



CITY OF TROUTDALE

"Gateway to the Columbia River Gorge"

AGENDA

CITY COUNCIL – REGULAR MEETING

Troutdale City Hall - Council Chambers
219 E. Historic Columbia River Hwy. (Lower Level, Rear Entrance)
Troutdale, OR 97060-2078

Tuesday, September 22, 2015 – 7:00PM

Mayor

Doug Daoust

City Council

David Ripma

Eric Anderson

Larry Morgan

Glenn White

Rich Allen

John Wilson

City Manager

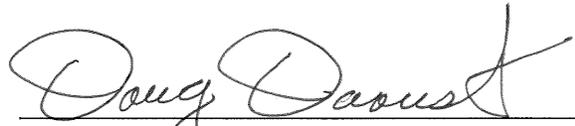
Craig Ward

1. **PLEDGE OF ALLEGIANCE, ROLL CALL, AGENDA UPDATE.**
2. **CONSENT AGENDA:**
 - 2.1 **RESOLUTION:** A Resolution Allowing the Use of Alcohol at the Sam Cox Building, and Temporarily Suspending Resolution No. 1975.
 - 2.2 **RESOLUTION:** A Resolution Approving the Collective Bargaining Agreement with Employees Represented by AFSCME Local 3132.
 - 2.3 **RESOLUTION:** A Resolution Approving an Intergovernmental Agreement with the City of Maywood Park for the Renewal of Building Inspection Services.
 - 2.4 **RESOLUTION:** A Resolution Approving the Second Amendment to the Lease Agreement with Sprint Spectrum Realty Company, L.P. for the Use of Reservoir #2 as a PCS Site.
3. **PUBLIC COMMENT:** Public comment is limited to comments on non-agenda items. *Remarks shall be limited to 5 minutes for each speaker unless a different time is allowed by the Mayor. The Mayor and Council should avoid immediate and protracted response to citizen comments.*
4. **ORDINANCE (INTRODUCTION):** An ordinance creating Chapter 3.07 of the Troutdale Municipal Code to phase in a motor vehicle fuel tax over three years and to premise the same on voter approval.

Ed Trompke, City Attorney
5. **STAFF COMMUNICATIONS**

6. COUNCIL COMMUNICATIONS

7. ADJOURNMENT



Doug Daoust, Mayor

Dated: 9/17/15

City Council Regular Meetings will be replayed on Comcast Cable Channel 30 and Frontier Communications Channel 38 on the weekend following the meeting - Saturday at 2:30pm and Sunday at 9:00pm.

Further information and copies of agenda packets are available at: Troutdale City Hall, 219 E. Historic Columbia River Hwy. Monday through Friday, 8:00 a.m. - 5:00 p.m.; on our Web Page www.troutdaleoregon.gov or call Debbie Stickney, City Recorder at 503-674-7237.

The meeting location is wheelchair accessible. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting to: Debbie Stickney, City Recorder 503-674-7237.



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A resolution allowing the use of Alcohol at the Sam Cox Building, and temporarily suspending Resolution No. 1975.

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: September 22, 2015

STAFF MEMBER: Steve Gaschler
DEPARTMENT: Public Works

ACTION REQUIRED
Consent Agenda/Resolution

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

Comments:

STAFF RECOMMENDATION: Adoption.

EXHIBITS: A: None.

Subject / Issue Relates To:

- Council Goals Legislative Other (describe)

Goal: *“Strengthen the relationship between the City and the Chamber regarding event planning and tourism goals.”*

And: *“Continue the Mayor’s Art Initiative to support and bring resources to local artists.”*

Issue / Council Decision & Discussion Points:

- ◆ The West Columbia Gorge Chamber of Commerce (WCGCC) is presenting the 2015 Fall Festival of the Arts.
- ◆ The City is supporting the WCGCC in their efforts to present the Fall Festival of the Arts.

Reviewed and Approved by City Manager: 

- ◆ The City allows the consumption of alcohol in a park in conjunction with a community event, special event, or event of citywide interest, however, it currently prohibits alcohol inside the Sam Cox Building.

BACKGROUND:

“The Fall Festival of the Arts is a community event, bringing together artists, civic leaders and business owners, studios and workshops, and, of course, locals plus visitors to our region, in a weekend that celebrates the thriving Arts scene in our beautiful Gateway To The Gorge.”

The Fall Festival of the Arts will include music, art, food and wine, and vendor booths providing wine tasting and case sales inside the Sam Cox Building.

The Council has expressed support for the Fall Festival of the Arts event, and has directed staff to facilitate allowing alcohol inside the Sam Cox Building.

SUMMARY:

Subject to permit compliance, the resolution “opens the door slightly” by allowing the consumption of alcohol inside the Sam Cox Building, but only in conjunction with a community event, special event, or event of citywide interest.

The consumption of alcohol inside the Sam Cox Building is still prohibited for private events, such as weddings and private art and wine tasting dinner parties.

The resolution provides for an evaluation period for the consumption of alcohol inside the Sam Cox Building from which staff will propose future policy revisions for Council consideration.

PROS & CONS:

- A. Approve resolution and allow the consumption of alcohol inside the Sam Cox Building for the upcoming Fall Festival of the Arts event and other properly permitted events during the evaluation period.
- B. Not adopt resolution, negatively impacting the WCGCC’s potential success with the upcoming Fall Festival of the Arts event.

RESOLUTION NO.

A RESOLUTION ALLOWING THE USE OF ALCOHOL AT THE SAM COX BUILDING, AND TEMPORALLY SUSPENDING RESOLUTION NO. 1975.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Chapter 13 of the Troutdale Municipal Code (TMC) provides Park Rules, which allow, only with a permit, the consumption of alcohol in conjunction with a community event, special event, or event of citywide interest being held at the particular park.
2. Resolution No. 1975 adopted December 9, 2008 prohibited the use of alcohol at the Sam Cox Building.
3. The Council desires for a limited time evaluation period, to allow the use of alcohol inside the Sam Cox Building under the same limitations as allowed outside the Building in the park, as per TMC 13.20.190.
4. The use of alcohol at the Sam Cox Building for private events remains prohibited.
5. Upon expiration of the limited time evaluation period, Resolution No. 1975 prohibiting the use of alcohol at the Sam Cox Building, shall again be in force.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Agrees now that the consumption of alcohol inside the Sam Cox Building under the same limitations of TMC 13.20.190 as allowed outside in the park, and only in conjunction with a community event, special event, or event of citywide interest.

Section 2. Resolution No. 1975 is temporally suspended upon adoption of this resolution.

Section 3. The limited time evaluation period allowing alcohol consumption inside the Sam Cox Building shall expire January 31, 2017.

Section 4. Authorizes the City Manager or Public Works Director (each a "City Official") or a designee of the City Official, consistent with intent of this resolution, and in the best interest of the City, to permit, monitor and evaluate the consumption of alcohol inside the Sam Cox Building.

Section 5. Further, the City Official is directed to evaluate the consumption of alcohol inside the Sam Cox Building and recommend further policy revisions.

Section 6. This Resolution shall be effective upon adoption.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder
Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A resolution approving the Collective Bargaining Agreement with Employees Represented by AFSCME Local 3132

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: September 22, 2015
STAFF MEMBER: Erich Mueller
DEPARTMENT: Finance

ACTION REQUIRED
Consent Agenda Item

ADVISORY BOARD/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

STAFF RECOMMENDATION: Approve

EXHIBITS:

A. Agreement Between the City of Troutdale and the City of Troutdale Employees Union Local 3132, AFSCME Council 75, 2015-2018

Subject / Issue Relates To:

Council Goals Legislative Other (describe)

Issue / Council Decision & Discussion Points:

- ◆ The City and AFSCME Local 3132 have reached a tentative agreement.
- ◆ The AFSCME Local 3132 have ratified the agreement.
- ◆ The City Council must ratified the agreement before it becomes final.

BACKGROUND:

The American Federation of State County and Municipal Employees (AFSCME) represent 34 City employees in the AFSCME bargaining unit Local 3231. The 14 remaining City employees are non-represented. The previous AFSCME contract expired June 30, 2015.

Reviewed and Approved by City Manager:

Since January 29, 2015 the City and AFSCME bargained over 9 negotiation sessions within the required 150 days to negotiate. The City and AFSCME subsequently proceeded through the state mandated mediation phase, meeting twice. The teams have reached tentative agreement on a new three year agreement from July 1, 2015 through June 30, 2018.

The City Council was briefed in Executive Session by the City bargaining team June 16, 2015 regarding the various wage and benefit considerations. The Council then gave direction to staff regarding the open bargaining issues. The Collective Bargaining Agreement (CBA) proposed for ratification reflects in substantial form the financial positions as directed by the Council during the Executive Session.

On August 24, 2015 the City Council was again briefed in Executive Session by the City bargaining team on the proposed agreement for ratification, and the attached Exhibit A reflects in substantial form the CBA represented to the Council during that Executive Session.

The significant economic terms of the proposed contract are:

- A wage Cost of Living Adjustment (COLA) fixed at 3% per year effective each July 1st of the three year term, retroactive to July 1, 2015.
- The employee monthly share of health insurance premium shall remain fixed at 10% during the three year term.

SUMMARY:

The bargaining period was both lengthy and difficult for both parties. The tentative agreement was ultimately reached through the State mandated mediation process that produced a CBA that both parties are accept.

PROS & CONS:

- A. Approve the CBA, ending prolonged negotiations, providing certainty in labor costs over the contract term, and maintaining more cost sustainable health insurance premium plans.
- B. Not approve the CBA, prolonging negotiations costing more productivity loss and increased legal expenses. It is unclear what new negotiated terms might produce a more favorable agreement and avoid an Unfair Labor Practice charge for bad-faith negotiations by the City of the Public Employees Collective Bargaining Act.

Current Year Budget Impacts: Yes, COLA increase.

Future Fiscal Impacts: Yes, COLA cost in both year 2 and 3 of the CBA term.

Community Involvement Process: Yes (*describe*) N/A

AGREEMENT

BETWEEN

CITY OF TROUTDALE

AND

**CITY OF TROUTDALE EMPLOYEES UNION
LOCAL 3132, AFSCME COUNCIL 75**

2015-2018

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PREAMBLE

This Agreement is entered into by the City of Troutdale, hereinafter referred to as the "City" and the City of Troutdale Employees Union, Local 3132 AFSCME Council 75, hereinafter referred to as the "Union," for the purpose of establishing the wages, hours and conditions of employment and establishing an equitable and peaceful procedure for the resolution of differences between the parties.

ARTICLE 1 - RECOGNITION

A. The City recognizes the Union as the sole and exclusive representative for the purpose of collective bargaining for all employees of the City excluding managerial, supervisory, temporary, seasonal, and confidential employees and employees currently represented in a different bargaining unit. Supervisory and confidential employees are defined in ORS 243.650.

B. **Categories of Employment:**

Trial Service Employees: Employees in the first six months of employment. Trial service employees are eligible for City provided benefits, as set forth in this Agreement.

Full-Time Regular Employees: Employees who have successfully completed the trial service period and are regularly scheduled to work at least forty (40) hours per week.

Part-Time Regular Employees: Employees who have successfully completed the trial service period and are scheduled to work at least twenty (20) hours per week. Part-time regular employees are eligible for City provided benefits as set forth in this Agreement. Part-time employees who work less than twenty (20) hours per week are not eligible for benefits, but are members of the bargaining unit.

Temporary/Seasonal Employees: Employees hired to work for a limited duration of time, whether by the City or through a temporary agency, not to exceed 1040 consecutive hours on a peak work load (FMLA/OFLA) or project basis. If the employee works more than 1040 consecutive hours, he/she will become a member of the bargaining unit and will be entitled to benefits as set forth in this Agreement.

C. **Definition of Term:**

FTE (Full Time Equivalent): Any position or combination of positions, which are budgeted for 2,080 work hours per year. For example, a budgeted position of 0.5 FTE would typically have 1,040 work hours per year.

Domestic Partner: A "domestic partner" is used in this Agreement, it is defined as a registered domestic partner under ORS Chapter 106. Registered domestic partners will be eligible for all benefit insurance options available to "spouses" of employees, as provided in

carrier eligibility rules. Additionally, employees with domestic partners are entitled to use sick leave pay and OFLA benefits to care for a domestic partner or the child or other family members of a domestic partner on the same basis that those benefits are extended for the care of a spouse, in accordance with applicable law. Employees are obligated to promptly notify Human Resources in writing when domestic relationships begin and end.

D. **New Classifications:**

When any new classification is established by the City and assigned to the bargaining unit pursuant to Section A, above, the City shall designate a pay range for the new classification. The City shall then notify the Union via USPS, and may also notify via email of the intended pay range for the new classification and shall furnish the Union with a copy of the job description. In the event the Union does not concur, the Union shall notify the City in writing of such within fourteen (14) calendar days of its receipt of the City notice. Upon receipt of timely notice, the City will bargain with the Union over the pay range for the classification.

Nothing in this Section will be construed to prohibit the City from hiring an employee in the new classification at the intended rate, subject to the Union's right to demand retroactivity of any agreed upon rate.

ARTICLE 2 - UNION SECURITY

- A. **Check Off:** Upon receipt of signed authorization, the City agrees to deduct from such employee's paychecks the amount shown on the said authorization for Union dues or fair share costs. Fair share costs are equivalent to membership dues. The City agrees to remit the aggregate of the deductions monthly to the treasurer of the Union on behalf of the employees involved. Current authorizations from employees shall remain in full force and effect from year to year unless revoked in writing.

All employees covered by this Agreement shall within thirty (30) days of employment either (1) become a member of the Union, or (2) tender to the Union through payroll deduction his/her fair share of the cost of negotiating and administering the labor agreement. If the employee is a member of a church or religious body which has bona fide religious tenets or teachings which prohibit such employees from being a member of or contributing to a labor organization or as otherwise required by law, such employee shall pay an amount of money equivalent to regular Union dues and initiation fees and assessments, if any, to a non-religious charity or to another charitable organization mutually agreed upon by the employee and Union. The employee shall furnish written proof to the City that this has been done.

- B. **Hold Harmless:** Provided the City acts in compliance with the provisions of this article, the Union will indemnify, defend and hold the City harmless against any claims made and against any suit instituted against the City as a result of the City's enforcement of the above provisions or as a result of any check off errors arising out of acts of the Union.

- C. **New Hires:** The City will notify the Union of all new hires in the bargaining unit within thirty (30) days after their having been employed, furnishing the Union with the new employee's name, mailing address and position for which he or she was hired.
- D. **Bulletin Boards:** The City will allow the Union reasonable space on designated bulletin boards for posting Union materials.
- E. **Reasonable Access:** The City agrees that representatives of the American Federation of State, County and Municipal Employees, whether local union representatives, District Council representatives or International representatives, shall have reasonable access to the premises of the City, so long as they do not interrupt the employees' performance of their duties.
- F. **Negotiations:** No more than two (2) City employees shall be allowed time off with pay at straight time rate while at the bargaining table. Employees are subject to being called away from bargaining for urgent duty without receiving extra pay for Unscheduled Call Back Time (Article 4, Section F).

ARTICLE 3 - NONDISCRIMINATION

- A. Employees shall have the right to form, join and participate in the activities of employee organizations of their own choosing for the purpose of representation in matters of employment relations. No employee shall be interfered with, intimidated, restrained, coerced or discriminated against by the City because of his/her exercise of his/her rights.
- B. The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without discrimination as to marital status, sex, race, color, creed, national origin, age, union affiliation, political affiliation or other protected status or protected activity, in accordance with applicable law.
- C. All references to employees in this Agreement designate both sexes and whenever the male gender is used it shall be construed to include male and female employees.

ARTICLE 4 - HOURS OF WORK

- A. **Regular Hours:** The regular hours of each workday shall be consecutive with interruptions for meal and rest periods.
- B. **Work Week:** The work week for full time employees shall consist of a seven (7) day work schedule of five (5) consecutive eight (8) hour days with two (2) consecutive days off or four (4) consecutive ten (10) hour days with three (3) consecutive days off or any other type of alternative work schedule agreed to in writing by the affected employee(s) and the City.
- C. **Work Shift:** Each employee shall be scheduled to work on a regular shift. Each employee shall have regular starting and quitting times, unless the employee has an approved flex schedule. Flex schedules may be requested by the employee or management for a limited

duration not to exceed thirty (30) calendar days and will be implemented only upon mutual agreement and reduced to writing. Flex schedules shall allow employees to adjust their start/stop times within the parameters agreed upon between the employee and manager (such as start/stop times may be adjusted within one (1) hour of normal start/stop time) for designated period. Flex schedules that result in "built in" overtime will not be granted. However, flex schedules do not preclude the opportunity for overtime for hours worked in excess of an employee's regularly scheduled hours or forty (40) hours in a work week.

The City reserves the right to discontinue or modify flex schedules at its discretion with ten (10) calendar days' written notice to the employee. Employees who do not acknowledge their agreement with the modified flex schedule in writing prior to the expiration of the ten (10) day period will be returned to a normal work schedule with fixed start/stop times.

- D. **Rest Periods:** All employees' work schedules shall provide for a fifteen (15) minute paid rest period during each four (4) hour segment of work which shall be scheduled as near the middle of each four (4) hour segment as is feasible.

Employees who for any reason work beyond their regular quitting time into the next shift shall receive a fifteen (15) minute rest period before they start to work on such next shift, if the overtime assignment would reasonably exceed two hours.

- E. **Meal Periods:** All employees who work a schedule of at least six (6) hours shall be granted a thirty (30) minute or a sixty (60) minute unpaid meal period during each work shift which shall be scheduled as near the middle of each shift as is feasible. The current length of meal periods may be changed by mutual agreement between the employee and supervisor. However, where the City now allows thirty (30) minutes off or sixty (60) minutes off, as the case may be, the City will continue to do so for the life of this Agreement, unless changed by mutual agreement.

- F. **On-Call Status and Unscheduled Call Back:**

To qualify for on-call rotation, employees are required to demonstrate the ability to respond to the SCADA system via electronic remote response (i.e. iPhone/iPad, smartphone, computer, etc.).

An employee assigned on-call duty that is contacted by SCADA outside of his/her scheduled shift, who responds by means of electronic remote response, and is able to resolve the issue shall be paid for a minimum of thirty (30) minutes at the rate of time and one-half of the employee's regular pay rate, and in fifteen (15) minute increments thereafter, rounded to the nearest quarter hour. If the emergency cannot be adequately addressed by means of electronic remote response and a physical call back is required, the employee will be eligible for call back pay in lieu of the thirty (30) minute electronic remote response pay, or pay for actual time worked, whichever is greater.

An employee who is physically called back more than one (1) hour before his/her regularly scheduled shift, or after completing his/her shift to perform work of an emergency nature shall be paid for a minimum of three (3) hours at the rate of time and one-half, and in fifteen

(15) minute increments thereafter, rounded to the nearest quarter hour. The employee is expected to perform any work or repairs arising from the call back which he/she is qualified and able to safely perform during the three (3) hours. For the purposes of this Section, an emergency is defined as an unexpected situation that, which in the City's determination, demands immediate attention. The City shall not be arbitrary or capricious in making such determinations.

Responding to phone calls, emails or other means of contact which do not require an employee to remotely respond electronically to SCADA or physically report to work are compensated through standby pay and do not trigger electronic remote response pay or physical call back pay.

In the event an employee who is not on-call is required to respond to telephone calls during his/her off-duty hours, he/she shall be paid for such time rounded to the nearest quarter hour, provided a supervisor has authorized the off-duty work for that employee.

- G. **Overtime:** Except as provided in Section H, below, employees will be paid overtime compensation at the rate of one and a half (1 ½) their regular hourly rate for all hours worked in excess of their regularly scheduled work shift or when they exceed forty (40) hours of work in a workweek. There shall be no pyramiding of overtime.

For the purposes of this Section, the only non-worked paid time that will be considered hours worked for the purpose of computing overtime will be vacation hours, holiday hours, jury duty hours and compensatory time hours. Sick leave, bereavement leave, and other non-worked paid time will not be considered hours worked for overtime purposes.

- H. **Compensatory Time:** In lieu of overtime, employees can elect to receive equivalent compensatory time off not exceed eighty (80) hours. Requests for compensatory time pay out shall be made in writing ten (10) days in advance and will be paid on the regular payroll schedule.
- I. **Scheduled Return to Work:** Employees who are scheduled to return to work after their regular workday, for example a night meeting, may choose to flex their schedules for that workday so that their working hours for that day are contiguous with the scheduled return to work, with advance approval from their supervisor.

Employees who are required to return to scheduled work after their regular workday (for night meetings, etc.), but who do not flex their schedule, will receive a minimum of two (2) hours pay for such time, at applicable regular or overtime rates.

- J. Essential employees, such as Facilities Maintenance and Public Works employees, shall be required to report to their workplace or emergency response site within sixty (60) minutes of being called.
- K. **Stand-by Beeper Duty:** Employees who are Public Works and Waste Water Treatment Operators on stand-by beeper duty shall be required to respond to calls within thirty (30) minutes of being called.

ARTICLE 5 - WAGES

- A. **Rate of Pay:** Each employee shall be paid at one of the steps in the range prescribed for his/her classification set forth in Appendix A of this Agreement. Each year of the Agreement employee wages shall be increased by three percent (3%). For the first year of the Agreement, the three percent (3%) increase shall be made retroactive to July 1, 2015.
- B. **First Six Months of Service with the City:** A new employee is eligible for consideration for a merit increase to the next step of the salary range for his/her classification at the beginning of the next pay period following completion of the trial service period. (See Article 13, Trial Service Period, for criteria.)
- C. **Merit Step Increases:** An employee is eligible for consideration for an additional merit increase twelve (12) months after his/her last merit increase until the employee reaches the top step in that range.
- D. **Yearly Merit Step Increase Criteria:** Yearly merit step increases shall be awarded if employees receive an overall merit evaluation of *Consistently Achieved* as defined in the performance review form. Normally, the evaluation process shall be completed by the employee's merit date. If the supervisor has not completed the employee evaluation within thirty (30) days following the employee's merit date, the employee shall automatically move to the next step in his/her salary range, retroactive to his/her merit date. Employee's performance in this case shall be assumed to meet expectations. The Performance Review Form must be returned to Human Resources with both the employee and the supervisor signatures before a Personnel Action Form will be generated. The step increase shall be paid on the paycheck following the evaluation process. Employees at the top of their pay range must sign and return their Performance Evaluation Form to their supervisor within two weeks after receiving their evaluation.
- E. **Merit Date:** An employee's merit step increase date will change upon competitive and noncompetitive promotion to become the date of promotion and upon transfer to a higher pay grade to become the date of transfer. In the event of a lateral transfer, or a reduction in grade, the employee will retain his/her previous merit date.
- F. **Pay Day:** Normally employees shall be paid every other Friday. If the payday falls on a holiday, employees shall be paid on the last working day preceding the holiday.
- G. **Final Paychecks:** In all cases of voluntary or involuntary separation, final paychecks will be issued on the City's next regular payday by direct deposit.
- H. **On-Call Compensation:** Employees assigned to be available by phone and/or carry a device during nonworking hours shall be compensated either by receiving one (1) hour of compensatory time for every day or seven (7) hours a week they are on on-call duty or shall receive one hundred sixty-one dollars (\$161.00) for each full week (twenty three dollars \$23.00 per day) of on-call duty. Employees shall designate the means of compensation

desired prior to the period of on-call duty. If the week of on-call duty includes a designated holiday (but not a personal holiday) as identified in Article 8, Section A, subsections 1-10, the on-call compensation for that day shall be increased by thirty-nine dollars (\$39) to sixty-two (\$62) or an additional hour of compensatory time for that holiday. For the purposes of this Section, the two Thanksgiving holidays (Thanksgiving and the day after Thanksgiving) shall count as one holiday. Also for the purposes of this Section, the day on-call duty begins is the day the employee becomes eligible for on-call pay; the day on-call duty ends the employee is not eligible for on-call pay.

- I. The Hourly Rate Schedules in Appendix A, which represents the hourly rate in effect July 1, 2015, shall be effective for the duration of this Agreement as adjusted by COLA increases per Section A of this Article and upwardly adjusted pursuant to Appendix C.
- J. **Stability Schedule:** All full-time and part-time regular employees shall earn stability pay once they have completed five (5) continuous years of service. Stability pay will be paid on an hourly basis as follows:

Minimum Years of Continuous Service	Stability Pay Rate
5	2% at Current Step
10	3% at Current Step
15	4% at Current Step
20	5% at Current Step

- K. **Job Descriptions:** All employees of the City shall receive a job description with their duties and responsibilities outlined. The City reserves the right to update job descriptions as necessary. The City will notify the employee and the Union via email when a job description is updated.
- L. **Out of Class Pay:** Employees who are assigned substantially all of the duties of a higher classification for ten (10) consecutive working days or more shall receive retroactively to the first day of the assignment at least the entry step in the higher range or five percent (5%) above their current rate of pay at the time of the appointment, whichever is greater.
- M. All compensation pursuant to this Article is subject to payroll taxes.

ARTICLE 6 - RETIREMENT

The City shall pay the six percent (6%) employee contribution to the Public Employees Retirement fund. Contributions shall be in accordance with PERS rules and regulations.

ARTICLE 7 - HEALTH AND WELFARE

- A. **Health Insurance and Eligibility:** The City agrees to make contributions to provide medical and dental insurance coverage, including vision coverage to full-time regular and full-time

trial service employees and part-time regular and part-time trial service employees and their eligible family members, as set forth in CIS Benefit Rules. Effective January 1, 2016 “eligible family members” shall include only spouses, registered domestic partners under ORS Chapter 106 and their eligible children, except as permitted by CIS “grandfathering” Benefit Rules. Domestic partners submitting an affidavit will no longer be eligible for coverage.

Coverage begins on the first day of the month following thirty (30) calendar days of continuous employment, provided the employee has timely completed their on-line enrollment.

The City will maintain at least two health insurance options, one Kaiser and one non-Kaiser option. During the appropriate enrollment period(s), the employee may choose between one of the following health and vision insurance options:

1. CIS Regence BlueCross BlueShield Co-Pay Plan B and Vision; or
2. CIS Kaiser Deductible A Plan and Vision.

Existing medical insurance plan options will remain in effect with no changes through December 31, 2016 or the last day of the month following sixty (60) days notice to CIS. The above medical plan options shall commence January 1, 2016 or the first of the month following sixty (60) days notice to CIS.

Dental insurance shall be provided under Willamette Dental or ODS Dental.

- B. **Premium Sharing:** The cost of the premium to provide health insurance coverage will be shared by the City and participating employees as follows:

For the duration of the Agreement, the City will pay ninety percent (90%) of the premium cost for eligible full-time and part-time employees who are regularly scheduled to work at least twenty (20) hours per week and the employee will pay ten percent (10%) of the premium cost. For part-time employees who are regularly scheduled to work at least twenty (20), but less than thirty (30) hours per week and their eligible dependents, the City will pay the same percent of the premium cost for the employee as paid on behalf of full-time employees; fifty percent (50%) of the premium cost for the employee’s first dependent, and zero percent (0%) of the premium cost for any additional dependents. For part-time employees who are regularly scheduled to work at least thirty (30), but less than forty (40) hours per week and their eligible dependents, the City will pay the same percent of the premium cost for the employee as paid on behalf of full-time employees; seventy-five percent (75%) of the premium cost for the employee’s first dependent, and twenty-five percent (25%) percent of the premium cost for any additional dependents. Any portion of the premium not paid by the City shall be paid by the employee through payroll deduction.

- C. **Voluntary Employee Benefit Account (VEBA):** The City has established a VEBA plan for employees who are participating in CIS BlueCross BlueShield Co-Pay Plan B. All VEBA contributions shall vest immediately in participating employee’s individual VEBA accounts.

The amount of annual contributions to employees VEBA accounts shall be calculated based on the employee's tier of coverage and plan selected as follows:

1. The City will contribute \$250 for Employee-only participants.
2. The City will contribute \$500 for Employee + Spouse or Employee + Child participants.
3. The City will contribute \$750 For Employee + Children or Employee + Family participants.

The VEBA contributions set forth above will be made to individual employee VEBA accounts during the month of January or within thirty (30) days of the date the employee begins participating in Co-Pay Plan B, if participation commences midway during a plan year. The amount of the annual VEBA contribution will not be prorated for employees who are hired or start participating in Co-Pay Plan B midway during the plan year. Such employees will receive the full amount of the contribution.

In the event an employee increases his/her tier of coverage midway during the plan year, the City will contribute the amount necessary to match the contribution for the higher tier of coverage. Reductions in employee's tiers of coverage will not affect previous VEBA contributions, but the employee's VEBA contribution will be adjusted to the correct amount effective the next January 1st.

The employees VEBA accounts may be used in compliance with Internal Revenue Code (IRC) section 213(d). Any unused amount may be carried forward for the use in subsequent years. All contributions shall be made in accordance with the Voluntary Employees' Beneficiary Association Medical Expense Plan for Public Employees in the Northwest (VEBA) Plan Document, Summary of Health Benefits Coverage and Summary Plan Description.

The VEBA will be sponsored by the City, but will be administered externally by an independent third party claims administrator.

- D. If the medical, vision or dental insurance carrier at its sole discretion changes benefits or claims administrators during the term of this Agreement, the Union and its employees waive all rights to bargain or grieve the change.
- E. In the event the insurance and insurance related benefits provided under this Agreement trigger the excise ("Cadillac") tax under the Affordable Care Act and there is a potential that the tax will be triggered, the parties agree to automatically reopen Article 7 of the Agreement no later than July 1, 2017 for the purpose of negotiating only the impact of potential increased cost of the Cadillac tax.
- F. **Life and Disability Insurance:** The City shall provide a term life insurance benefit policy and an accidental death and dismemberment benefit policy equal to \$20,000. In addition, the City shall provide a Long Term Disability Insurance policy that provides for 66-2/3% of

salary to a \$4333 maximum monthly benefit with a 90-calendar day elimination period. These policies shall be provided to all full-time regular and part-time regular employees at no cost to the employee. Eligibility for coverage will commence following the elimination period. Eligibility and benefit obligations shall be governed by the terms of the contract between the City and insurance carrier.

- G. The City agrees to make available to eligible employees and their dependents a Section 125 Flexible Spending Account, for eligible medical and dependent care expenses.
- H. The City shall continue liability protection at least equal to the current level.
- I. Employees shall continue to receive medical, dental, disability and life insurance benefits through the City's payment of its portion of the premium during the time they are on paid leave (holiday, vacation, sick leave and compensatory time) or during the time they are on OFLA/FMLA leave, whichever is greater. Benefit coverage through the City's payment of the premiums will continue through the last day of the month in which the employee's paid leave is depleted or OFLA/FMLA leave expires, whichever occurs later, except as otherwise required by law or mutually agreed upon in writing.

ARTICLE 8 - HOLIDAYS

- A. **Recognized Holidays:** All regular and trial service employees of the City shall be entitled to the holidays listed below, with pay. Full-time regular and trial service employees shall receive regular compensation of eight (8) hours regular pay and part-time employees working a minimum of twenty (20) hours per week shall receive regular compensation on a pro-rated FTE basis. Alternative work schedule employees and part-time employees will be allowed to utilize vacation, compensatory time and floating holidays to cover the difference between their holiday pay and regular work shift or may opt to take unpaid time.
 - 1. New Year's Day
 - 2. Martin Luther King, Jr. Birthday
 - 3. Presidents' Day
 - 4. Memorial Day
 - 5. Independence Day
 - 6. Labor Day
 - 7. Veterans Day
 - 8. Thanksgiving Day
 - 9. Day after Thanksgiving
 - 10. Christmas Day
 - 11. Three (3) Floating Holidays equal to twenty-four (24) hours per calendar year, prorated at four (4) hours for the period from July 1, 2015 through December 31, 2015. These holidays are not cumulative and must be used by the end of the calendar year or they are forfeited. Floating Holidays are selected by the employee. Requests for Floating Holiday usage shall not be unreasonably denied. Upon hire, employees will receive a pro-rated portion of twenty-four (24) hours. Each January 1st thereafter, employees will

be credited with twenty-four (24) hours of Floating Holiday time. Upon termination, unused Floating Holiday time will be paid out on a pro-rated basis (1/12th for each full month worked in the current calendar year).

- B. If any such holiday falls on a Sunday, the following Monday shall be given as a holiday. If any such holiday falls on a Saturday, the preceding Friday shall be given as a holiday.
- C. Holidays which occur during vacation or sick leave shall not be charged against such leave.
- D. Any employee who is required to work on a holiday shall receive overtime at the rate of one and one-half (1 ½) times his/her normal rate of pay for all hours worked on the holiday. This section does not apply if the employee works on personal holidays. This pay rate is in addition to holiday pay.

ARTICLE 9 - VACATION

- A. **Vacation Accrual:** All regular and trial service full-time employees shall accrue paid vacation leave according to the following schedule:
 - 1. One week (40 working hours) shall be accrued from first day of employment through six months of continuous employment.
 - 2. Six and two-thirds hours shall accrue during each month after the first six months for the next thirty months (i.e., two weeks each year through the third year of employment).
 - 3. After three years of continuous employment, two vacation days (16 hours) shall accrue each year in addition to the two regular weeks (80 hours) of vacation (i.e., two weeks and two days each year during the fourth and fifth years).
 - 4. After five years of employment, vacation shall accrue at three weeks (120 hours) per year (i.e., three weeks per year during the sixth through tenth years).
 - 5. After ten years of employment, four weeks (160 hours) shall accrue per year (i.e. four weeks during the eleventh through fifteenth years).
 - 6. After fifteen years of employment, four weeks and three days (184 hours) shall accrue per year.
 - 7. After twenty years of employment, five weeks (200 hours) shall accrue per year.
 - 8. Part-time employees working a minimum of twenty (20) hours per week shall be eligible for vacation accrual on a pro-rated FTE basis.
 - 9. Vacation hours shall accrue on a prorated basis.
- B. New employees are not permitted to schedule or take vacation leave during their first six (6) months of employment, although vacation leave shall accrue from the beginning of

employment.

- C. Any employee may request and receive payment for up to fifty (50) hours of accrued vacation once per fiscal year. Payment will be made by direct deposit on the City's next regular payday following receipt and processing of the request.

D. Vacation Scheduling:

1. Vacations shall be scheduled by mutual agreement between employees and their supervisor, consistent with the other provisions of this Article.
 2. If it is necessary to limit the number of employees on vacation in a specific work unit for the same time period, the employee with the greater seniority who has made his/her choice by April 1 shall be given his/her choice of vacation. In the event of any conflict over vacation period, an employee will be entitled to exercise seniority over other employees for one vacation period per calendar year selected by April 1.
 3. Employees must submit their leave requests by March 1st of each year thereafter, for April 1st of the current year through March 31st of the following year and shall receive an approval or disapproval of their request by March 15 so that an employee who has not exercised seniority may still do so by April 1st. Leave requests submitted after April 1st shall be considered on a first-come, first-served basis and responses to those requests shall be made in writing within thirty (30) days, beginning with the receipt of request. If there is no response within thirty (30) days, the request will be deemed automatically approved.
- E. Any employee who is requested to and does work during his/her vacation period shall be paid for actual hours worked at the rate of time and one-half (1 ½) his/her regular rate of pay. In addition, the City will make every reasonable effort to reschedule the employee's vacation.
 - F. Any employee who is laid off, discharged, retired or separated from the service of the City for any reason, shall be compensated at the current rate of pay for the unused vacation he/she has accumulated at the time of separation. Payment shall be made in accordance with Article 5, Section G.
 - G. If requested at least ten (10) days in advance, each employee will receive his/her paycheck the last work day before commencement of his/her vacation.
 - H. Statements of vacation accruals shall be itemized on employee paychecks.
 - I. If a holiday occurs during the calendar week in which a vacation is taken by an employee, the holiday will not be charged against vacation.
 - J. Earned vacation should be used during the fiscal year in which it is earned. An employee with less than five (5) years of service may accrue a maximum of one hundred sixty (160) hours vacation. Employees with more than five (5) years of service may accrue a maximum of two hundred forty (240) hours.

ARTICLE 10 - SICK LEAVE

- A. **Sick Leave Accrual:** All full-time regular and probationary employees shall earn sick leave at the rate of eight (8) hours for each calendar month of service. Part-time employees working a minimum of twenty (20) hours per week shall earn sick leave on a pro-rated FTE basis. Such leave shall accrue from the date of employment. Such leave shall not be accumulated in excess of 1300 hours.
- B. **Use of Sick Leave:** Regular employees and probationary employees who have completed sixty (60) calendar days of employment are eligible to use their accrued sick leave for the following reasons:
1. When an employee is unable to report for all or part of a shift due to an illness, injury, medical or dental appointment. Appointments should be prescheduled when possible. Employees should report scheduled appointments to their supervisor, as soon as they have knowledge of the anticipated absence.
 2. When an employee's attendance is required to care for an immediate family member. For the purpose of this paragraph, "immediate family member" shall be defined in accordance with the Oregon Family Leave Act and shall include spouse, parents (including step parents) children (including step children and foster children), sister, brother, current father-in-law and mother-in-law, brother-in-law, sister-in-law, grandparents, grandchildren, step siblings, domestic partner, children, grandchildren and grandparents of a domestic partner and other relatives residing in the employee's household. In the event the definition of "immediate family" is changed by the Oregon Legislature, the above definition shall be automatically revised in accordance with the change and the Union and employees will be given written notice.
 3. When an employee is unable to perform their work duties by reason of an on-the-job injury or occupational illness, as set forth in Section F, below.
 4. When an employee who is eligible for OFLA/FMLA is absent for an OFLA/FMLA qualifying reasons.

Employees should be familiar with the reasons for which sick leave can be used and must request sick leave only for absences that they believe fall within the usage rules described above. Questions regarding sick leave eligibility should be directed to Human Resources, the City's Personnel Officer or his/her designee.

- C. **Reporting Absences:** An employee who is unable to report to work because of any of the reasons set forth in paragraph Section B above shall report the reason for the absence to the employee's supervisor or to City Hall within thirty (30) minutes before or after the time the employee is expected to report for work following the procedure designated by their supervisor, unless the employee is unable to report his/her inability to report to work due to incapacitation or emergency. In case of extended illness or injury, the employee shall call in at least once per week.

D. **Medical Verification:** In the interest of not delaying an employee's return to work, the City will make a reasonable effort to notify the employee in advance that certification will be required. The City may require an employee to submit written certification from a physician or other acceptable verification of eligibility to receive sick leave benefits under any of the following conditions:

1. The employee's absence exceeds three (3) consecutive workdays, excluding scheduled days off;
2. The employee is absent on an intermittent basis for a chronic condition or other OFLA/FMLA qualifying reason as permitted by applicable law: or
3. The City can articulate facts giving rise to a good faith concern that misuse of sick leave has occurred (i.e. questionable patterns of usage, calling in on a previously denied day off, etc.).

Abuse of sick leave privilege may be cause for discipline and/or recovery of sick leave payments made for reasons not permitted under Article 10, Section B.

E. **Donations for Catastrophic Illness or Injury:** Employees who have depleted their sick leave and other paid leave accounts may apply for donated leave, as described in Article 11, Section J.

F. **Integration with Workers' Compensation:** Employees have two workers' compensation pay options:

1. They can elect to use their sick pay and sign over their worker's compensation time loss checks for sick pay crediting; or
2. They can accept the workers' compensation time loss checks and not use sick pay or any other form of paid time off.

Employees shall elect one of the above pay options in writing and shall not be entitled to any benefits derived from a combination of the options

For employees who elect the first option, the following conditions apply:

- a. An employee's sick leave bank shall be charged for only the differential between the employee's time loss payments and his/her regular gross wages for the period that the employee is receiving workers' compensation time loss checks.
- b. In the event an employee who elects this option fails to provide the City with any of his/her workers' compensation time loss payments, the employee will receive only time loss benefits for that period.
- c. In the event an employee's time loss benefits end, but he/she is unable to return to work, that employee may utilize his/her accrued sick leave benefits in order to receive

his/her regular gross wages.

- d. In the event an employee's sick leave benefits are depleted, that employee shall use available compensatory time, floating holiday and vacation pay to receive their regular gross wages. In the event the employee does not specify which paid leave accrual he/she would like to use, compensatory time will be used first, followed by floating holidays, then vacation pay.

Accrual of benefits shall continue as long as the employee is receiving workers' compensation time loss payments or is receiving sick leave, floating holidays, compensatory time or vacation pay.

If an employee's workers' compensation claim is disputed, the employee will be eligible to exercise the same options as outlined above, while the claim is in disputed status. In the event the employee's injury or illness is determined to be non-compensable at any point in the workers' compensation process, whether by the City's workers' compensation carrier or through a workers' compensation proceeding, the employee shall, from that date, be treated as though he/she suffered a non-compensable injury or illness and shall be eligible to draw full available sick leave benefits. If the employee's sick leave benefits are depleted, the employee may use accrued compensatory time, floating holidays and vacation pay. In the event an employee does not specify the order of utilization the following order shall be used: compensatory time will be utilized first, floating holidays, then vacation pay.

In the event there is a final decision issued through the Workers' Compensation Board or Oregon courts, reversing a previous determination that an employee's injury or illness *was or was not* compensable, the employee's sick leave and other paid leave accounts will be adjusted to reflect what he/she should have received in sick leave and other benefits as described above.

- G. Records of sick leave will be charged for actual time away from the job in fifteen (15) minute increments. Each employee shall be provided a bi-weekly report of his/her accumulated sick leave.

ARTICLE 11 - LEAVES OF ABSENCE

- A. **Leave Request:** Employees may request a leave of absence with or without pay for the purposes specified in this Article. Each request shall be judged by the City and granted or denied based on the guidelines provided in this Article.
- B. **Bereavement Leave:** In the event of death in the immediate family (husband, wife, mother, father, son, daughter, sister, brother, father-in-law, mother-in-law, brother-in-law, sister-in-law, grandparents, grandchildren, foster children, step parents, step siblings, step children, domestic partner as defined in Article 1, and other relatives who are not listed, but are residing in the employee's household), an employee shall be granted a leave of absence of up

to twenty-four (24) hours absence with pay, not chargeable to any accumulated leave. This leave is noncumulative. Additional bereavement leave will be granted in accordance with OFLA. Employees who either do not qualify for OFLA leave or have depleted their OFLA leave may be granted additional unpaid leave or may utilize accrued compensatory time or vacation pay with advance approval from their Department Director and the City Personnel Officer or designee.

- C. **Witness/Jury Duty Leave:** When a City employee is called for jury duty or is subpoenaed as a witness in connection with his/her City employment, there shall be no loss of regular City compensation during such absence. Witness and jury duty pay will be made on the City's next regular payday by direct deposit. Time not worked because of such duty shall not affect vacation or sick leave accrued. Each employee shall turn over to the City all jury/witness fees paid to him/her, except for travel reimbursement. Employees who are released from witness or jury duty during their regular working hours are required to return to work, unless released from duty by their supervisor. However, employees will be released from duty if less than an hour would remain of their workday by the time they return to work.
- D. **Military Leave:** The City will abide by all applicable laws.
- E. **Conference/Convention/Training Leave:** Decisions concerning attendance at conferences, conventions, training or other meetings at City expense shall be made by the department head. Permission may be granted on the basis of an employee's participation in or the direct relation of their work to the subject matter of the meeting. Members of professional societies may be permitted to attend meetings of their society when such attendance is considered to be in the best interest of the City. The time employees spend attending conferences, conventions, training and other meetings approved by the employee's supervisor or department head will be paid at the employee's applicable straight-time or overtime rate. Travel time to and from mandatory training during the course of the employee's workday will be paid as regular wages or overtime per Article 4, Hours of Work. In addition, time spent traveling directly to and from home to training or conferences that do not require an overnight stay will be paid at applicable straight time or overtime rates. Such payment will, however, not be made when the distance the employee travels from home to the training or conference is less than the distance he/she travels to work. If travel to or from a training or conference occurs outside an employee's normal work schedule, the employee may be required by their supervisor to work a flex schedule that day or workweek. Actual time spent traveling to and from training or conferences that requires an overnight stay and occurs within an employee's work schedule will be paid at the applicable straight-time or overtime rate.
- F. **Personal Leave:** Personal leaves of absence without pay may be granted to employees who do not qualify for other types of leaves of absence. Requests for such leave must be in writing and must set forth the reason for the request. All personal leaves of absence are subject to the discretion of the City and must be approved by the City Personnel Officer.
- G. **Union Leave:** Employees elected or selected by the Union to an office or position which takes them from their employment with the City, shall, at the written request of the Union, be

granted unpaid leave of absence not to exceed eighty (80) hours in a fiscal year. No more than two Union employees may be on a granted unpaid leave of absence at the same time.

- H. **Oregon Family Leave Act/Federal Family Medical Leave Act:** The City will comply with the Family Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA). Employees who are absent from work for FMLA and/or OFLA qualifying reasons, but have depleted their available sick leave benefits or are not eligible for sick leave benefits will be paid from their accrued compensatory time, floating holiday pay, and/or vacation pay for their absence. In the event an employee does not specify whether he/she prefers to utilize compensatory time, vacation pay, or floating holiday pay, compensatory time will be utilized first, then floating holiday pay, then vacation pay. Only after all accrued paid leave time has been depleted may the employee be placed on unpaid leave status except employees may reserve up to three (3) days of sick time in their accrual bank before going on unpaid status. Pre approved vacations, prior to having exhausted vacation accruals through OFLA/FMLA shall be honored regardless of vacation accrual amount.

Employees on medical leave are prohibited from intentionally exerting themselves beyond their medical restrictions that results in a further delay in their recovery to return to work.

- I. Employees will continue to accrue vacation, floating holiday and sick leave benefits while they are actively working or on paid leave of absence, except catastrophic leaves of absence where they are receiving donated leave from other employees.

Employees will continue to receive the City's contribution toward their health insurance, including medical, dental, vision, and life, disability coverage, as well as voluntary supplemental benefits through payroll deduction, while they are actively working or on any type of paid leave of absence, including catastrophic leaves of absence where they are receiving donated leave. Except as otherwise required by law, eligibility for continued benefit accrual and insurance coverage will end when an employee goes on unpaid leave, that is, leave that is not paid through City payroll. Insurance coverage through City payment of its share of the contribution will end on the last day of the month in which paid leave is depleted or the employee's continued eligibility for OFLA and/or FMLA is exhausted, whichever occurs later.

J. **Donations for Catastrophic Illness or Injury:**

The donated leave policy is intended to give employees an opportunity to contribute donations of paid leave to other City employees who have applied for and are eligible to receive FMLA/OFLA coverage and have been absent from work for a prolonged period due to their own-catastrophic illness or injury or the need to care for spouse, domestic partner or child (including step-children, foster children, domestic partner's children and adopted children) with a catastrophic illness or injury.

Leave may be donated to designated City employees who:

- Have exhausted all their paid leave banks (e.g. vacation, holiday, compensatory and

sick leave)

- Have been continuously absent from work for a period of at least fourteen (14) calendar days due to their own catastrophic illness or injury or the need to care for their spouse, domestic partner or child (including step-children, foster children, domestic partner's children and adopted children) with a catastrophic illness or injury. "Catastrophic illness or injury" is defined as significant, incapacitating medical conditions.
- In the case of absences for an employee's own catastrophic injury or illness, the employee must have applied for Long Term Disability (LTD) insurance and must not have enough paid leave to cover until LTD Social Security disability or PERS disability benefits become available, whichever date occurs first.

Donations of accrued vacation, holiday and compensatory time hours are subject to the following conditions:

1. Any employee seeking to donate benefits must maintain a minimum of forty (40) hours of accrued vacation.
2. Paid leave donation requests must be submitted to the City Personnel Officer or his/her designee in writing and must specify the amount and type of paid benefits being donated.
3. Paid leave donations are made voluntarily and donors will remain anonymous.
4. Paid leave donations will be converted to a dollar amount based on the hourly wage of the person donating the leave. This amount will then be converted back to hours based on the hourly wage of the employee receiving the donated leave.
5. Donations will be removed from the donor's paid leave banks and deposited in a City sponsored leave bank for use by other City employees who are eligible to receive paid leave donations.
6. Donations of compensatory, vacation or holiday hours are irrevocable. In the event the employee designated to receive the leave does not use all the donated leave, the donated leave will remain in the leave bank for use by non-designated employees who qualify to receive donated leave.
7. Donations shall not be available for any period an employee is receiving LTD, Social Security or PERS disability benefits.

ARTICLE 12 - TRAINING/EDUCATIONAL OPPORTUNITIES

- A. **Mandatory Training:** Mandatory training is defined as training that is required by state law or specialized training for job assignments as directed by the Department Director or his/her

designee.

1. All reasonable related expenses mutually agreed upon before the employee leaves for any mandatory training shall be paid by the City. Such reasonable expenses shall include but are not limited to:
 - a. Course or seminar fees and/or tuition,
 - b. Required books, course materials, etc., and
 - c. Meals, lodging and travel (if travel is by automobile, mileage for personal vehicle at the IRS rate). However, mileage will not be paid under circumstances where the employee travels directly to and from his/her home to the training, except to the extent that such travel exceeds the employee's daily commute.
2. When requested, the City will make an effort to distribute budgeted funds for discretionary training equitably, however the final allocation shall be at the City's sole discretion and judgment.
3. The City shall allow the time off with pay and shall reimburse an employee for the tuition and expenses of attending classes, lectures, conferences or conventions when attendance is required by the City.
4. All training classes must be authorized, in writing, by the Department Director. Such authorization must be in advance.

B. Tuition Reimbursement for Voluntary Courses:

1. All training classes must be authorized, in writing, by the Department Director if the class is to be reimbursed in any portion. Such authorization must be in advance. The City shall reimburse an employee for one-half the amount of tuition for courses the City determines at its discretion are directly related to the employee's work offered at accredited colleges or universities (i.e., M.H.C.C., P.S.U., O.S.U., or U.P.) and conducted outside the employee's regular working hours, provided that:
 - a. Funds for such expenditures are budgeted by the City;
 - b. The employee has made application for and has received written approval of the course and tuition reimbursement from the City Personnel Officer or designee at least ten (10) days prior to the registration for such course;
 - c. The employee has completed his/her probationary period before the course commences.
 - d. The employee submits evidence of satisfactory completion of the course;
 - e. The employee is not receiving reimbursement for tuition from any other source; and
 - f. The employee satisfactorily completes the course (receives at least a "C" grade or a passing grade in a pass-fail class) and submits verification of that grade.

A further stipulation for any tuition reimbursement is that the benefited employee is required to continue employment with the City for a minimum of one (1) year following completion of the course. Voluntary separation from employment with the City prior to that time will require that the employee reimburse the City a portion of the amount received for tuition. The employee will be credited one-twelfth (1 1/12th) of the amount received for each full calendar month of completed service after he/she completes the course for which reimbursement was made. The City may recover any unpaid portion of the reimbursement from the employee's final paycheck to the extent permitted by law.

2. Courses which are only offered during regular working hours may be approved by the City Personnel Officer, provided time off can be arranged conveniently.
3. The cost of textbooks and fees and expenses required for such courses shall be the responsibility of the employee.

ARTICLE 13 - TRIAL SERVICE PERIOD

The trial service period for new employees is six (6) months from date of hire defined as a minimum of 1,040 hours worked for full-time employees and 520 hours worked for part-time employees. In the event a trial service employee does not work the minimum number of hours specified during his/her first six (6) months of service, the employee's trial service period will be automatically extended through the day in which he/she completes the minimum number of hours required to complete the trial service period. In addition, an employee's trial service period may be extended at the discretion of the City one time only per employee for an additional ninety (90) days. The City shall not be arbitrary or capricious in making such determinations. The City shall notify the Union of any such extensions of trial service prior to it being extended and the rationale as to why the extension is needed. If the City feels that a longer extension is required the City may submit a request to the Union. With agreement by the Union the trial service period may be extended beyond ninety (90) days.

Trial service employees may be terminated at any time during the trial service period at the discretion of the City. Trial service terminations are not subject to any appeal through the grievance and arbitration procedure.

ARTICLE 14 - SENIORITY

- A. **Definition of Seniority:** Seniority for full-time and part-time employees shall be determined by the employee's length of continuous service within the bargaining unit since the last actual date of hire ("anniversary date") by the City. Part-time employees will accrue seniority on a pro-rated FTE basis. After joining the City, any time spent on military leave, paid leaves, OFLA and FMLA leave, whether paid or unpaid, and duty-connected disability leave shall be included in determining length of service. To qualify for seniority, an employee must satisfactorily complete his/her trial service period.

- B. Ties in seniority shall be broken by lot.
- C. Seniority shall not be used as a factor regarding personnel matters, except as set forth in this Article and in Articles 9, 15, and 16.

D. **Breaks in Seniority:**

Seniority shall be broken and employment is terminated by any of the following events:

1. Voluntary resignation or retirement;
2. Discharge of regular employees for just cause and discharge of trial service or temporary employees "at will";
3. Layoff for twenty-four (24) continuous months;
4. Absence from work due to off-the-job illness or off-the-job injury for twelve (12) continuous months;
5. Failure to notify the City of intent to return to work pursuant to a recall notice sent by certified mail, return receipt requested, to the last address provided to the City through personnel records within fourteen (14) calendar days of mailing except as set forth below.
6. Failure to report for work immediately upon expiration of an authorized leave of absence or, in the case of an absence due to off or on-the-job injury or illness, failure to report for available work within seven (7) calendar days of receipt of notice of a limited or full medical release to return to work.
7. Absence from work due to an on-the-job injury or on-the-job illness in accordance with ORS 659A.043 and 659A.046.
8. Failure to return from military leave in accordance with applicable law.

Employees who are recalled to a position less than their previous FTE or to a position of half their previous salary may decline the recall and remain on the layoff list.

- E. Should a bargaining unit member be placed in an interim management position, seniority would continue to accrue.
- F. If a bargaining unit member promoted into a supervisory or management position returns to the bargaining unit within twenty-four (24) months, his/her seniority shall be restored for the time spent in the bargaining unit.

ARTICLE 15 - PROMOTIONS, TRANSFERS, AND JOB OPPORTUNITIES

A. **Promotion:** There are two types of promotions: competitive and noncompetitive. A competitive promotion is one in which the vacancy is available to all qualified applicants. A noncompetitive promotion is one in which a promotion is made within a Department without a job posting. The City will guarantee a minimum five percent (5%) wage increase to all promoted employees.

1. Competitive promotional opportunities will be communicated via internal job postings (and external ads, as the City deems appropriate) and successful applicants will be placed on a new trial service period for a period of six months with a minimum of 1040 hours worked in that job.
2. Noncompetitive promotions are appointed without a job posting to the most senior employee who meets the minimum job requirements for the vacant position as defined by the most current job description, provided the employee has satisfied all of the conditions set forth for promotion under Appendix B of this Agreement.

For the purposes of this Article, the types of promotions that will be considered noncompetitive promotions are identified in Appendix B.

3. Employees who are promoted to a position in a higher pay range through the competitive or noncompetitive process and have not reached the top step in their range will be eligible for consideration for a merit step increase after serving twelve (12) months in that position.
4. In the case of competitive promotions, the promoted employee may be demoted at any time during the trial service period to his/her former position. Such demotions shall be made at the discretion of the City, but shall not be made for arbitrary or capricious reasons. If this action necessitates further staff movement, the affected employees will be returned to their former positions. In the event of demotion, the employee's merit date will revert to his/her merit date in his/her former position.

B. **Competitive Promotional Opportunities:** It is the City's general policy to promote qualified regular employees who are in good standing (meaning the employee must not have received a documented oral reprimand, written reprimand, demotion or suspension within six (6) months prior to submitting the application. The City will post all vacancies except for certain non-union jobs that management needs to fill from outside the City, for example, to obtain specific professional skills that existing employees do not possess. Management reserves the right to interview outside candidates at any point in the process. If a job opening is to be available to internal applicants, it will be posted at each work location for a minimum of three (3) business days. To comply with workers' compensation and state and federal disability discrimination laws, management may, on occasion, be required to offer a job to a returning worker, rather than subject it to posting. The following factors will be considered in determining eligibility for promotion:

- Attendance, safety and disciplinary records,
- Skill and ability to do the required work,
- Overall performance, and
- Job related aptitude tests.

Evaluation of the above factors is management's sole discretion. When the City determines that all factors are equal, the employee with the greatest bargaining unit seniority will be selected.

C. **Transfer**: A transfer is defined as a change of an employee from one vacant position to another vacant position in the same class or to a vacant position in a comparable class within the City service. Transfers are subject to the following conditions:

1. Requests from employees for transfers from one department to another shall be made in writing and shall be directed to the employee's present Department Director and referred to the appropriate Department Director and the Personnel Officer.
2. Requests for transfer shall be given consideration when a suitable vacancy occurs; however, no employee shall be transferred to a position for which he/she does not possess the minimum qualifications. No requests for transfer under this section will be denied for arbitrary or capricious reasons.

ARTICLE 16 - LAYOFF AND RECALL

When the City determines that a layoff of employee(s) is necessary due to a shortage of funds, lack of work, elimination of positions or other reasons, the following conditions will apply:

- A. **Layoffs**: The City will determine the number of positions to be eliminated by classification. The procedures and rights set forth in this Article apply when a position held by a bargaining unit employee is eliminated, not when an employee's hours are reduced, unless the reduction in hours results in the elimination of a full-time position and creation of a part-time position. In the event there are Temporary/Seasonal or trial service employees in the classification(s) selected for layoff, those employees will be laid off first. In the event there are no Temporary/Seasonal or trial service employees in the classifications selected for layoff, the regular employees in those classifications shall be laid off in reverse order of their bargaining unit seniority, as defined in Article 14.
- B. Temporary/Seasonal employees or new hires will not be used to fill bargaining unit positions previously held by laid off employees with layoff rights, unless there are no regular employees with recall rights who have the qualifications and skills to perform the position held by the Temporary/Seasonal employee or new hire. Temporary/Seasonal employees will not be used to perform work historically performed by bargaining unit employees.
- C. **Layoff Procedures**: All employees and the Union shall be given written notice of layoff at least thirty (30) calendar days before the effective day, stating the positions to be laid off. If

the Union desires to discuss possible options to the pending layoff, it shall notify the City to schedule a meeting within seven (7) calendar days of receipt of notice of layoff. Employees who have an FTE reduction by half or more have the option of accepting the reduction or triggering their bumping rights. Employees shall have the following options:

1. Accept the layoff and be placed on the recall list for twenty-four (24) months from date of layoff.
2. Request assignment to a vacant position within the bargaining unit for which they possess the mandatory skills, qualifications, and special requirements, certifications/licenses.
3. Exercise their bumping rights as set forth in Section D, below.

D. **Bumping Procedure:** Employees who receive notice of layoff may exercise their bargaining unit seniority to bump an employee with lower seniority in a formerly held position in the City or in the same or lower pay range within the job families as set forth in Appendix E, provided that employee currently possesses the required certifications/licenses: or can renew certification at the next certification opportunity and has the knowledge, skill and ability to perform the job at a satisfactory level of performance with on-the-job orientation. Bumping rights must be exercised in writing within five (5) calendar days of receipt of layoff notice. Any employee who is bumped by a more senior employee in the same or higher pay range may, in turn, bump another employee with lower seniority in their pay range or a lower pay range by exercising their bumping rights as described above.

If, after thirty (30) days of on-the-job orientation, the City finds the employee who has bumped into another job is not satisfactorily performing the job duties, the employee will be laid off. The employee will be placed on the layoff list.

E. **Recall Procedures:**

1. Employees laid off shall be placed on layoff lists in order of bargaining unit seniority as defined in Article 14, within job families as set forth in Appendix E. Employees shall be recalled according to such lists as positions equal to or below their previous pay grade become available within the same job family or formerly held position. Recall rights will continue for twenty-four (24) months from date of layoff, unless the employee's seniority is broken and employment is terminated as set forth in Article 14, Section D.
2. All employees on the layoff list have priority over outside hiring provided the employee possesses the mandatory skills, qualifications and special certifications/licenses and can perform the duties of the job.
3. Upon recall to a position in the City, a recalled employee shall have all unused accruals of sick leave, vacation accrual rate, and seniority in effect on the date of layoff restored.
4. If recalled to a different position then the employee shall be placed on a new trial service period for six (6) months. If the employee does not successfully complete trial service, the employee shall revert to layoff list.

5. If an employee is recalled to his/her former position or another position within the same noncompetitive group, the employee will serve no trial service period. The employee will return to the same grade and step as when laid off and will have a new merit date for purposes of step increases.
6. Employees on layoff must keep Human Resources informed of their most current address, email and telephone number during the period of layoff, as well as any changes in certifications or licenses that may affect their recall rights. Failure to notify the City of intent to return to work pursuant to a recall notice sent by certified mail, return receipt requested, to the last address provided to the City through personnel records within fourteen (14) calendar days of mailing shall result in forfeiture of all recall rights.

F. **Placement:**

Employees who are placed in a lower pay range shall be paid the salary closest to their current/previous salary on the pay range. The employee may request and shall be paid for all accrued compensatory time at the rate being earned in the higher pay range prior to placement.

ARTICLE 17 - PERSONNEL FILES

- A. Each employee shall have the right, upon request, to review and obtain and copy the contents of their personnel file, exclusive of materials received prior to the date of his/her employment by the City. A charge may be assessed for providing such copies, consistent with the City policy. An employee's Union representative may receive copies of the documents in the employee's file upon written request of the affected employee. The official personnel file shall be maintained by the Personnel Officer or his/her designee.
- B. Employee personnel records shall be considered confidential and shall be accessible only to the employee involved, or his/her designee, and by the City Manager or his/her designee, the Personnel Officer, Executive and Human Resources Department staff members, the employee's Department Director or immediate supervisor, the City's legal counsel, appropriate governmental agencies and others on a need-to-know basis.
- C. Upon receipt of material, the employee may respond, in writing, within thirty (30) calendar days, to any item placed in his/her personnel file, and that response shall become a part of the employee file.
- D. Each employee shall be afforded an opportunity to read and sign any written material that is placed in his/her personnel file, including, but not limited to: employee evaluations, citizen complaints, written reprimands, suspensions or discharge. Signing does not necessarily indicate agreement.
- E. **Retention of Documents:** Notices of disciplinary action shall be retained in the employee's personnel file. Notices of written reprimand shall be considered to be "stale" after three (3)

years from the incident in question, unless the employee receives subsequent discipline of a like or similar nature within that time period. These “stale” notices will not be used to establish progressive discipline in future disciplinary action against the employee, but may be used in any civil or arbitration proceeding for the purpose of establishing that the employee was aware of the policy or standard in question, as well as to show consistency of disciplinary action between employees; lack of discrimination; the existence of mitigating or extenuating circumstances and compliance with legal obligations.

ARTICLE 18 - DISCIPLINE

- A. Disciplinary action may include any or all of the following: documented oral reprimand, written reprimand, suspension for one or more days without pay, reduction in current pay step, placement on a Last Chance Agreement or a Rehabilitation and Return to Work Agreement and other actions designated to correct unsatisfactory employee performance or unacceptable conduct, as well as demotion and discharge. Notice of any discipline will be given in writing. Regular employees are subject to discipline or discharge for just cause. Temporary and trial service employees are subject to discipline or discharge at the will of the City.
- B. The City will apply the principles of progressive discipline to address concerns related to a regular employee’s tardiness, excessive absences, unsatisfactory performance or failure to comply with City policies, procedures and other expectations. However, the City reserves the right to determine the type and level of discipline to be issued to an employee and may skip a steps and utilize any of the forms of disciplinary action referenced in Section A above, based on the severity of the infraction, subject only to just cause standards.
- C. If the City has reason to discipline an employee, it will take all reasonable measures to assure against embarrassment of the employee before other employees or the public.
- D. In the event of an employee being interviewed or participating in a hearing which may reasonably lead to disciplinary action, the affected employee shall have the right to be assisted by a Union representative during such procedures. The right to Union representation does not apply when an employee is being notified of disciplinary decisions, however the City may agree to allow a Union representative to be present.

ARTICLE 19 - DISPUTE RESOLUTION PROCESS

- A. **Problem Solving:** During working hours and without loss of pay, an employee covered by this Agreement may participate in his/her own problem-solving discussions with their supervisor. Employees and supervisors are encouraged to use the problem-solving step to informally resolve issues prior to utilizing the grievance process.
- B. If the problem is unable to be resolved by discussion with the employee’s immediate supervisor, the employee is encouraged to meet with the supervisor’s Department Director in an attempt to informally resolve the issue.

- C. Employees and supervisors are encouraged to use these problem-solving steps to resolve issues prior to utilizing the grievance procedure set forth in Section D, below.
- D. To promote better relations, the parties agree to settle all disputes as to the meaning, interpretation, or application of this Agreement by the following procedure:

STEP 1 - Supervisor: If the parties chose to utilize the Problem Solving step to attempt to resolve the issue, but were unsuccessful the Union or an employee may claim a breach of this Agreement by filing a grievance with the employee's immediate supervisor with a copy to the City Personnel Officer. Grievances must be in writing and must be submitted to the immediate supervisor and City Personnel Officer within thirty (30) calendar days from the occurrence of the alleged violation, or the employee's knowledge of the incident giving rise to the grievance, or from the time the employee should reasonably have become aware of the incident, whichever occurs later. The written grievance shall include:

- a. A statement of the grievance and the relevant facts.
- b. Identification of the specific provision(s) of the Agreement alleged to have been violated.
- c. Remedy sought.

The immediate supervisor shall respond to the grievance in writing within ten (10) calendar days after receipt.

STEP 2 - Department Director: If, after ten (10) calendar days from the date of the supervisor's response the grievance remains unresolved, the grievance may be appealed to the Department Director (or directly to Step 3- City Manager for employees within the Executive Department). Such submission must occur within ten (10) calendar days after receipt of the response from the immediate supervisor. The Department Director may meet with the employee, who may be represented by a City paid Union representative at the meeting. At the City's option, the employee's immediate supervisor may also be present. The Department Director shall respond to the grievance in writing within ten (10) calendar days after the grievance is submitted to him/her or, in the event a meeting is conducted, within ten (10) calendar days after the meeting. If the Department Director responded in STEP 1, this STEP 2 shall be bypassed, and the employee may go directly to STEP 3.

STEP 3- City Manager: If, after ten (10) days from the date of the Department Director's response, the grievance remains unresolved, the grievance may be appealed to the City Manager or a person designated by the City Manager. All appeals to the City Manager or designee must be made in writing. Such submission must occur within ten (10) calendar days after receipt of the response from the Department Director. The City Manager or his/her designee may meet with the employee, who may be represented by the Union at the meeting. The City Manager shall respond to the grievance in writing within ten (10) calendar days after the grievance is submitted to him/her. If the City Manager responded in STEP 2, this STEP 3 shall be bypassed, and the employee may go directly to STEP 4.

STEP 4- Arbitration: If the grievance is not resolved by the completion of STEP 3, the Union may submit the grievance to arbitration. Such a submission must be made in writing

within fourteen (14) calendar days after receipt of the response from the City Manager. The arbitrator may be selected by mutual agreement of the parties. In the event the parties do not mutually agree on the selection, the arbitrator will be selected as follows:

- a. A list of seven (7) Oregon and Washington arbitrators shall be requested from the State Employment Relations Board Mediation and Conciliation Service, and the parties shall alternately strike one (1) name from the list until only one (1) is left. The Union shall strike first. The one remaining shall be the arbitrator.
 - b. The parties shall jointly request that the arbitrator render a decision in writing within thirty (30) days of the close of the hearing or receipt of briefs, if submitted. The powers of the arbitrator shall be limited to interpreting this Agreement and determining if it has been violated. The arbitrator shall have no authority to add to, subtract from, or modify this Agreement. The decision of the arbitrator shall be binding on both parties.
 - c. The parties specifically agree that, in the event issues are submitted to arbitration, the decision shall be specifically limited to those issues disputed by the parties.
 - d. The costs of the arbitrator shall be borne by the losing party. Each party shall be responsible for the costs of presenting its own case to arbitration.
 - e. Any time limits specified in this grievance procedure may be waived by mutual consent of the parties. Failure by the Union to submit and advance the grievance in accordance with these time limits without such waiver shall constitute abandonment of the grievance. Failure by the City to submit a reply within the specified time will constitute a denial of the grievance and will be grounds to advance the grievance to the next step. A grievance may be terminated at any time, upon receipt by the City of a signed statement from the Union or the employee that the grievance is withdrawn.
- E. If the Union asserts that the City has a continuing obligation to bargain and there is a dispute about the mandatory/permissive status of the issue, the Employment Relations Board shall be the sole avenue of appeal.

ARTICLE 20 - NO STRIKE

- A. During the life of this Agreement, the Union and its members, as individuals or as a group, will not initiate, cause, permit or participate or join in any strike, work stoppage, slow down, picketing or any other restriction of work. Employees in the bargaining unit, while acting in the course of their employment, shall not honor any picket line established by the Union or by any other labor organization when called upon to cross such picket line in the line of duty. Disciplinary action, including discharge, may be taken by the City against any employee or employees engaging in a violation of this article. No employee shall be required to perform struck work that is not his/her normal work assignment.
- B. In the event of a strike, work stoppage, slow down, picketing, observation of a picket line or other restriction of work in any form, either on the basis of individual choice or collective employee conduct, the Union will immediately upon notification make a reasonable attempt to secure an immediate and orderly return to work.

ARTICLE 21 - LABOR-MANAGEMENT

- A. **Labor Management:** The joint labor-management committee (LMC) shall meet quarterly.

The intent of the LMC is to facilitate communication between the parties by providing a forum for discussion and collaborative problem solving of issues not addressed by the contract such as staff morale, operational methods and procedures, attendance, safety, and other policies of the department which affect the working conditions of the employees when such policies are not mandatory subjects of bargaining. Issues that have not been previously addressed to the appropriate City department management member shall not be considered by the LMC. The LMC shall not become involved in individual grievances nor shall the committee meetings be construed as formal contract negotiations.

- B. **Committee Structure:** The Union and the City shall appoint two (2) City paid representatives each to the LMC. The committee will meet to establish a meeting schedule to share information and discuss issues, which might be appropriate for further LMC activity. It is agreed that LMC meetings shall be City paid. The parties mutually agree to utilize a consensus method involving all recommendations of the committee to the City. LMC members shall provide Human Resources with agenda topics for upcoming meetings no less than one week prior to the scheduled meeting, otherwise the meeting shall be cancelled.

- C. **Safety Committee:** Committees will normally meet monthly, but no less than quarterly. The Agenda for meetings shall be published and posted on the intranet no less than five (5) calendar days prior to the next scheduled meeting. Members representing the bargaining unit shall suffer no loss of wages for participating in the safety committee. Safety committee shall explore safety related issues and shall recommend a course of action to Division Managers and/or the City Manager.

There shall be a Safety Committee member elected from each division. Half of the Safety Committee members shall be elected by their peers in the month of January in odd numbered years, the other half shall be elected in the month of January in even numbered years. All members shall be elected for two (2) year terms. In the event no one volunteers from each division, management may appoint a representative. The Chair of the committee is elected by the committee. Official note taker shall be elected and responsible for posting the minutes on the intranet.

ARTICLE 22 - OUTSIDE EMPLOYMENT

The employee shall be able to work in other jobs than City employment so long as such jobs do not present a conflict of interest, affect the performance of their work duties for the City or interfere with the employee's work schedule or standby duties. However, should the employee take a leave of absence, the employee agrees that the status quo for outside employment shall be maintained. In addition employees on medical leaves are responsible for being informed of their

medical restrictions and are prohibited from performing work in their outside employment which involves intentionally exerting themselves beyond their medical restrictions.

If an employee takes a second job, that employee will notify Human Resources in writing (e.g. email, ets.) within seven (7) calendar days.

ARTICLE 23 - MAINTENANCE OF STANDARDS

All terms and conditions of employment not covered by the Agreement, but which are mandatory subjects for bargaining under Oregon law, shall be bargained in accordance with the Public Employee Collective Bargaining Act.

ARTICLE 24 - FUNDING

The parties recognize that revenue needed to fund wages and benefits provided by the Agreement must be approved annually by established budget procedures and in certain circumstances by vote of the citizens of the City. All such wages and benefits are therefore contingent upon sources of revenue and where applicable, annual voter budget approval. The City guarantees it will pay the wages and benefits agreed upon in this Agreement, but does not guarantee any level of employment in the bargaining unit covered by this Agreement.

ARTICLE 25 - MANAGEMENT RIGHTS

The Union recognizes and agrees that responsibility for management of the City and direction of its workforce is vested solely in the City and responsible Department Heads. The Union recognizes and agrees that in order to fulfill this responsibility, the City shall retain the exclusive right to exercise the regular and customary functions of management. Unless otherwise expressly restricted by a specific provision of this Agreement the City shall have the sole and exclusive right, at its own discretion, to exercise the regular and customary functions of management, including, but not limited to:

- Directing the activities of the Departments and employees covered by the Agreement;
- Determining standards, levels of service and methods of operations, including subcontracting;
- Introducing, discontinuing and modifying methods of operation, processes, technology, equipment, etc.;
- Hiring, promoting, laying off and transferring employees;
- Disciplining and discharging employees;

- Determining work schedules and assigning work;
- Promulgating and implementing policies and procedures;
- Enforcing, revising and modifying rules related to employee conduct, performance, attendance and safety. However, prior to implementing such new or revised rules the City shall send a copy of the new or revised rules to the Union; and
- Exercising any other right not specifically abridged by this Agreement.

If the City does not exercise one or more of its management's rights, such conduct shall not be deemed a waiver or abandonment of any such right(s). If the City exercises any of its reserved management right(s) in a particular manner, such conduct shall not preclude its exercise of such right(s) differently or in any other way not in conflict with a specific provision of this Agreement.

ARTICLE 26 - SAVINGS CLAUSE

If any Article or provision of this Agreement or any addition to this Agreement shall be held invalid by operation of law, or by any lawful tribunal having jurisdiction, or if compliance with or enforcement of any article or provision should be restricted by such tribunal, legislative action or ruling by an administrative agency, the parties shall enter into immediate collective bargaining negotiations for the purpose of arriving at a mutually satisfactory replacement Agreement under the terms of ORS 243.702 and ORS 243.698.

ARTICLE 27 - CLOTHING

- A. The City will continue to supply to all bargaining unit employees OSHA/OROSHA required safety equipment, raingear, rubber boots, insulated coveralls, winter coats or jackets and required uniform shirts, both long and short sleeve.
- B. The City will provide up two hundred dollars (\$200.00) for field clothing such as: pants, thermal undergarments, and boot replacement allowance per year throughout the term of this agreement to eligible "field" employees. Employees must provide original receipts for the item to receive reimbursement. Employees providing receipts totaling less than \$200.00 will receive only the amount on their receipts. Employees have the full fiscal year beginning each July 1st to receive the full \$200.00 reimbursement for field clothing replacement.
- C. For the purposes of this Article, eligible field employees are Public Works Operators and Laborers, Wastewater Operators and Laborers, Mechanics, Parks & Facilities Workers, Building Inspectors, Code Compliance Officers, Civil Engineers and Engineering Associates.

ARTICLE 28 - DECLARATION OF EMERGENCY

In the event of a natural disaster (flood, earthquake, volcanic eruption, etc.) or terrorist attack, the

City Manager may declare a state of emergency. In such an event the City may adjust employee work schedules, cancel leaves unless the leave has already commenced; assign employees to perform duties within reason outside of their job classifications and take other action as it deems necessary to restore and maintain City services. The City's right to respond to declarations of emergency temporarily supersedes contrary provisions of this Agreement. Action taken in response to declarations of emergency shall not be considered a violation of this Agreement.

ARTICLE 29 - INCLEMENT WEATHER

The City agrees to comply with the following policy when ice, snow, freezing rain or other inclement weather conditions occur:

- A. **Procedures for Notification:** The City has set up an "Employee Weather Line" at 503-674-7202 to communicate with non-essential employees regarding closure of City services on inclement weather days. On days when such weather conditions occur, the City Manager will make a determination as to whether or not the City will be open to the public. The message on the "Employee Weather Line" will be updated by 6:30 a.m. Unless the City Manager or his/her designee notifies employees that the City is closed to the public and non-essential employees on the "Employee Weather Line" all employees are to consider the City open and operating and are to report to work as described below.

- B. **Reporting Expectations for Non-Essential Employees:** In the event the City Manager determines that the City will remain open for services during an inclement weather day, all employees whose services are not essential to perform road, maintenance or other necessary services on that workday should use their good judgment to determine whether they can safely get to or from work. In the event employees whose services are not essential determine that they cannot safely travel to or from work, they may utilize compensatory time or vacation pay, or floating holidays to cover missed hours. All employees are required to notify their supervisor of anticipated delays or inability to report to work as soon as possible, but no later than thirty (30) minutes after their scheduled start time.

- C. **Reporting Expectations for Essential Employees:** Employees whose services are deemed essential on any inclement weather day (Facilities Maintenance, Public Works and other essential employees as determined by the City in advance) will be expected to report to their work location or reporting location as designated by the City within (60) sixty minutes as directed by the City.

- D. **Compensation in the Event of Closure:** In the event the City Manager determines that the City will be closed to the public and non-essential employees during all or part of an inclement weather day and announces the closure on the "Employee Weather Line" or directs employees who reported to work to leave before the end of their regularly scheduled shift, employees shall be compensated as follows:
 - 1. Non-essential employees shall be compensated at straight-time rates for the regularly scheduled hours missed from work due to the City's closure, with no deduction from

compensatory time, vacation pay or floating holidays.

2. Essential employees will receive double time (2) pay for only those hours worked during periods in which time City Hall has been closed by the City Manager, whether a partial or full day closure.

ARTICLE 30 - DURATION

- A. This Agreement shall commence on July 1, 2015 and remain in full force and effect until June 30, 2018.
- B. The Union shall notify the City in writing not later than January 15th of the final year of the Agreement, of its intention to negotiate a successor agreement, in which event the parties shall strive to commence negotiations not later than thirty (30) days after receipt of such notice.

CITY OF TROUTDALE, OREGON:

Erich Mueller, City Personnel Officer

Date

Craig Ward, City Manager

Date

**CITY OF TROUTDALE EMPLOYEES UNION LOCAL 3132, AFSCME COUNCIL 75,
AFL-CIO:**

Timothy Shoop, Local 3132 Representative

Date

John Bushard, Local 3132 Representative

Date

Ross Grami, Council 75 Representative

Date

APPENDIX A-1 – Wage Scale

Hourly Rate Schedule Effective July 1, 2015 through June 30, 2016:

RANGE	A	B	C	D	E
1	11.5281	12.1045	12.7097	13.3452	14.0125
2	12.1045	12.7097	13.3452	14.0125	14.7131
3	12.7097	13.3452	14.0125	14.7131	15.4488
4	13.3452	14.0125	14.7131	15.4488	16.2212
5	14.0125	14.7131	15.4488	16.2212	17.0323
6	14.7131	15.4488	16.2212	17.0323	17.8839
7	15.4488	16.2212	17.0323	17.8839	18.7781
8	16.2212	17.0323	17.8839	18.7781	19.7170
9	17.0323	17.8839	18.7781	19.7170	20.7028
10	17.8839	18.7781	19.7170	20.7028	21.7380
11	18.7781	19.7170	20.7028	21.7380	22.8248
12	19.7170	20.7028	21.7380	22.8248	23.9661
13	20.7028	21.7380	22.8248	23.9661	25.1644
14	21.7380	22.8248	23.9661	25.1644	26.4226
15	22.8248	23.9661	25.1644	26.4226	27.7437
16	23.9661	25.1644	26.4226	27.7437	29.1309
17	25.1644	26.4226	27.7437	29.1309	30.5875
18	26.4226	27.7437	29.1309	30.5875	32.1169
19	27.7437	29.1309	30.5875	32.1169	33.7227
20	29.1309	30.5875	32.1169	33.7227	35.4088
21	30.5875	32.1169	33.7227	35.4088	37.1793
22	32.1169	33.7227	35.4088	37.1793	39.0382
23	33.7227	35.4088	37.1793	39.0382	40.9902
24	35.4088	37.1793	39.0382	40.9902	43.0397
25	37.1793	39.0382	40.9902	43.0397	45.1916
26	39.0382	40.9902	43.0397	45.1916	47.4512
27	40.9902	43.0397	45.1916	47.4512	49.8238

APPENDIX A-2 – Wage Scale

Hourly Rate Schedule Effective July 1, 2016 through June 30, 2017:

RANGE	A	B	C	D	E
1	11.8739	12.4676	13.0910	13.7456	14.4329
2	12.4676	13.0910	13.7456	14.4329	15.1545
3	13.0910	13.7456	14.4329	15.1545	15.9122
4	13.7456	14.4329	15.1545	15.9122	16.7078
5	14.4329	15.1545	15.9122	16.7078	17.5432
6	15.1545	15.9122	16.7078	17.5432	18.4204
7	15.9122	16.7078	17.5432	18.4204	19.3414
8	16.7078	17.5432	18.4204	19.3414	20.3085
9	17.5432	18.4204	19.3414	20.3085	21.3239
10	18.4204	19.3414	20.3085	21.3239	22.3901
11	19.3414	20.3085	21.3239	22.3901	23.5096
12	20.3085	21.3239	22.3901	23.5096	24.6851
13	21.3239	22.3901	23.5096	24.6851	25.9193
14	22.3901	23.5096	24.6851	25.9193	27.2153
15	23.5096	24.6851	25.9193	27.2153	28.5761
16	24.6851	25.9193	27.2153	28.5761	30.0049
17	25.9193	27.2153	28.5761	30.0049	31.5051
18	27.2153	28.5761	30.0049	31.5051	33.0804
19	28.5761	30.0049	31.5051	33.0804	34.7344
20	30.0049	31.5051	33.0804	34.7344	36.4711
21	31.5051	33.0804	34.7344	36.4711	38.2947
22	33.0804	34.7344	36.4711	38.2947	40.2094
23	34.7344	36.4711	38.2947	40.2094	42.2199
24	36.4711	38.2947	40.2094	42.2199	44.3308
25	38.2947	40.2094	42.2199	44.3308	46.5474
26	40.2094	42.2199	44.3308	46.5474	48.8748
27	42.2199	44.3308	46.5474	48.8748	51.3185

APPENDIX A-3 – Wage Scale

Hourly Rate Schedule Effective July 1, 2017 through June 30, 2018:

RANGE	A	B	C	D	E
1	12.2302	12.8417	13.4838	14.1579	14.8658
2	12.8417	13.4838	14.1579	14.8658	15.6091
3	13.4838	14.1579	14.8658	15.6091	16.3896
4	14.1579	14.8658	15.6091	16.3896	17.2091
5	14.8658	15.6091	16.3896	17.2091	18.0695
6	15.6091	16.3896	17.2091	18.0695	18.9730
7	16.3896	17.2091	18.0695	18.9730	19.9216
8	17.2091	18.0695	18.9730	19.9216	20.9177
9	18.0695	18.9730	19.9216	20.9177	21.9636
10	18.9730	19.9216	20.9177	21.9636	23.0618
11	19.9216	20.9177	21.9636	23.0618	24.2149
12	20.9177	21.9636	23.0618	24.2149	25.4256
13	21.9636	23.0618	24.2149	25.4256	26.6969
14	23.0618	24.2149	25.4256	26.6969	28.0318
15	24.2149	25.4256	26.6969	28.0318	29.4333
16	25.4256	26.6969	28.0318	29.4333	30.9050
17	26.6969	28.0318	29.4333	30.9050	32.4503
18	28.0318	29.4333	30.9050	32.4503	34.0728
19	29.4333	30.9050	32.4503	34.0728	35.7764
20	30.9050	32.4503	34.0728	35.7764	37.5652
21	32.4503	34.0728	35.7764	37.5652	39.4435
22	34.0728	35.7764	37.5652	39.4435	41.4157
23	35.7764	37.5652	39.4435	41.4157	43.4865
24	37.5652	39.4435	41.4157	43.4865	45.6608
25	39.4435	41.4157	43.4865	45.6608	47.9438
26	41.4157	43.4865	45.6608	47.9438	50.3410
27	43.4865	45.6608	47.9438	50.3410	52.8581

APPENDIX B - Noncompetitive Promotions

Individuals can be promoted into positions in the noncompetitive job groups set forth in the boxes below without a job posting.

<p>Public Works Shop Public Works Operator II to Public Works Operator III Public Works Operator I to Public Works Operator II Public Works Laborer to Public Works Operator I</p>	<p>Wastewater Services Wastewater Operator II to Wastewater Operator III Wastewater Operator I to Wastewater Operator II Wastewater Laborer to Wastewater Operator I</p>
<p>Community Development Associate Planner to Senior Planner</p>	<p>Public Works Management Engineering Associate II to Civil Engineer Engineering Associate I to Engineering Associate II</p>
<p>Finance Accounting Technician II to Accounting Technician III Accounting Technician I to Accounting Technician II</p>	<p>Facilities and Parks Facilities/Parks Maintenance Worker II to Facilities/Parks Maintenance Worker III Facilities/Parks Maintenance Worker I to Facilities/Parks Maintenance Worker II</p>

Career Ladder - Noncompetitive Promotions

All Career Ladder advancement criteria is as follows:

General Advancement Criteria:

1. Department Directors will determine the number of I, II and III's needed in each department.
2. Department Directors must verify that there is an operational need for incumbents to perform a higher-level of duties. Operational and/or financial need determines the opportunity – advancement is not guaranteed.
2. Incumbent must have previously demonstrated the ability to successfully perform all of the duties in the higher level classification, as determined by his/her supervisor with the written approval from the Department Director.
4. Incumbent must have demonstrated a willingness to lead in their own professional development by taking on new challenges when they are identified and offered.
5. Incumbents must have completed all mandatory training for any certifications as required by the higher classification, and any trainings identified by their supervisor.
6. Incumbents must not receive any disciplinary action higher than a documented oral reprimand in the six (6) months immediately preceding the date of the posting for the

promotion; and

7. Incumbents must receive a satisfactory overall rating in their last performance evaluation.

The most senior incumbent who has met all the above criteria shall be offered the first opportunity for advancement when it is available.

An incumbent may request to be considered for advancement at any time.

Career Ladder Criteria Language to Specific Levels:

Associate to Senior: Advancement from the Associate classification to the Senior classification may occur depending on the operational needs of the department and the qualifications of the employee.

Incumbent is required to serve a minimum of one (1) year in the Associate level classification. However, three (3) years represents the typical amount of time needed for incumbent to fully demonstrate the ability to advance from the Associate level classification to the Senior level classification.

APPENDIX C - Memorandum of Understanding Wage Reviews

This Memorandum of Understanding is hereby incorporated into the Agreement between the City of Troutdale and the City of Troutdale Employees' Union, Local 3132, AFSCME Council 75:

The parties agree to review wages for three (3) positions in the City per calendar year. The first meeting shall commence with the first calendar quarter following ratification of this Agreement. These positions shall be chosen randomly, in the presence of the Union and City Management representatives. Once selected for review that position shall be removed from the list until all bargaining unit represented positions have been reviewed. Inactive positions (vacant positions the City has no intention to fill) will not be included in the positions chosen for review.

In the event that the Union determines that the base wage rate paid for the positions selected is five percent (5%) or more below the average wage rate agreed upon for the same or substantially equivalent position in comparable cities, the Union will notify the City of its determination via email or other written communication. Effective for reviews commencing on or after January 1, 2016, the determination of whether the positions selected are five percent (5%) or more below the average shall be based on wage rate paid, as adjusted for PERS pickup, i.e. 6% reduction in base wages for jurisdictions that do not pay the PERS pick-up. Additionally, there must be a minimum of three (3) comparator city positions which are included in the comparator city bargaining units, and that are the same or substantially equivalent. The Union will also provide to the City for review the data it has collected to support its view that the position(s) are underpaid by more than five (5%) percent of the average. Such data will include job descriptions from the comparable cities listed below, wages/salary schedules for selected comparable positions and the respective comparator cities' current collective bargaining agreements (including relevant wage MOU's) for reference purposes. Following the receipt of complete data the City will review the data gathered and provide a response within sixty (60) calendar days. The Union may request a meeting to discuss the results if necessary.

If the City agrees that the wage rate paid for a position selected for review, as adjusted for PERS pick-up, is five (5%) percent or more below the average base wages paid to employees for the same or similar positions in comparable cities, the wage rate for employees in that position will be adjusted upward by five (5%) percent at the beginning of the next pay period. The Union and its employees agrees to waive all rights to grieve the City's determination beyond step three (3) of Article 19 - Dispute Resolution Process.

The parties agree to use bargaining unit positions in the following comparator cities of sixty percent (60%) more or less population in the Portland Metro-area for wage comparators:

City	Population under/over Troutdale
Canby	Under
Fairview	Under
Forest Grove	Over
Gladstone	Under
Newberg	Over
Milwaukie	Over
Sherwood	Over
St. Helens	Under
Wilsonville	Over
West Linn	Over
Cornelius	Under

APPENDIX D - Drug & Alcohol Policy

The following Drug and Alcohol Policy is hereby incorporated into the Agreement between the City of Troutdale and the City of Troutdale Employees' Union, Local 3132, AFSCME Council 75:

PURPOSE:

The City of Troutdale is strongly committed to providing excellent service to its citizens. In furtherance of that interest, it is the policy of the City to take those steps necessary to ensure that its employees perform their duties and responsibilities free of the influence of drugs and alcohol. Employees are encouraged to seek confidential counseling on problems associated with drug and alcohol abuse through the City's Employee Assistance Program (EAP).

POLICY:

The City of Troutdale recognizes a responsibility to the citizens of Troutdale to maintain a safe and productive working environment. Consistent with this commitment, the City has developed the following Drug and Alcohol Policy, which all employees are required to follow. Employees in commercial drivers license (CDL) positions are also required to comply with the City's Department of Transportation (DOT) Drug and Alcohol Policy.

A. PROHIBITED CONDUCT:

The following conduct is prohibited:

1. Buying, selling, consuming, manufacturing, distributing or possessing drugs or alcohol while on City Property. City property includes all property rented, leased, owned, or controlled by the City, including parking lots. City property also extends to City equipment and vehicles on or off City property at any time.
2. Buying, selling, consuming, manufacturing, distributing or possessing drugs or alcohol while on duty, including rest and meal periods. As a narrow exception, employees may purchase on meal and rest periods, alcohol to be consumed during non-working hours provided they transport and store the alcohol in their personal vehicles.
3. Reporting for work or being at work with prohibited levels of alcohol or drugs present in the body as set forth in the "Drug and Alcohol Thresholds" table attached to this policy.
4. Failing to comply with disclosure and notification obligations, as set forth in the Medications Section, below.
5. Failing to promptly report arrests, convictions and/or plea-bargains for an alcohol or drug related criminal offense. All drug and alcohol-related convictions and plea

bargaining agreements must be promptly (within five (5) business days) reported to the Department Head and Personnel Officer.

6. Failing to comply with City directives regarding enforcement of this Policy, including but not limited to refusing to promptly submit to required testing; giving false, diluted or altered samples; obstructing the testing process; failing to comply with rehabilitation conditions imposed by rehabilitation counselors or by the City pursuant to Section F of this Policy.
7. Engaging in any other violation of this Policy.

For the purpose of this Policy "drugs" refers to all controlled substances regulated under the federal Controlled Substances Act, including but not limited to marijuana and designer drugs not approved for use by the US Food and Drug Administration. "Drugs" does not include lawful prescription and non-prescription medications obtained, used, transferred, possessed and reported consistently with the label, physician instructions, applicable law and Medications sections of this Policy.

B. TESTING:

The City may conduct the following types of testing:

1. Reasonable Suspicion - All employees will be required to immediately submit to urinalysis testing for drugs whenever the City has a reasonable suspicion to believe that the employee has reported to work, returned to duty or is working with drugs in his/her system. Likewise, all employees will be required to immediately submit to blood and/or breathalyzer testing for alcohol whenever the City has reasonable suspicion to believe that the employee has reported to work, returned to duty or is working with drugs or alcohol in his/her system.

"Reasonable suspicion" is a belief based on articulated observations and/or information from a reliable source concerning the employee's appearance, unusual behavior, speech, breath odor, body movements, abrupt changes in pattern of conduct, involvement in an accident which results in physical injury or property damage and which, in conjunction with other facts, suggest that the employee may be impaired by drugs or alcohol or other reliable indicators that would lead a reasonable person to suspect that the employee has reported to work or returned to duty with drugs or alcohol in his/her system.

Employees who are required to submit to reasonable suspicion testing are prohibited from transporting themselves to or from the collection site and home. A supervisor or management employee will provide or arrange for alternate transportation. Employees will be notified of their right to have a Union representative present while they are being questioned about their conduct giving rise to reasonable suspicion testing. Testing will not, however, be unreasonably delayed pending the arrival of a Union representative.

In the event the City requires an employee to be tested in accordance with the reasonable suspicion testing rule and the employee tests positive for any amount of drugs or alcohol present in his/her body, the test results shall be deemed conclusive evidence that a reasonable suspicion existed for the City to require the employee to submit to the test.

2. Post-Accident - Where a CDL employee is involved in any work-related accident, which results in a fatality or a vehicular accident in which he/she receives a citation for a moving violation and there is an injury which is treated away from the scene or a vehicle which must be towed away from the scene the employee will be required to submit to urinalysis testing for drugs and breath and/or blood testing for alcohol in compliance with DOT regulations.

Employees who are not in CDL positions will be tested for drugs, but not alcohol if they are involved in an accident, which results in property damages estimated to be \$2,500 or more or a fatality or an injury which is treated away from the scene while they are involved in safety sensitive activity. "Safety sensitive" activity shall include driving, operating heavy equipment or machinery and handling hazardous substances or materials. The City may waive urinalysis testing for drugs and/or oral fluid specimen testing for marijuana, if it concludes that the employee's actions or inactions were clearly not a factor causing the accident. Employees who are involved in such accidents may also be tested for alcohol if there is reasonable suspicion to believe that they had prohibited levels of alcohol present in his/her body when the accident occurred under reasonable suspicion testing as set forth above.

In the event an employee is injured and is therefore unable to promptly consent to testing, the employee will be required to authorize a release of medical records to reveal whether drugs and/or alcohol were in his/her system at the time of the accident. The employee is further prohibited from consuming alcohol or taking drugs (excluding prescribed drugs consistent with a physician's instructions) between the time of the accident and testing.

3. Last Chance Agreement – Employees will be required to submit to testing for drugs and/or alcohol as required pursuant to a Last Chance Rehabilitation and Return to Work Agreement and as recommended by the employee's rehabilitation counselors and approved by the Personnel Officer.
4. DOT Testing - CDL drivers and other employees who are covered by DOT regulations requiring drug and alcohol testing will be subject to testing as required by law.

All testing will be conducted at a laboratory certified by the Department of Health and Human Services (DHHS) under the National Laboratory Certification Program (NLCP) to conduct DOT testing. Oral fluid specimen testing will be used to detect marijuana under circumstances where the testing is not required by the DOT. All oral fluids tested will be collected by facilities whose personnel are trained to collect fluid specimens in accordance with the Mandatory Guidelines for Federal Workplace Drug Testing Programs issued by the DHHS on May 15, 2015. Additionally, all oral fluids specimen testing will be conducted by DHHS laboratories using scientifically recognized oral fluids testing procedures. In the event the Mandatory Guidelines for Federal

Workplace Drug Testing programs are amended, this Policy shall be automatically adjusted to be consistent with those standards. All drug tests will be conducted through collection of a split sample. All positive drug tests will be confirmed by a second confirming test from the same sample using GCMS or superior testing methodology before the test result is reported as positive. Employees with positive tests will have an opportunity to discuss the confirmed results with the MRO before the result is reported to the City.

Drug test results will be reported to Human Resources and will be considered medical records and released only on an "as needed" basis. An employee who tests positive for drugs may request a second test of the remaining portion of the split sample within 72 hours of notification of a positive test result. The cost of the retest shall be borne by the employee, unless the retest shows the original positive result was in error.

The time spent by an employee in traveling to and from the collection site as well as time spent in testing shall be treated as hours worked for pay purposes.

C. MARIJUANA:

Marijuana is an illegal drug under the federal Controlled Substances Act. The use of marijuana which is inconsistent with the "Prohibited Conduct" listed above will be considered a violation, even if an employee has a prescription for medical marijuana or is consuming marijuana recreationally consistent with Oregon state law. Any buying, selling, consuming, possession or use of marijuana on work time or City property is prohibited. Likewise, reporting to work with prohibited levels of marijuana present in the body as set forth in the "Drug and Alcohol Thresholds" table attached to this Policy will also be considered a violation, even if the employee has authorization for the use of marijuana under state medical marijuana law(s).

Employees who believe they have a disability requiring accommodation should contact Human Resources to determine whether some other reasonable accommodation can be made that would allow them to continue being employed without violating this Policy.

D. MEDICATIONS:

This policy is not intended to prohibit the appropriate use of legally prescribed or over-the-counter medications containing controlled substances. However, employees using prescribed drugs or non-prescription medications are responsible for carefully reviewing side effects warnings (including any warnings pertinent to the effects of use of a combination of substances) and for consulting with their prescribing physician and/or the pharmacist to determine whether there are any side effects that could impair the employee's ability to safely or competently perform his/her job duties whether that medication is being used alone or in combination with other prescription or over-the-counter medications. If the employee or his/her doctor feels that the employee is experiencing any such side effects, the employee must notify Human Resources of the side effects before reporting to work or continuing to perform his/her job duties. The employee is not required to disclose the medical condition for which the medication is being taken unless the City determines that this is necessary to comply with its legal obligations (such as properly designating leaves and/or evaluating reasonable accommodation options). However,

medical verification of the ability to safely perform job duties may be required before the employee is allowed to continue his/her work assignment.

It is a violation of this Policy for an employee to use medication inconsistently with the prescription or label, to unlawfully transfer prescription medication (including but not limited to selling or giving prescription medications to another person), and to use medication that is unlawfully obtained (including but not limited to using medication prescribed to another person).

E. CONSEQUENCES OF VIOLATION:

Violations of the City's Drug and Alcohol Policy are considered serious. Employees who engage in any prohibited conduct will be subject to discharge, even for a first offense. In addition, CDL drivers and other employees covered by the City's DOT Policy are required to comply with all the terms of that Policy, as well as all applicable DOT drug and alcohol laws and regulations. A violation of the City's DOT policy will also be considered a violation of this Policy.

F. REHABILITATION:

1. Employees Who Report Dependencies and Seek Assistance Before Committing a Policy Violation (Rehabilitation)

The City encourages employees who have drug and/or alcohol dependencies or think they may have such dependencies to seek assistance voluntarily. When an employee voluntarily reports a drug or alcohol dependency to the Personnel Officer and seeks assistance before violating this policy, that employee will be placed on a leave of absence or adjusted working hours to allow for inpatient or outpatient rehabilitation treatment as recommended by a Substance Abuse Professional (SAP). (This section is not intended to address situations whereby the employee feels he/she may have a substance abuse problem and pursues treatment without assistance from the City.)

The employee will not be permitted to work until the employee provides written verification from a qualified healthcare provider that he/she can safely return to work. In addition, employees who are covered by DOT regulations will not be permitted to return to work until they have:

- Been evaluated by an SAP;
- Complied with all rehabilitation/after-care prescribed/recommended by the SAP; and
- Complied with other return to work conditions, including a verified negative drug or alcohol test as required by law.

The time an employee is off work undergoing rehabilitation is not work time. However, employees may draw their unused, accumulated sick leave, compensatory time, vacation pay and/or floating holiday pay. Also, employees who are receiving health insurance

coverage will be eligible for continuation of health insurance benefits with City contributions as required under Article 7 - Health and Welfare and, as required by the Family Medical Leave Act.

Being engaged in treatment for a substance abuse problem will not relieve an employee from normal performance, safety, or attendance standards, nor will it relieve an employee from the obligation to comply with this Policy. Any violation of this Drug and Alcohol Policy will result in discipline up to and including termination.

2. Employees Who Report Dependencies and Seek Treatment After Committing a Policy Violation.

Employees who claim drug or alcohol dependencies after being selected for testing or otherwise violating this Policy or other City standards may be subject to discharge, irrespective of such dependencies.

The City may however, at its discretion, allow an employee a one-time opportunity to undergo evaluation and rehabilitation in lieu of discharge, provided the employee agrees to all rehabilitation treatment, education, testing and other conditions as set forth in a written Last Chance Rehabilitation and Return to Work Agreement provided by the City and negotiated with the Union. Any employee who violates the terms of the Agreement will be subject to immediate discharge.

The City will consider the following factors in exercising its discretion: the employee's length of service, the employee's work record, the safety-sensitivity of the individual's position, the consequences of the violation, whether the individual's behavior violated any other City policy and any other circumstances offered by the employee that mitigate against discharge.

Drug & Alcohol Thresholds

DRUG TESTING

The following initial and confirmatory cutoff levels (using gas chromatography/mass spectrometry (GC/MS) quantitative analysis) shall be used when screening specimens to determine whether they are positive or negative for the following drugs or classes of drugs.

Tests Required by DOT for CDL Holders:

<u>Initial Test Analyte</u>	<u>Initial Test Cutoff Concentration</u>	<u>Confirmatory Test Analyte</u>	<u>Confirmatory Test Cutoff Concentration</u>
<u>Marijuana metabolites.....</u>	<u>50 ng/mL.....</u>	<u>THCA¹.....</u>	<u>15 ng/mL</u>
<u>Cocaine metabolites.....</u>	<u>150 ng/mL.....</u>	<u>Benzoyllecgonine.....</u>	<u>100 ng/mL</u>
<u>Opiate metabolites</u>			
<u>Codeine/Morphine².....</u>	<u>2000 ng/mL.....</u>	<u>Codeine.....</u>	<u>2000 ng/mL</u>
		<u>Morphine.....</u>	<u>2000 ng/mL</u>
<u>6-Acetylmorphine.....</u>	<u>10 ng/mL.....</u>	<u>6-Acetylmorphine.....</u>	<u>10 ng/mL</u>
<u>Phencyclidine.....</u>	<u>25 ng/mL.....</u>	<u>Phencyclidine.....</u>	<u>25 ng/mL</u>
<u>Amphetamines³</u>			
<u>AMP/MAMP⁴.....</u>	<u>500 ng/mL.....</u>	<u>Amphetamine.....</u>	<u>250 ng/mL</u>
		<u>Methamphetamine⁵.....</u>	<u>250 ng/mL</u>
<u>MDMA⁶.....</u>	<u>500 ng/mL.....</u>	<u>MDMA.....</u>	<u>250 ng/mL</u>
		<u>MDA⁷.....</u>	<u>250 ng/mL</u>
		<u>MDEA⁸.....</u>	<u>250 ng/mL</u>

¹ Delta-9-tetrahydrocannabinol-9-carboxylic acid (THCA) testing.

² Morphine is the target analyte for codeine/morphine testing.

³ Either a single initial test kit or multiple initial test kits may be used provided the single test kit detects each target analyte independently at the specified cutoff.

⁴ Methamphetamine is the target analyte for amphetamine/methamphetamine testing.

⁵ To be reported positive for methamphetamine, a specimen must also contain amphetamine at a concentration equal to or greater than 100 ng/mL.

⁶ Methylenedioxyamphetamine (MDMA).

⁷ Methylenedioxyamphetamine (MDA).

⁸ Methylenedioxyethylamphetamine (MDEA).

These drug and testing levels are intended to be consistent with DOT standards. In the event that DOT testing substances and/or testing cutoff levels change, the above list shall be automatically adjusted to be consistent with DOT standards for employees required to have a CDL for their employment.

Tests that Apply to Non-CDL Holders:

The same initial and confirmatory cutoff levels shall be used when screening specimens to determine whether employees in non-CDL positions are positive to drugs or classes of drugs. However, for employees in non-CDL positions, a test for marijuana will not be considered “positive” by the City, unless an oral fluids specimen test for THC is reported as positive at the following initial and confirmatory thresholds:

<u>Initial Test Analyte</u>	<u>Initial Test Cutoff Concentration</u>	<u>Confirmatory Test Analyst</u>	<u>Confirmatory Test Cutoff Concentration</u>
<u>Marijuana</u>	<u>4 ng/mL</u>	<u>THC¹</u>	<u>2 ng/mL</u>

¹Delta-9-tetrahydrocannabinol (THC) oral fluids testing.

This drug testing cutoff level is intended to be consistent with the level proposed by the DHHS as outlined in the Mandatory Guidelines for Federal Workplace Testing Programs issued May 15, 2015. In the event that cutoff levels for oral fluid testing change under the Mandatory Guidelines for Federal Workplace Testing Programs which are ultimately adopted, this Policy will be automatically adjusted to be consistent with those cutoff levels.

ALCOHOL TESTING

An employee is considered to be under the influence if his/her alcohol concentration is .02 or greater by weight of alcohol in the blood or by volume of breath expressed in terms of grams of alcohol per 210 liter of breath as indicated by an evidential breath test. Alcohol concentration levels measuring less than .02 are considered negative results.

APPENDIX E - Job Families

Position	Grade	Position	Grade	Position	Grade
Public Works		Technical Services			
Parks Maintenance Worker I	6	Planning Tech	12	Receptionist/Secretary	9
Public Works Laborer	6	Code Enforcement Officer	13	Accounting Tech I (Cashier)	10
WPCF Laborer	6	Recreation Program Mgr.	13	Administrative Assistant	11
Public Works Operator I	10	Assistant Planner	14	Office Float/Support Spec.	11
WPCF Operator I	10	Engineering Assoc. I	16	Municipal Court Clerk	12
Facilities Maintenance Tech.	12	Associate Planner	17	Administrative Specialist	12
Parks Maintenance Worker II	12	GIS Analyst	18	Accounting Tech II	12
WPCF Operator II	12	Engineering Assoc. II	18	Permit Specialist	13
Public Works Operator II	13	Environmental Spec.	18	Accounting Tech III	14
Equipment Maintenance Tech.	13	Information Services Spec.	18		
Parks Maintenance Worker III	14	Building Inspector	19		
Public Works Operator III	14	Civil Engineer	20		
WPCF Operator III	14	Senior Planner	21		

MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is entered into by and between the City of Troutdale (City) and City of Troutdale Employees Union, Local 3132, AFSCME Council 75 (Union).

Whereas:

- Appendix C of the Collective Bargaining Agreement (Agreement) between the City and Union, which addresses wage reviews, states that once a position has been reviewed, that position will be removed from the list of positions to be reviewed until all of the positions in the bargaining unit have been reviewed;
- The position of Civil Engineer was reviewed in calendar year 2015;
- The review of the Civil Engineer position did not result in a wage increase for that position; and
- During bargaining for a successor agreement commencing July 1, 2015, the parties agreed to revise Appendix C by adding comparator cities and making other changes.

Terms of Agreement:

The City agrees to re-review the position of Civil Engineer in calendar year 2016 using bargaining unit positions in the comparator cities agreed upon by the City and Union during bargaining for a successor agreement. The review of the Civil Engineer position will not count as one of the three (3) positions to be selected for review in 2016. The review shall be subject to the provisions of Appendix C, as agreed upon by the City and Union in bargaining for a successor agreement.

FOR THE CITY:

Signature

Date

FOR THE UNION:

Signature

Date

RESOLUTION NO.

A RESOLUTION APPROVING THE COLLECTIVE BARGAINING AGREEMENT WITH EMPLOYEES REPRESENTED BY AFSCME LOCAL 3132

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City and AFSCME Local 3132 bargaining teams have reached a tentative agreement on a three-year Collective Bargaining Agreement (CBA) for the period July 1, 2015 to June 30, 2018.
2. Ratification of the tentative agreement was completed by the AFSCME Local 3132 Union membership September 10, 2015.
3. The tentative agreement must be ratified by the City Council before it becomes effective.
4. That it is advisable to ratify the tentative agreement without further delay to avoid unnecessary difficulties in payroll processing and the needed benefits administration and implementation actions.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. The CBA between the City of Troutdale and City of Troutdale Employees Union Local 3132 AFSCME Council 75 for the period July 1, 2015 through June 30, 2018 is approved in substantially the form shown in accordance with Exhibit A of the staff report.

Section 2. Designates the City Manager or Finance Director (each a "City Official") to act on behalf of the City, and without further action by the City Council the City Official is hereby, authorized, empowered and directed to sign on behalf of the City the CBA, and any and all other required and necessary documents to implement the of the terms, requirements, and benefit programs contemplated by the CBA.

Section 3. Further, the City Official is authorized to execute any supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the CBA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the terms and conditions of the CBA and benefits programs, and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 5. Upon adoption this Resolution and the Collective Bargaining Agreement shall be effective July 1, 2015.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date

Debbie Stickney, City Recorder
Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A Resolution Approving an Intergovernmental Agreement with the City of Maywood Park for the Renewal of Building Inspection Services

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: September 22, 2015 STAFF MEMBER: Erich Mueller DEPARTMENT: Finance</p>
<p>ACTION REQUIRED Consent Agenda Item</p> <p>PUBLIC HEARING No</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable</p> <p><u>Comments:</u></p>
<p>STAFF RECOMMENDATION: Approve</p>	

EXHIBITS:
A. Intergovernmental Agreement with Maywood Park for the Renewal of Building Inspection Services

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other (describe)

Issue / Council Decision & Discussion Points:

- ◆ The City has provided Building Inspection Services to Maywood Park since 2010.
- ◆ The City and Maywood Park desire to continue and build upon this existing partnership.
- ◆ The Cities agree that the Intergovernmental Agreement (IGA) enables the sharing of resources and promotes efficiency in service delivery.

Reviewed and Approved by City Manager:

BACKGROUND:

For the past five years the City has provided Maywood Park with Building Inspection Services. The arrangement provides sharing resources and avoids unnecessary duplication of staff, equipment, and training. The IGA therefore promotes efficiency and effectiveness in local government administration and service delivery.

The IGA provides that the City will continue to process building permits on behalf of Maywood Park by taking in applications, collecting fees, issuing permits, performing inspections, and keeping all records. Troutdale will retain 90% of all fees collected and remit 10% to Maywood Park of the resulting permit fees. Revenue to the City has ranged from \$4,000 to \$5,000 per year.

The workload of supporting Maywood Park is not substantial, but neither is the resulting revenues, so this IGA might best be viewed as an example of intergovernmental, regional cooperation rather than a profit center for Troutdale. Recent experience with permit enforcement has demonstrated that defending challenges to permits does represent some risk to Troutdale that can absorb the permit revenues generated.

SUMMARY:

The IGA is a renewal of existing services.

PROS & CONS:

- A. Approve the resolution renewing the IGA with Maywood Park to provide building inspection services providing efficient service delivery and supplemental program revenue. The additional revenue helps support a more robust Building Department, though the revenues generated likely only breakeven with the necessary costs.
- B. Not adopt the resolution, decreasing building inspection services service delivery and losing some supplemental program revenue. Losing the Maywood Park workload would also shed Troutdale of the costs of administering and defending the enforcement of the resulting permits.

<p>Current Year Budget Impacts <input checked="" type="checkbox"/> Yes <i>(describe)</i> <input type="checkbox"/> N/A First Year: unknown, dependent upon permit volume</p> <p>Future Fiscal Impacts: <input checked="" type="checkbox"/> Yes <i>(describe)</i> <input type="checkbox"/> N/A Future Years: unknown, dependent upon permit volume</p> <p>Community Involvement Process: <input type="checkbox"/> Yes <i>(describe)</i> <input checked="" type="checkbox"/> N/A</p>

**TROUTDALE / MAYWOOD PARK
BUILDING INSPECTION SERVICES
INTERGOVERNMENTAL AGREEMENT**

THIS Intergovernmental Agreement (IGA) is made and entered into by and between the CITY OF TROUTDALE, a municipal corporation of the State of Oregon, herein referred to as Troutdale, and the CITY OF MAYWOOD PARK, a municipal corporation of the State of Oregon, herein referred to as Maywood Park.

WITNESSETH:

WHEREAS, Troutdale, through its Building Division has an inspection program to do building, mechanical, plumbing and electrical inspections; and

WHEREAS, Troutdale has personnel certified to perform plan review and permit issuance as provided in ORS Chapter 456; and

WHEREAS, Maywood Park does not presently have on staff personnel certified to perform the above noted functions, but does require the indicated services which Troutdale has the capability to perform; and

WHEREAS, Troutdale and Maywood Park are authorized by ORS 190.003-190.110 and other pertinent statutes to enter into Intergovernmental Agreements for the performance of the functions and activities herein indicated.

WHEREAS, Troutdale and Maywood Park have for the prior five years successfully operated under an IGA for building inspection services, they both now desire to continue the previous services arrangement.

NOW, THEREFORE, IT IS AGREED:

That Troutdale will assist Maywood Park in administering the Maywood Park building, mechanical, plumbing and electrical permit issuance and inspection programs mandated by State statutes and related Maywood Park ordinances in the following particulars:

1. Duties and Responsibilities of Maywood Park
 - a. Maywood Park shall have sole authority and responsibility for determining and enforcing compliance with zoning, land use and other laws separate and distinct from

the Building, Plumbing, Mechanical and Electrical Codes adopted by the State of Oregon.

- b. Maywood Park shall have sole authority and responsibility for determining whether a permit application is in conformance with Maywood Park City ordinances.
- c. Maywood Park grants the City of Troutdale the authority to enforce and administer the State of Oregon Structural Specialty Code, Oregon Residential Specialty Code, Oregon Plumbing Specialty Code, Oregon Mechanical Specialty Code, Oregon Electrical Specialty Code, Oregon Manufactured Dwelling Code and Oregon Park and Camp Code as adopted by Maywood Park. The City of Troutdale accepts this authority and agrees to enforce and administer the State of Oregon Specialty Codes in Maywood Park. The Building Official of the City of Troutdale shall act as Building Official for the City of Maywood Park for purposes of administering the State of Oregon Specialty Codes including issuing stop work and similar orders. Maywood Park shall maintain full control and responsibility for the prosecution of any violation of the State Structural Specialty Codes referenced in this agreement. All costs of such prosecution shall be paid by Maywood Park.

2. Duties and Responsibilities of Troutdale. Troutdale shall be responsible for and shall perform the following functions and activities for Maywood Park:

- a. Troutdale shall receive applications for building, plumbing, mechanical, electrical and manufactured home permits and issue permits to builders, contractors and owners.
- b. Troutdale shall collect all fees for building, plumbing, mechanical, electrical and manufactured home plan reviews and permits issued for Maywood Park in accordance with the fee schedules then in effect.
- c. Troutdale shall keep records of all permits issued and shall make such records available to Maywood Park upon request.
- d. Troutdale shall make all State certified inspections ordinarily performed by the State certified inspectors up to and including a final inspection. Upon completion of the final inspection, Troutdale shall issue a certificate of occupancy or final inspection.
- e. Troutdale shall perform special inspections required or necessary to be performed by certified inspectors on existing or occupied structures in Maywood Park upon request

of Maywood Park; payment for special inspections, unrelated to permits in force, shall be at the rate of \$105.00 per hour.

- f. Troutdale shall prepare such information as may be required by the State Department of Commerce associated with the reporting of building inspection activities and provide such information to Maywood Park.
 - g. Troutdale shall pay the wages and all related benefits to the personnel performing the services hereunder.
 - h. Troutdale shall coordinate the service enumerated herein with the Maywood Park Mayor.
3. Applicable Building Codes: This agreement is entered into by the parties hereto upon the assumption that the Oregon Structural Specialty Code, Oregon Residential Specialty Code, Oregon Plumbing Specialty Code, Oregon Mechanical Specialty Code, Oregon Electrical Specialty Code, Oregon Manufactured Dwelling Code and Oregon Park and Camp Code, as promulgated by the State of Oregon Department of Commerce, shall be the codes in effect and used by Maywood Park.
4. Payment: Maywood Park agrees to pay for the cost of Troutdale providing the services performed pursuant to this agreement. Cost shall be determined as follows: Troutdale shall pay to Maywood Park an amount equal to ten percent (10%) of all collected fees for building, plumbing, electrical, mechanical, manufactured dwellings, demolition, grading, and applicable fire & life safety permits issued for Maywood Park for structures for which inspections are requested. The payment of the aforesaid sum shall be made on or before the 15th day of each month following the month during which the fees are collected by Troutdale.
5. Fee Schedule: The permit fee schedules for the City of Troutdale which are effect at the time of permit issuance shall be used for Maywood Park permits. The fee schedule may be changed from time to time by Troutdale in accordance with state regulations governing such fees (OAR 918-020-0220). Maywood Park shall adopt any changes in Troutdale building permit fees no later than forty-five (45) days after approved by the Troutdale City Council and ratified by the State of Oregon, whichever is later.

6. Term: This agreement shall have an effective date of July 1, 2015, and the initial term shall continue until June 30, 2020. Either party upon 180 days written notice to the other, may terminate this Agreement. This initial term may be altered or amended by mutual consent of both parties, in writing. After the initial term this agreement shall automatically renew annually on July 1st of each year for a one (1) year term, with the first automatic renewal on July 1, 2020, unless either party gives written notice of termination prior to any such automatic renewal.

7. Administrative Procedures: All administrative procedures governing the prior Agreement shall continue for this Agreement, and shall be in written form.

8. Insurance and Indemnity: Troutdale agrees to maintain workers' compensation, health and accident insurance on any building officials employed by Troutdale who perform services under this Agreement and further agrees to provide liability insurance upon any vehicle employed by such persons while performing service within Maywood Park.
 - a. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Maywood Park shall defend, hold harmless and indemnify Troutdale against liability for damage to life or property arising from Maywood Park's negligent activity under this agreement, including but not limited to settlements, judgments, costs and attorneys' fee.

 - b. To the extent permitted by the Oregon Constitution and the Oregon Tort Claims Act, Troutdale shall defend, hold harmless and indemnify Maywood Park against liability for damage to life or property arising from Troutdale's negligent activity under this agreement, including but not limited to settlement, judgments, costs and attorney's fees.

9. Coordination of Administration: The Building Official shall coordinate his/her functions with the Maywood Park Mayor or designated individual whenever necessary.

10. No Benefit to Third Parties: Maywood Park and Troutdale are the only parties to this Agreement and as such are the only parties entitled to enforce its terms. Nothing in this Agreement gives or shall be construed to give or provide any benefit, direct or indirect, or otherwise to third parties unless third persons are expressed described as intended to be beneficiaries of its terms.

11. Notices. All notices to the respective parties shall either be personally delivered or sent certified mail to the following addresses:

City of Maywood Park
10100 NE Prescott, Suite 147
Maywood Park, Oregon 97220

City of Troutdale, Attn: City Manager
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078.

IN WITNESS WHEREOF, Maywood Park and Troutdale, pursuant to appropriate action taken by their respective City Council, have duly caused this Agreement to be signed by the authorized representatives as of the day and year hereafter written.

CITY OF TROUTDALE

CITY OF MAYWOOD PARK

By: _____
Craig Ward, City Manager

By: _____
Name & Title: _____

Date: _____

Date: _____

RESOLUTION NO.

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT WITH THE CITY OF MAYWOOD PARK FOR THE RENEWAL BUILDING INSPECTION SERVICES.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City of Troutdale provides building inspection services through an Intergovernmental Agreement (IGA) to the City of Maywood Park providing plan reviews and structural, mechanical, electrical and plumbing inspections,
2. The City of Troutdale and the City of Maywood Park have over the past five years established a successful contract relationship for the provision of building inspection services, and desire to continue and build upon this existing partnership.
3. That the parties agree that the IGA enables the sharing resources and avoids unnecessary duplication of staff, equipment, and training and will continue to promote efficiency and effectiveness in local government administration and service delivery.
4. A renewal of the IGA building inspection services is necessary in order to continue to provide these contract services, and is in the best interest of the two cities.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Agrees now that the City enter into a renewed IGA with the City of Maywood Park for Building Inspection Services.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the IGA on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.

Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the IGA in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the IGA, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, extension, revisions, modification, or successor documents of the IGA, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized to disburse funds, subject to annual appropriations, as necessary to fulfill the IGA obligations, and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 6. This Resolution and the IGA shall be effective July 1, 2015.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder
Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: A resolution approving the Second Amendment to the Lease Agreement with Sprint Spectrum Realty Company, L.P. for the use of Reservoir #2 as a PCS Site

MEETING TYPE:
City Council Regular Mtg.

MEETING DATE: September 22, 2015

STAFF MEMBER: Erich Mueller
DEPARTMENT: Finance

ACTION REQUIRED
Consent Agenda Item

ADVISORY COMMITTEE/COMMISSION RECOMMENDATION:
Not Applicable

PUBLIC HEARING
No

Comments:

STAFF RECOMMENDATION: Approve

EXHIBITS:

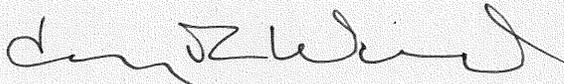
A: Second Amendment to the PCS Site Lease Agreement with Sprint Spectrum Realty Company LP

Subject / Issue Relates To:

- Council Goals Legislative Other (describe)

Issue / Council Decision & Discussion Points:

- ◆ Since 1996 the City has had a lease agreement with Sprint for a cell antenna site located on Water Reservoir #2.
- ◆ The lease provides revenue to the City and avoids a visually unattractive standalone cell tower in the neighborhood.
- ◆ The parties desire to continue the successful lease agreement for their mutual benefit.

Reviewed and Approved by City Manager: 

BACKGROUND:

The City Council approved Resolution No. 1232 on March 26, 1996 approving a lease with the corporate predecessor of the current lessee, Sprint Spectrum Realty Company L.P. (Sprint) for a personal communications services (PCS) site on Water Reservoir #2 at 24451 Stark Street for a cellular phone antenna and rental of 450 square feet of land within the site for PCS equipment.

The lease provided for an initial term of five (5) years and three (3) automatic five (5) year renewals for a total twenty (20) year term. The lease rental rate increased 20% at each term renewal.

Sprint desires to continue to operate the PCS site and has requested an amendment renewing the lease for an additional three (3) automatic renewal terms of five (5) years, maintaining the increase in rent of 20% at the beginning of each renewal term.

Effective April 25, 2016, the annual rent amount will be \$18,662 and will increase 20% at each five (5) year renewal term. These revenues that supplement the Water Utility Fund.

SUMMARY:

The lease amendment continues an existing mutually beneficial agreement providing the City lease revenue and avoids a visually unattractive standalone cell tower in the neighborhood.

PROS & CONS:

- A. Renewing the lease enhances the Water Utility Fund and presumably preserves reliable PCS service for Sprint customers in the immediate service area.
- B. Not adopt the resolution and either give direction to renegotiate the lease or require Sprint to remove the antennas. The effect to the City would be the loss of the lease revenue.

<p>Current Year Budget Impacts <input checked="" type="checkbox"/> Yes (<i>describe</i>) <input type="checkbox"/> N/A First Year: \$18,662</p> <p>Future Fiscal Impacts: <input checked="" type="checkbox"/> Yes (<i>describe</i>) <input type="checkbox"/> N/A Future Years: 20% increase at each 5 year term renewal</p> <p>Community Involvement Process: <input type="checkbox"/> Yes (<i>describe</i>) <input checked="" type="checkbox"/> N/A</p>
--

Site Name: South Troutdale

Site ID #: PO03XC035

AMENDMENT NO. 2 TO PCS SITE AGREEMENT

This Amendment No. 2 (“Amendment”), effective as of the date last signed below (“Effective Date”), amends a certain PCS Site Agreement between Sprint Spectrum Realty Company, L.P., a Delaware limited partnership, (“**Lessee**”) successor-in-interest to Sprint Spectrum L.P., a Delaware limited partnership, and The City of Troutdale (“**Lessor**”), dated April 26, 1996, (“**Lease**”) as amended by Amendment No.1 to a certain PCS Site Agreement dated January 11, 2006 (“**First Amendment**”) (The Lease and First Amendment are collectively, the “**Agreement**”).

BACKGROUND

The Agreement will expire on April 24, 2016. Lessee and Lessor desire to extend the term of the Agreement, as set forth herein.

AGREEMENT

In consideration of the mutual promises between the parties and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, Lessor and Lessee agrees as follows:

- 1. Term Extension.** Notwithstanding the provisions of Section 2 of the Lease and Section 1 and Section 2 of the First Amendment, the term of the Agreement will be extended for (3) three additional renewal terms of (5) five years each (each an “**Additional Renewal Terms**”), commencing upon expiration of the last remaining Renewal Term of the Agreement, under the same terms and conditions as are set forth therein, and as otherwise amended. The Agreement will automatically be extended for each Additional Renewal Term unless Lessee notifies Lessor of its intention not to renew prior to expiration of the then current Renewal Term or Additional Renewal Term.
- 2. Rent.** Notwithstanding anything contained in the Agreement to the contrary, effective April 25, 2016, the annual rent amount will be increased to Eighteen Thousand Six Hundred Sixty Two Dollars (\$18,662.00), payable in advance in annual installments, partial years to be pro-rated. Rent for each successive Additional Renewal Term thereafter will increase by 20% over the rent in effect for the prior 5-year term.
- 3. Assignment/Subletting:** Section 5 of the Agreement is deleted in its entirety and replaced with the following:

“Lessee will not assign or transfer this Agreement or sublet all or any portion of the Site without the prior written consent of Lessor, which consent will not be unreasonably withheld, conditioned or delayed; provided, however, that Lessee will have the right, without notice to or consent of Lessor, to sublease (or otherwise transfer or allow the use

of) all or any portion of the Site or assign its rights under this Agreement in whole or in part to: (a) any entity controlling, controlled by or under common control with Lessee; (b) any entity acquiring substantially all of the assets of Lessee; (c) any entity that is authorized to sell telecommunications products or services under the "Sprint" or "Sprint PCS" or other brand name(s) used or licensed by Lessee's parent corporation ("Contract Affiliate"); or (d) any successor entity in a merger or consolidation involving Lessee. Lessor will not be entitled to any additional rent or other fees for its review or approval."

4. **Notices.** Section 4 of the First Amendment is amended by deleting the entire provision and substituting the following in its place:

"All notices must be in writing and are effective only when deposited in the U.S. mail, return receipt requested and postage prepaid, or when sent via overnight delivery service.

Notices to Lessee are to be sent to:
Sprint Spectrum Realty Company, L.P.
Attn: Sprint Property Services
Sprint Site ID: PO03XC035
Mailstop KSOPHT0101-Z2650
6391 Sprint Parkway
Overland Park, Kansas 66251-2650

with a mandatory copy to:
Sprint Law Department
Attn.: Real Estate Attorney
Sprint Site ID: PO03XC035
Mailstop KSOPHT0101-Z2020
6391 Sprint Parkway
Overland Park, Kansas 66251-2020

Notices to Lessor are to be sent to:
City of Troutdale
Attn: City Manager
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078.

with a mandatory copy to:
City of Troutdale
Attn: City Attorney
219 E. Historic Columbia River Hwy
Troutdale, OR 97060-2078."

5. General Terms and Conditions.

(a) All capitalized terms used in this Amendment, unless otherwise defined herein, will have the same meaning as the terms contained in the Agreement.

(b) In case of any inconsistencies between the terms and conditions contained in the Agreement and the terms and conditions contained in this Amendment, the terms and conditions herein will control. Except as set forth herein, all provisions of the Agreement are ratified and remain unchanged and in full force and effect.

(c) This Amendment may be executed in duplicate counterparts, each of which will be deemed an original.

(d) Each of the parties represent and warrant that they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Amendment.

(e) Lessor agrees to execute and deliver to Lessee a Memorandum of Agreement in the form annexed to the Agreement as Exhibit C, as modified to show the Additional Renewal Terms and acknowledges that Lessee may record the Memorandum of Agreement in the official records of the County where the Site is located.

The parties have executed this Amendment as of the Effective Date.

Lessor:

City of Troutdale

By: _____

Name: Craig Ward

Title: City Manager

Date: _____

Lessee:

Sprint Spectrum Realty Company, L.P.,
a Delaware limited partnership

By: _____

Name: Michael Mizzell

Title: Manager – Vendor Management

Date: _____

RESOLUTION NO.

A RESOLUTION APPROVING THE SECOND AMENDMENT TO THE LEASE AGREEMENT WITH SPRINT SPECTRUM REALTY COMPANY, L.P. FOR THE USE OF RESERVOIR #2 AS A PCS SITE.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. The City has an established lease agreement with Sprint Spectrum Realty Company LP (Sprint) for a personal communications service (PCS) site located on Water Reservoir #2 which provides cellular phone services in the surrounding area.
2. The lease agreement was originally approved by Resolution No. 1232 in 1996, and provided for an initial term of five (5) years and three (3) automatic renewal terms of five (5) years.
3. Sprint has requested an amendment renewing the lease for an additional three (3) automatic renewal terms of five (5) years, with an increase in rent of 20% at the beginning of each renewal term.
4. A renewal of the lease is in the best interest of the City, providing lease revenue and avoiding the adverse visual impact on the neighborhood of the construction of a replacement cell tower.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Approves the Second Amendment to the PCS Site Lease Agreement with Sprint Spectrum Realty Company LP for the continued use of Reservoir #2 as a PCS site, in substantial conformity with Exhibit A of the Staff Report.

Section 2. Designates the City Manager or Finance Director (each a "City Official") or a designee of the City Official, to act on behalf of the City, and without further action by the City Council the City Official is hereby authorized, empowered and directed to sign the lease amendment on behalf of the City, and any and all other required and necessary documents to implement the intent of the agreement.

Section 3. The City Official is hereby authorized to execute, acknowledge and deliver the lease amendment in substantial conformity with Exhibit A of the Staff Report, including any other supporting and implementing documents, and to take any other action as may

be advisable, convenient, necessary, or appropriate to give full force and effect to the terms and intent of the lease amendment, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 4. Further, consistent with intent of the lease amendment, and in the best interest of the City, the City Official is authorized to determine, execute, acknowledge and deliver any subsequent addendums, extension, revisions, modification, or successor documents of the lease amendment, and the execution thereof by any such City Official shall be conclusive as to such determination.

Section 5. The Finance Director is authorized, as necessary to fulfill the lease amendment obligations, and is further directed to implement all such actions necessary to ensure budgetary compliance.

Section 6. This Resolution shall be effective upon adoption.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder
Adopted:



CITY OF TROUTDALE



STAFF REPORT

SUBJECT / ISSUE: An ordinance creating Chapter 3.07 of the Troutdale Municipal Code to phase in a motor vehicle fuel tax over three years and to premise the same on voter approval.

<p>MEETING TYPE: City Council Regular Mtg.</p>	<p>MEETING DATE: September 22, 2015 STAFF MEMBER: Ed Trompke DEPARTMENT: Legal</p>
<p>ACTION REQUIRED Ordinance - Introduction PUBLIC HEARING Yes</p>	<p>ADVISORY COMMITTEE/COMMISSION RECOMMENDATION: Not Applicable Comments: None.</p>
<p>STAFF RECOMMENDATION: Consider public testimony and conduct first reading.</p>	
<p>EXHIBITS: None</p>	

Subject / Issue Relates To:

- Council Goals
 Legislative
 Other:

Issue / Council Decision & Discussion Points:

- ◆ Shall Council create a framework for a possible motor vehicle fuels tax?

BACKGROUND:

On July 14, 2015, Council approved written text of a ballot title to submit to the voters. Afterwards, the city elections official filed the measure with Multnomah County, which prepares the measure for consideration by the voters on November 3, 2015.

SUMMARY:

If voters pass the fuel tax measure, the city would collect and monitor tax payments. To accomplish that the city requires an administrative program. This ordinance creates a registration system, under which merchants register as fuel sellers, and track fuel sales. By creating the program now, motorists, voters, and interested parties may further understand how the program will operate.

Reviewed and Approved by City Manager:

Moreover, if the measure is approved, city staff members believe that advance information within this ordinance about “how the program works” will increase the public’s opportunities to learn about the program.

Under state law, this ordinance cannot and will not take effect unless the voters approve the fuels tax measure at the November 3rd election.

<p>Current Year Budget Impacts <input type="checkbox"/> Yes (<i>describe</i>) <input checked="" type="checkbox"/> N/A</p> <p>Future Fiscal Impacts: <input checked="" type="checkbox"/> Yes (<i>describe</i>) A voter-approved fuels tax will raise revenue for the city’s street maintenance program. <input type="checkbox"/> N/A</p> <p>Community Involvement Process: <input checked="" type="checkbox"/> Yes (<i>describe</i>) Members of the public may comment on this ordinance. Moreover, under state law there must be an election of the people to authorize the tax embodied in this ordinance. <input type="checkbox"/> N/A</p>

ORDINANCE NO.

AN ORDINANCE CREATING CHAPTER 3.07 OF THE TROUTDALE MUNICIPAL CODE TO PHASE IN A MOTOR VEHICLE FUEL TAX OVER THREE YEARS AND TO PREMISE THE SAME ON VOTER APPROVAL.

THE TROUTDALE CITY COUNCIL FINDS AS FOLLOWS:

1. Oregon law provides that cities such as Troutdale may impose a tax on sales of motor vehicle fuels to raise revenue to construct, repair, and maintain roadways which, over time, degrade and fall into disrepair through use for travel by the motoring public.
2. On July 14, 2015, The City Council for the City of Troutdale found that revenues from existing sources are inadequate to maintain the City's street system.
3. At its July 14, 2015, public meeting, the City Council devised, and afterwards ratified, a ballot measure putting the question of a motor vehicle tax to the voters at the November 3, 2015 general election (the "Election").
4. The Council wishes to prepare an administrative program for a motor vehicle fuel tax before the Election, to further inform interested parties.
5. This Ordinance only takes effect if the voters approve the motor vehicle fuel tax measure at the November 3, 2015 special election. If the voters reject the measure, this Ordinance will be automatically repealed.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TROUTDALE:

Section 1. Troutdale Municipal Code is amended by adding Chapter 3.07, to read as follows:

3.07.010 Short Title

This chapter shall be known as the "Motor Vehicle Fuel Tax Ordinance."

3.07.020 Definitions

As used in this chapter, unless the context requires otherwise:

"City" means City of Troutdale and any person, agency, or other entity authorized by the City to act as its agent related to administration of the motor vehicle fuel tax ordinance or collection of the motor vehicle fuel tax.

“Dealer” means any person who:

- A. Supplies or imports motor vehicle fuel for sale, use, or distribution in, and after the same reaches the City, but “dealer” does not include any person who imports into the City motor vehicle fuel in quantities of five hundred (500) gallons or less purchased from a supplier who is permitted as a dealer hereunder and who assumes liability for the payment of the applicable motor vehicle fuel tax to the City;
- B. Produces, refines, manufactures, or compounds motor vehicle fuels in the City for use, distribution, or sale in the City; or
- C. Acquires in the City for sale, use, or distribution in the City motor vehicle fuels with respect to which there has been no motor vehicle fuel tax previously incurred.

“Distributor” means, in addition to its ordinary meaning, the deliverer of motor vehicle fuel by a dealer to any service station or into any tank, storage facility, or series of tanks or storage facilities connected by pipelines, from which motor vehicle fuel is withdrawn directly for sale or for delivery into the fuel tanks or motor vehicles whether or not the service station, tank, or storage facility is owned, operated, or controlled by the dealer.

“Motor vehicle” means all vehicles, engines or machines, moveable or immovable, operated or propelled by the use of motor vehicle fuel.

“Motor vehicle fuel” means and includes gasoline, diesel, and any other flammable or combustible gas or liquid, by whatever name that gasoline, gas, or liquid is known or sold, usable as fuel for the operation of motor vehicles. Propane fuel and motor vehicle fuel used exclusively as a structural heating source are excluded as a taxable motor vehicle fuel.

“Motor vehicle fuelhandler” means any person who acquires or handles motor vehicle fuel within the City through a storage tank facility with storage tank capacity that exceeds five hundred (500) gallons of motor vehicle fuel.

“Person” includes every natural person, association, firm, partnership, or corporation.

“Service station” means and includes any place operated for the purpose of retailing and delivering motor vehicle fuel into the fuel tanks of motor vehicles.

3.07.030 Tax imposed

As of 12:01 AM on January 1, 2016, motor vehicle fuel tax is imposed on every dealer operating within the corporate limits of Troutdale. The City of Troutdale motor vehicle fuel tax imposed shall be paid monthly to the City.

- A. A person who is not a permitted dealer or permitted motor vehicle fuelhandler shall not accept or receive motor vehicle fuel in this City from a person who supplies or imports motor vehicle fuel who does not hold a valid motor vehicle fuel dealers permit in this City. If a person is not a permitted dealer or permitted motor vehicle fuelhandler in this City and accepts or receives motor vehicle fuel, the purchaser or receiver shall be responsible for all taxes, interests and penalties prescribed herein.
- B. A permitted dealer or fuelhandler who accepts or receives motor vehicle fuel from a person who does not hold a valid dealer or fuelhandler permit in this City, shall pay the tax imposed by this chapter to the City, upon the sale, use, or distribution of the motor vehicle fuel.

3.07.040 Amount and payment

- A. Subject to subsections B through D of this section, by law, every dealer engaging in his or her own name, or in the name of others, or in the name of his or her representatives or agents in the City, in the sale, use, or distribution of motor vehicle fuel, shall:
 - 1. Not later than the 25th day of each calendar month, render a statement to the City, of all motor vehicle fuel sold, used, or distributed by him or her in the City as well as all such fuel sold, used, or distributed in the City by a purchaser thereof upon which sale, use, or distribution the dealer has assumed liability for the applicable motor vehicle fuel tax during the preceding calendar month; and
 - 2. Pay a motor vehicle fuel tax, computed on the basis specified in subsection C of this section, of such motor vehicle fuel so sold, used, or distributed as shown by such statement in the manner and within the time provided in this chapter.
- B. In lieu of claiming refund of the tax as provided in Section 3.07.200, or of any prior erroneous payment of motor vehicle fuel tax made to the City by the dealer, the dealer may show such motor vehicle fuel as a credit or deduction on the monthly statement and payment of tax.
- C. The amount of tax under subsection A(2) of this section is determined by the date such motor vehicle fuel is sold, used, or distributed by the person responsible for paying the tax. The date of such sale, use, or distribution shall be recorded in the statements that persons must file under this chapter, and the amount of tax will be calculated and owed as follows:
 - 1. The tax on motor vehicle fuel sold, used, or distributed from January 1, 2016, to December 31, 2016 is \$0.01 cents per gallon of fuel;

2. The tax on motor vehicle fuel sold, used, or distributed from January 1, 2017, to December 31, 2017 is \$0.02 cents per gallon of fuel; and
 3. The tax on motor vehicle fuel sold, used, or distributed on or after January 1, 2018 is \$0.03 cents per gallon of fuel.
- D. The motor vehicle fuel tax shall not be imposed wherever it is prohibited by the Constitution or laws of the United States or of the State of Oregon.

3.07.050 Permit required

After January 30, 2015, no dealer or fuel handler, shall sell, use, or distribute any motor vehicle fuel until he or she has secured a dealer or fuelhandler permit as required herein.

3.07.060 Permit application and issuance

- A. Every person, before becoming a dealer or fuel handler in motor vehicle fuel in this City, shall make an application to the City or its duly authorized agent, for a permit authorizing such person to engage in business as a dealer or fuelhandler.
- B. Applications for the permit must be made on forms prescribed, prepared, and furnished by the City.
- C. Each application must include a certificate, signed by the applicant, that contains the following information:
 1. The business name under which the dealer or fuelhandler is transacting business;
 2. The place of business and location of distributing stations in the City and in areas adjacent to the City limits in the State of Oregon;
 3. The name and address of the managing agent, the names and addresses of the several persons constituting the firm or partnership, and, if a corporation, the corporate name under which it is authorized to transact business and the names and addresses of its principal officers and registered agent, as well as primary transport carrier.
- D. An application for a motor vehicle fuel dealer or fuelhandler permit having been accepted for filing, the City shall issue to the dealer or fuelhandler a permit in such form as the City may prescribe to transact business in the City. The permit so issued is not assignable, and is valid only for the dealer or fuel handler in whose name issued.
- E. The City Recorder's office shall keep on file a copy of all applications and/or permits.

- F. The City will not charge a fee for seeking and obtaining the permit required by this section.

3.07.070 Failure to secure permit

- A. After January 30, 2016, if any dealer sells, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.07.060, the motor vehicle fuel tax shall immediately be due and payable on account of all motor vehicle fuel sold, distributed, or used on or after January 1, 2016.
- B. The City shall proceed forthwith to determine, from the best available sources, the amount of such tax, and it shall assess the tax in the amount found due, together with a penalty of two hundred percent (200%) of the tax, and shall make its certificate of such assessment and penalty, determined by City Manager or designee. In any suit or proceeding to collect such tax or penalty or both, the certificate is prima facie evidence that the dealer therein named is indebted to the City in the amount of the tax and penalty therein stated.
- C. Any fuelhandler who sells, handles, stores, distributes, or uses any motor vehicle fuel without first filing the certificate and securing the permit required by Section 3.07.060, shall be assessed a penalty of two hundred fifty dollars (\$250.00) unless modified by Subsection 3.07.270.A in the City Manager's determination. In any suit or proceeding to collect such penalty, the certificate is prima facie evidence that the fuelhandler therein named is indebted to the City in the amount of the penalty therein stated.
- D. Any tax or penalty so assessed may be collected in the manner prescribed in section 3.07.110 with reference to delinquency in payment of the tax, or by court action.

3.07.080 Revocation of permit

The City shall revoke the permit of any dealer or fuelhandler refusing or neglecting to comply with any provision of this chapter. The City shall mail by certified mail addressed to such dealer or fuelhandler at his or her last known address appearing on the files, a notice of intention to cancel. The notice shall give the reason for the cancellation. The cancellation shall become effective without further notice if within ten (10) days from the mailing of the notice the dealer or fuelhandler has not cured or remedied its default or delinquency.

3.07.090 Cancellation of permit

- A. The City may, upon written request of a dealer or fuelhandler, cancel any permit issued to such dealer or fuelhandler, the cancellation to become effective thirty (30) days from the date of receipt of the written request.
- B. If the City ascertains and finds that the person to whom a permit has been issued is no longer engaged in the business of a dealer or fuelhandler, the City may cancel the permit of such dealer or fuelhandler upon investigation after thirty (30) days' notice has been mailed to the most recent mailing address of the dealer or fuel handler furnished to the City by the dealer or fuelhandler.

3.07.100 Remedies cumulative

Except as otherwise provided in Sections 3.07.110 and 3.07.130, the remedies provided in Sections 3.07.070, 3.07.080, and 3.07.090 are cumulative. No action taken pursuant to those sections shall relieve any person from the penalty provisions of this chapter.

3.07.110 Payment of tax and delinquency

- A. The motor vehicle fuel tax imposed by Sections 3.07.030 and 3.07.040 shall be paid on or before the 25th day of each month to the City which, upon request, shall receipt the dealer, or fuelhandler therefor.
- B. Except as provided in subsection D of this section, to any motor vehicle fuel tax not paid as required by subsection A of this section, there shall be added a penalty of one percent (1%) of such motor vehicle fuel tax.
- C. Except as provided in subsection D of this section, if the tax and penalty required by subsection B of this section are not received on, or before the close of business on the last day of the month in which the payment is due, a further penalty of ten percent (10%) shall be paid in addition to the penalty provided for in subsection B of this section.
- D. If the City determines that the delinquency was due to reasonable cause and without any intent to avoid payment, the penalties provided by subsections B and C of this section may be waived. Penalties imposed by this section shall not apply when the penalty provided in Section 3.07.070 has been assessed and paid.
- E. If any person fails to pay the motor vehicle fuel tax, or any penalty provided for by this chapter, the amount thereof shall be collected from such person for the use of the City. The City shall commence and prosecute to final determination in any court of competent jurisdiction an action to collect the same.
- F. If the City institutes any suit or action to collect the motor vehicle fuel tax, or any penalty provided for by this chapter, the City may recover from the person sued reasonable attorney's fees at trial, or upon appeal of such suit, or action, in addition to all other sums provided by law.

- G. The city has a cause of action to collect any tax or penalty unpaid pursuant this chapter. The city may collect any tax or penalty in one or more demands, actions, or suits. The City may collect any such sum in any procedure or form of action available to it, including but not limited to the action embodied in this paragraph, actions for collecting amounts due, including due under agreements, or as a penalty in an ordinance violation proceeding.
- H. No dealer who collects from any person the tax provided for herein, shall knowingly or intentionally fail to report and pay the same to the City, as required herein.

3.07.120 Monthly statement of dealer and fuelhandler

Unless modified by Subsection 3.07.270.B, every dealer and fuelhandler in motor vehicle fuel shall render to the City, on or before the 25th day of each month, on forms prescribed, prepared, and furnished by the City, a signed statement of the number of gallons of motor vehicle fuel sold, distributed, used, or stored by him or her during the preceding calendar month. The statement shall be signed by the permit holder. All statements as required in this section are public records.

3.07.130 Failure to file monthly statement

If any dealer, or fuelhandler fails to file the report required by Section 3.07.120, the City shall proceed forthwith to determine from the best available sources the amount of motor vehicle fuel sold, distributed, used, or stored by such dealer or fuelhandler for the period unreported, and such determination shall be prima facie evidence of the amount of such fuel sold, distributed, used, or stored. The City immediately shall assess the motor vehicle fuel tax in the amount so determined, as pertaining to the reportable dealer, adding thereto a penalty of ten percent (10%) for failure to report. Fuelhandlers failing to file a monthly statement of motor vehicle fuel shall be assessed a penalty of fifty dollars (\$50.00). The penalty shall be cumulative to other penalties provided in this chapter. In any suit brought to enforce the rights of the City under this section, any such determination showing the amount of tax, penalties, and costs unpaid by any dealer, or fuelhandler and that the same are due and unpaid to the City is prima facie evidence of the facts as shown.

3.07.140 Billing purchasers

Bills shall be rendered to all purchasers of motor vehicle fuel by dealers in motor vehicle fuel. The bills shall separately state and describe to the satisfaction of the City the different products shipped thereunder and shall be serially numbered except where other sales invoice controls acceptable to the City are maintained. The bills required hereunder may be the same as those required under ORS 319.210.

3.07.150 Failure to provide invoice or delivery tag

No person shall receive and accept any shipment of motor vehicle fuel from any dealer, or pay for the same, or sell, or offer the shipment for sale, unless the shipment is accompanied by an invoice or delivery tag showing the date upon which shipment was delivered and the name of the dealer in motor vehicle fuel.

3.07.160 Transportation motor vehicle fuel in bulk

Every person operating any conveyance for the purpose of hauling, transporting, or delivering motor vehicle fuel in bulk shall, before entering upon the public streets of the City with such conveyance, have and possess during the entire time of such hauling or transporting of motor vehicle fuel, an invoice, bill of sale, or other written statement showing the number of gallons, the true name and address of the seller or consignor, and the true name and address of the buyer or consignee of the same. The person hauling such motor vehicle fuel shall at the request of any officer authorized by the City to inquire into, or investigate such matters, produce and offer for inspection the invoice, bill of sale, or other statement.

3.07.170 Exemption of export fuel

- A. The license tax imposed by Sections 3.07.030 and 3.07.040 shall not be imposed on motor vehicle fuel that is:
 - 1. Exported from the City by a dealer; or
 - 2. Sold by a dealer in individual quantities of five hundred (500) gallons, or less for export by the purchaser to an area, or areas outside the City in containers other than the fuel tank of a motor vehicle, but every dealer shall be required to report such exports and sales to the City in such detail as may be required.
- B. In support of any exemption from motor vehicle fuel taxes claimed under this section other than in the case of stock transfers, or deliveries in a person's own equipment, every dealer must execute and file with the City an export certificate in such form as shall be prescribed, prepared, and furnished by the City, containing a statement, made by some person having actual knowledge of the fact of such exportation, that the motor vehicle fuel has been exported from the City, and giving such details with reference to such shipment as may be required. The City may demand of any dealer such additional data as is deemed necessary in support of any such certificate, and failure to supply such data will constitute a waiver of all right to exemption claimed by virtue of such certificate. The City may, in a case where it believes no useful purpose would be served by filing of an export certificate, waive the certificate.
- C. Any motor vehicle fuel carried from the City in the fuel tank of a motor vehicle shall not be considered as exported from the City.

- D. No person shall, through false statement, trick, or device, or otherwise, obtain motor vehicle fuel for export as to which the City motor vehicle fuel tax has not been paid and fail to export the same, or any portion thereof, or cause the motor vehicle fuel or any portion thereof not to be exported, or divert, or cause to be diverted the motor vehicle fuel or any portion thereof to be used, distributed, or sold in the City, and fail to notify the City and the dealer from whom the motor vehicle fuel was originally purchased of his or her act.
- E. No dealer or other person shall conspire with any person to withhold from export, or divert from export, or to return motor vehicle fuel to the City for sale or use, so as to avoid any of the fees imposed herein.
- F. In support of any exemption from taxes on account of sales of motor vehicle fuel in individual quantities of five hundred (500) gallons or less for export by the purchaser, the dealer shall retain in his or her files for at least three (3) years an export certificate executed by the purchaser in such form and containing such information as is prescribed by the City. This certificate shall be prima facie evidence of the exportation of the motor vehicle fuel to which it applies only if accepted by the dealer in good faith.

3.07.180 Sales to armed forces exempted

The motor vehicle fuel tax imposed by Sections 3.07.030 and 3.07.040 shall not be imposed on any motor vehicle fuel sold to the Armed Forces of the United States for use in ships, aircraft, or for export from the City; but every dealer shall be required to report such sales to the City, in such detail as may be required. A certificate by an authorized officer of such Armed Forces shall be accepted by the dealer as sufficient proof that the sale is for the purpose specified in the certificate.

3.07.190 Fuel in vehicles coming into city not taxed

Any person coming into the City in a motor vehicle may transport in the fuel tank of such vehicle motor vehicle fuel for his or her own use only and for the purpose of operating such motor vehicle, without securing a license or paying the tax provided in sections 3.07.030 and 3.07.040, or complying with any of the provisions imposed upon dealers herein. But if the motor vehicle fuel so brought into the City is removed from the fuel tank of the vehicle or used for any purpose other than the propulsion of the vehicle, the person so importing the fuel into the City shall be subject to all provisions herein applying to dealers.

3.07.200 Refunds

Refunds will be made pursuant to ORS. 319.280 to 319.320.

3.07.210 Examination and investigations

The City may examine accounts, records, stocks, facilities, and equipment of dealers, fuelhandlers, service stations, and other persons engaged in storing, selling, or distributing motor vehicle fuel or other petroleum products within this City, and such other investigations as it considers necessary in carrying out the provisions of this chapter. If the examinations or investigations disclose that any reports of dealers or other persons theretofore filed with the City pursuant to the requirements herein, have shown incorrectly the amount of gallons of motor vehicle fuel distributed or the tax accruing thereon, the City may make such changes in subsequent reports and payments of such dealers or other persons, or may make such refunds, as may be necessary to correct the errors revealed by its examinations or investigations.

3.07.220 Limitation on credit for or refund of overpayment and on assessment of additional tax

- A. Except as otherwise provided in this chapter, any credit for erroneous overpayment of tax made by a dealer taken on a subsequent return or any claim for refund of tax erroneously overpaid filed by a dealer must be so taken or filed within three (3) years after the date on which the overpayment was made to the City or to its authorized agent.

- B. Except in the case of a fraudulent report or neglect to make a report, every notice of additional tax proposed to be assessed under this chapter shall be served on dealers within three (3) years from the date upon which such additional taxes become due.

3.07.230 Examining books and accounts of carrier of motor vehicle fuel

The City may at any time during normal business hours examine the books and accounts of any carrier of motor vehicle fuel operating within the City for the purpose of checking shipments or use of motor vehicle fuel, detecting diversions thereof, or detecting evasion of taxes in enforcing the provisions of this chapter.

3.07.240 Records to be kept by dealers and fuel handlers

Every dealer and fuelhandler in motor vehicle fuel shall keep a record in such form as may be prescribed by the City of all purchases, receipts, sales, and distribution of motor vehicle fuel. The records shall include copies of all invoices or bills of all such sales and purchases, and shall at all times during the business hours of the day be subject to inspection by the City.

3.07.250 Records to be kept three (3) years

Every dealer and fuelhandler shall maintain and keep, for a period of three (3) years, all records of motor vehicle fuel used, sold, and distributed within the City by such dealer or fuel handler, together with stock records, invoices, bills of lading, and other pertinent papers as may be required by the City. In the event such records are not kept within the

State of Oregon, the dealer shall reimburse the City for all travel, lodging, and related expenses incurred in examining such records. The amount of such expenses shall be an additional tax imposed hereunder.

3.07.260 Use of tax revenues

- A. The City Manager shall be responsible for the disposition of the revenue from the tax imposed by this chapter in the manner provided by this section.
- B. For the purposes of this section, "net revenue" means the revenue from the tax imposed by this chapter remaining after providing for the cost of administering the motor vehicle fuel tax to motor vehicle fuel dealers and any refunds and credits authorized herein. The program administration costs of revenue collection and accounting activities shall not exceed ten and one-half percent (10.5%) for the first year, and ten percent (10%) thereafter, of annual tax revenues.
- C. The net revenue shall be used only for maintenance activities standing alone or embodied within projects to construct, reconstruct, improve, repair, and maintain public highways, roads, and streets within the City, with a focus on pavement preservation projects.
- D. Any use of net revenue must be documented in a writing that shows the following information:
 - 1. The amount of net revenue estimated or actually used;
 - 2. The goods or services acquired with the net revenue; and
 - 3. If goods or services are acquired with both net revenue and other money, a statement identifying the proportion of net revenue relative to the other money used to achieve the purpose.
- E. The City Council will, by resolution, adopt a public reporting system to track revenues and program expenditures which are documented in subsection D of this section and to make such information available to the public.
- F. The city shall account for program costs, revenues, and expenditures, within the street fund established under chapter 12.05.

3.07.270 Administration

- A. The City Manager or designee is responsible for administering this chapter.
- B. The City Manager may enter into an agreement with the Oregon Department of Transportation as an authorized agent for the implementation of certain sections of this chapter. If the Department of Transportation is chosen as an authorized agent of the City, then the modifications outlined below shall apply:

1. The fuelhandler's penalty of subsection 3.07.070.C shall be reduced to one hundred dollars (\$100.00). If the Department determines that the failure to obtain the permit was due to reasonable cause and without any intent to avoid obtaining a permit, then the penalty provided in section 3.07.070 and this section may be waived.
2. The fuelhandler's monthly reporting requirements of Section 3.07.120 and 3.07.130 shall be waived.

Section 2. Section 1 of this Ordinance does not take effect unless Measure 26-168 is approved by the people according to elections results published by Multnomah County for the election held in the City on November 3, 2015. If Measure 26-168 is so approved, then this ordinance takes effect on December 31, 2015.

Section 3. If Measure 26-1688 is not approved by the people according to the election results published by Multnomah County for the election held in the City on November 3, 2015, then this Ordinance is repealed.

YEAS:
NAYS:
ABSTAINED:

Doug Daoust, Mayor

Date _____

Debbie Stickney, City Recorder
Adopted: