

Amendment No. 1  
TO THE 2012-2014 MEMORANDUM OF UNDERSTANDING  
BETWEEN  
THE CITY AND COUNTY OF SAN FRANCISCO  
AND  
SAN FRANCISCO DEPUTY PROBATION OFFICERS' ASSOCIATION

The parties hereby amend the Memorandum of Understanding as follows:

**II.H. SUBSTANCE ABUSE TESTING**  
**SUBSTANCE ABUSE PREVENTION POLICY**

~~109. Attached as Appendix B is the Substance Abuse Prevention Policy (SAPP). Also attached is a side letter related to the implementation of the SAPP. If pursuant to the side letter the parties proceed to arbitration, then The parties will begin meeting and conferring no later than October 1, 2012 in regards to establishing a mutually agreed upon substance abuse testing policy that will be limited to instances of reasonable suspicion of drug and/or alcohol use and post-accident, to be implemented by January 1, 2014. The meet and confer process on this subject will consider the possibility that an employee who tests positive will be subject to a rehabilitation program, and the application of the grievance and arbitration procedure. Should the parties fail to reach agreement on a new substance abuse testing program by May 1, 2013, the Mediation/Arbitration Board established under Charter Section A8.409-4 in connection with the negotiation of this Agreement, with Arbitrator Joe Henderson as the neutral Chairperson, shall be retained by the parties for that arbitration proceeding retain jurisdiction and resolve any such dispute by mandatory arbitration no later than June 30, 2013 in accordance with the procedure and criteria established in Charter Section A8.409-4(d). This Agreement shall be amended to reflect the new substance abuse testing program as a new Appendix.~~

**APPENDIX B**

**APPENDIX B**  
**SUBSTANCE ABUSE PREVENTION POLICY**

**1. MISSION STATEMENT**

- a. Employees are the most valuable resource in 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 work 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 shall 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, City-owned or personal vehicles) used during the course of the Covered Employee's work day where the City concludes that the occurrence may have resulted from human error by the Covered Employee, or could have been avoided by reasonably alert action by the Covered Employee, and:
  - (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 is damage to the Equipment exceeding three thousand dollars (\$3,000); or
  - (4) With respect to an occurrence involving structures or property, there are damages exceeding ten thousand dollars (\$10,000) to the structures or property.
- b. "Adulterated Specimen" means a specimen that contains a substance that is not expected to be present in oral fluid, or contains a substance expected to be present but is at a concentration so high that it is not consistent with oral fluid.

- 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 49 C.F.R. Part 40 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 an on-site employee trained to collect a drug or alcohol specimen, or the staff of the collection facility under contract with the City and County of San Francisco’s drug testing contractor.
- g. “Covered Employee” means an employee in a represented covered classification as stated in Section 4.
- 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 oral fluid.
- l. “EAP” means the Employee Assistance Program offered through the City and County of San Francisco.
- m. “Equipment” includes any vehicle (including, but not limited to any City-owned vehicle or personal vehicle used during the course of the employee’s paid work time); firearms when a firearm is required, and approved by the Appointing Officer, to be carried and used by the Covered Employee; banding tools; band-it; power tools; bucket truck; or equipment that is used to change the elevation of the Covered Employee more than five (5) feet.
- n. “Illegal Drugs” or “drugs” refer to those drugs listed in Section 5.0. Section 8.a. lists the drugs and alcohol and the threshold levels for which a Covered Employee will be tested. Threshold levels of categories of drugs and alcohol constituting positive test results will be determined using the applicable Substance Abuse and Mental Health Services Administration (“SAMHSA”) (formerly the National Institute of Drug Abuse, or “NIDA”) threshold levels, or U.S. government required threshold levels where required, in effect at the time of testing, if applicable. Section 8.a. will be updated periodically to reflect the SAMHSA or U.S. government threshold changes, subject to mutual agreement of the parties.

- o. “Invalid Drug Test” means the result of a drug test for an oral fluid specimen that contains an unidentified adulterant, or an unidentified substance, that has abnormal physical characteristics, or that has an endogenous substance at an abnormal concentration -preventing the laboratory from completing or obtaining a valid drug test result.
- p. “MRO” means Medical Review Officer who is a licensed physician certified by the Medical Review Officers Certification Council or U.S. Department of Transportation responsible for receiving and reviewing laboratory results generated by an employer’s drug testing program and evaluating medical explanations for certain drug test results.
- 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. “Oral Fluid” means saliva or any other bodily fluid generated by the oral mucosa of an individual.
- s. “Parties” means the City and County of San Francisco and the San Francisco Deputy Probation Officers’ Association.
- t. “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”).
- u. “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.
- v. “Refusal to Submit,” “Refusing to Submit,” “Refuse to Test,” or “Refusal to Test” means a refusal to take a drug and/or alcohol test and includes, but is not limited to, the following conduct:
  - i. Failure to appear for any test within a reasonable time.
  - ii. Failure to remain at the testing site until the test has been completed.
  - iii. Failure or refusal to take a test that the Collector has directed the employee to take.
  - iv. Providing false information.
  - v. Failure to cooperate with any part of the testing process, including obstructive or abusive behavior or refusal to drink water when directed.
  - vi. Failure to provide adequate oral fluid or breath samples, and subsequent failure to undergo a medical examination as required for inadequate breath or oral fluid samples, or failure to provide adequate breath or oral fluid samples and subsequent failure to obtain a valid medical explanation.
  - vii. Adulterating, substituting or otherwise contaminating or tampering with an oral fluids specimen.
  - viii. Leaving the scene of an Accident without just cause prior to submitting to a test.

- ix. Admitting to the Collector that an employee has Adulterated or Substituted an oral fluid specimen.
  - x. Possessing or wearing a prosthetic or other device that could be used to interfere with the collection process.
  - xi. Leaving work, after being directed to remain on the scene by the first employer representative, while waiting for verification by the second employer representative under section 6.I.b.
- w. “Safety-Sensitive Function” means a job function or duty where a Covered Employee either:
- (1) is operating a vehicle during paid work time on more than fifty-percent (50%) of the Covered Employee’s work days on average over the prior three (3) months. Vacation, sick leave, administrative leave time and all other leave shall be excluded when determining whether a Covered Employee operates a vehicle on more than fifty-percent (50%) of his or her work days; or,
  - (2) is actually operating, ready to operate, or immediately available to operate Equipment other than a vehicle during the course of the Covered Employee’s paid work time.
- x. “Substance Abuse Prevention Coordinator” (SAPC) means a licensed physician, psychologist, social worker, certified employee assistance professional, or nationally certified addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders. The SAPC will be chosen by the City.
- y. “Split Specimen” means a part of the oral fluid specimen in drug testing that is retained unopened for a confirmation test (if required) or in the event that the employee requests that it be tested following a verified positive test of the primary specimen or a verified Adulterated or Substituted Specimen test result.
- z. “Substituted Specimen” means a specimen with laboratory values that are so diminished that they are not consistent with oral fluid and which shall be deemed a violation of this policy, and shall be processed as if the test results were positive.

#### 4. COVERED CLASSIFICATIONS

All employees shall be subject to post-Accident testing under this Agreement. All employees who perform Safety-Sensitive Functions, as defined in this Policy, shall be subject to reasonable suspicion testing.

#### 5. SUBSTANCES TO BE TESTED

- a. The City shall test, at its own expense, for alcohol and/or the following drugs:
  - (1) Amphetamines
  - (2) Barbiturates
  - (3) Benzodiazepines

- (4.) Cocaine
- (5.) Methadone
- (6.) Opiates
- (7.) PCP
- (8.) THC (Cannabis)

b. Prescribed Drugs or Medications.

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

- (1) Upon receipt of a signed release from the Covered Employee's licensed healthcare provider, the department representative may consult with Covered Employee's healthcare provider to confirm specific job duties that the employee can perform while on prescribed medication. If the employee's healthcare provider is not readily available, or none is given, the department representative may consult with any City-licensed healthcare provider before making a final determination whether the employee may perform his/her job functions. However, if an employee, at the time of notification, brings in a medical note from the healthcare provider who prescribed the medication clearing the employee to work, then the City shall not restrict that employee from performing his or her job functions.
- (2) If a Covered Employee is temporarily unable to perform his or her job because of any potential side effects caused by prescribed medication, the employee shall be reassigned to perform a temporary modified duty assignment consistent with the employee's medical restrictions without loss of pay until either the employee is off the prescribed medication or is cleared by a licensed healthcare provider. This temporary modified duty reassignment shall last for a period of no more than thirty (30) working days. If, after thirty (30) working days, the employee is still on said medication and/or has not been cleared by a licensed healthcare provider to return to work without restrictions, the City may extend the temporary modified duty assignment for a period not to exceed thirty (30) working days, provided that the healthcare provider certifies that the employee is reasonably anticipated to be able to be able to return to work without restrictions after that thirty (30) day period. Employees who are unable to return to work under this provision shall be referred to the Department's human resources representative designated to engage with employees regarding possible reasonable accommodation under state and federal disability laws.

6. TESTING

I. Reasonable Suspicion Testing

- a. Reasonable suspicion to test a Covered Employee will exist when contemporaneous, articulable and specific observations concerning the symptoms or manifestations of impairment can be made. These observations shall be documented on the Reasonable Suspicion Report Form attached to this Appendix as Exhibit B. At least three (3) indicia of drug or alcohol impairment must exist, in two (2) separate categories, as listed on the Reasonable Suspicion Report Form. In the alternative, the employer representatives must confirm direct evidence of drug or alcohol impairment as listed on the Reasonable Suspicion Report Form.
- b. Any individual or employee may report another employee who may appear to that individual or employee to be under the influence of alcohol or drugs. Upon receiving a report of possible alcohol or drug use or impairment in the workplace, two (2) trained supervisory employer representatives will independently verify the basis for the suspicion and request testing in person. The first employer representative shall verify and document the employee's appearance and behavior and, if appropriate, recommend testing to the second employer representative. The second employer representative shall verify the contemporaneous basis for the suspicion. If reasonable suspicion to test a Covered Employee arises between 11:00 p.m. and 7:00 a.m., or at a location outside the geographic boundaries of the City and County of San Francisco (excluding San Francisco International Airport), and where a second trained supervisory employer representative cannot reasonably get to the location within thirty (30) minutes, then the second employer representative shall not be required to verify the basis for the suspicion in person, but instead shall verify by telephone or email. After completing the verification, and consulting with the first employer representative, the second employer representative has final authority to require that the Covered Employee be tested.
- c. If the City requires an employee under reasonable suspicion to be tested, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time from the time the employee is notified that he or she will be tested (up to a maximum of one hour) for the employee to obtain representation. Such request shall not delay the administration of the tests for more than one hour from the time the employee is notified that he or she will be tested.
- d. Department representative(s) shall document the incident. If a Covered Employee Refuses to Submit to testing, then the City shall treat the refusal as a positive test, and shall take appropriate disciplinary action pursuant to the attached discipline matrix.

## II. Post-Accident Testing

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

substance abuse testing if he or she fails to remain readily available, including failing to notify a supervisor (or designee) of the Accident location, or leaving the scene of the Accident prior to submitting to testing.

- c. Nothing in this section shall delay medical attention for the injured following an Accident or prohibit an employee from leaving the scene of an Accident for the period necessary to obtain assistance in responding to the Accident or to obtain necessary emergency medical care.
- d. If the City requires a Covered Employee to be tested post-Accident, then the employee may ask for representation. Representation may include, but is not limited to, union representatives and shop stewards. If the employee requests representation, the City shall allow a reasonable amount of time from the time the employee is notified that he or she will 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) first 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 and telephone the union(s) second designated representative on file with DHR. 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 two designated representatives are on file with DHR.

## 7. TESTING PROCEDURES

### I. Collection Site

- a. If there is a trained Collector available on site, the City may conduct "on-site" tests (alcohol breathalyzer testing and oral fluid testing). If any of those tests are "Non-Negative," a confirmation test will be performed. The on-site tests may enable the Covered Employee and the City to know immediately whether that employee has been cleared for work.
- b. If a trained Collector is not available on-site, the staff of a collection facility under contract to the City, or the City's drug testing contractor shall collect oral fluid samples from Covered Employees to test for prohibited drugs.



- (1.) A Covered Employee presenting herself/himself at the approved drug collection site must have a minimum of one piece of government-issued photo identification and may not leave the collection site for any reason – unless authorized by the collection agency – until (s)he has fully completed all collection procedures. Failure to follow all collection procedures will result in the employee classified as a “Refusal to Submit.”
- c. Covered Employees who Refuse to Test may be subject to disciplinary action, up to and including termination, pursuant to Exhibit A.
- d. Alcohol and drug testing procedures.
- (1.) Alcohol Testing Procedure. Tests for alcohol concentration on Covered Employees will be conducted with a National Highway Traffic Safety Administration (NHTSA)-approved evidential breath testing device (EBT) operated by a trained breath alcohol technician (BAT). Alcohol tests shall be by breathalyzer using the handheld Alco-Sensor IV Portable Breath Alcohol Analyzer device, or any other U.S. Department of Transportation (DOT) approved breath analyzer device.
  - (2.) Drug Testing Procedure. Tests for drugs shall be by oral fluid collection. The oral fluid specimens shall be collected under direct visual supervision of a Collector and in accordance with the testing device manufacturer’s recommended procedures for collection. Screening results may be provided by the Collector or by a laboratory. Confirmation tests shall be conducted at a laboratory.
  - (3.) The Covered Employee being tested must cooperate fully with the testing procedures.
  - (4.) A chain of possession form must be completed by the Collector, hospital, laboratory and/or clinic personnel during the specimen collection and attached to and mailed with the specimens.
- e. After being tested for drugs, the Covered Employee may be barred from returning to work until the department is advised of the final testing result by the MRO. During that period, the Covered Employee will be assigned to work that is not safety-sensitive or placed on paid administrative leave for so long as the Covered Employee is eligible for such leave under the terms of the applicable provision of the City’s Administrative Code. The test shall be deemed a negative test if the MRO has not advised of the final testing result by the time the Covered Employee’s paid leave has expired under the terms of the applicable provision of the City’s Administrative Code.

## II. Laboratory

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

## III. Medical Review Officer (MRO)

- a. All positive drug, or Substituted, Adulterated, positive-Diluted Specimen, or Invalid Drug Test, as defined herein, will be reported to a Medical Review Officer (MRO). The MRO shall review the test results, and any disclosure made by the Covered Employee, and shall attempt to interview the individual to determine if there is any physiological or medical reason why the result should not be deemed positive. If no extenuating reasons exist, the MRO shall designate the test positive.
- b. When the laboratory reports a confirmed positive, Adulterated, Substituted, positive-Diluted, or Invalid test, it is the responsibility of the MRO to: (a) make good faith efforts to contact the employee and inform him or her of the positive, Adulterated, Substituted, positive-Diluted, or Invalid test result; (b) afford the employee an opportunity to discuss the test results with the MRO; (c) review the employee's medical history, including any medical records and biomedical information provided by the Covered Employee, or his treating physician, to the MRO; and (d) determine whether there is a legitimate medical explanation for the result, including legally prescribed medication. Employees shall identify all prescribed medication(s) that they have taken. If the Covered Employee fails to respond to the MRO within three (3) days, the MRO may deem the Covered Employee's result as a positive result.
- c. The MRO has the authority to verify a positive or Refusal To Test without interviewing the employee in cases where the employee refuses to cooperate, including but not limited

to: (a) the employee refused to discuss the test result; or (b) the City directed the employee to contact the MRO, and the employee did not make contact with the MRO within seventy-two (72) hours. In all cases, previously planned leaves may extend this time. The MRO's review of the test results will normally take no more than three (3) to five (5) days from the time the Covered Employee is tested.

- d. If the testing procedures confirm a positive result, as described above, the Covered Employee and the Substance Abuse Prevention Coordinator (SAPC) for the City and departmental HR staff or designee will be notified of the results in writing by the MRO, including the specific quantities. The results of a positive drug test shall not be released until the results are confirmed by the MRO. The Covered Employee may contact the SAPC, or the MRO, to request a drug or adulterant retest within seventy-two (72) hours from notice of a positive test result by the MRO. The requesting party will pay costs of re-tests in advance.
- e. A drug test result that is positive and is a Diluted Specimen will be treated as positive. All drug test results that are determined to be negative and are Diluted Specimens will require that the employee take an immediate retest. If the retest yields a second negative Diluted Specimens result, the test will be treated as a normal negative test, except in the case of subsection (f).
- f. If the final test is confirmed negative, then the Employee shall be made whole, including the cost of the actual laboratory re-testing, if any. Any employee who is subsequently determined to be subject of a false positive shall be made whole for any lost wages and benefits, and shall have their record expunged.
- g. The City shall assure that all specimens confirmed positive will be retained and placed in properly secured long-term frozen storage for a minimum of one (1) year, and be made available for retest as part of any administrative proceedings.
- h. All information from a covered employee's drug and/or alcohol test is confidential for purposes other than determining whether this policy has been violated or pursuing disciplinary action based upon a violation of this policy. Disclosure of test results to any other person, agency, or organization is prohibited unless written authorization is obtained from the Covered Employee or as required by law.

## 8. RESULTS

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

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

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

#### 9. CONSEQUENCES OF POSITIVE TEST RESULTS

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

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

## 10. RETURN TO DUTY

The SAPC will meet with a Covered Employee who has tested positive for alcohol and/or drugs. The SAPC will discuss what course of action may be appropriate, if any, and assistance from which the employee may benefit, if any, and will communicate a proposed return-to-work plan, if necessary, to the employee and department. The SAPC may recommend that the Covered Employee voluntarily enter into an appropriate rehabilitation program administered by the Covered Employee's health insurance carrier prior to returning to work. The Covered Employee may not return to work until the SAPC certifies that he or she has a negative test prior to returning to work. In the event that the SAPC does not schedule a return-to-work test before the Covered Employee's return-to-work date, the SAPC shall arrange for the Covered Employee to take a return-to-work test within three (3) working days of the Covered Employee notifying the SAPC in writing of a request to take a return-to-work test. If a Covered Employee fails a return-to-work test, he or she shall be placed on unpaid leave until testing negative but shall not be subject to any additional discipline due to a non-negative return-to-work test. The SAPC will provide a written release to the appropriate department or division certifying the employee's right to return to work.

## 11. TRAINING

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

## 12. ADOPTION PERIOD

This Policy shall go into effect on June 30, 2014.

## 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 each Union, except that no Union shall be required to participate. The Committee shall meet on an annual basis and, in addition, on an as-needed basis to address any implementation issues and review available data concerning the implementation of this policy.

## 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 of this policy will not invalidate the remaining parts. If operational barriers arise that make implementation of any part of this policy impossible or impracticable, such operational barriers will not

invalidate the remaining parts of this policy. In the event of a determination that a part of the policy is contrary to law or if operational barriers arise, the parties agree, with the intent of the parties hereto, to immediately meet and negotiate new provision(s) in conformity with the requirements of the applicable law, or which will remove the operational barrier. Should the parties fail to agree on a resolution, the matter will be submitted to binding arbitration using the factors set forth in Charter section A8.409-4(d), and, as appropriate, Charter section 8A.104(n). 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/Occurrence within Three (3) Years</u>
<u>Post-Accident and Reasonable Suspicion</u>	<u>Suspension of no more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC); SAPC may Recommend Treatment;<sup>1</sup> Return to Duty Test.</u>	<u>Will be subject to disciplinary action greater than a ten (10) working- day suspension, up to and including termination except where substantial mitigating circumstances exist.</u>
<u>Refusal to Test or Alteration of Specimen ("Substituted," "Adulterated" or "Diluted")</u>	<u>Suspension of no more than ten (10) working days; Referred to Substance Abuse Prevention Coordinator (SAPC); SAPC may Recommend Treatment;<sup>1</sup> Return to Duty Test.</u>	<u>Will be subject to disciplinary action greater than a ten (10) working- day suspension up to and including termination except where substantial mitigating circumstances exist.</u>

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

**EXHIBIT B**

**REASONABLE SUSPICION REPORT FORM**

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

~Please print information~

Employee Name:

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

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

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

\_\_\_\_\_ Smells of Alcohol

\_\_\_\_\_ Smells of Marijuana

\_\_\_\_\_ Observed Consuming/Ingesting Alcohol or Drugs at work

**Section II**

**Contemporaneous Event Indicating Possible Drug or Alcohol Impairment at Work:**

**(Check all that apply)**

**1. SPEECH:**

\_\_\_\_\_ Incoherent/Confused

\_\_\_\_\_ Slurred

**2. BALANCE:**

\_\_\_\_\_ Swaying

\_\_\_\_\_ Reaching for support

\_\_\_\_\_ Staggering

\_\_\_\_\_ Falling

\_\_\_\_\_ Arms raised for balance

\_\_\_\_\_ Stumbling

**3. AWARENESS:**

\_\_\_\_\_ Confused

\_\_\_\_\_ Paranoid

\_\_\_\_\_ Lack of Coordination

\_\_\_\_\_ Cannot Control Machinery/Equipment

\_\_\_\_\_ Sleepy/Stupor/ Excessive Yawning or Fatigue

\_\_\_\_\_ An observable contemporaneous change in the Covered Employee's behavior that strongly suggests drug or alcohol impairment at work. [Such observable change(s) must be described in Section III below.]

**4. APPEARANCE:**

\_\_\_\_\_ Red Eyes

\_\_\_\_\_ Dilated (large) Pupils

\_\_\_\_\_ Constricted (small) Pupils

\_\_\_\_\_ Frequent Sniffing

**Section III – NARRATIVE DESCRIPTION**

**(MUST be completed in conjunction with Section I and/or Section II)**

**~Please print information~**



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

---

---

---

---

---

---

---

---

---

---

Section IV

In addition to completing the narrative in Section III above:

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

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

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

Print name of first on-site Supervisor Employee Representative

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

Print name of second Supervisor Employer Representative

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

**FOR THE CITY:**

\_\_\_\_\_  
**Micki Callahan**                      **Date**  
**Human Resources Director**

\_\_\_\_\_  
**Martin R. Gran**                      **Date**  
**Employee Relations Director**

\_\_\_\_\_  
**Christina Fong**                      **Date**  
**Chief Negotiator**

*Erik Rapoport*                      *8/20/13*  
\_\_\_\_\_  
**Erik Rapoport**                      **Date**  
**Deputy City Attorney**

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

*Elizabeth Salveson*                      *8/23/13*  
\_\_\_\_\_  
**Elizabeth Salveson**                      **Date**  
**Chief Labor Attorney,**  
**Office of the City Attorney**

**FOR THE UNION:**

*[Signature]*                      *9/20/13*  
\_\_\_\_\_  
**Jonathan Yank**                      **Date**  
**Lead Negotiator**

*Armando Garcia*                      *9-26-13*  
\_\_\_\_\_  
**Armando Garcia**                      **Date**  
**San Francisco Deputy Probation**  
**Officers Association**

**SIDE LETTER BETWEEN THE CITY AND COUNTY OF SAN FRANCISCO, AND THE SIGNATORY UNIONS OF THE PEC (Local 21, DPOA, TWU Local 200, and Teamsters Local 856 [multi]) AND SIGNATORY UNIONS OF THE CONSOLIDATED CRAFTS (Local 6, Local 38, Crafts Coalition) REGARDING THE SUBSTANCE ABUSE PREVENTION POLICY**

The parties have negotiated and reached agreement on a Substance Abuse Prevention Policy (SAPP) to apply to each union and to be effective June 30, 2014, and have further negotiated over issues pertaining to implementation of SAPP, as follows:

1. **Reopener.** Any union that is a signatory to this side letter can request to re-open negotiations on the SAPP applicable to that union anytime between July 1, 2015 and August 31, 2015. If a union reopens on any SAPP issues, the City may also reopen on any SAPP issues with that union. In the event of an impasse arising out of such reopener negotiations, the union that sought to reopen may proceed to binding arbitration pursuant to Charter section A8.409-4(d), and, as appropriate, Charter Section 8A.104(n), before the arbitrator previously designated by the parties. Any individual Consolidated Crafts union may reopen on any SAPP issue applicable to that union during this two-month window. However, if more than one of the Consolidated Crafts unions do reopen on any issue, then in the event of an impasse in reopener negotiations, all unresolved issues with all Consolidated Crafts unions that have chosen to reopen shall be consolidated into one binding arbitration proceeding pursuant to Charter section A8.409-4(d), and, as appropriate, Charter Section 8A.104(n).
2. **No Proposals.** Other than the reopener rights described above or described in the SAPP's savings clause (section 14), through June 30, 2018, absent mutual agreement, no parties shall make proposals related to SAPP.
3. **RFP Process.** For PEC unions signatory to this side letter, access to the RFP process by which the City selects vendors to implement the SAPP shall be as follows:
  - a. PEC unions may select up to three (3) representatives to assist the City in the SAPP RFP process to select a SAPC or Contractor hired to administer the SAPP.
  - b. All three (3) representatives will be given the opportunity to comment and suggest proposed edits to the RFP on an advisory-only basis.
  - c. The PEC unions may designate one representative to sit on SAPP RFP selection panel(s).
  - d. PEC representatives selected to assist the City in the SAPP RFP process may not have any actual, or apparent, conflicts that would prevent them from assisting in the RFP process, or have any background that would create an appearance of bias, as determined by the City.
  - e. PEC representatives selected to assist the City in the SAPP RFP process must sign a confidentiality agreement acceptable to the City prior to participating in the RFP process.

**FOR THE CITY**

**FOR THE UNION**

\_\_\_\_\_  
Micki Callahan                      Date  
Director, Department of Human Resources

\_\_\_\_\_  
Larry Mazzola, Jr.                      Date  
Plumbers, Local 38

---

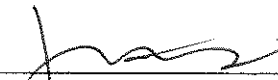
Martin Gran                      Date  
Employee Relations Director

---

Kevin Hughes                      Date  
Electrical Workers, Local 6

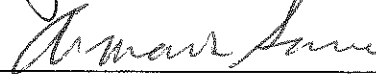
---

Bob Muscatt                      Date  
IFPTE, Local 21

 9/20/13

---

Jonathan Yank                      Date  
Deputy Probation Officers

 9-20-13

---

Armando Garcia                      Date  
Deputy Probation Officers

---

Steve Kantoniemi                      Date  
Bricklayers and Allied Crafts, Local 3

---

Robert Alvarado                      Date  
N. California Carpenters Regional Council, L22

---

Robert Alvarado                      Date  
N. California Carpenters Regional Council/  
Building Inspectors' Association

---

Dennis M. Carlin, Jr.                      Date  
San Francisco Building Inspectors' Assoc.

---

Tony Tofani                      Date  
Carpet, Linoleum and Soft Tile Workers, Local 12

---

Dave Johnson                      Date  
Plasterers & Cement Masons, Local 300

---

Mike Dufford                      Date  
Glaziers Architectural Metal and Glass Workers,  
Local 718

---

Sam Robinson	Date
--------------	------

Hod Carriers Union, Local 166

---

Dennis Meakin	Date
---------------	------

Ironworkers, Local 377

---

Steve Lutge	Date
-------------	------

IATSE, Local 16

---

Pat Karinen	Date
-------------	------

Pile Drivers, Divers, Carpenters, Bridge Wharf and  
Dock Builders, Local 34

---

Chester Murphy	Date
----------------	------

Business Representative  
Plasterers and Shophands, Local 66

---

Steven Tucker	Date
---------------	------

United Union of Roofers, Waterproofers and Allied  
Workers, Local 40

---

Richard Koenig	Date
----------------	------

Sheet Metal Workers International Union, Local  
104

---

Rome Aloise	Date
-------------	------

Secretary Treasurer, Teamsters L853

---

Dan Harrington	Date
----------------	------

Teamsters, Local 853

---

Joe Abad	Date
----------	------

Transport Workers Union, Local 200

---

Peter Finn	Date
------------	------

Teamsters, Local 856 (Multi-Unit)