant or an unidentified substance, that has abnormal physical characteristics, or that has an endogenous substance at an abnormal concentration preventing the laboratory from completing or obtaining a valid drug test result.
- p. “MRO” means Medical Review Officer who is a licensed physician is responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results,
- q. “Non-Negative Test” or “positive test” means a test result found to be Adulterated, Substituted, Invalid, or positive for alcohol or drug metabolites.

- r. “Parties” means the City and County of San Francisco and the San Francisco City Workers United (Painters).
- s. “Policy” means “Substance Abuse Prevention Policy” or “Agreement” between the City and County of San Francisco and the Union and attached to the parties’ Memorandum of Understanding (“MOU”).
- t. “Prescription Drug” means a drug or medication currently prescribed by a duly licensed healthcare provider for immediate use by the person possessing it that is lawfully available for retail purchase only with a prescription.
- u. “Refusal-to-Submit” or “Refusing to Submit” or “Refusal to Test” means a refusal to take a drug and/or alcohol test. Examples of Refusal to Submit includes the following conduct:
- Failure to appear for any test within a reasonable time.
 - Failure to remain at the testing site until the test has been completed.
 - Failure or refusal to take a first or second test that the Collector has directed the employee to take.
 - Intentionally providing false information.
 - Failure to cooperate with any part of the testing process, including obstructive or abusive behavior or refusal to drink water when directed.
 - Failure to provide adequate urine or breath and subsequent failure to undergo a medical examination as required for inadequate breath or urine, or failure to provide adequate breath or urine and subsequent failure to obtain a valid medical explanation for the inadequate breath or urine condition.
 - Adulterating, Substituting or otherwise contaminating or tampering with a urine specimen.
 - Leaving the scene of an Accident without just cause prior to submitting to a test.
 - Admitting to the collector that an employee has Adulterated or Substituted a urine specimen.
 - Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
 - Leaving work, after being directed to remain on the scene by the first employer representative while waiting for verification by the second employer representative under section 6.1.b.
- v. “Safety-Sensitive Function” means the use of Equipment during the course of the Covered Employee’s work day.
- w. “Substance Abuse Prevention Coordinator” (SAPC) means a licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.
- x. “Split Specimen” means a part of the urine specimen in drug testing that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory in the

event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified Adulterated or substituted test result.

- y. “Substituted Specimen” means a specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine which shall be deemed a violation of this policy and shall be processed as if the test results were positive.

4. COVERED CLASSIFICATIONS

All the employees in the classifications listed in Article I.A of the Memorandum of Understanding shall be subject to Reasonable Suspicion and Post Accident testing under this Policy.

5. SUBSTANCES TO BE TESTED

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

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

- b. Prescribed Drugs or Medications.

The City also recognizes that Covered Employees may at times have to ingest prescribed drugs or medications. If a Covered Employee takes any drug or medication that a treating physician, pharmacist or health care professional has informed the employee (orally, on the medication bottle and/or in the literature accompanying the medication) will interfere with job performance, including driving restrictions or restrictions on the use of equipment, the employee is required to immediately notify the designated Department’s human resources representative or the Department’s representative who is responsible for interacting with employees regarding disability accommodations of those restrictions before performing his/her job functions.

- c. Upon receipt of a signed release from the Covered Employee’s licensed healthcare provider, the department’s human resources representative or the Department’s representative who is responsible for interacting with employees regarding disability accommodations may consult with Covered Employee’s healthcare provider to confirm specific job duties that the employee can perform while on prescribed medication. If the employee’s healthcare provider is not readily available or none is given, the department’s human resources representative or the Department’s representative who is responsible

¹ Prescription marijuana is treated as a controlled substance and will be tested for in the event criteria for Reasonable Suspicion or Post-Accident testing exists.

for interacting with employees regarding disability accommodations may consult with any City-licensed healthcare provider before making a final determination as to whether the employee may perform his/her job functions. However, if an employee, during the time of restriction, brings in a medical note from the healthcare provider who prescribed the medication clearing the employee to work, then the City shall not restrict that employee from performing his/her job functions.

- d. If a Covered Employee is temporarily unable to perform Safety-Sensitive Functions because of any potential side effects caused by prescribed medication, the employee shall be reassigned to perform a temporary modified duty assignment consistent with the employee's medical restrictions without loss of pay until either the employee is off the prescribed medication or is cleared by a licensed healthcare provider. This reassignment shall last for a period of no more than thirty (30) working days. If, after thirty (30) working days, the employee is still on said medication and/or not cleared by a licensed healthcare provider to perform safety sensitive functions, the City may extend this accommodation for a period not to exceed thirty (30) working days, provided that the healthcare provider certifies that the employee is reasonably anticipated to be able to resume Safety-Sensitive Functions after that thirty (30) day period. Employees who are unable to return to work under this provision shall be referred to the Department's human resources representative designated to engage with employees regarding possible reasonable accommodations under state and federal disability laws.
- e. For Covered Employees, nothing in this Appendix shall supersede any disability accommodation requirements under state or federal law.

6. TESTING

I. Reasonable Suspicion

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

indicators and has final authority to require the employee to be tested. At work locations outside the border of the City and County of San Francisco, the second employer representative shall confer with the first employer representative to verify the employee's behavior based on the above-stated indicators, and the second employer representative has the final authority to require the employee to be tested. In the event only one trained employer representative is available on-site, the representative shall confer with any other trained employer representative within the City to verify the employee's behavior. The second trained employer representative shall have the final authority to require the employee to be tested.

- c. If the City requires an employee to be tested under reasonable suspicion, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time (a maximum of one hour) for the employee to obtain representation. Such request shall not delay the administration of the tests for more than one hour from the time the employee is notified that he or she will be tested.
- d. Moreover, if the City has reason to believe or suspect that a prescription medication may have interfered with or may have had a direct impact on an employee's job performance, it may require that employee to be tested unless the City has prior knowledge and approval of a Covered Employee's health condition requiring the use of prescription medication..
- e. The department representative(s) shall be required to accurately document and file the incident and the employee shall be required to complete a consent form prior to any testing. If an employee Refuses to Submit to testing, then the City shall treat the refusal as having tested positive and shall immediately take appropriate disciplinary action pursuant to the attached discipline matrix.
- f. The City shall bear the costs for any required testing for alcohol and/or drugs under this section. Any counseling and rehabilitation services shall be on the employee's time and at the employee's cost, except that employees may use accrued paid time off to attend treatment and may utilize any resources covered by insurance. Employees shall have the right to use any accrued but unused leave balances while enrolled in any counseling or rehabilitation program. Any request by an employee to re-test a specimen shall be at the employee's cost.

II. Post-Accident

- a. The City may require a Covered Employee who caused, or may have caused, an Accident, based on information known at the time at the time of the Accident, to submit to drug and/or alcohol testing.
- b. Following an Accident, all Covered Employees subject to testing shall remain readily available for testing. A Covered Employee may be deemed to have refused to submit to substance abuse testing if he/she fails to remain readily available, including failure to

notify a supervisor (or designee) of the Accident location or leaving the scene of the Accident prior to submitting to testing.

- c. Nothing in this section shall delay medical attention for the injured following an accident or prohibit an employee from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care.
- d. If the City requires a Covered Employee to be tested post-Accident, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time from the time the employee is notified that he or she will be tested (a maximum of one hour) for the employee to obtain representation provided that the union representative meet the employee at the Accident site, work location or testing center as determined by the City. Such request shall not delay the administration of the tests for more than one hour from the time the employee is notified that he or she will be tested.
- e. As soon as reasonably possible after the occurrence of an Accident, the supervisor or other City representative at the Accident scene shall make best efforts to contact the Department of Human Resources (DHR) or designee, and DHR or designee shall then make best efforts to telephone the union(s) designated representative on file with DHR representing the Covered Employee(s) involved in the Accident. If the first designated representative does not answer, DHR or designee shall leave a voice mail message notifying the union of the Accident. For purposes of this paragraph, a designated representative shall be any union officer or employee whose telephone number is on file with DHR for the purpose of Accident review. The union may change the designated representative, in writing, as necessary from time to time, but it is the sole responsibility of the union to ensure that a current telephone number (with voice mail capability) for a designated representative is on file with DHR. This subsection (e) shall not be grievable.

7. TESTING PROCEDURES

I. Collection Site;

- a. The City shall make best efforts to ensure that a Covered Employee subject to testing is safely transported to and from the collection site.
- b. The staff of the collection facility under contract to the City or the City's drug testing contractor ("Collector") shall collect urine samples from Covered Employees to test for prohibited drugs.
- c. Tests for alcohol concentration on Covered Employees will be conducted with a National Highway Traffic Safety Administration (NHTSA) approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). Alcohol tests shall be by breathalyzer.

- d. A Covered Employee presenting herself/himself at the approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until (s)he has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee classified as “Refusal to Submit.”
- e. Covered Employees, who refuse to test, may be subject to disciplinary action, up to and including termination, pursuant to Exhibit A.
- f. The specific required procedure for urine collection is as follows:
 - (1.) Urine will be obtained directly in a tamper-resistant urine bottle. Alternatively, the urine specimen may be collected at the employee’s option in a wide-mouthed clinic specimen container that must remain in full view of the employee until transferred to, sealed and initialed, in separate tamper-resistant urine bottles.
 - (2.) Immediately after the specimen is collected, it will be divided into two (2) urine bottles, which, in the presence of the employee, will be labeled and then initialed by the Covered Employee and witness. If the sample must be collected at a site other than the drug and/or alcohol-testing laboratory, the specimens must then be placed in a transportation container. The container shall be sealed in the employee’s presence and the Covered Employee must be asked to initial or sign the container. The container will be sent to the designated testing laboratory on that day or the earliest business day by the fastest available method.
 - (3.) A chain of possession form must be completed by the hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
- g. After being tested for drugs, the Covered Employee will be barred from returning to work until the department is advised of the final testing result from the MRO. During that period, the Covered Employee will be placed on paid administrative leave for so long as the Covered Employee is eligible for such leave under the terms of the applicable provision of the City’s Administrative Code. The test shall be deemed a negative test if the MRO has not advised of the final testing result by the time the Covered Employee’s paid leave has expired under the terms of the applicable provision of the City’s Administrative Code.

II. Laboratory

- a. Drug tests shall be conducted by laboratories licensed and approved by SAMSHA which comply with the American Occupational Medical Association (AOMA) ethical standards. Upon advance notice, the parties retain the right to inspect the laboratory to determine conformity with the standards described in this policy. The laboratory will only test for

drugs identified in this policy. The City shall bear the cost of all required testing unless otherwise specified herein.

- b. Testing procedures, including substances to be tested, specimen collection, chain of custody and threshold and confirmation test levels shall comport with the Mandatory Guidelines For Federal Workplace Testing Programs, established by the U.S. Department of Health and Human Services, as amended and the U.S. Department of Transportation regulations, where applicable. Tests shall be by urine screening and shall consist of two procedures, a screen test (EMIT or equivalent) and if that is positive, a confirmation test (GC/MS).
- c. The initial test of all urine specimens will use immunoassay techniques. All specimens identified as positive in the initial screen must be confirmed using gas chromatography/mass spectrometry (GC/MS) technique that identifies at least three (3) ions. In order to be considered "positive" for reporting by the laboratory to the City, both samples must be tested separately in separate batches and must also show positive results on the GC/MS confirmatory test.
- d. In the event of a positive drug or alcohol test, the testing laboratory will perform an automatic confirmation test on the original specimen at no cost to the Covered Employee. In addition, the testing laboratory shall preserve a sufficient specimen to permit an independent re-testing at the Covered Employee's request and expense. The same, or any other, approved laboratory may conduct re-tests. The laboratory shall endeavor to notify the designated MRO of positive drug, alcohol, or adulterant tests results within five (5) working days after receipt of the specimen.

III. Medical Review Officer (MRO)

- a. All positive drug, or Substituted, Adulterated or positive-Diluted Specimen, or Invalid as defined herein will be reported to a Medical Review Officer (MRO). The MRO shall review the test results and any disclosure made by the Covered Employee and shall attempt to interview the individual to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive.
- b. When the laboratory reports a confirmed positive, Adulterated, Substituted, positive Diluted, or Invalid test, it is the responsibility of the MRO to: (a) make good faith efforts to contact the employee and inform him or her of the positive, Adulterated, Substituted, positive Diluted, or Invalid test result, (b) afford the employee an opportunity to discuss the test results with the MRO; (c) review the employee's medical history, including any medical records and biomedical information provided by the Covered Employee, or his treating physician, to the MRO; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. Employees shall identify all prescribed medication(s) that they have taken. If the Covered Employee fails to respond to the MRO within three (3) days, the MRO may deem the Covered Employee's results as a "positive result."

- c. The MRO has the authority to verify a positive or Refusal To Test without interviewing the employee in cases including but not limited to: (a) the employee refused to discuss the test result; or (b) the City directed the employee to contact the MRO, and the employee did not make contact with the MRO within seventy-two (72) hours. In all cases, previously planned leaves may extend this time. The parties understand that the MRO's review of the test results will normally take no more than three (3) to five (5) days from the time the Employee is tested.
- d. If the testing procedures confirm a positive result, as described above, the Covered Employee and the Substance Abuse Prevention Coordinator for the City and departmental HR staff or designee will be notified of the results in writing by the MRO, including the specific quantities. The results of a positive drug test shall not be released until the results are confirmed by the MRO.
- e. The Covered Employee may request a drug or adulterant re-test within seventy-two (72) hours from notice of a positive test result by the MRO. The requesting party will pay costs of re-tests in advance.
- f. A drug test result that is positive and is a Diluted Specimens will be treated as positive. All drug test results that are determined to be negative and are Diluted Specimens will require that the employee take an immediate retest. If the retest yields a second negative Diluted Specimens result, the test will be treated as a normal negative test, except in the case of subsection (g).
- g. If the final test is confirmed negative, then the Employee shall be made whole, including, if any, the cost of the actual laboratory re-testing. Any employee who is subsequently determined to be the subject of a false positive shall be made whole for any lost wages and benefits and shall have their record expunged.
- h. The City shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
- i. All information from a covered employee's drug and/or alcohol test is confidential for purposes other than determining whether this policy has been violated or pursuing disciplinary action based upon a violation of this policy.. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Covered Employee or as required by law.

IV. On-Site

- a. For post-Accident purposes, the City may conduct "on-site" tests (alcohol breathalyzer testing and "Quicktest" urine testing). If any of those tests are "non-negative" a confirmation test will be performed. This on-site test is to enable the Covered Employee and the City to know immediately whether that employee has been cleared for work.

- b. In order to facilitate the on-site urine testing, an individual's sample will be divided into three separate containers. One of the containers will provide a sample for the on-site test that will be read within 5 to 10 minutes of collection. The other two containers will be sealed and sent to the lab, in the event a confirmation is necessary due to a "non-negative" outcome of the on-site test. The laboratory will store the split sample in accordance with SAMHSA guidelines. One of the two samples will be used for a confirmation test. The other sample will be made available to the employee for testing by a certified laboratory selected by the employee at the employee's expense.

8. RESULTS

a. Substance Abuse Prevention and Detection Threshold Levels

Any test revealing a blood/alcohol level equal to or greater than 0.08 percent or the established California State standard for non-commercial motor vehicle operations, or when operating a moving vehicle or performing a Safety-Sensitive Function as defined in this Policy shall be deemed positive. Any test revealing a blood/alcohol level equal to or greater than that 0.04 percent or the established California State standard for commercial motor vehicle operations shall be deemed positive. Any test revealing controlled substance confirmation level as shown in the chart below shall be deemed positive test.

<u>CONTROLLED SUBSTANCE *</u>	<u>SCREENING METHOD</u>	<u>SCREENING LEVEL **</u>	<u>CONFIRMATION METHOD</u>	<u>CONFIRMATION LEVEL</u>
<u>Amphetamines</u>	<u>EMIT</u>	<u>500 ng/ml **</u>	<u>GC/MS</u>	<u>250 ng/ml **</u>
<u>Barbiturates</u>	<u>EMIT</u>	<u>300 ng/ml</u>	<u>GC/MS</u>	<u>200 ng/ml</u>
<u>Benzodiazepines</u>	<u>EMIT</u>	<u>300 ng/ml</u>	<u>GC/MS</u>	<u>300 ng/ml</u>
<u>Cocaine</u>	<u>EMIT</u>	<u>150 ng/ml **</u>	<u>GC/MS</u>	<u>100 ng/ml **</u>
<u>Methadone</u>	<u>EMIT</u>	<u>300 ng/ml</u>	<u>GC/MS</u>	<u>100 ng/ml</u>
<u>Opiates</u>	<u>EMIT</u>	<u>2000 ng/ml **</u>	<u>GC/MS</u>	<u>2000 ng/ml **</u>
<u>PCP (Phencyclidine)</u>	<u>EMIT</u>	<u>25 ng/ml **</u>	<u>GC/MS</u>	<u>25 ng/ml **</u>
<u>THC (Marijuana)</u>	<u>EMIT</u>	<u>50 ng/ml **</u>	<u>GC/MS</u>	<u>15 ng/ml **</u>
* <u>All controlled substances including their metabolite components.</u>				
** <u>SAMHSA specified threshold</u>				

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

9. CONSEQUENCES OF POSITIVE TEST RESULTS

- a. For Reasonable Suspicion or post-Accident, a Covered Employee shall be immediately removed from performing her or his Safety-Sensitive Function(s) and shall be subject to disciplinary action and further follow-up as set forth in Exhibit A if any of the following takes place:

the Covered Employee:

1. Is confirmed to have tested positive for alcohol or drugs;
 2. Refuses to Submit to testing; or
 3. Has submitted a specimen that the testing laboratory reports is an Adulterated or Substituted Specimen.
- b. If the Union disagrees with the proposed disciplinary action, it may use the grievance procedure as set forth in the parties' MOU provided, however, that such a grievance must be initiated at the Employee Relations Director step, unless the parties otherwise mutually agree.
- c. All proposed disciplinary actions resulting from a positive drug/alcohol test(s) shall be administered pursuant to the disciplinary matrix set forth in Exhibit A. Notwithstanding the disciplinary matrix which applies to the violation of this Policy, the City may impose discipline based on the Covered Employee's conduct, which may include consideration of whether the conduct at issue occurred while the employee was impaired by drugs or alcohol and/or whether the employee refused to test in addition to any discipline imposed under Exhibit A.
- d. In the event the City proposes disciplinary action, the notice of the proposed discipline shall contain copies of all laboratory reports and any other supporting documentation which the City is relying on to support the proposed discipline.

10. RETURN TO DUTY

The Substance Abuse Prevention Coordinator (SAPC) will meet with a Covered Employee who has tested positive for alcohol and/or drugs. The SAPC will discuss what course of action may be appropriate, if any, and assistance from which the employee may benefit, if any, and will communicate a proposed return-to-work plan, if necessary, to the employee and department. The SAPC may recommend that the Covered Employee voluntarily enter into an appropriate rehabilitation program administered by the Covered Employee's health insurance carrier prior to returning to work. The Covered Employee may not return to work until the SAPC certifies that he or she has a negative test prior to returning to work. The SAPC will provide a written release to the appropriate department or division certifying the employee's right to return to work.

11. TRAINING

The City or its designated vendor shall provide training on this policy to working line staff, union representatives, first-line, working supervisors and up to the Deputy Director level as needed. In addition, all Covered Employees shall be advised of this policy.

12. ADOPTION PERIOD

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

13. JOINT CITY/UNION COMMITTEE

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

14. SAVINGS CLAUSE

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

EXHIBIT A

CONSEQUENCES OF A POSITIVE TEST/OCCURRENCE

<u>Testing Types/Issues</u>	<u>First Positive/Occurrence</u>	<u>Second Positive/Occurrence⁴</u>
<u>Reasonable Suspicion</u>	<u>No more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC), SAPC Recommendation for Treatment¹ Return to Duty Test², Follow-up Testing, Subject to disciplinary action except where substantial mitigating circumstances exist.³</u>	<u>Will be subject to disciplinary action greater than ten (10) working days up to and including termination except where substantial mitigating circumstances exist.</u>
<u>Post Accident</u>	<u>No more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC), SAPC Recommendation for Treatment¹ Return to Duty Test², Follow-up Testing, Subject to disciplinary action except where substantial mitigating circumstances exist.⁴</u>	<u>Will be subject to disciplinary action greater than ten (10) working days up to and including termination except where substantial mitigating circumstances exist.</u>
<u>Alteration of Specimen ("Substituted," "Adulterated" or "Diluted")</u>	<u>Subject to Termination except where substantial mitigating circumstances exist.</u>	<u>Subject to Termination except where substantial mitigating circumstances exist.</u>
<u>Refusal to Test</u>	<u>No more than 15 working days; Assumption is a positive result; Referred to Substance Abuse Prevention Coordinator (SAPC), SAPC Recommendation for Treatment.¹ Return to Duty Test.² Subject to disciplinary action except where substantial mitigating circumstances exist.⁵</u>	<u>Will be subject to disciplinary action greater than 15 working days up to and including termination except where substantial mitigating circumstances exist.</u>

- 1: Employee may use accrued but unused leave balances to attend a rehabilitation program.
- 2: Employee may not return to work until the SAPC certifies that he or she has completed recommended rehabilitation program and has a negative test prior to returning to full duty. The SAPC will be chosen by the City.
- 3: Proposed disciplinary action for a first positive test or Refusal to Test to be no more than 15 working days. A second positive test within three (3) years may also result in disciplinary action up to and including termination.
- 4: Proposed disciplinary action for Post Accident for a first positive test to be no more than 15 working days. A second positive test within three (3) years may result in more severe proposed disciplinary action, up to and including termination.
- 5: Proposed disciplinary action for Alteration of Specimen ("Substituted", "Adulterated", or "Diluted") or Refusal to Test for a first positive or occurrence to be no more than 15 working days. A second positive test or occurrence within three years may result in more severe proposed disciplinary action, up to and including termination of employment.

FOR THE CITY:

FOR THE UNION:

_____ Date
Micki Callahan
Human Resources Director

_____ Date
Liam Kenny
President

_____ Date
Martin R. Gran
Employee Relations Director

_____ Date
Gerald Maxwell
Vice President

_____ Date
Christina Fong
Chief Negotiator

_____ Date
Douglas Bias
Secretary-Treasurer

Erik Rapoport 8/20/13
 _____ Date
Erik Rapoport
Deputy City Attorney

APPROVED AS TO FORM:
DENNIS J. HERRERA, City Attorney

Elizabeth Salveson 8/23/13
 _____ Date
Elizabeth Salveson
Chief Labor Attorney,
Office of the City Attorney