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**AGREEMENT**

**LOCAL 521 IAFF**

**AND**

**CITY OF BILLINGS**

**EFFECTIVE DATES**

**JULY 1, 2013- JUNE 30, 2016**

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1 **P R E A M B L E**

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3 THIS AGREEMENT is made and entered into, by and between the **CITY OF BILLINGS**, Montana,  
4 hereinafter referred to as "**EMPLOYER**", and **LOCAL 521 INTERNATIONAL ASSOCIATION OF FIRE**  
5 **FIGHTERS**, hereinafter referred to as the "**ASSOCIATION**", for the purpose of promoting and improving  
6 understanding between the **EMPLOYER**, its employees and the **ASSOCIATION**, relative to: Employer-employee  
7 relations, standards of wages, hours and other conditions of employment, and to provide a means of amicable and  
8 equitable adjustment of differences or grievances which may arise within the terms contained herein.

9  
10 **ARTICLE I - RECOGNITION**

11 The **EMPLOYER** recognizes the **ASSOCIATION** as the exclusive bargaining agent for all employees of the Billings  
12 Fire Department, except the Fire Chief, Assistant Chief, Deputy Chief, administrative support employees and all initial  
13 probationary firefighters.

14 **ARTICLE II - MANAGEMENT RIGHTS**

15 A. The **ASSOCIATION** recognizes the prerogative of the **CITY** to operate its affairs in all respects in accordance  
16 with its responsibilities, and the powers or authority which the **CITY** has not officially abridged, delegated or  
17 modified by this Agreement are retained by the **CITY**, and in such areas as, but not limited to the following, to-  
18 wit:

- 19 1. Directing employees;
- 20 2. Hiring, promoting, transferring, assigning, and retaining employees;
- 21 3. Relieving employees from duties because of lack of work or funds or under conditions where  
22 continuation of such work would be inefficient and non-productive;
- 23 4. Maintaining the efficiency of government operations;
- 24 5. Determining the methods, means, job classifications, organization, and personnel by which operations  
25 of the City of Billings Fire Department are to be conducted;

- 1           6.       Taking whatever actions that may be necessary to carry out the mission of the City of Billings Fire  
2                   Department in situations of emergency;
- 3           7.       Establishing the methods and processes by which work is to be performed;
- 4           8.       Establishing reasonable work rules;
- 5           9.       Scheduling overtime work as required, in a manner most advantageous to the City Fire Department  
6                   and consistent with requirements.

7    B.       The **ASSOCIATION** recognizes that the **EMPLOYER** has statutory and other rights and obligations in  
8           contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in  
9           the **EMPLOYER**. The right to contract or subcontract shall not be used for the purpose or intention of  
10          undermining the **ASSOCIATION**, nor to discriminate against any of its members.

11

12                                   **ARTICLE III - GRIEVANCE & ARBITRATION PROCEDURES**

13   A.       A grievance is defined as a dispute, or a difference in interpretation between an employee, or the  
14           **ASSOCIATION** and the **EMPLOYER** involving wages, hours, and all conditions of employment which are  
15           expressly provided by this contract.

16   B.       The **ASSOCIATION** shall certify in writing to the **EMPLOYER** the names of all employees or others  
17           authorized to represent the **ASSOCIATION** in this procedure. For the purpose of this Article, persons  
18           authorized to represent the **ASSOCIATION** shall be known as "Stewards." A Steward may process  
19           grievances during regular working hours without loss of regular pay subject to the approval of the Fire Chief.  
20           Union representatives from the Council or International level may be called in to assist at any step during the  
21           grievance.

22   C.       Departure from the established procedure, unless mutually waived by both parties:

23           1.       By the **ASSOCIATION** or any person represented by the **ASSOCIATION** shall automatically  
24                   nullify any further recourse through this procedure for the grievance.

25           2.       By the **EMPLOYER** shall automatically place the grievance in the following step:

D.       Procedure:

1           1.       STEP 1: In the event an employee covered by this Agreement shall have a grievance, he shall notify in  
2                           writing the Fire Chief and the **ASSOCIATION** within ten (10) business days of the grievance's  
3                           occurrence. The **ASSOCIATION** shall investigate the grievance and, within twenty (20) business  
4                           days of the receipt of the grievance, may present a grievance to the Fire Chief for resolution. The  
5                           grievance shall be presented in written form containing as a minimum, the following information:

- 6                   a.       The name of the grievant(s)
- 7                   b.       The date(s) of the grievance
- 8                   c.       The nature of the grievance
- 9                   d.       The terms of the Agreement in dispute
- 10                  e.       The adjustment sought

11                   The Fire Chief may request a meeting with the **ASSOCIATION** and the grievant to discuss the  
12                   grievance. The Fire Chief shall attempt to resolve the grievance and shall report this adjustment in  
13                   writing to the **ASSOCIATION** within ten (10) business days of the receipt of the grievance from the  
14                   **ASSOCIATION**.

15                   If the grievance remains unresolved, the **ASSOCIATION** may proceed to the following step:

16                   STEP 2: Within ten (10) business days of the date of the Department Head's reply, the Chief Steward  
17                   or his designee shall present the written grievance, along with the **ASSOCIATION'S** reasons for non-  
18                   acceptance of the Department Head's reply, to the City Administrator. The City Administrator shall  
19                   meet with the **ASSOCIATION** and the Department Head or his/her designee to attempt to resolve the  
20                   grievance and shall respond in writing to the Chief Steward within twenty (20) business days of the  
21                   receipt of the grievance.

22                   If the grievance remains unresolved, the **ASSOCIATION** may proceed to the following step:

23                   STEP 3: Within ten (10) business days of the date of the City Administrator's reply the  
24                   **ASSOCIATION** may request arbitration. This request must be made in writing and be presented to  
25                   the City Administrator.

The arbitrator shall be selected by use of the following:

1 The Board of Arbitration shall be composed of three (3) members: one person to be appointed by each  
2 party and a third, acting as a chairperson, to be selected in accordance with sub-paragraph 1 and 2 of  
3 Step 3. The **ASSOCIATION** and the **CITY** individually shall pay the expenses of the member it  
4 appoints and the two parties shall jointly share the expenses of the third member. The decision of the  
5 Board of Arbitration shall be final and binding on both parties in all matters pertaining to this Article.

6 1. Within ten (10) business days of the receipt of the request, the parties to this Agreement shall  
7 mutually select a person who is not employed by the City of Billings to act as chairperson. If  
8 no such person can be found who is acceptable to act as chairperson:

9 2. Within ten (10) additional business days, the party requesting arbitration shall request the  
10 American Arbitration Association to provide a list of five (5) arbitrators. The parties shall  
11 select the chairperson by the method of alternatively striking names, with the parties flipping  
12 a coin to determine who strikes the first name. The final name left on the list shall be the  
13 chairperson.

14 The chairperson chosen will be contacted immediately and asked to start proceedings at  
15 his/her earliest possible date. During the arbitration proceedings, all evidence shall be  
16 presented to the Board. It shall have no power to alter in any way the terms of this  
17 Agreement, State law, or Federal law. Its decision shall be within the scope and terms of this  
18 Agreement and it shall be requested to issue its decision within twenty (20) business days  
19 after the conclusion of the proceedings, including filing of briefs, if any.

20 E. It is understood by both parties to this Agreement that an appointed authority may replace any titled position  
21 mentioned in the above grievance and arbitration procedures, so long as the **ASSOCIATION** is notified in  
22 writing of such change.

23 F. The use of the above procedure is exclusive and shall constitute a waiver of recourse through any other  
24 procedure, except for recognized civil procedures.

25 G. For purposes of this Article only, a business day means all calendar days except Saturdays, Sundays, and  
holidays.

1 H. The City and the **ASSOCIATION** shall follow 7-33-4124, MCA, unless the statute is repealed during the life  
2 of the contract.

3 **ARTICLE IV - NON-DISCRIMINATION**

4 The **EMPLOYER** and the **ASSOCIATION** accept their responsibility to ensure non-discrimination in all aspects of  
5 employment for all qualified persons regardless of race, creed, religion, color, national origin, age, mental and physical  
6 disability, sex, marital status, family relationships, membership or non-membership in the **ASSOCIATION**.

7  
8 **ARTICLE V - DUES ASSIGNMENT**

9 A. The **EMPLOYER** agrees to accept and honor an employee's voluntary written assignment designating a  
10 specified amount of wages or salaries due and owing as **ASSOCIATION** dues or equivalent contribution.

11 B. The aggregate deduction will be remitted, together with an itemized statement, to the Treasurer of the  
12 **ASSOCIATION** within five (5) working days from the date of payroll distribution.

13 C. The **ASSOCIATION** agrees to hold harmless the **EMPLOYER** for any loss or damages arising from the  
14 operations of the Article due to unintentional errors.

15 D. All present employees covered by this Agreement who have not made application for membership in the  
16 **ASSOCIATION**, shall, as a condition of employment, pay to the **ASSOCIATION** an amount equal to  
17 **ASSOCIATION** dues as a contribution toward the administration of the Agreement. Employees who fail to  
18 comply with this requirement within 30 days after being confirmed shall be discharged by the **EMPLOYER**  
19 within 15 calendar days after receipt of written notice from the **ASSOCIATION**, unless the employee  
20 complies before his discharge.

21  
22 **ARTICLE VI - HOURS OF WORK AND COMPENSATION**

23 A. Work Schedule

24 1. Fire Suppression Personnel  
25

1 a. The work schedule shall be a 27-day total work cycle consisting of seven (7) consecutive  
2 work shifts of twenty-four (24) hours on duty and forty-eight (48) hours off duty,  
3 immediately followed by six (6) consecutive days off.

4 One Battalion Chief (the fourth) shall be assigned a regular work schedule as follows:

5 (1) The work schedule shall be a 27-day total work cycle.

6 (2) The work schedule shall consist of:

- 7 • One 24 hour shift on-duty, followed by 48 hours off-duty
- 8 • One 24 hour shift on-duty, followed by 96 hours off-duty
- 9 • One 24 hour shift on-duty, followed by 48 hours off-duty
- 10 • One 24 hour shift on-duty, followed by 96 hours off-duty
- 11 • One 24 hour shift on-duty, followed by 48 hours off-duty
- 12 • One 24 hour shift on-duty, followed by 168 hours off-duty

13 (3) In addition to the regular scheduled shifts, the fourth Battalion Chief shall work  
14 twenty-four (24) hours during the first twenty- (20) days of the 27-day work cycle.  
15 These work assignment periods shall be no less than eight (8) hour periods. The  
16 fourth Battalion Chief shall not be assigned work more than four (4) days in a  
17 calendar week a regularly scheduled work assignment.

18 (4) The fourth (4th) Battalion Chief's work schedule may be changed by mutual  
19 agreement between the fourth (4) Battalion Chief, the Fire Chief, and the  
20 **ASSOCIATION.**

21 b. "Companies shall stay together at all times." – Defined

22 (1) Together is defined as a Captain, an Engineer, and a Firefighter assigned to the  
23 same station, except to respond on separate apparatus to the same call.

24 c. The duty day schedule:

25 0000 to 0800 - Alarm Time

0800 to 1200 - Work Assignment Period\*

- 1 1200 to 1300 - Alarm Time
- 2 1300 to 1700 - Work Assignment Period\*
- 3 1700 to 1800 - Alarm Time
- 4 1800 to 2200 - Work Assignment Period\*
- 5 2200 to 2400 - Alarm Time

6 \*Each work assignment period shall be inclusive of a 15-minute coffee break after 2 hours.  
7 Meal periods are 0700 to 0800, 1200 to 1300, and 1700 to 1800 unless interrupted by an  
8 emergency. Meal periods interrupted by emergency situation shall be made up at the earliest  
9 opportunity. Companies shall stay together at all times. All unassigned work period hours  
10 shall be considered alarm time.

11 d. Alarm Time - suppression personnel must be at their assigned stations, on call, and available  
12 for all fire fighting and emergency purposes during all alarm time, unless otherwise approved  
13 by the Battalion Chief. No classes or drills, and only essential work can be included on  
14 Sundays, and holidays and such alarm time.

15 e. Sunday Training - Only essential fire suppression training that cannot be scheduled during  
16 normal work assignment periods may be assigned on Sundays.

17 2. Uniformed Day Personnel

18 The workweek for day personnel shall be forty (40) hours. It shall normally consist of five (5)  
19 consecutive eight (8) hour days starting on Monday and ending on Friday. This schedule may be  
20 changed by mutual agreement.

21 B. Compensation

22 1. Pay status

23 All employees covered by this Agreement are non-exempt hourly employees as defined by the FLSA.  
24 As such, all employees shall be paid for all hours worked and for approved, paid leave hours.

25 2. Wages

- 1 a. Hourly rates of pay for the contract term shall be as shown in Exhibit A of this Agreement,  
2 which reflects annual adjustments as described below. Regular payday shall be every other  
3 Friday and the amount of pay shall be based upon the number of hours worked within the pay  
4 period. Hourly wages shown in Exhibit A do not include Special Certification pay, which is  
5 described elsewhere in this Article.
- 6 b. July 1, 2013 – June 30, 2014: All hourly base wages shall increase by an amount equal to  
7 2.9%.
- 8 c. July 1, 2014 – June 30, 2015: All hourly base wages shall increase by an amount equal to  
9 2.9%.
- 10 d. A wage reopener for the third year of the contract, July 1, 2015 through June 30, 2016 for  
11 hourly base wages as set out in Article VI, B. 2. Management and the Association shall open  
12 negotiations concerning hourly wages only. Negotiations shall commence on or about  
13 April 1, 2016.

14  
15  
16 C. Overtime Pay

17 Employees required to work in excess of their regular work schedule at the direction of proper City authority  
18 shall be compensated at a rate of 1-1/2 times the regular hourly rate for each hour of overtime worked. This  
19 overtime shall be computed to the nearest 1/4 hour starting one minute after the one-quarter (1/4) hour begins  
20 and extending to the full 1/4 hour. The **EMPLOYER** shall determine the employees to receive the overtime  
21 work and the amount of overtime necessary to be worked.

22 D. Call Back Pay

23 The employee shall be paid a minimum of three (3) hours at one and one-half (1 1/2) times the regular hourly  
24 rate of pay for each and every call-out. Call back pay will commence on page out, not an extension of the  
25 regular shift. In the event the call-out extends into the employee's regular scheduled work shift, the one and  
one-half (1 1/2) rate of pay shall be paid for only the actual time spent before the regular shift started.

1 In the event the employee asks to be excused before the work is completed, and the supervisor in charge  
2 excuses him/her, the employee will be paid only for time worked at one and one-half (1-1/2) times his/her  
3 regular rate of pay.

4 E. Standby Time

5 Personnel required for standby shall be compensated with pay at the rate of 10 percent of the hours of the  
6 standby time.

7 F. No Pyramiding

8 Compensation shall not be paid more than once for the same hour under any overtime provision of this  
9 Agreement, including overtime, callback and standby pay.

10 G. Longevity Pay

11 1. Each employee covered by this Agreement shall receive longevity pay as follows:

12 a.) employees with 1- 14 years of service shall receive longevity pay equal to 62% (.62) multiplied  
13 by the hourly rate of a newly confirmed firefighter multiplied by the number of years of completed  
14 service, per month. Employees hired on or after July 1, 2012, shall not receive longevity pay  
15 until the beginning of his/her 6<sup>th</sup> year of employment.

16 b.) employees with 15 and more years of service shall receive longevity pay equal to 77% (.77)  
17 multiplied by the hourly rate of a newly confirmed firefighter multiplied by the number of years of  
18 completed service, per month.

19 c.) the total annual amount of longevity pay shall be calculated, then divided by the number of pay  
20 periods per year and paid at that amount equally for each pay period.

21 H. Higher Classification Pay

22 1. a.) Any person covered by this Agreement who is required to accept the responsibilities and carry out  
23 the duties of a position or rank above that which he/she normally holds for a period for two (2) hours  
24 or more shall be paid at the rate in Exhibit B while acting. All assignments for scheduled absences for  
25 engineer or captain made under this Section shall be on basis of the senior qualified employee first. In  
the event of an unscheduled absence, the Battalion Chief shall select a qualified employee whose

1 service would promote the most efficient operation of the department. Selection for filling  
2 unscheduled absences shall be made in a fair, equitable and impartial manner. Suppression employees  
3 shall Hi-C only one classification over employee's current rank. Exempt from this provision shall be  
4 any employee exchanging shifts for an employee who is absent due to attendance of **ASSOCIATION**  
5 business, as authorized by the Local and approved by the Fire Chief. Also, the water tender/brush  
6 truck will be operated by a qualified firefighter at his/her regular rate of pay.

7 Hi-C Battalion Chief - The B.C. assigned to each shift, with the approval of the Fire Chief, shall select  
8 the Hi-C B.C. to act during his/her absence. In implementing this concept, the Fire Chief and B.C.'s  
9 will not act in an arbitrary or capricious manner. Any complaints may be brought to the Joint Labor  
10 Management Committee. If a complaint is not resolved through the Joint Labor Management  
11 Committee, then it shall be resolved in accordance with Article III of the contract.

12 Suppression personnel may be required to work in a lower classification in order to maintain staffing  
13 levels. In such an event, the employee working in a lower classification shall continue to maintain  
14 his/her original rate of compensation.

- 15 2. In the absence of the Fire Marshal and the Assistant Fire Marshal, the Fire Marshal, with approval of  
16 the Fire Chief, shall select a Deputy Fire Marshal that will Hi-C to Fire Marshal. In the implementing  
17 of this concept, the Fire Chief and Fire Marshal will not act in an arbitrary or capricious manner. Any  
18 complaints will be brought to the Joint Labor Management Committee. If a complaint is not resolved  
19 through the Joint Labor Management Committee, it shall be resolved in accordance with Article III of  
20 the contract. The Deputy Fire Marshal selected as the Hi-C Fire Marshal shall be compensated at the  
21 rate of pay according to Exhibit B for the Deputy Fire Marshal assuming the duties of Fire Marshal.

22 I. Special Assignment Pay

23 1. Compensaton

- 24 a. Suppression personnel who are assigned Fire Department work outside of the Suppression  
25 Division by the Fire Chief shall be paid their base salary plus ten percent (10%), excluding  
the Assistant Fire Marshal, Deputy Fire Marshals, and light duty assignments.

1           b.       Suppression personnel on a special assignment shall receive Hi-C pay for any shift they  
2                       would have received, had they remained in the suppression division..

3           2.       Whenever the person immediately following the assigned person on the seniority list is promoted, the  
4                       assigned person shall automatically receive the next pay grade plus 10 percent.

5           3.       If the assigned person wishes to return to shift to receive a promotion and can qualify for the  
6                       promotion and a vacancy occurs, he shall be placed in accordance with the promotional priority list.

7           4.       Fire Fighters, except regular day personnel, that require remedial training and are assigned to days for  
8                       a period not to exceed twenty-seven (27) days in a calendar year, shall be compensated at their current  
9                       hourly rate. After the twenty-seventh (27) day, fire suppression personnel shall be compensated at  
10                      Special Assignment Pay, I.1.

11    J.       Special Certification Pay

12           Any member of the Billings Fire Department holding a certification in any of the following areas shall receive  
13                      an additional \$50.00 per month (except up to \$60.00 for the Advanced EMT as set out below.) per  
14                      certification with a maximum of three (3) paid certifications:

15           Coordinator/Instructor, Haz Mat Technician; Rope Rescue Technician; SCBA Repair; ICC Fire Inspector  
16                      I; ICC Fire Inspector II; and Advanced EMT (EMT Basic with endorsements equal to EMT-I/85 or  
17                      Paramedic). The Advanced EMT certification will be paid at \$10.00 per endorsements through the 6<sup>th</sup>  
18                      endorsement (as approved by the Montana Board of Medical Examiners, the City of Billings Medical  
19                      Director, and Fire Chief.) up to a total of \$60.00, Any member currently holding a State of Montana Boiler  
20                      License, and who is receiving Special Certification pay, will be grandfathered, and shall continue to be  
21                      compensated for such work related to that certification until that work no longer exists, or he/she allows the  
22                      license to expire. If the Department functions as a licensed paramedic level service, Paramedics will be  
23                      paid an additional 5% of a confirmed firefighter wage, but will not receive Advanced EMT and/or 6<sup>th</sup>  
24                      endorsement certification pay. In addition to the certifications listed above, Association members, while in  
25                      the Fire Prevention Bureau, may hold certifications in the following two areas and shall receive \$50.00 per

1 month per certification with a maximum of three (3) paid certifications: ICC Fire Plans Examiner or ICC  
2 Certified Fire Marshal.

3 The Fire Chief will determine the number of people holding the certifications for Haz-Mat Technician,  
4 Coordinator/ Instructor, Rope Rescue Technician, SCBA repair, Montana Boiler License and Advanced  
5 EMT. The number of employees holding certifications as ICC Fire Inspector I or ICC Fire Inspector II is  
6 unlimited. The \$50.00 per month (up to \$60.00 for Advanced EMT) will be paid for only three (3)  
7 certifications regardless of the number of any and all certifications held. EMT certification pay of \$30.00  
8 will be added to the employee's base and is exempt from the three (3) certification limitation as it is a  
9 requirement for hire.

10 The Special Certification Pay (up to \$160 for three (3) certifications and 5% Paramedic pay if applicable)  
11 per month will be added to the base pay in terms of retirement calculations, however, will be separated  
12 from the base to calculate pay increases that are negotiated. Any change in the amount of Special  
13 Certification Pay will be negotiated separately.

14 K. Deputy Fire Marshal Incentive Pay Plan

15 The position of Deputy Fire Marshal shall be considered as an assignment by the Chief. All Deputy Fire  
16 Marshals shall be a grade 213. Firefighters shall enter the grade 213 at step B and may advance to step E.  
17 Engineers shall enter the grade 213 at step C and may advance to step F. Captains shall move into the pay  
18 range of a grade 213 at the level immediately above their current level of pay and may advance to step G.

19 All Deputy Fire Marshals shall be ICC Fire Inspector I certified within one (1) year from the date of  
20 assignment. If the employee does not achieve the certification, then his or her base salary will be frozen at  
21 his/her current grade and step until certification is achieved. If the Deputy Fire Marshal's rate has been frozen,  
22 then the date certification is achieved will become the employee's promotional anniversary date for step  
23 increases. In the event that a Deputy Fire Marshal decides to return to suppression, that Deputy Fire Marshal  
24 shall return to his/her seniority position and shall be paid accordingly to his/her rank. Deputy Fire Marshals  
25 who complete certification within one year will receive step increases from the date of assignment.

L. Compensation During Light Duty Assignments



1	2) <b>Suppression personnel</b>	
2	0 through 10 years	131 hours/yr.
3	11 through 15 years	157 hours/yr.
4	16 through 20 years	184 hours/yr.
5	21+ years	210 hours/yr.

6

7                   This suppression schedule is calculated as follows and the calculation method shall be

8                   used for the number of scheduled hours per calendar year, regardless of the number of

9                   hours actually worked: number of vacation leave credit days earned according to

10                  Montana Code, 2-18-612 MCA (2005); multiplied by 8 hours per day; divided by 2080;

11                  multiplied by 2272 and rounded to the nearest whole hour.

12                 b.     Any employee who terminates employment with the City, for a reason not reflecting

13                   discredit on her/himself, shall be entitled to cash compensation of unused earned vacation

14                   leave, if the employee has worked the qualifying period. Unused earned vacation leave shall

15                   be paid at the employee's regular rate of pay at the time of termination.

16                 c.     Vacation leave may be accumulated. The total is not to exceed two (2) times the maximum

17                   number of days earned annually as of the end of the first pay period of the next calendar year.

18                   Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the

19                   calendar year in which the excess was accrued.

20                 d.     The date or dates when an employee may take accrued vacation shall be determined by

21                   agreement between the employee and the chief or his designee, in the best interest of the City.

22                 e.     **Vacation Selection Procedure**

23                   1.     Vacation schedule shall be offered in two (2) week time slots.

24                   2.     Only two (2) Fire Suppression Personnel, from each shift, shall be on vacation

25                   at the same time. No more than one (1) Officer and one (1) Engineer, from each

                      shift, shall be on vacation at the same time.





1 Sick leave credits are earned at the rate of one hundred five (105) hours per  
2 year

- 3 c. An employee who terminates employment with the City is entitled to a lump-sum payment  
4 equal to one-fourth of the pay attributed to his/her accumulated sick leave. The pay shall be  
5 computed on the employee's rate of compensation at the time of termination. Accrual of  
6 credits for calculating the lump-sum payment begins July 1, 1971. No employee forfeits any  
7 sick leave rights or benefits accrued prior to July 1, 1971. An employee who received a lump-  
8 sum payment, and who is again employed by the City, shall not be credited with any sick  
9 leave earned during the previous service. An employee who received a lump-sum payment as  
10 a result of a layoff, who is again employed by the City, may buy back all sick leave earned  
11 during the previous service at the rate of compensation at the time of the layoff.
- 12 d. Sick leave credits will be used on a first earned, first charged basis.
- 13 e. Abuse of sick leave is cause for dismissal and forfeiture of lump-sum payment.
- 14 f. An employee, during illness, must notify the shift supervisor on duty at least one (1) hour  
15 before the beginning of the shift, each day that he/she is sick.
- 16 g. A physician's certificate may be required by an employee's supervisor to substantiate a sick  
17 leave charge. Such required physician's certificate shall be furnished by the employer's  
18 physician at the employer's expense. The employer reserves the right to select the physician  
19 and schedule the appointment.
- 20 h. Authorized medical appointments of the employee shall be charged to sick leave. Each  
21 absence shall be reported separately and authorized in advance by the employee's  
22 supervisor.
- 23 i. Maternity leave may be charged against sick leave credits. Reasonable leave is a maximum  
24 of twelve (12) weeks, as defined under the Family and Medical Leave Act.

1 j. Sick leave charged in excess of earned sick leave may be charged to earned and available  
2 vacation leave at the employee's request. Reasonable Leave is a maximum of 12 weeks as  
3 defined under the Family and Medical Leave Act.

4 4. Family Leave

5 Definition: Accrued leave credits are defined as sick leave or vacation leave at the employee's option.

6 a. Paternity Leave

7 1. Upon prior notification of the pregnancy and with as much advance notice as  
8 possible, fire suppression personnel shall be granted two (2) consecutive work shifts  
9 off charged against accrued leave credits at the employee's option for purposes of  
10 assisting the spouse upon birth of a child.

11 2. Uniform day personnel shall be granted five (5) consecutive work shifts off charged  
12 against accrued leave credits at employee's option for the purpose of assisting the  
13 spouse upon birth of a child.

14 b. Emergency Leave

15 1. In the event an employee's presence is required because of an emergency caused by  
16 a major illness or injury to an employee's immediate family member, the employee  
17 may use accrued leave credits, at employee's option, to be in attendance.

18 2. Emergency leave shall not exceed a total of seventy-two (72) hours per year for  
19 illness in the immediate family that is not a FMLA qualifying event. The Fire Chief  
20 or his designee may authorize additional vacation leave credits to be used.

21 3. The immediate family shall include: spouse, parents, grandparents, brothers, sisters,  
22 children, grandchildren, step-relatives, household dependents, and all the same relatives  
23 of the employee's spouse in like degree.

24 4. The Chief or his designee may authorize use of vacation leave for other circumstances as  
25 requested by the employee.

5. Funeral Leave

- 1 a. In the event of a death in the immediate family, a regular employee shall be entitled to a  
2 maximum of seventy-two (72) hours to attend the funeral. Funeral leave may be charged to  
3 sick or vacation leave, at employee's option.
- 4 b. The immediate family shall include: spouse, parents, grandparents, brothers, sisters, children,  
5 grandchildren, step-relatives, household dependents, and all the same relatives of the  
6 employee's spouse in like degrees.
- 7 c. The Chief or his designee may authorize use of vacation leave for other funerals  
8 as requested by the employee.

9 6. Jury Service and Subpoena

- 10 a. Each employee who is under proper summons as a juror or subpoenaed as a witness shall  
11 collect all fees and allowances payable as a result of the service and forward the fees to the  
12 Employer. Juror fees shall be applied against the amount due the employee from his/her  
13 Employer. However, if an employee elects to charge his/her juror or witness time against  
14 his/her annual leave, he/she shall not be required to remit his/her fees to the Employer. In no  
15 instance is an employee required to remit his/her Employer any expense or mileage  
16 allowance paid by the court. Employee shall not lose accumulative benefits because of juror  
17 or witness service.
- 18 b. Each employee who is under subpoena as a witness for matters concerning the Employer,  
19 and that employee is off duty, the employee's time shall be treated the same as Call Back  
20 Pay with the time starting when the employee is required to be in court or for preparation  
21 time for that case.

22 7. Military Leave

23 Any employee who is a member of the organized National Guard or forces of the United States Army,  
24 Navy, Marine Corps, Air Force, or Coast Guard, shall be given leave of absence with pay, after six (6)  
25 months of employment, for attending regular encampments, training cruises, and similar training  
programs, not to exceed fifteen (15) working days per calendar year under military orders properly

1 issued by military authorities. Such absence shall be charged against training cruises and similar  
2 training programs.

3 Inactive duty training (IDT) weekend drills are documented by training schedules rather than orders,  
4 however, the right to time-off for training without loss of benefit applies for IDT as well as active duty  
5 training and annual training. Reservists and Guardsman shall be given the opportunity to take vacation  
6 time to fulfill their IDT requirements. Personnel shall provide the Employer with their military  
7 training schedule.

8 8. Leave Without Pay

9 a. Employees may request to take leave of absence without pay for good and sufficient reasons  
10 in the best interest of the City with prior approval of the Fire Chief and the City  
11 Administrator.

12 b. Requests for leave of absence without pay shall be submitted in writing by the employee to  
13 the Fire Chief or his designee.

14  
15  
16 9. General Provisions

17 a. An employee may not accrue any leave credits during a continuous leave of absence without  
18 pay, which exceeds fifteen (15) calendar days.

19 b. For purposes of definition, the work "day" shall mean one eight- (8) hour period.

20 c. All leaves covered under this Article must have prior notification and approval of the  
21 employee's supervisor.

22 d. For the purpose of calculating vacation and sick leave credits, 2080 hours shall equal one  
23 (1) year for Uniformed Day Personnel and 2272 hours shall equal one (1) year for  
24 Suppression Personnel.

25 e. All leaves covered under this work agreement shall be charged to the nearest one-quarter  
(1/4) hour.

1           10.     Attendance Incentive

2           Employees will be provided up to twenty-four (24) hours of additional vacation time per year  
3           depending upon the employee's attendance record. The amount of the Incentive to be awarded will be  
4           calculated at the end of each calendar year. The maximum of twenty-four (24) hours will be reduced,  
5           hour for hour, for each hour of sick leave the employee has used during each full calendar year of  
6           employment. The amount of incentive will be pro-rated for employees hired during the year.

7    B.     Insurance(s)

8           1.     Health and Accident Insurance

9           a.     Contribution changes to the City's Health Insurance Plan shall be shared equally  
10          (50%/50%) between the employees and the City. Contribution changes can be either  
11          increases or decreases. Contribution adjustments can be either in dollars contributed or in  
12          modifications to the plan benefits. All modifications shall be with the approval of the  
13          Insurance Committee. It is the intent of the Committee to reach the consultant recommended  
14          reserve level over a period of time.

15          b.     Billings Health Insurance Committee: The City of Billings has an established Health  
16          Insurance Committee to maintain a group health insurance plan for employees of the City  
17          of Billings and their dependents. The committee shall consist of 15 members appointed  
18          as follows:

- 19                   1) Three members of each employee union appointed by each union.  
20                   2) Six members appointed by the City Administrator. One member shall be a retired  
21                   city employee currently covered by the city health insurance plan.

22          c.     The Committee will manage the City Health Insurance Plan and report directly to the  
23          City Administrator. The committee shall meet at least quarterly to:

- 24                   1) Review the existing city group health insurance plan;  
25                   2) Review the claims experience, projections and plan problems;  
                      3) Maintain the plan on a sound actuarial basis;

- 1 4) Be solely responsible for all changes in plan design, administrators or carriers;
- 2 5) Establish plan premium rates and cost sharing by both the City and the employees;
- 3 6) Advise the City Administrator on all other group insurance matters;
- 4 7) Decisions will be made by a simple majority vote where all members have one vote
- 5 and can vote by absentee ballot.

6 d. Coverage shall be extended to all insurable employees and their insurable dependents,  
7 following the period of exclusion provided by the terms of the master insurance policy.  
8 All employees and dependents' participation and coverage shall be solely governed by  
9 the terms and conditions of the master insurance contract as signed by the City and the  
10 insurance carrier. Coverage shall be extended to only those employees while in an active  
11 pay status. Employees on an approved absence without pay may elect to continue their  
12 group coverage by directly paying the City the total premium cost during their absence.

13 e. The dollar amount of the City's portion of the monthly health insurance premium (not  
14 including dental, vision, disability or life insurance) shall be added to employee gross pay  
15 effective January 1, 2009, subject to the limits described here. The purpose of adding the  
16 City's portion of the health insurance premium amount to gross pay is solely to increase  
17 the employee's pay for calculating retirement contributions by the employer, employee  
18 and state. The higher gross pay and retirement contributions are expected, but are not  
19 guaranteed, to produce a retirement benefit that is greater than without this additional  
20 gross pay. The employee recognizes that the added gross pay and his/her required  
21 retirement contribution may reduce net pay and may have tax implications. Adding the  
22 City's portion of the health insurance premium to gross pay for retirement purposes only  
23 does not affect and shall not be included in the computation of any other pay or benefits  
24 or the calculation of any rate of pay, including but not limited to the regular hourly rate,  
25 any cost-of-living increase, overtime, longevity, special certification pay, holiday pay,  
standby, callback, higher classification and special assignment pay.

1 Employees are required to purchase the City's health insurance. Employees shall  
2 contribute the employer's share of the health insurance premium, in the dollar amount  
3 identified below, and the employee's share of the health insurance premium to the City  
4 for deposit in the health insurance fund. If the employee elects, the contribution may be  
5 made before local, state or federal taxes are deducted from the employee's gross pay  
6 (pre-tax contribution). If the employee does not make this election, the contribution will  
7 be made after appropriate taxes are withheld from gross pay (post-tax contribution).  
8 Regardless of tax treatment under IRC Section 125, the employer's portion of the health  
9 insurance premium that is being added to gross pay may cause the employee to pay  
10 additional taxes, fees or assessments as required by federal or state laws or regulations.  
11 Those taxes, fees or assessments may include but are not limited to unemployment  
12 insurance, workers compensation insurance and Medicare tax.

13  
14 At the time of the annual Section 125 election, each employee shall acknowledge in  
15 writing that 1) the employer paid portion of the health insurance premium is being added  
16 to gross pay solely to increase the employee's pay for calculating retirement contributions  
17 by the employer, employee and state ("added gross pay"); 2) the employee recognizes  
18 that the added gross pay and his/her required retirement contribution may reduce net pay  
19 and may have tax implications; 3) adding the City's portion of the health insurance  
20 premium to gross pay for this retirement purpose only does not affect and shall not be  
21 included in the computation of any other pay or benefits or the calculation of any rate of  
22 pay, including but not limited to the regular hourly rate, any cost-of-living increase,  
23 overtime, longevity, special certification pay, holiday pay, standby, callback, higher  
24 classification and special assignment pay; 4) the added gross pay may subject the  
25 employee to additional federal, state or local taxes, fees or assessments; and (5) the added

1 gross pay and increased retirement contributions are expected, but are not guaranteed, to  
2 produce a retirement benefit that is greater than without this additional gross pay.

3  
4 The Association and employees agree that the amount of the employer paid health  
5 insurance premium that is applied to an employee's gross pay for retirement purposes  
6 only will not, under any circumstance, exceed:

- 7 • \$800 per month for calendar year 2013

8 The increase that will be added to employee gross pay in each following calendar year in  
9 2014, 2015 and 2016 for this retirement purpose only, shall be limited to the actual  
10 increase in the City's portion of the premium or fifteen percent (15%) over the previous  
11 year whichever is less. All conditions and restrictions set out in this section, Article VII,  
12 B.1.e apply regardless of the dollar amount of the City's portion of the premium.

13  
14 If any change in local, state or federal laws, regulations, determinations or rulings change  
15 the employer's costs or invalidates the intent or application of this provision, it will  
16 immediately terminate and the Employer and Association shall meet and attempt to  
17 negotiate a new provision that complies with the changed laws or regulations. The  
18 Association and employees agree that any grievance involving this section, Article VII,  
19 B.1.e., the contribution as set forth herein or any effects of the contribution shall be  
20 subject to the grievance process set out in this agreement and shall be subject to final and  
21 binding arbitration. The Association specifically waives the right to address the  
22 substance and effect of this Article in any other forum in law or in equity except if an  
23 arbitration decision deems the grievance process to be inappropriate to resolve the  
24 dispute.

- 25 2. As per state law, entitled, "An Act to Provide Group Health Coverage for Retired Public Employees  
and Their Surviving Spouse and Children."

1           3.       Liability Insurance

2                   The Employer shall provide a copy of the Employer's current liability insurance coverage to the  
3                   **ASSOCIATION.**

4    C.       On Duty Injury Leave

5                   Health and Accident Insurance Coverage. An employee who is injured in the performance of duty and is  
6                   receiving a combination of partial salary and worker's compensation payments shall be afforded the current  
7                   level of health insurance coverage for city employees provided in the City of Billings Employees Insurance Plan  
8                   until the disability has ceased, as determined by worker's compensation or for a period not to exceed one year,  
9                   whichever occurs first. To qualify for full health insurance benefits the employee must require medical or other  
10                  remedial treatment and must be incapable of performing his/her duties as a result of the injury.

11   D.       Education Benefits

12           1.       Tuition Reimbursement.

13                   The City will provide \$25,000 for each year of the contract to support employees wishing to pursue  
14                   higher education. Any employee matriculated into a program of higher education at an accredited U.S.  
15                   college or university shall be reimbursed tuition based on available funds, for all course(s) and books  
16                   approved by the Joint Labor Management Committee. The Joint Labor Management Committee will  
17                   review each request upon the employee furnishing evidence of satisfactory completion ("C" or better;  
18                   pass) of course(s) within thirty (30) days of completion. The Joint Labor Management Committee  
19                   shall award educational reimbursement based on funds available and the relevance of the degree  
20                   sought compared to the department's mission. The Joint Labor Management Committee will  
21                   distribute available education funds in a fair and equitable manner. If an employee receives benefits  
22                   under this Section and resigns prior to the completion of his/her fifth (5<sup>th</sup>) year of service, all  
23                   educational benefits must be repaid to the City. If an employee receives more than the Federal IRS  
24                   Guidelines for tuition reimbursement, then the amount in excess is taxable (the Current IRS Tax Free  
25                   amount is \$5,250.00 but subject to IRS provision changes).

2.       Degree Incentive

1 An employee shall receive \$25 per pay period for holding an Associate's Degree or  
2 \$50 per pay period for holding a Bachelor's Degree. The degree must be from an  
3 institution of higher learning recognized as accredited in the United States. If an  
4 employee holds both an Associate's and Bachelor's Degree he/she shall receive the  
5 pay for the higher degree only.

6 E. Deferred Compensation

7 The City will contribute \$36.54 per pay period (26 pay periods per year) for each employee into a deferred  
8 compensation (457) plan. If an employee leaves employment with the City, then the 457 contribution will be  
9 discontinued with the employee's final date of employment. Contributions will be made by the City on each  
10 employee's behalf to either Nationwide or ICMA 457 plans, whichever is designated by the employee.

11  
12 **ARTICLE VIII - WORKING CONDITIONS**

13 A. Layoffs

14 Reductions in force shall be in order of seniority within the department; that is, the employee last hired in the  
15 department, shall be the first released. Employees who are scheduled to be released shall be given at least  
16 fourteen (14) calendar days notice. All recalls of employees to employment shall likewise be in order of  
17 seniority within the department in which employed; that is, the last employee released as a result of a reduction  
18 in force, shall be the first rehired when the Employer needs additional employees. It shall be the employee's  
19 responsibility to maintain a current notification address on record with the Fire Chief or his designee. The  
20 **ASSOCIATION** shall also be notified in advance of all recall actions. An employee who is notified to report to  
21 duty, but fails to notify the Employer within fourteen (14) calendar days of his intention to report to work shall  
22 forfeit his right to re-employment.

23  
24 B. Association Bulletin Boards

25 The Employer agrees to provide suitable space for Association bulletin boards. Postings by the Association on  
such boards are to be confined to official business of the **ASSOCIATION**.

1 C. Shift Trading

2 Upon approval of the Battalion Chief, and Captain, subject to review by the Fire Chief or his designee, any  
3 employee will have the right to exchange shifts or trade time with any other qualified employee. The practice of  
4 exchanging shifts or trading time will be a voluntary program by the employees in order to permit an employee  
5 to absent himself, or herself, from work to attend purely personal pursuits. When an employee is absent from  
6 work under the exchange of shift policy, no other employee will be paid working out of classification or  
7 overtime pay as a result of the exchange.

8 Shift trades between personnel from different divisions, such as Suppression and the Fire Prevention Bureau  
9 require approval, in advance, by the Fire Chief.

10 D. Uniform Allowance

11 1. The uniform allowance for Fire Suppression and Day personnel shall be three hundred seventy five  
12 dollars (\$375.00) per year.

13 2. Changes in uniform style or requirement shall not be made during the terms of this agreement, unless  
14 mutually agreed upon by the **ASSOCIATION** and the Chief.

15 3. All working uniforms shall be of wash and wear variety with the approval of the Fire Chief.

16 4. Clothing allowance as set by this section shall be paid to the **ASSOCIATION** by August 1<sup>st</sup> of each  
17 year.

18 5. All newly confirmed firefighters will be provided, on a one-time basis, one Dress Uniform, one  
19 matching pair of pants and one "Class A" hat.

20 6. Every new association member will be provided wild land fire fighting boots as part of their initial  
21 protective gear ensemble.

22 7. The employee is responsible for any applicable taxes associated with the provision of the items above.

23 E. Physical Examinations

24 1. Fire Department personnel may elect to undergo an annual physical by the City physician at no cost  
25 to the employee. This physical examination will be conducted by the designated Fire Department

1 physician and scheduled by the employee. Physical examinations will be scheduled on the  
2 employee's day off.

3 2. The first physical after entrance exam shall include an electrocardiogram.

4 3. All personnel will receive a chest x-ray if determined to be needed by the physician contracted for  
5 service by the **EMPLOYER**.

6 4. An audiology test will be provided annually to uniform Fire Department personnel.

7 5. Employee must be able to physically and mentally perform the duties of the position. Any action taken  
8 by the **EMPLOYER** in connection with this provision, including termination shall be upon the  
9 recommendation of the City physician and the Fire Chief.

10 6. The employee shall be afforded a copy of his/her medical records upon request of the City's physician.  
11 The employee may obtain a second medical opinion at his/her own expense if the City's physician's  
12 report may affect his/her employment status. The employee reserves the right to select the physician  
13 furnishing the second opinion and shall be afforded a pre-termination hearing.

14 7. The Employer shall provide all **ASSOCIATION** members with vaccinations for Hepatitis B, and  
15 subsequent booster inoculations.

16 8. A prostate specific antigen exam will be provided annually to all uniformed Fire Department personnel  
17 over the age of 50, and at age 45 for all personnel with a family history of prostate cancer.

18 F. General Provisions

19 1. The Employer shall provide to employees on duty:

20 a. Initial badge and name plates as required by the Fire Chief.

21 b. Items to maintain stations, including necessary soap and towels for dormitories as required.

22 c. Furnish meals as necessary on a call-out of four (4) hours or more.

23 d. Kitchen facilities for preparing meals.

24 2. From the date of this contract forward, any new or replacement firefighting equipment and protective  
25 clothing as required by the National Fire Protective Association: 1500 will be supplied to firefighters  
on duty by the Employer.

1           3.       The Employer agrees that present parking facilities shall remain for the term of  
2                   this Agreement; and that employees, with the approval of the supervisor, may work on their personal  
3                   autos and other personal equipment during alarm time.

4    G.       Just Cause

5           1.       No employee shall be disciplined, suspended, or dismissed, except for justifiable cause.

6           2.       Disciplinary Procedures. The following disciplinary procedures shall be followed in all cases where  
7                   the seriousness of the infraction may warrant discharge, demotion, or suspension. These procedures  
8                   may be followed, at the discretion of the **EMPLOYER**, in other cases.

9           a.       Employees may be disciplined or discharged for just cause. For other than serious infractions,  
10                   discipline should be applied at progressive and escalating levels. The level or degree of  
11                   discipline imposed shall be appropriately based on the employee's prior record of service, the  
12                   severity of the offense, and the employee's prior record of discipline.

13          b.       Disciplinary actions or measures may include the following:

- 14                   (1)       Oral reprimand;
- 15                   (2)       Written reprimand;
- 16                   (3)       Suspension without pay;
- 17                   (4)       Demotion;
- 18                   (5)       Discharge.

19                   The provisions of this section shall not prevent the Employer from ordering other remedial  
20                   action.

21          c.       Prior to the imposition of suspension without pay, demotion, or discharge, the employee shall  
22                   be informed in writing of the charges against him/her, of the possible disciplinary actions that  
23                   may be taken, and of the time, date and place at which the employee will be given the  
24                   opportunity to respond to the charges. The hearing will be held no sooner than seven (7)  
25                   business days after the Notice of Intent to Take Disciplinary Action. The employee shall be

1 required to sign the written record of discipline as an acknowledgment that he/she has read the  
2 contents of the document.

3 d. The **EMPLOYER** may use administrative leave with pay pending the final decision as to  
4 imposition of discipline.

5 e. The employee and the employee's representative with the employee's written authorizations  
6 shall have the right to inspect the full contents of his/her personnel file. No written reprimand  
7 or other written record of imposition of any disciplinary action may be placed in an  
8 employee's personnel file unless both the employee and the **ASSOCIATION** have received  
9 written notice of the discipline. The employee shall be required to sign the written record of  
10 discipline as an acknowledgment that he/she has read the contents of the document.

11 f. An employee may request that written records of disciplinary action be removed from their  
12 personnel file after a period of four (4) years.

13 g. No employee shall be demoted except for just cause. Any employee who has been  
14 demoted will be eligible for promotion six (6) months from the date of demotion. Any  
15 demotion shall not cause any loss in departmental seniority.

16 H. Business by Union Representatives

17 1. The **EMPLOYER** agrees that accredited representatives of the International Association of Fire  
18 Fighters or the Montana State Council of Professional Fire Fighters shall have full and free access to  
19 the premises of the **EMPLOYER** at all times with the approval of the Chief. The Employer shall  
20 provide shift coverage for the Negotiating Team (the team shall consist of no more than 6  
21 members) to attend negotiation sessions, mediation, fact-finding meetings, ~~and~~ arbitration  
22 hearings, and Joint Labor Management Committee (JLMC) meetings.

23 2. The Employer shall provide two (2) hours during recruit training for a Union Representative to present  
24 a new member orientation with any new firefighter.

25 3. Coverage is for on-duty members only.

I. Job Posting Notification

1 The **EMPLOYER** agrees to post notice of all vacancies of positions normally assigned by the Fire  
2 Chief. A copy of the notification will be posted on all Department bulletin boards or published by  
3 distribution of Fire Department Informational Notices.

4 J. Promotional Priority Procedure

5 On or prior to February 1 of each year, the promotional priority schedule for all grades below Battalion  
6 Chief shall be posted. The promotional priority schedule shall be the Master Work Roster.

7 1. Promotion Requirements

8 For promotion to the grades listed below, candidates must meet the listed requirements for each grade.

9 **FIRE FIGHTER:** All new uniformed members of the Billings Fire Department who have  
10 satisfactorily completed their probationary period shall be classified as Fire Fighter.

11 **FIRE FIGHTER 1:** All Fire Fighters who have completed a minimum of 18 months of satisfactory  
12 service with the Billings Fire Department and have been departmentally certified as having completed  
13 the NFPA standards for Fire Fighter 1.

14 **FIRE FIGHTER 2:** All Fire Fighter 1's who have completed 30 months of satisfactory service with  
15 the Billings Fire Department and have been departmentally certified as having completed the NFPA  
16 standards for Fire Fighter 2.

17 **ENGINEER:** Fire Fighter 2's who have satisfactory service with the Billings Fire Department and  
18 successfully (70% minimum score) completed the written tests on the following IFSTA Manuals, plus  
19 a qualification evaluation tests consisting of a operating, pumping and driving practical testing  
20 administered and evaluated by the training officer or his/her designee and two other  
21 randomly selected members of the department. An Engineer Development Program (EDP) will  
22 become a policy establishing the Engineer qualification and will become a requirement for promotion.

23 a. Pumping Apparatus Driver/Operator

24 b. Aerial Apparatus Driver/Operator

25 **CAPTAIN:** Fire Fighter 2's or above rank who have satisfactory service with the Billings Fire  
Department and have passed the required IFSTA Manuals, the Officer's Qualification Test and

1 completed the Officer Development Program (ODP). The ODP course shall be offered to members on  
2 a seniority basis, starting with the most senior member each time the course is offered.

- 3 a. Building Construction
- 4 b. Company Officer

5 2. Promotion requirements for Battalion Chief, Training Officer, and Fire Marshal.

6 **BATTALION CHIEF:** The position of Battalion Chief shall be selected from personnel who have  
7 completed five (5) years satisfactory service with the Billings Fire Department and who are qualified  
8 for Captain.

9 **TRAINING OFFICER:** The position of Training Officer shall be selected from personnel who have  
10 completed five (5) years satisfactory service with the Billings Fire Department and who are qualified  
11 for Captain.

12 **FIRE MARSHAL:** Qualified for Captain with the Billings Fire Department, shall have had at least  
13 six (6) months of service in the Billings Fire Prevention Bureau and/or be ICC Fire Inspector II  
14 Certified selected by the Fire Chief from the list of three (3) candidates presented by the Promotional  
15 Board.

16 **DEPUTY CHIEF:** The position of Deputy Chief is not represented by the Association, however,  
17 Management and the Association agree that the person who is selected for the position shall be  
18 selected from the Association members who hold the rank of Battalion Chief, Captain, Training  
19 Officer or Fire Marshall and meets the minimum qualification per the job description.

20 3. Special Assignment

21 a. The positions of Assistant Fire Marshal and Deputy Fire Marshal shall be considered as an  
22 assignment by the Chief.

- 23 1. As vacancy occurs
- 24 2. A Deputy Fire Marshal is expected to serve in that position for a minimum term of  
25 two (2) years and until a vacancy occurs in Suppression Division which allows  
Suppression personnel of every rank, specifically Firefighter, Engineer, and Captain,

1 to apply for the Deputy Fire Marshal position. At that time, a DFM may submit a  
2 letter to the Fire Chief and Fire Marshal requesting reassignment. Upon submission,  
3 the Fire Chief, or his/her designee, shall have 10 business days to post a job position  
4 opening for the vacancy of Deputy Fire Marshal. The position opening shall be  
5 posted for a minimum of two (2) weeks. In the event the position remains unfilled,  
6 the position shall be posted for an additional two (2) weeks. In the event the position  
7 is still not filled, consortium candidates shall be considered to fill the DFM position.  
8 The current DFM may then return to suppression as per ARTICLE VI-HOURS OF  
9 WORK AND COMPENSATION, K., Deputy Fire Marshal Incentive Pay Plan.

- 10
- 11 b. Assistant Fire Marshal Eligibility Requirements: Qualified for Captain with the Billings Fire  
12 Department, and shall have had at least six (6) months of service in the Billings Fire  
13 Prevention Bureau and/or be ICC Fire Inspector II certified.

14 4. General Conditions

- 15 a. All promotions shall be made permanent upon satisfactory completion of a six (6) month  
16 probationary period. The Fire Chief has the right to extend the probationary period for up to  
17 an additional six (6) months. During the original probationary period, and any extension of  
18 that period, the Fire Chief has the right to demote an individual to their previous position  
19 under Article VIII, G. Just Cause, Disciplinary Procedure.
- 20 b. CAPTAINS: All candidates for Captain shall be evaluated by Battalion Chiefs. This  
21 information shall be used as part of the six (6) month probationary evaluation.
- 22 c. All promotions through Fire Fighter 2 shall be made as soon as the individual fulfills all  
23 qualifications. All other promotions shall be made expeditiously and as soon as possible after  
24 a vacancy occurs. Satisfactory service shall be based upon the last year's performance  
25 evaluations and the individual's personnel file.
- d. Failure to attain Fire Fighter 2 prior thirty six (36) months of employment shall

1 be grounds for disciplinary action.

2 e. In the event that more promotions are needed than can be made under the provisions of this  
3 procedure, selected requirements may be waived subject to the agreement between the  
4 representative of Local 521 and the representative of the City.

5 f. Courses of instruction and materials containing the necessary information shall be provided to  
6 all personnel during work assignment periods, prior to giving tests used to determine  
7 eligibility for placement on the promotional priority schedule.

8 g. Engineers shall drive and operate engines. Only qualified personnel shall drive and operate  
9 water tenders and brush rigs. Qualified Captains shall be in charge of and may operate the  
10 aerial equipment in the absence of a qualified engineer. The Captain is in charge of company  
11 operations.

12  
13 5. Qualification Evaluation

14 Selection for inclusion on the promotional list for Engineer and Captain shall be determined from  
15 those qualifications as follows:

16 a. Candidates will be tested for placement on the promotional priority schedule three (3) times a  
17 year. The promotional test will be designed by a mutually agreed upon independent agency.

18 b. Attaining a passing score on given tests shall be considered as qualifying the individual for  
19 placement on the promotional priority schedule. This score shall be determined by the  
20 developing agency and subject to adjustment through joint negotiation between the City of  
21 Billings, Montana, and Local 521 of the International Association of Fire Fighters. All  
22 Captain promotional tests shall be based on questions from the following material:

- 23 1. Fire Marshals Office Handbook for Captain
- 24 2. Rules and Regulations
- 25 3. City and Fire Department Policies
4. Protocols developed by the Billings Fire Department:

- 1 a) Incident Command
- 2 b) Hazardous Materials
- 3 c) EMS
- 4 d) Airport
- 5 e) Exposure Control
- 6 f) Confined Space
- 7 g) Rope Rescue
- 8 h) Fire Investigation
- 9 i) High Rise
- 10 j) Structure Fire Fighting
- 11 k) Wild Land

12 5. The manuals and new protocols may be changed by mutual consent between the  
13 Fire Chief and the **ASSOCIATION**.

14 c. Personnel receiving a passing score of 70% or better on all promotional examinations for  
15 engineer and company officer will be retained on the promotional list.

16 d. The promotional priority schedule shall list passing personnel in order of seniority. (The man  
17 with the most seniority first, the man with next most seniority second, etc.), except in cases of  
18 demotion. Any employee who was promoted and subsequently demoted during their  
19 probationary period must wait six (6) months from the date of demotion before they may  
20 again be promoted. All promotions for Engineer, and Captain shall be made in accordance  
21 with this list.

22 e. **BATTALION CHIEFS AND TRAINING OFFICER:** All candidates shall be evaluated by a  
23 promotional board consisting of three (3) members appointed by the Fire Chief and three (3)  
24 members appointed by the **ASSOCIATION**. This board will develop a list of no more than  
25 three (3) candidates. The Fire Chief must select the Battalion Chiefs and Training Officer  
from the list of three (3) candidates presented by the Promotional Board. If the promotional

1 board is unable to develop a list of no less than three (3) candidates, then the position will be  
2 advertised again for a minimum of two (2) weeks. If after two (2) weeks the promotional  
3 board is still unable to develop a list of no less than three (3) candidates, the Chief shall have  
4 the right to promote a qualified member of the Billings Fire Department that meets all the  
5 requirements for that position.

6 f. FIRE MARSHAL: All candidates for Fire Marshal shall be evaluated by a promotional board  
7 consisting of three (3) members appointed by the City (excluding the Fire Chief) and three  
8 (3) members appointed by the **ASSOCIATION**. This board will develop a list of three (3)  
9 candidates. The Fire Chief must select the Fire Marshal from the list of three (3) candidates  
10 presented by the Promotional Board.

11 6. Grandfather Provision.

12 Changes in the promotional priority procedure shall not affect the qualification requirement for those  
13 who have been promoted or who have completed the requirements for the next promotion or grade  
14 prior to the approval of this contract.

15  
16 K. Forfeiture of Vehicle and Maintenance Work

17 1. Members of IAFF Local 521 shall no longer perform maintenance or repair of any Fire Department  
18 vehicles or equipment while on duty. This shall include but is not limited to; Fire Department  
19 apparatus, fleet vehicles, small engines, mobile radios, emergency lighting and electrical systems,  
20 apparatus buildup, retrofit or fabrication of new or existing apparatus and equipment, lubrication and  
21 maintenance of aerial devices, annual pump testing, station generators and compressors.

22 2. Local 521 agrees to perform daily, weekly and monthly apparatus checks consistent with current  
23 check sheets as of this date excluding the lubrication of aerial apparatus waterway and ladder.

24 L. Random Drug/Alcohol and Reasonable Suspicion Policy

25 1. The Employer and the Union agree to promote the health, safety, and welfare of its employees and the  
community by maintaining an alcohol and drug-free workplace. The Employer will conduct random

1 drug and alcohol testing of all firefighters of the Billings Fire Department in accordance with the  
2 Workforce Drug and Alcohol Testing Act of the Montana Code Annotated and the written policies  
3 issued by the Employer.

4 M. Voluntary Physical Fitness Program

5 Voluntary Physical Fitness Program: The purpose of this program is to promote physical fitness, and those  
6 wishing to participate in the physical fitness testing can do so voluntarily. Effective January 1, 2014, the  
7 Billings Fire Department will offer the Cooper Institute Test with the standards established by the Cooper  
8 Institute. The most recent age and gender bias standards available will be applied. Participants must have a  
9 minimum score of 70% in each of the following categories: push-ups, sit-ups, sit and reach, and either the mile  
10 and one half run (Airdyne test with approval) or 300 meter run. The test will be administered in the spring and  
11 in the fall as scheduling and equipment permit. A one-time payment will be awarded annually according to the  
12 following scale to each participant based on his/her overall score:

13 85% or Higher \$300.00

14 80-84% \$200.00

15 70-79% \$100

16 This is contingent that the existing contract language remains and that there are no amendments to Article VII,  
17 B.(1)(a) and that Section be removed from the May 28, 2013 TA.

18  
19 **ARTICLE IX - ASSOCIATION MANAGEMENT COMMITTEES**

20 A. Joint Labor Management Committee

21 There shall be a Joint Labor Management Committee that will use the Interest-Based problem-solving process  
22 trained by a Montana Board of Personnel agent. If facilitation is needed, then the request will be made to the  
23 Montana Board of Personnel Appeals. Recommendations will be made by consensus. If parties are unable to  
24 reach consensus, then the issue shall exit the Committee and each party will have the same rights and or  
25 obligations related to the issue that each had prior to the issue being submitted to the Committee.

B. Promotion Committee

1 The **EMPLOYER** and **ASSOCIATION** agree that its designated representatives shall meet to discuss the  
2 promotional priority procedure. Such meetings shall provide the parties a forum to explore new concepts that  
3 may enhance the current promotional priority procedures. The discussions of the committee shall not be  
4 binding on either party, and shall not commit the **EMPLOYER** or **ASSOCIATION** to any specific proposal  
5 should the parties mutually agree to bargain collectively concerning the promotional priority procedure in the  
6 future.

7 C. Officer Development Program Committee

8 There shall be an Officer Development Program (ODP) Committee composed of the following positions or  
9 their designees: Fire Chief, Assistant Fire Chief, Training Officer, Battalion Chief and Fire Marshal. The  
10 Committee is directed to study, formulate, substantiate, recommend and oversee the training/educational  
11 program for the Officer Development Program. Decisions made by the committee shall be by consensus.  
12 If parties are unable to reach consensus, then the matter shall exit the Committee and each party will retain  
13 its initial rights and/or obligations related to the matter.

14  
15 **ARTICLE X - CITY SECURITY**

16 The **ASSOCIATION** agrees to the essential nature of service provided by its members in protecting the public safety.  
17 In recognition of this fact, the **ASSOCIATION** agrees that there shall be no work interruptions, slowdowns, or strikes at  
18 any time during this Agreement. In the event of unauthorized interruptions, the **ASSOCIATION** agrees it will join the  
19 **EMPLOYER** in requiring it members to return to work immediately. The **EMPLOYER** agrees that there shall be no  
20 lockout of employees during the life of this agreement.

21  
22 **ARTICLE XI - TERMS OF AGREEMENT AND NEGOTIATIONS**

23 This Agreement shall become effective on the 1st day of July 2013 and continue in full force and effect through the 30th  
24 day of June 2016. Either party may open any portion or all of the contract for negotiation of the next contract by giving  
25 the other party notices of its desire to modify the Agreement on or prior to April 1, 2016. Such notification shall include  
the desired modification(s) in order for the party to review such proposed changes prior to the first negotiation session.

1 Existing wages, hours, and other conditions of employment arising out of this Agreement shall not be changed by the  
2 action of either party without the consent of the other during the negotiation, mediation, fact-finding, or arbitration of the  
3 next contract. Any additional cost of maintaining the items listed in this paragraph, after the expiration of this  
4 Agreement, shall be figured in the financial settlement of the next Agreement.

5 The parties may mutually agree to engage in collective bargaining with respect to a particular subject or matter covered  
6 or not covered in this Agreement.

7 If any provision of this Agreement is declared invalid by any court, only that provision declared invalid shall be affected  
8 and all other provisions shall remain in full force and effect. Any ordinance enacted during the term of this Agreement  
9 shall not abridge, abrogate, or alter any of the terms of this Agreement.

10 The parties acknowledge that during the negotiations that resulted in this Agreement, each had the unlimited  
11 right and opportunity to make demands and proposals with respect to any subject or matter not removed by law  
12 from the areas of collective bargaining, and that all the understandings and Agreements arrived at by the parties  
13 after their exercise of that right and opportunity are set forth in this Agreement. Therefore, Employer and  
14 Union, for the life of this Agreement, each voluntarily and unqualifiedly waives the right and releases the other  
15 from the obligation to bargain collectively with respect to any subject or matter referred to or covered in this  
16 Agreement, or with respect to any subject or matter not specifically referred to or covered in this Agreement,  
17 even though such subject or matter may not have been within the knowledge or contemplation of either or both  
18 parties at the time they negotiated or signed this Agreement.

19

20 IN WITNESS WHEREOF, the parties hereto, acting by and through their respective and duly authorized officers and  
21 representatives, have hereto set their hands and seals on this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

22

**THE CITY OF BILLINGS**

**LOCAL 521 INTERNATIONAL ASSOCIATION  
OF FIRE FIGHTERS**

23

24

\_\_\_\_\_  
THOMAS W. HANEL, MAYOR

\_\_\_\_\_  
DAN COTRELL, PRESIDENT

25

\_\_\_\_\_  
CITY CLERK

\_\_\_\_\_  
KEVIN BENTZ, SECRETARY

**CITY ADMINISTRATIVE REVIEW:**

**NEGOTIATION COMMITTEE MEMBERS:**

CHRISTINA F. VOLEK  
CITY ADMINISTRATOR

MIKE MARTIN  
MEMBER, NEGOTIATING COMMITTEE

ROBERT GOLUBSKI  
MEMBER, NEGOTIATING COMMITTEE

GEORGE RICHARDS  
MEMBER, NEGOTIATING COMMITTEE

STEVEN NUGENT  
MEMBER, NEGOTIATING COMMITTEE

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Pay Matrix - Billings Fire Department				Effective: 7/1/2013	
July 1, 2013 - June 30, 2015					
2272 + 119.86 Holiday hrs = 2392 – Suppression Personnel [2.9%] – 2080 hrs – Day Personnel (2.9%)					
GRADE	TITLE	STEP	2012 - 2013 BASE SALARY	2013 - 2014 BASE SALARY	2014 - 2015 BASE SALARY
Suppression Shift Personnel					
177	FIREFIGHTER [6mos]	D	19.54	20.08	20.66

1	177	FIREFIGHTER I [18mos]	E	20.47	21.07	21.68
	177	FIREFIGHTER II [30mos]	F	21.46	22.09	22.73
2	177	FIREFIGHTER II [42mos]	G	22.55	23.20	23.88
				-		
3	187	ENGINEER	G	24.86	25.58	26.32
				-		
4	203	CAPTAIN	F	27.77	28.58	29.40
			G	29.16	30.01	30.88
5				-		
6	218	BATTALION CHIEF	D	29.15	30.00	30.87
			E	30.61	31.50	32.41
7			F	32.24	33.18	34.14
			G	33.81	34.80	35.80
8				-		
	DAY PERSONNEL			-		
9	213 [G13]	DEPUTY FIRE MARSHAL	B	25.90	26.66	27.43
			C	28.34	29.16	30.01
10			D	29.73	30.59	31.48
			E	31.23	32.14	33.07
11			F	32.79	33.74	34.72
			G	34.41	35.40	36.43
12				-		
13	217 [G17]	Asst. Fire Marshal	E	32.47	33.42	34.39
			F	34.10	35.09	36.11
14			G	35.80	36.84	37.90
				-		
15	218 [G18]	TRAINING OFFICER	C	29.77	30.64	31.53
			D	31.25	32.16	33.09
16			E	32.81	33.76	34.74
			F	34.47	35.47	36.50
17			G	36.17	37.22	38.29
				-		
18	228 [G28]	FIRE MARSHAL	C	32.85	33.81	34.79
			D	34.50	35.50	36.53
19			E	36.23	37.28	38.36
			F	38.03	39.14	40.27
20			G	39.92	41.08	42.27

21

22 Special Certification Pay

23 Any member of the Billings Fire Department holding a certificate in any of the following areas shall receive an additional \$50.00 per month certification with a maximum of (3) paid certifications

24 Cert 1 = \$25 Additional Pay \$25 x 24 payperiods annually = \$600

25 Cert 2 = \$50 Additional Pay \$50 x 24 payperiods annually = \$1200

Cert 3 = \$75 Additional Pay \$75 x 24 payperiods annually = \$1800

Longevity 1-14 years	12.09766	per month	
	145.17235	Annual	5.5836 per pay period (26 per year)

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Longevity 15 + years	15.024558	per month	
	180.29469	Annual	6.9344 per pay period (26 per year)

			-		
218 [G18]	MASTER MECHANIC - REMOVED FROM FIRE DEPT	C	29.77	30.64	31.53
		D	31.25	32.16	33.09
		E	32.81	33.76	34.74
		F	34.47	35.47	36.50
		G	36.17	37.22	38.29

**EXHIBIT "B"**  
**HIGHER CLASSIFICATION PAY**

Hi-C pay adjustments landing between steps to be paid to next higher step.

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1 **MEMORANDUM OF UNDERSTANDING**

2  
3 The City of Billings and Local 521 International Association of Firefighters do enter into a MEMORANDUM OF  
4 UNDERSTANDING as outlined hereto:

5  
6 **OPTIONAL WORK SCHEDULE FOR UNIFORMED DAY PERSONNEL**

7  
8 Uniformed Day Personnel assigned to work normal (8) hour duty period; (40) hour workweek may be offered optional  
9 work hours as follows:

- 10  
11 1. The workday shall be a maximum (10) ten-hour duty period.  
12 2. Each Bureau personnel shall work a ten-hour, four-day workweek.  
13 3. Each Bureau personnel would be given a number, i.e. 1,2,3,4,5. This number will serve as a mechanism for  
14 determining when the individual Bureau person would be on his day off.

15 The day of the week when the Bureau person would be off will change each week.  
16

17 This MEMORANDUM OF UNDERSTANDING expires upon thirty (30) days notice from either party unless both  
18 parties mutually agree to dissolve or extend the MEMORANDUM by action of the Labor Relations Committee.  
19

20 \_\_\_\_\_  
21 CITY OF BILLINGS

INTERNATIONAL ASSOCIATION

22 OF FIRE FIGHTERS - LOCAL 521

23  
24 \_\_\_\_\_  
25 DATE

\_\_\_\_\_ DATE

**IAFF - LOCAL 521 RANDOM DRUG/ALCOHOL AND  
REASONABLE SUSPICION POLICY**

**PURPOSE:**

The purpose of this policy is to provide an alcohol and drug-free workplace for the protection and well being of the City of Billings, its employees, and the public it serves along with City property, equipment, and operations. Employees (IAFF – Local 521) are expected to report to work alcohol and drug free in order to enable safe and efficient job performance. Employees, while on-the-job, while on department premises, or in the scope and course of employment are expected to engage in activities which are appropriate for the work environment and do not compromise the City’s integrity or interest in maintaining a safe, secure, and alcohol and drug free workplace.

**POLICY:**

The City of Billings is committed to protecting the safety, health, and well being of all employees and the individuals with whom the employees come into contact. Therefore, the City establishes an alcohol and drug-free workplace program that balances our respect for individuals with the need to maintain an alcohol and drug-free environment.

If there are employees who have drug or alcohol problems, the City encourages affected employees to seek help through the Employee Assistance Program (EAP) and the benefits available through the City’s medical plan. The City will not terminate employment, discipline, or discriminate against an employee solely because an employee voluntarily seeks treatment for an alcohol or substance abuse problem by following the City’s controlled substance safe-harbor procedures prior to any drug or alcohol related occurrence, including testing notification.

The unlawful manufacture, distribution, possession, sale, transfer, or use of illegal drugs; or illegal use of a legally obtainable drug or substance; or impairment by over the counter drugs or misuse of alcohol is strictly prohibited. Illegal possession of drug paraphernalia is prohibited. As a condition of employment, all employees must abide by this prohibition while in any employment capacity with the City, and while on City property, in any City vehicle, or at any City office or facility. All employees are expected to be at work without being under the influence of drugs and/or alcohol, including controlled substances, in order to enable safe and efficient job performance.

Violation of this policy will result in the discipline set out in the attached procedures.

The provisions of the Workforce Drug and Alcohol Testing Act, Sections 39-2-205 through 39-2-211, MCA, provide the basis for this policy.

**DEFINITIONS:**

For the purposes of this policy.

**Alcohol** – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called ethanol; or the hydrated oxide of ethyl.

**Controlled Substance(s)** – means any drug, substance, or precursor included in Schedules I through V as defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code Annotated (for example, but not limited to: cocaine, marijuana, medical marijuana, and methamphetamine) For the purpose of this policy, the term ‘controlled substance’ does not include the use of prescribed drugs, which have been legally obtained and are being used in the manner and for the purpose for which they were prescribed. The term does not include distilled spirits, wine, malt beverages, or tobacco. It does include medical marijuana.

**Illegally Used Drugs / Illegal use of drugs** – means:

- 1 a. any prescribed drug which is legally obtainable but has not been legally obtained or is not being  
used for prescribed purposes or in the prescribed manner;
- 2 b. any other over-the-counter or non-drug substances (for example, but not limited to: airplane  
glue) being used for other than their intended purpose.

3 **EMPLOYEES SUBJECT TO THIS POLICY**

- 4 A. All IAFF – Local 521 full-time and the probationary firefighters of the City of Billings.
- 5 B. Prospective job applicants are subject to pre-employment testing prior to confirmation.

6 **ROLES AND RESPONSIBILITIES:**

7 A. Employees are prohibited from:

- 8 • Using, consuming, distributing, or possessing alcoholic beverages or illegal drugs while on  
duty or reporting for duty while under the influence of alcoholic beverages or illegal drugs.
- 9 • Use of, consumption of, distribution of, or possession of alcoholic beverages and illegal  
drugs by employees are prohibited in City worksites at all times whether on duty or off duty.  
10 The term “worksite” includes City vehicles and private vehicles while being used by  
employees in the performance of their duties.
- 11 • Use, distribution, dispensation, possession, manufacture, or sale of (illegal drugs) while off  
duty which adversely affects the employee’s work performance, the safety of the employee  
12 or others at work, or a criminal drug related arrest that results in a conviction . This includes  
reporting to duty while under the influence of illegal drugs.
- 13 • Use of alcohol off duty that adversely affects the employee’s work performance, the safety  
of the employee or others at work, or a criminal arrest that results in an alcohol related  
14 conviction. This includes reporting to duty while under the influence of alcohol.

15 B. Employees are expected to notify Human Resources of any drug or alcohol criminal conviction  
no later than five (5) calendar days after conviction.

16 C. Station Captains are required to:

- 17 1. attend training sessions on alcohol misuse, controlled substance misuse, and the illegal  
use of drugs in the workplace when offered;
- 18 2. report anything that could create Reasonable Suspicion to the Division Heads and Fire  
Administration;
- 19 3. ensure confidentiality of all information regarding employee testing, disciplinary action and  
20 rehabilitation

21 D. Division Heads in addition to Part C are required to initiate an alcohol/drug test as described in this  
policy when Reasonable Suspicion is confirmed.

22 E. Fire Administration in addition to Part C and D are required to:

- 23 1. refer employees to the City’s designated Substance Abuse Professional (SAP) under  
appropriate conditions for assistance in obtaining counseling and rehabilitation upon a  
24 finding of alcohol abuse, use of controlled substances or illegal use of legal drugs;
- 25 2. initiate appropriate disciplinary action upon a finding of alcohol use, controlled substance  
use, and/or the illegal use of legal drugs;
3. in conjunction with Human Resources, assist the SAP Administrator in evaluating  
employee performance and/or personnel problems that may be related to alcohol misuse,

use of controlled substances or the illegal use of legal drugs.

F. Human Resources is required to:

1. direct and implement this program to ensure it is administered consistently;
2. consult with Department Head or designee in determining appropriate action for situations related to this program; and
3. ensure that all records and information of personnel actions taken against employees with verified positive test results remain confidential and only shared with individuals having a legal right to access.

#### **AUTHORITY TO IMPLEMENT PROCEDURES**

The City Administrator is authorized to develop and maintain procedures to enact this policy.

#### **PERIODIC REVIEW**

This policy will be reviewed by the City Council with each proposed new IAFF – Local 521 Collective Bargaining Agreement.

1 **PROCEDURES**

2 **Based on the Alcohol and Drug-Free Workplace Policy adopted by the City Council on**

3 \_\_\_\_\_, **the following procedures are hereby adopted by Administrative Order \_\_\_\_\_.**

4 **Changes to the policy or procedures that affect IAFF - Local 521 employees will be bargained with that**  
5 **organization.**

6  
7 **I. EMPLOYEE ASSISTANCE PROGRAM**

8 A. Any employee needing help in dealing with drug or alcohol problems is encouraged to use the  
9 City’s Employee Assistance Program (EAP) and the benefits available through the City’s medical  
10 plan. Additional information regarding the City’s EAP available in Human Resource’s Policy  
11 Manual-Employee Assistance Program Policy. Employees who have questions or need more  
12 detailed information should contact Human Resources. The City EAP plays an important role in  
13 preventing and resolving problem alcohol and drug use by:

- 12 1. Providing confidential counseling and assistance to employees and their qualifying family  
13 members who self-refer for treatment or whose tests have been verified positive and  
14 monitoring the employee’s progress through treatment and rehabilitation;
- 15 2. Providing educational materials and training to employees on alcohol & drug use issues;
- 16 3. Ensuring the confidentiality of test results and related medical treatment and rehabilitation  
17 records, which they maintain.

16 B. The EAP will not be involved in the collection of test samples or the initial reporting of test results.  
17 The City’s designated testing professional will be responsible for such testing.

18 **II. SAFE HARBOR REFERRAL**

19 A. A fundamental purpose of the City’s Alcohol and Drug-Free Workplace Policy and Procedures is  
20 to assist employees who themselves are seeking treatment for alcohol or controlled substance use  
21 or misuse of prescription drugs. For this reason, the City will not initiate disciplinary action  
22 against any employee regarding the disclosure of his or her drug or alcohol related problem when  
23 the employee meets all three of the following conditions:

- 22 1. Voluntarily identifies him/herself to Human Resources as an abuser of alcohol and/or  
23 illegal drugs and/or as someone who misuses prescription drugs, as they apply to this  
24 policy, prior to being identified through other means, such as reasonable suspicion, or  
25 prior to being asked to provide a urine and/or breath sample for testing;
- 24 2. Obtains evaluation, counseling or rehabilitation from an approved facility; and
- 25 3. Thereafter refrains from using controlled substances or misusing prescription drugs and/or  
alcohol. The employee may be subject to a return-to-duty agreement as determined by the  
SAP.

B. This provision is not intended to allow an employee to evade disciplinary action. The key to this  
provision’s rehabilitative effectiveness is an employee’s willingness to admit his/her problem.

1 Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit  
2 the problem, this provision is not available to an employee who requests protection under this  
3 provision after:

- 4 1. Being identified through other means; or
  - 5 2. Being asked to provide a urine sample for testing; or
  - 6 3. Having a verified positive test result for alcohol and/or controlled substances pursuant to  
7 this policy.
- 8 C. Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe  
9 Harbor are not covered by Safe Harbor protections.

### 10 **III. ALCOHOL, CONTROLLED SUBSTANCE AND/OR DRUG MISUSE**

11 These prohibitions apply while an employee is on duty in City-owned facilities, any City-owned  
12 property; any City owned or rented vehicle and any City approved activity

- 13 A. Employees are prohibited from consuming alcohol or controlled substances or engaging in the  
14 illegal use of drugs while on duty, during a scheduled portion of an approved activity such as  
15 training, or while on standby.
- 16 B. Employees are prohibited from reporting to work or to a scheduled portion of a City approved  
17 work-related activity under the influence of alcohol or drugs.
- 18 C. Employees are prohibited from reporting to work or to a City approved activity exhibiting signs  
19 of having consumed alcohol (such as the odor of alcoholic beverage on the breath) or controlled  
20 substances, or of engaging in the illegal use of drugs.
- 21 D. This policy includes unanticipated call-out situations. If an employee cannot meet the  
22 requirements of call-out, it is his or her responsibility to tell a supervisor or person initiating the  
23 request to return to work that he/she cannot report to work. He/she shall suffer no reprisals for  
24 doing so.
- 25 E. Alcohol is a legal substance for those ages 21 or older. Therefore, it is not the intention of this  
policy to prohibit employees from consuming alcohol when not on duty in paid status and the  
employee's performance of duties has concluded for the day. However, employees are expected  
to use good judgment and behave in a professional and respectable manner while attending events  
that are connected to their job duties.
- F. Misuse of drugs/and or alcohol as set out in the attached policy and these procedures or  
performing any duties under the influence of drugs and/or alcohol is a violation of this policy  
and will result in disciplinary action as set forth herein.
- G. The unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is  
prohibited.
- H. The illegal use of a legally obtainable drug or substance is prohibited.
- I. Use and possession of legally obtained prescription drugs when taken as prescribed and over-  
the-counter drugs is not prohibited by this part subject to the following:
  1. Employees who must use a prescription drug or over-the-counter medication that causes  
adverse side effects (e.g. drowsiness, impaired reflexes or reaction time) or may affect  
ability to perform work in a safe and productive manner must notify his or her supervisor  
prior to starting work or operating City equipment.
  2. A Division Head or Fire Administration, under reasonable suspicion, may relieve an  
employee from duty if it is determined that a medication is causing impairment to an

employee's ability to perform the functions of his or her job. The employee will be required to utilize his/her accrued sick or leave time until such time that the employee is no longer impaired by the medication. If the employee runs out of leave time he/she will then be placed in an unpaid leave status.

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1 **IV. TYPES OF TESTING**

2 **A. Reasonable Suspicion Testing**

- 3 1. All employees will be tested for alcohol and/or controlled substances when there is  
4 reasonable suspicion of on-duty use or impairment. Reasonable suspicion testing may be  
5 based on, but not limited to:
- 6 a. observable phenomena, including but not limited to direct observation of drug or  
7 alcohol use or possession and/or the physical symptoms of being under the influence  
8 of a drug or alcohol such as the odor of an alcoholic beverage on the breath;
  - 9 b. a pattern of abnormal conduct or erratic behavior;
  - 10 c. conviction for a drug or alcohol-related offense. An employee will be tested only  
11 once for this conviction upon return to work.
  - 12 d. evidence that the employee has tampered with a previous alcohol or drug test.
- 13 2. Although reasonable suspicion testing does not require certainty, mere hunches alone are  
14 not sufficient to meet the standard for a test.
- 15 3. If an employee is suspected of using or being impaired by alcohol, controlled substances  
16 or illegal drugs in violation of this policy, the appropriate Division Head will gather all  
17 information, facts, and circumstances leading to and supporting this suspicion. The  
18 division head will contact Fire Administration, Human Resources or other City  
19 Administration to come to the workplace for concurrence and a decision to test the  
20 individual..
- 21 4. The employee shall remain on duty, but shall not be allowed to operate a vehicle or  
22 perform job functions until the circumstances are evaluated.
- 23 5. Employees who are subject to reasonable suspicion testing shall  
24 be transported to and from the collection facility identified by the City as an appropriate  
25 collection site depending on day and time testing is needed.
- 26 6. Testing will be conducted in compliance with the selected collection site's protocols.
- 27 7. The employee's Division Head will, within 48 hours, prepare and forward to Human  
28 Resources a written report on a Reasonable Suspicion Incident Record (attached),  
29 detailing the circumstances that formed the basis to warrant the testing, This report  
30 should include the appropriate date(s) and time(s) of reported alcohol or drug-related  
31 incident(s) during the shift, reliable/credible sources of information, rationale leading to  
32 the test and the action taken. All documentation related to the determination also shall  
33 be forwarded to Human Resources.

34 **B. Post-Incident Testing**

- 35 1. Employees involved in critical incidents, on-the-job accidents, or who engage in unsafe on-  
36 duty job-related activities that pose a danger to themselves or others or the overall  
37 operation of the City shall be subject to testing. If the employee's act, or failure to act,  
38 results in:
- 39 a. Death; or
  - 40 b. Personal injury requiring immediate emergency room or urgent care center  
41 treatment; or
  - 42 c. Damage to government or private property estimated in excess of \$1,500; or
  - 43 d. At the request of the employee.

- 1 2. An employee subject to post-incident testing shall remain immediately available for up to  
2 two (2) hours for transportation to and from such testing, or the City may consider the  
3 employee to have refused to submit to testing.
- 4 a. If there were extenuating circumstances that kept the employee from submitting to a  
5 test within 2 hours after the incident, Human Resources shall evaluate those  
6 circumstances and make the final determination as to whether or not it will be  
7 deemed a refusal.
- 8 b. An employee subject to post-incident testing shall not consume alcohol or drugs,  
9 either legal or illegal, prior to the testing. Exceptions may be made for previously  
10 prescribed maintenance medications and/or medications administered to treat any  
11 personal injury.
- 12 3. If a test under this provision is not administered within two (2)  
13 hours of the occurrence, the supervisor shall document the reason(s) why it was not  
14 promptly administered. If more than eight (8) hours pass, then no alcohol test will be  
15 administered. If more than thirty-two (32) hours pass, no drug test shall be administered.  
16 If either test is not completed, Human Resources shall document the reason(s) why.

17 C. Random Testing

- 18 1. Random testing for alcohol and/or controlled substances will be conducted on all  
19 employees before, during or after their scheduled shift.
- 20 2. Random tests will be unannounced and will occur throughout the calendar year.
- 21 3. The random selectees will be notified by their supervisor using a lottery system conducted  
22 by an outside agency. The Random, Reasonable Suspicion and Post-Incident testing will  
23 be conducted by the same agency if possible. To ensure that all employees who have been  
24 designated for testing have an equal chance of being randomly tested, a scientifically valid  
25 random process is used.
- 26 a. The annual number of random alcohol tests will be no more than ten percent (10%) of  
27 the average number of employees subject to random testing.
- 28 b. The annual number of random drug tests will be no more than twenty-five percent  
29 (25%) of the average number of employees subject to random testing.
- 30 4. Human Resources will notify the employee's supervisor or designee and provide the name  
31 of the individual selected for random testing. The employee shall not be given advance  
32 notice of the scheduled testing. Upon notification by the supervisor, employees shall  
33 proceed immediately to the testing site.

34 D. Substances Tested For During Reasonable Suspicion, Post-Incident and Random Testing

- 35 1. The City will test for the following substances:
- 36 (a) Alcohol;  
37 (b) Marijuana;  
38 (c) Cocaine;  
39 (d) Amphetamines;  
40 (e) Opiates; and  
41 (f) Phencyclidine (PCP).
- 42 2. The following cutoff concentration shall be applicable to determine whether specimens  
43 are negative or positive for the following drugs or classes of drugs utilizing the initial test  
44 procedure. The cutoff levels used by the Department's DHHS certified lab may change,  
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and if so, those changes will be published in the Code of Federal Regulations and Federal Register and shall take precedence over the levels listed herein. All cutoff concentrations are expressed in nanograms per milliliter (ng/mL).

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Type of drug or metabolite	Initial test	Confirmation test
(1) Marijuana metabolites (i) Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC)	50	15
(2) Cocaine metabolites (Benzoylecgonine)	150	100
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	500	250
(i) Amphetamine	500	250
(ii) Methamphetamine <sup>1</sup>		250
(5) Opiate metabolites	2000	
(i) Codeine		2000
(ii) Morphine		2000
(iii) 6-acetylmorphine (6-AM) <sup>2</sup>		10
(iv) MDMA <sup>6</sup>	500	250

<sup>1</sup> Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.

<sup>2</sup> Test for 6-AM in the specimen. This test conducted only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.

<sup>6</sup> Methylenedioxymethamphetamine (MDMA).

7. Employees should be aware that use of hemp oil products will not be an acceptable defense for a positive Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC) test.

8. Alcohol shall be confirmed positive if both the initial and confirmation tests reveal a breath alcohol content of greater than .04 grams of alcohol per 210 liters of breath or higher. If the initial and confirmation test is above .02 but .04 or below, the employee will not be allowed to perform safety-sensitive functions until the start of his or her next regularly scheduled duty period, but not less than eight (8) hours following administration of the test.

#### E. Return to Duty and Follow-up Testing

1. After a verified positive test result for drugs and/or alcohol, employees must have a negative test result before returning to work.
2. All employees referred through administrative channels that undergo counseling or rehabilitation program will be subject to unannounced drug and/or alcohol testing for a period of one year following completion of such a program.
  - a. Such employees shall be tested at the frequency recommended by the SAP.
  - b. Return to duty testing is distinct from testing which may be imposed as a component of a rehabilitation program.
3. Confirmation of and continuing participation in a rehabilitation program, as recommended by SAP, is required of an employee returning to duty.

- 1 4. In some instances, SAP may require completion of a program prior to returning to duty.
- 2 5. The SAP will notify Human Resources when an employee has completed a rehabilitation  
3 program.
- 4 6. After an employee returns to work during or following a rehabilitation program, a single  
5 positive test result for alcohol or a controlled substance or the illegal use of a legal drug or  
6 failure to successfully complete the recommended rehabilitation program will result in  
7 referral to Human Resources, and the penalty for any conduct described in this part shall  
8 be termination of employment.

## 9 **V. TEST PROCEDURES**

10 A. Drug testing will be done by the split sample method. Testing services shall be provided by a  
11 designated contractor at a designated collection site with collection personnel trained in accordance  
12 with U.S. Department of Health and Human Services (DHHS) standards and analyzed by an  
13 independent DHHS certified lab. The personnel involved in testing and processing results are not  
14 employees of the City.

15 B. Employees subject to testing shall comply with all requirements of the testing process and  
16 personnel. Employees will complete all requirements of initial and follow-up tests. Failure to do so  
17 will result in termination of employment.

### 18 C. Procedures for Alcohol Testing

19 1. All alcohol tests will be by breath testing only.

20 2. Upon arrival at the collection site, the employee will show photo identification.  
21 Acceptable identification includes an actual Montana driver's license or department ID.

22 3. Initial breath alcohol testing.

23 a. Initial breath alcohol testing is performed by a Breath Alcohol Technician (BAT) who  
24 is employed by the collection facility and who is trained in the operation of an  
25 evidential breath testing device (EBT) as approved by the National Highway Traffic  
26 Safety Administration (NHTSA).

27 b. The employee will receive instructions such as 'blow with a strong  
28 continuous breath until advised to stop.'

29 c. If the result of the initial breath test is an alcohol concentration of .02 or greater, a  
30 confirmatory test shall be conducted.

#### 31 4. Confirmation or verification alcohol breath testing

32 a. Confirmation/verification tests shall only be conducted by a Breath Alcohol  
33 Technician who is employed by the collection facility.

34 b. The confirmatory test may be conducted on the same EBT as the initial test.

35 c. Before the confirmatory test is given, the employee shall be observed for 20 minutes  
36 prior to testing and shall be instructed not to eat, drink, or place anything in his/her  
37 mouth until the conclusion of the breath test.

38 d. The employee will receive instructions such as 'blow with a strong continuous breath  
39 until advised to stop.'

e. Collection site personnel may require the employee to sign forms.

f. If the employee has any concerns following the testing process, the employee should advise a supervisor at the collection site, the employee's supervisor, or Human Resources.

#### D. Procedures for Drug Testing

1. An employee will be verbally notified by a supervisor that he/she has been chosen for a random drug test.
2. The employee will report immediately to the collection site.
3. The employee will strictly follow all directions from collection site personnel before, during, and after collection.
4. Upon arrival at the collection site, the employee will show photo identification. Acceptable identification includes an actual Montana driver's license or Departmental ID.
5. The employee will remove outer garments, such as a jacket or coat. The employee will not be required to remove clothing such as a shirt and pants, and will not be required to put on a hospital gown. All personal belongings, such as a bag or purse, must remain with the outer garments. The employee may retain a small wallet.
6. An employee subject to testing for controlled substances or illegally used drugs under this policy shall be permitted to provide urine specimens in private and in a restroom stall or similar enclosure so that the employee is not visually observed while providing the sample.
7. Collection site personnel may be within hearing range so they can confirm the sample was physically produced at that time.
8. The employee is encouraged to observe the entire collection procedure.
9. Collection site personnel may require the employee to sign forms.
10. If the employee has any concerns following the testing process, the employee should advise a supervisor at the collection site, the employee's supervisor, or Human Resources.

## VI. SPECIAL DRUG TESTING PROCEDURES

### A. Direct Observation Testing

1. Collection site personnel of the same gender as the employee tested may observe the employee provide the urine specimen when:
  - a. Collection site personnel may have reason to believe that a particular individual has altered or substituted the specimen, or
  - b. the employee has previously tampered with a sample, or
  - c. the employee has equipment or implements capable of tampering with or altering urine samples.
2. Direct observation shall not be the norm.

1 3. In addition to the procedures listed under Random Testing, the procedure will include  
2 direct inspection of the employee with shirt lifted and trousers lowered.

3 4. Collection site personnel will directly observe the urine leaving the body and entering the  
4 collection container.

5 B. Specimen Temperature Outside of Range

6 If the temperature of the specimen is outside the range of 32-38 degrees C / 90-100  
7 degrees F or shows signs of contaminants, then there is reason to believe the donor may  
8 have altered or substituted the specimen, and another specimen shall be collected for  
9 testing under the direct observation of a representative from the collection facility.

10 C. Dilute Sample

11 1. If the Medical Review Officer (MRO) notifies the City that an employee's test was positive  
12 and dilute, the test will be treated as verified positive. The employee shall not be required  
13 to submit another test.

14 2. If the MRO notifies the City that an employee's test was negative and dilute, and there is no  
15 acceptable medical explanation, the following procedures will be followed. If the  
16 employee declines to complete or does not complete these procedures, it will be treated as  
17 a refusal.

18 a. If the creatinine concentration of the dilute specimen was equal to or greater than  
19 2mg/dL, but less than or equal to 5 mg/dL, another sample will be collected under  
20 direct observation.

21 (1) This test will be conducted unannounced (with the minimum possible  
22 advance notice) as soon as possible after the initial test.

23 (2) The employee will be escorted by a supervisor immediately to the collection  
24 site.

25 (3) The employee will be directed not to ingest anything until after the test is  
26 completed.

(4) If the result of the direct observation test is also negative and dilute, the  
employee will not be required to take an additional test. The result shall be  
considered confirmed positive.

b. If the creatinine concentration of the dilute specimen is greater than 5 mg/dL, another  
test will be collected, but shall not be conducted under direct observation, unless there  
is another basis for utilization of direct observation.

(1) This test will be conducted unannounced (with the minimum possible  
advance notice) as soon as possible after the initial test.

(2) The employee will be directed not to ingest anything until after the test is  
completed.

c. If the 2<sup>nd</sup> specimen is positive and dilute, the test will be treated as positive.

d. If the specimen is again negative and dilute, the following procedure will apply:

(1) If the creatinine concentration of the second dilute specimen was equal to or  
greater than 2mg/dL, but less than or equal to 5 mg/dL, another test will be  
collected under direct observation in the same manner as listed under C2a above.

(2) If the result of this direct observation test is also negative and dilute, the  
employee will not be required to take an additional test because the result was  
dilute. The result shall be considered confirmed positive.

(3) If the creatinine concentration of the second dilute specimen is greater than 5  
mg/dL, the employee will not be required to take an additional test because the

result was dilute. The test will be considered negative.

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D. Insufficient Urine Specimen Volume

45mL of urine is required to constitute sufficient testing volume. If the employee does not provide sufficient volume, the following “shy bladder” procedures will apply. If the employee declines to complete or does not complete these procedures, it will be treated as a refusal.

For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection, and considered not amenable to correction or cure for an extended period of time, if ever. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters. Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period of time, cannot receive the same exceptional consideration as permanent or long-term conditions.

E. Shy Bladder Procedure:

1. The insufficient specimen will be discarded. Specimens may not be combined.
2. Employees will be advised to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. The employee may decline to drink, but will still be required to provide a sufficient urine specimen.
3. The employee shall remain in the testing area under observation during the three hour period.
4. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection attempt will be discontinued, and the employer will be notified.
5. The employee will be directed to obtain, within seven calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee’s failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
6. After completing the evaluation, the referral physician must provide a written statement of his/her recommendations and the basis for those to the MRO. Detailed information on the employee’s medical condition beyond what is necessary to explain the conclusion must not be in this statement. The MRO will seriously consider and assess the referral physician's recommendations in making a determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine. The MRO will notify Human Resources as soon as a determination is made.
  - a. If the employee refuses to obtain the evaluation, the test will be deemed a refusal.
  - b. If the evaluation determines the employee has a medical condition, and the medical condition has, or with a high degree of probability could have, precluded the employee from providing a sufficient amount of urine, the test will be cancelled.
  - c. If the evaluation determines that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, the MRO will conduct a further medical evaluation to determine if there is clinical evidence that the employee is using a controlled substance or illegally using drugs.

1 (1) If the medical evaluation reveals no clinical evidence of controlled substance use  
or illegal use of drugs, the test result shall be negative.

2 (2) If the medical evaluation reveals clinical evidence of controlled substance use or  
3 illegal use of legal drugs, the test result shall be cancelled. (Because this is a  
4 cancelled test, it does not serve the purposes of a negative test, i.e., the employer  
is not authorized to allow the employee to begin or resume duty, because a  
negative test is needed for that purpose).

5 d. If the evaluation determines that there is not an adequate basis for determining that a  
6 medical condition has, or with a high degree of probability could have, precluded the  
employee from providing a sufficient amount of urine, the test will be considered a  
7 refusal.

## 8 **VII. TEST REFUSAL**

9 A. Refusals will result in administrative action the same as if the test was verified positive. In the  
10 case of a breath test refusal, administrative action will be the same as if the test was verified in  
excess of .04.

11 B. Employees will be considered to have refused testing if they:

- 12 1. Refuse to provide a specimen; or
- 13 2. Refuse to complete all required tests as directed; or
- 14 3. Fail to report for a required test at the scheduled time; or
- 15 4. Engage in conduct that clearly obstructs the testing process; or
5. Tamper with the test; or
6. Alter or substitute the specimen; or
7. Fail to provide adequate breath or specimen volume without a verified medical explanation.

## 16 **VIII. DEFERRAL OF TESTING**

17 A. An employee selected for random drug and alcohol testing may obtain a deferral of testing if Human Resources  
concur that a compelling need necessitates a deferral on the grounds that the employee is:

- 18 1. In a leave status (sick, annual, administrative or leave without pay); or
- 19 2. In official travel status away from the test site or imminently embarking on official travel  
20 scheduled prior to testing notification.

21 B. An employee whose random drug and/or alcohol test is deferred will be subject to testing on his/her next regularly  
scheduled work shift.

## 22 **IX. POSITIVE TEST RESULT PROCEDURE**

23 A. Samples testing positive for controlled substances or illegally used drugs will undergo further  
testing to identify the specific type of drug(s) or substance(s) in the specimen.

24 B. The applicant or employee will be contacted by the MRO and have the opportunity to provide an  
25 explanation of a positive result, which may include providing medical documentation of lawful  
use of a prescription or over-the-counter medication.

C. If the MRO determines there is no justification for the positive result, such result will then be  
considered a verified positive test result.

1 D. The MRO shall notify Human Resources of a verified positive test result.

2 E. The MRO will notify the employee of the verified positive test result. Once notified, the employee may within 72  
3 hours of notification request the split specimen be tested by another DHHS certified lab.

4 F. If the employee is unable, for a legitimate reason, to make this request within the 72 hour period, the split specimen  
5 test will automatically be conducted.

6 G. The employer shall pay for the additional test if the additional test results are negative, and the employee shall  
7 pay for the additional tests if the additional tests are positive.

8 **X. FINDINGS AND ADMINISTRATIVE DISCIPLINARY ACTION**

9 A. An employee may be found in violation of this policy on the basis of any appropriate evidence  
10 including, but not limited to:

11 1. Direct observation of prohibited alcohol use or -drug use including misuse of prescription  
12 medication; or

13 2. Evidence obtained from an arrest or criminal conviction for a drug or alcohol related  
14 offense; or

15 3. A verified positive test result; or

16 4. An employee's voluntary admission, unless the employee is meeting the requirements as  
17 outlined under the Safe Harbor Referral; or

18 5. Test refusal.

19 B. An employee who is found to be in actual and illegal possession of a controlled substance,  
20 illegally used drug, and/or related paraphernalia while on duty, in or at any City-owned facility,  
21 City-owned property, City-approved activity, or City-owned vehicle, will be investigated and  
22 may be subject to discipline up to and including termination. He/she may be prosecuted under  
23 the applicable state or federal law (refer to Federal Controlled Substances Act Title 21 United  
24 States Code, Offenses Involving Dangerous Drugs Title 45 Chapter 9 Montana Code Annotated,  
25 and Model Drug Paraphernalia Act Title 45 Chapter 10 Montana Code Annotated.)

C. Effects of Positive Drug Testing Results

1. Any employee receiving his or her first verified positive test for a controlled substance will be  
referred to Human Resources, and will be subject to mandatory administrative action  
including referral to the SAP, and one (1) day leave without pay. A second positive test  
indicating drugs and/or alcohol will result in termination of employment.

2. Any employee receiving his or her first verified positive test for illegally used drugs, i.e.,  
prescription medication or over-the-counter medication, shall be referred to Human Resources  
and will be subject to mandatory administrative action including referral to the SAP, and to  
one (1) day leave without pay. A second positive test indicating drugs and/or alcohol will  
result in termination of employment.

3. Successful completion of any rehabilitation recommended will be a condition of continued  
employment.

a. The cost of rehabilitation will be the responsibility of the employee.

b. Employees may be allowed to use accrued leave (Sick leave followed by vacation  
and/or compensatory leave) to complete rehabilitation until such leave is exhausted, at  
which time the employee may be allowed to go on unpaid leave.

1 c. The employee remains responsible for successful completion of the SAP designated  
2 treatment program, and assertions regarding the effectiveness of a program shall not  
3 constitute either an acceptable explanation or excuse for continuing to misuse alcohol  
4 and/or drugs or a defense to disciplinary action if the employee does not complete  
5 treatment.

6 4. The City may initiate action to terminate an employee for refusing to obtain and complete  
7 counseling or rehabilitation through an SAP or a state licensed facility as recommended by  
8 SAP.

9 5. The employee must have a negative test result before returning to work.

10 6. The employee shall be subject to a return-to-duty agreement.

11 7. Following a verified positive test and after returning to duty, the employee will be subject  
12 to unannounced testing for a period of time determined by the SAP.

#### 13 D. Effects of Positive Alcohol Testing Results

14 1. When an employee is found to be in violation of the alcohol provisions of this policy, he or she  
15 shall be referred to Human Resources and will be subject to mandatory administrative action,  
16 including referral to the SAP and one (1) day leave without pay. A second positive test  
17 indicating drugs and/or alcohol will result in termination of employment.

18 2. If the employee is retained, the SAP's recommended rehabilitation will be a condition of  
19 continued employment.

20 a. The cost of rehabilitation will be the responsibility of the employee.

21 b. Employees may be allowed to use accrued leave to complete rehabilitation until such  
22 leave is exhausted at which time the employee may be allowed to go on unpaid leave.

23 c. The employee remains responsible for successful completion of a treatment program,  
24 and assertions regarding the effectiveness of a program shall not constitute either an  
25 acceptable explanation or excuse for continuing to misuse alcohol and/or drugs or a  
defense to disciplinary action if the employee does not complete treatment.

3. The City may initiate action to terminate an employee for refusing to obtain counseling or rehabilitation  
through an SAP or a state licensed facility.

4. The employee must have a negative test result before returning to work.

5. The employee shall be subject to a return-to-duty agreement.

6. Following a verified positive test and after returning to duty, the employee will be subject to unannounced  
testing for a period of time determined by the SAP.

7. Any subsequent positive test for alcohol use will subject the employee to termination of employment.

8. An employee with a first breath alcohol test which shows a breath alcohol content of .02 or greater but .04 or  
less may not return to duty for the remainder of the scheduled work day and must take sick leave for the  
remainder of his/her shift. The employee shall have a negative test result before returning to work.

## XI. RECORDS AND REPORTS

A. The employee's privacy shall be maintained. All testing information specifically relating to  
individuals pursuant to this program and any intervention steps, including referral for treatment,  
counseling or rehabilitation programs, is confidential and shall be treated as such by everyone

authorized to review or compile program records.

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- 2 B. In order to efficiently implement this requirement and to make information readily retrievable,
- 3 Human Resources shall maintain all records relating to testing, suspicion of tampering, and any
- 4 other authorized documentation necessary to implement this policy. Such information shall
- 5 remain confidential, with only authorized individuals who have a need-to-know having access to
- 6 them.
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- 8 C. The results of a test of an employee for alcohol, controlled substances, or illegally used drugs along
- 9 with all information, interviews, reports, statements, and memoranda will not be disclosed to an
- 10 outside entity without the prior written consent of such employee, unless the disclosure is:
- 11 1. to the tested employee;
- 12 2. to the MRO;
- 13 3. to the SAP in which the employee is receiving counseling or treatment or is otherwise
- 14 participating;
- 15 4. to the Human Resources Director, the Department Director, and the
- 16 City Administrator, the Assistant City Administrator or people with the legal right to
- 17 access;
- 18 5. pursuant to the order of a court of competent jurisdiction or where required by the
- 19 Department to defend against any challenges of adverse personnel action by the City;
- 20 6. report information that is required by law to be reported to a state or federal licensing
- 21 authority in response to inquiries relating to a workplace accident involving death,
- 22 physical injury, or property damage in excess of \$1,500 when there is reason to believe
- 23 that the tested employee may have caused or contributed to the accident.
- 24
- 25 D. Test results with all identifying information removed may be used for data collection and other
- activities necessary to comply with testing requirements.
- E. Information obtained through testing that is unrelated to the alcohol use, controlled substance use,
- or illegal use of a drug must be held in strict confidentiality by the Medical Review Officer and
- may not be released to the employer without the written consent of the employee tested.

## **XII. ADDITIONAL PROVISIONS**

- 18
- 19 A. Department Educational Program: Annually, employees will be provided with information
- 20 regarding controlled substances, alcohol, and illegal use of drugs. All supervisors shall receive
- 21 training in compliance with 49 CFR 382.603.
- 22
- 23 B. Notification of Conviction: Any employee who is convicted of a criminal drug or alcohol related
- 24 violation must notify the City within five (5) calendar days of the conviction. A conviction, a plea
- 25 of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld
- judgment will all be considered the same as a conviction. This obligation to report applies even to
- deferred prosecutions and deferred impositions of sentence.
- C. Limitation of Adverse Action: No adverse action, including follow-up testing, may be taken by the
- employer if the employee presents a reasonable explanation confirmed by the MRO indicating
- that the original test results were not caused by the use of controlled substances, by alcohol
- consumption, or by the illegal use of drugs. Reasonableness shall be determined by Human
- Resources. If the employee presents a reasonable explanation confirmed by the MRO, the test
- results must be removed from the employee's record and destroyed.
- D. Employee's Right of Rebuttal: The employer shall provide an employee or prospective employee
- who has been tested under any qualified testing program with a copy of the test report. The

1 employee or prospective employee will be given the opportunity to provide notification to the  
2 Medical Review Officer of any medical information that is relevant to interpreting test results,  
3 including information concerning currently or recently used prescription or nonprescription drugs.  
4 The employer is also required to obtain an additional test of the split sample by an independent  
5 laboratory selected by the person tested at the request of the employee. (See Section XI.) The  
6 employee must be provided the opportunity to rebut or explain the results of any test.

7 E. New Employee Notification: Applicants for City positions will be informed about the drug-free  
8 workplace policy on the vacancy announcement. During the screening process applicants will be  
9 notified of the testing requirements and that appointment to the position is contingent upon a  
10 negative pre-employment drug test. Upon hiring, new employees will receive a copy of the policy  
11 in the Employee Policy Handbook.

12 F. Employee Policy Confirmation Receipt: Employees will be required to  
13 sign a statement that confirms that he/she has received a copy of the alcohol and drug-free  
14 workplace policy. The statement will be maintained in the employee's personnel file.

15 G. Cost: Testing will be at the employer's expense: If an employee contests the verification test  
16 results, another test will be conducted. If that test is positive, the employee will be responsible for  
17 payment. If it is negative, the employer will be responsible for payment. Employees will be  
18 compensated at the employee's regular rate, including benefits, for time attributable to the testing  
19 program.

20 H. Unintentional Ingestion: Any employee who unintentionally ingests a controlled substance shall  
21 immediately report the incident to his/her supervisor so that appropriate medical steps may be  
22 taken to ensure the employee's health and safety.

23 I. Voluntary Testing: Employees may volunteer for testing as part of a City investigation. The  
24 employee must cooperate with all parts of the test and complete all requirements of collection site  
25 personnel.

Union Representation: Employees subject to investigations may have a Union representative  
present, at his/her option during interviews. If the Union representative is not available for the  
interview, the Employee shall select another Union official to fill in for the absent Union  
representative.

### 17 **XIII. RESERVATIONS**

18 Employees who are enrolled in and are participating in, or have completed a supervised rehabilitation  
19 program and are no longer engaging in the misuse of alcohol, use of controlled substances, or illegal  
20 use of drugs, shall be protected from discrimination and harassment in accordance with the Americans  
21 with Disabilities Act of 1990. This prohibition does not preclude follow-up testing.

22 This program is intended to carry out the City's Alcohol and Drug-Free Workplace Policy. All  
23 situations will be handled in accordance with this policy and in consultation with representatives of  
24 Human Resources.

### 25 **XIV. POLICY AND PROCEDURE DEFINITIONS**

**Adulterant** – Adulterating substance or agent aimed to corrupt, debase, or make impure.

**Adulterated specimen** – A urine specimen containing a substance that is not a normal constituent or  
containing an endogenous substance at a concentration that is not a normal physiological concentration.

**Alcohol** – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called  
ethanol; or the hydrated oxide of ethyl.

1 **Alcohol concentration** – means the alcohol in a volume of breath expressed in terms of grams of alcohol  
per 210 liters of breath as indicated by an evidential breath test.

2 **Breath Alcohol Technician (BAT)** – A person who instructs and assists individuals in the alcohol testing  
process and operates an EBT.

3 **Cancelled test** – A drug or alcohol test that has a problem identified that cannot be or has not been  
4 corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a  
negative test. Having a cancelled test does not relieve the employee of the responsibility to provide a test  
5 that produces a measured outcome.

6 **Collection site** – A place designated by the employer where employees present themselves for the purpose  
of providing a specimen of their urine to be analyzed for the presence of drugs or providing a breath same to  
7 be analyzed for the presence of alcohol.

8 **Confirmation test** - For alcohol, a second test following a screening test with a result of 0.02 or greater that  
provides a measure of alcohol concentration. For controlled substances and illegally used drugs testing, an  
9 analytical procedure to identify the presence of a specific drug or metabolite which is independent of the  
screening test and which uses a different technique and chemical principle from that of the initial screening  
test in order to ensure reliability and accuracy.

10 **Controlled Substance** – means any drug, substance, or precursor included in Schedules I through V as  
11 defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or  
precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code  
12 Annotated (for example, but not limited to: cocaine, marijuana, methamphetamine.) For the purpose of this  
policy, the term ‘controlled substance’ does not include the use of prescribed drugs, which have been legally  
13 obtained and are being used in the manner and for the purpose for which they were prescribed. The term  
does not include distilled spirits, wine, malt beverages, or tobacco. It does include medical marijuana.

14 **Conviction** – means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or  
both, by any judicial body charged with the responsibility to determine violations of federal or state criminal  
15 drug or alcohol statutes.

16 **Critical Incident** – means any incident in which someone is killed or is seriously injured.

17 **Dilute specimen** – means a urine specimen with creatinine and specific gravity values that are lower than  
expected for human urine.

18 **Direct observation** – means an employee being directly observed while providing a urine sample. The  
19 procedure will include direct inspection of the employee with shirt lifted and trousers lowered and will  
include direct observation of urine leaving the body and entering the collection container.

20 **Employee** – All part-time, full-time, , and seasonal employees of the City of Billings engaged in the  
21 performance, supervision, or management of work in a hazardous work environment, security position,  
position affecting public safety, or fiduciary position. It does not include an independent contractor. The  
term includes an elected official.

22 **Employee Assistance Program (EAP)** – means a contract-based counseling program that offers  
23 assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and  
mental health problems, and monitors the progress of employees while in treatment.

24 **Employer** – means the City of Billings.

25 **Evidential Breath Testing Device (EBT)** – means an instrument reliable in measuring alcohol  
concentration in breath, which meets the National Highway Traffic Safety Administration specifications and  
is listed in the conforming products list of evidential breath testing devices.

**Hazardous work environment** includes but is not limited to positions:

- i. For which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;
- ii. That involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or
- iii. That involves handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.

**Illegally Used Drugs / Illegal Use of Drugs – means:**

- A. any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes or in the prescribed manner;
- B. any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.

**Initial test or Screening test** – means a test for controlled substances or illegally used drugs to eliminate “negative” urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing. In alcohol testing, an analytical procedure to determine whether an employee has a prohibited concentration of alcohol in his or her system.

**Insufficient urine specimen** – means less than the 45mL of urine required to constitute a sufficient testing volume. An insufficient specimen will prompt “shy bladder” procedures.

**Medical Review Officer (MRO)** –Means a licensed physician trained in the field of substance abuse.

**Precursors** – means a biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this policy.

**Prospective employee** means an individual who has made a written or oral application to the City of Billings to become an employee.

**Qualified testing program** – means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in sections 39-2-207 and 39-2-208 Montana Code Annotated.

**Random testing** – means a system of drug and alcohol testing imposed without individualized suspicion that a particular employee is using controlled substances, alcohol, or illegally using drugs. The system is a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.

**Referral Physician** – means a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised when an employee provides an insufficient urine specimen. The MRO may act in this capacity if he/she has appropriate expertise.

**Return-to-Duty Agreement** – means an agreement between the City and an employee that allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee’s failure to meet the terms of the agreement, which may include successfully passing tests for alcohol and/or controlled substances and/or illegally used drugs, shall result in termination.

**Sample** – means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol.

**Shy bladder procedure** – means the procedure that is followed when an employee does not provide a sufficient urine volume (45mL) for testing.

1 **Split specimen** – means, in drug testing, a part of the urine specimen that is sent to a first laboratory and  
2 retained unopened, and which is transported to a second laboratory in the event that the employee requests  
that it be tested following a verified positive test of the primary specimen or a verified adulterated or  
substituted test result.

3 **Substance Abuse Professional (SAP)** – the City’s substance abuse professional who evaluates employees  
4 who have violated drug and alcohol policies and makes recommendations concerning education, treatment,  
follow-up testing, and after care.

5 **Supervisor** – means an employee who exercises supervision of one or more employees.

6 **Unannounced test** – means a test for alcohol, control substances, and/or illegally used drugs previously  
7 scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate  
time for the employee to immediately proceed directly to the scheduled testing site.

8 **Under the Influence/Impaired** – When an employee is affected by a drug or alcohol or a combination of a  
9 drug and alcohol. The symptoms of influence and/or impairment are not confirmed to those consistent with  
10 misbehavior, or to obvious impairment of a physical or mental ability such as slurred speech or difficulty in  
11 maintaining balance. A determination of use, influence, and/or impairment can be established by a  
12 professional opinion, urine, blood or any other commonly used scientific valid tests and in some cases by a  
lay person’s opinion. An employee will be presumed to be impaired and in violation of this policy  
whenever the presence of drugs is detected at levels determined by the testing laboratory as constituting a  
positive indication for drugs. An employee will be presumed to be impaired by positive indication for  
drugs. An employee will be presumed to be impaired by alcohol whenever the presence of alcohol is  
detected at a level of .04% or greater.

13 **Verified Positive Test Result for Alcohol** – means the presence of alcohol in the breath at a level of greater  
14 than .04 as confirmed by two tests with evidential breath testing devices and administered by a trained and  
certified Breath Alcohol Technician.

15 **Verified Positive Test Result for Drugs** – means a test result that was positive for a controlled substance or  
16 illegally used drug on an initial FDA-approved immunoassay test, confirmed by a Gas  
Chromatography/Mass Spectrometry assay, (or other confirmation tests approved by the U.S. Department of  
Health and Human Services), and reviewed and verified by the Medical Review Officer in accordance with  
this policy and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

17 REFERENCES:

18 Montana Workforce Drug and Alcohol Testing Act  
19 39-2-205 through 39-2-211 Montana Code Annotated (MCA)

20 Procedures for Transportation Workplace Drug and Alcohol Testing Programs  
21 Title 49 Part 40 (and Part 382) Code of Federal Regulations (CFR)

22 Federal Controlled Substances Act  
23 Title 21 United States Code (USC)

24 Offenses Involving Dangerous Drugs and Procedural Provisions  
25 Title 45 Chapter 9 Montana Code Annotated (MCA)

Model Drug Paraphernalia Act  
Title 45 Chapter 10 Montana Code Annotated (MCA)

Controlled Substances Codes  
Title 50 Chapter 32 Montana Code Annotated (MCA)

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