

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT**



**OPERATING ENGINEERS LOCAL UNION NO. 3
AND
CITY OF FREMONT**



**TERM OF AGREEMENT
JULY 1, 2019 – JUNE 30, 2021**

**CITY OF FREMONT
MEMORANDUM OF UNDERSTANDING
OE3**

TABLE OF CONTENTS

TABLE OF CONTENTS..... i

ARTICLE 1 - ADMINISTRATION..... 1

SECTION 1: PARTIES TO UNDERSTANDING 1

SECTION 2: STATE LAW COMPLIANCE 1

SECTION 3: CITY COUNCIL APPROVAL..... 1

SECTION 4: CONTINUATION OF EXISTING BENEFITS 1

SECTION 5: APPLICABILITY OF PROVISIONS 1

SECTION 6. TERM 2

SECTION 7: RECOGNITION 2

SECTION 8: NO DISCRIMINATION 2

SECTION 9: TOTAL AGREEMENT 2

SECTION 10: VALIDITY OF MEMORANDUM..... 3

SECTION 11: CITY RIGHTS..... 3

ARTICLE 2 - SALARIES AND OTHER COMPENSATION 4

SECTION 1: SALARIES..... 4

SECTION 2: TEMPORARY UPGRADE PAY 4

SECTION 3: SPECIALTY PAY 5

SECTION 4: CALL BACK..... 6

SECTION 5: ANNIVERSARY PAY..... 7

SECTION 6: OVERTIME COMPENSATION..... 7

SECTION 7: SAFETY SHOE ALLOWANCE 9

SECTION 8: TOOL ALLOWANCE 10

SECTION 9: GLOVE ALLOWANCE..... 10

SECTION 10: UNIFORMS 11

ARTICLE 3 - LEAVES 11

SECTION 1: GENERAL LEAVE..... 11

SECTION 2: HOLIDAYS 14

SECTION 3: FAMILY LEAVE 16

SECTION 4: PERSONAL LEAVE DONATION 16

SECTION 5: ON THE JOB INJURY LEAVE 18

SECTION 6: BEREAVEMENT LEAVE 18

ARTICLE 4 - INSURANCE 18

SECTION 1: MEDICAL/DENTAL BENEFITS 18

SECTION 2: HEALTH INSURANCES..... 20

SECTION 3: MEDICAL INSURANCE FOR RETIRED EMPLOYEES 20

SECTION 4: LIFE INSURANCE COVERAGE 22

SECTION 5: SHORT TERM/LONG TERM DISABILITY 22

ARTICLE 5 - RETIREMENT 23

SECTION 1: PUBLIC EMPLOYEES RETIREMENT SYSTEM 23

SECTION 2: CONVERSION OF EMPLOYER PAID MEMBER CONTRIBUTION TO BASE SALARY	23
SECTION 3: IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(H) (2) EMPLOYER PICKUP	24
SECTION 4: MILITARY SERVICE CREDIT	24
ARTICLE 6 - HOURS AND SCHEDULING	24
SECTION 1: ALTERNATE WORK SCHEDULES	24
SECTION 2: EARLY SHIFT SCHEDULING	24
SECTION 3: CLEAN UP TIME	25
SECTION 4: ASSIGNMENT BID SYSTEM	25
ARTICLE 7 - GRIEVANCES	26
SECTION 1: ARBITRATION	26
SECTION 2: GRIEVANCE PROCEDURE	26
SECTION 3: MISCELLANEOUS PROVISIONS	29
ARTICLE 8 - APPEALS ON DISCIPLINE	30
SECTION 1: ARBITRATION	30
SECTION 2: APPEAL PROCEDURE	30
SECTION 3: MISCELLANEOUS PROVISIONS	33
ARTICLE 9 - UNION ISSUES	34
SECTION 1: NOTICE TO UNION OFFICE	34
SECTION 2: ORGANIZATION BUSINESS	34
SECTION 3: UNION SECURITY	34
ARTICLE 10 - MISCELLANEOUS	36
SECTION 1: CREDIT UNION DEDUCTION	36
SECTION 2: SAFETY GOGGLES	36
SECTION 3: EMPLOYEE EVALUATION APPEALS	36
SECTION 4: LIGHT-DUTY ASSIGNMENTS	37
SECTION 5: AMERICANS WITH DISABILITIES ACT	37
SECTION 6: SUBSTANCE ABUSE POLICY	37
SECTION 7: VARIABLE DEMAND HIRING	37
SECTION 8: PROBATIONARY PERIOD	37
SECTION 9: CONTINUING DISCUSSION	37
SECTION 10: JOINT LABOR-MANAGEMENT COMMITTEE	38
SECTION 11: TUITION REIMBURSEMENT	38
SECTION 12: PERSONNEL RULES & LAYOFF ADMINISTRATIVE REGULATION ..	38
ARTICLE 11 - TEMPORARY AND PROVISIONAL WORKERS	39
SECTION 1: EMPLOYMENT OF TEMPORARY WORKERS	39
SECTION 2: EMPLOYMENT OF PERSONS IN A PROVISIONAL STATUS	40
EXHIBIT A - OE3 CLASSIFICATIONS	43
EXHIBIT B - RELEVANT SIDE LETTERS	45
INDEX	47

**MEMORANDUM OF UNDERSTANDING
ON
WAGES, HOURS, AND OTHER TERMS AND
CONDITIONS OF EMPLOYMENT
OF AND BETWEEN
CITY OF FREMONT AND
OPERATING ENGINEERS, LOCAL UNION #3 (OE3)**

ARTICLE 1 - ADMINISTRATION

SECTION 1: PARTIES TO UNDERSTANDING

This Memorandum of Understanding (hereinafter MOU) is entered into by and between the CITY OF FREMONT, a municipal corporation (hereinafter referred to as the CITY), and the OPERATING ENGINEERS, LOCAL UNION #3 (hereinafter referred to as the Union), pursuant to Government Code 3500, et seq. This MOU applies to those classifications set forth in Appendix "A" attached hereto and made a part hereof.

SECTION 2: STATE LAW COMPLIANCE

This MOU complies with the provisions of Section 3500 et seq. of the Government Code of the State of California, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the Employer-Employee representatives noted herein did meet and confer in good faith and did reach agreement on those matters within the scope of representation.

SECTION 3: CITY COUNCIL APPROVAL

It is the mutual understanding of the parties hereto that this MOU is of no force or effect in regard to matters within the authority of the City Council until such matters are submitted to, and accepted by, the City Council.

SECTION 4: CONTINUATION OF EXISTING BENEFITS

Except as provided herein, this MOU does not modify existing benefits established by resolution or ordinance or other compensation benefits. Such benefits as remain unmodified shall continue in full force and effect throughout the term of this Understanding.

SECTION 5: APPLICABILITY OF PROVISIONS

The following sections of the MOU are not applicable to persons employed in a temporary employment status in classifications represented by the Union:

Article 2, Section 2	Temporary Upgrade Pay
Article 2, Section 5	Anniversary Pay
Article 2, Section 7	Safety Shoe Allowance
Article 2, Section 8	Tool Allowance
Article 2, Section 9	Glove Allowance
Article 3	Leaves
Article 4, Section 3	Medical Insurance for Retired Employees
Article 7	Grievances
Article 8	Appeals on Discipline
Article 10, Section 3	Employee Evaluation Appeals
Article 10, Section 8	Probationary Period

SECTION 6. TERM

This Memorandum of Understanding incorporates all modification regarding wages, hours and other terms and conditions of employment. All prior Memoranda of Understanding are hereby superseded or terminated in their entirety. Unless otherwise so provided, this Memorandum of Understanding shall be effective as of July 1, 2019 and shall expire on June 30, 2021.

SECTION 7: RECOGNITION

The City recognizes the Operating Engineers, Local Union No. 3, as the exclusive representative for the purpose of establishing wages, hours, and other terms and conditions of employment for full-time, temporary, and modified/part-time schedule employees in the classified service in the classifications of positions set forth in Appendix "A", attached hereto and made a part hereof, as well as position classifications that may be added or deleted by mutual agreement in writing between said Union and the Municipal Employee Relations Officer.

SECTION 8: NO DISCRIMINATION

Neither the City nor the Union shall discriminate in any aspect of employment or membership based on political affiliation, race, religion, creed, color, national origin, ancestry, sex, marital status, age, sexual orientation, medical condition, or physical or mental disability.

SECTION 9: TOTAL AGREEMENT

- A. This MOU sets forth the full and entire understanding of the parties regarding matters set forth herein. All prior Memoranda of Understanding are hereby superseded or terminated in their entirety.
- B. All ordinances, resolutions, administrative regulations, departmental rules and regulations, personnel policies and procedures and management rights not specifically addressed within this MOU shall remain in full force and effect.

- C. No verbal statement or other amendments, except an amendment mutually agreed upon between the parties and in writing annexed hereto designated as an amendment to this MOU, shall supersede or vary the provisions herein.
- D. Except as specifically provided herein, it is agreed and understood that each party hereto waives its right, and agrees that the other shall not be required, to negotiate with respect to any subject or matter covered herein or with respect to any other matters within the scope of negotiations, during the term of this MOU.
- E. The waiver of any breach, term or condition of this MOU by either party shall not constitute a precedent in the future enforcement of all its terms and provisions.

SECTION 10: VALIDITY OF MEMORANDUM

Should any article, section, or portion thereof of this MOU be held unlawful and unenforceable by any court of competent jurisdiction, such decision of the court shall only apply to the specific article, section, or portion thereof directly specified in the decision, and the remainder of this MOU shall not be affected thereby.

SECTION 11: CITY RIGHTS

The City reserves, retains and is vested with any management rights not expressly granted to the Union by this Agreement, the Personnel Rules or the Employer-Employee Relations Resolution. These City rights include but are not limited to the right to:

- A. Determine and modify the organization of City government and its constituent work units.
- B. Determine the nature, standard, levels and mode of delivery of City services.
- C. Determine the methods, means, number and kind of personnel by which services are provided.
- D. Impose discipline subject to applicable law and the provisions of this MOU.
- E. Relieve employees from duty because of lack of work or lack of funds or for other legitimate reasons subject to the Personnel Rules and Regulations.

Nothing in this Section shall relieve the City of its obligation to meet and confer on the impact of the exercise of rights enumerated in this Section.

ARTICLE 2 - SALARIES AND OTHER COMPENSATION

SECTION 1: SALARIES

The salaries for this bargaining unit shall be administered as follows:

- a. Effective June 23, 2019, the salaries for all classifications listed in Appendix A shall be increased by 4.0%.
- b. Effective June 21, 2020, the salaries for all classifications listed in Appendix A shall be increased by 4.0%.

SECTION 2: TEMPORARY UPGRADE PAY

- A. An employee specifically assigned by the Department Head or designated representative to perform the full range of duties of a higher classification on a temporary basis and who, pursuant to such assignment, does perform the day-to-day duties and responsibilities of such position for five (5) cumulative days or more in any fiscal year shall be paid the salary of the higher classification for the time worked in the higher classification, retroactive to the first day of such service. In the pay period after the five (5) cumulative days are reached, Temporary Upgrade Pay will be paid. At the end of the fiscal year, all approved Acting time not previously compensated shall be paid at the temporary upgrade rate as provided in paragraph B below.
- B. Temporary Upgrade Pay shall be paid at either the first step of the classification acted into, or 5%, whichever is greater.
- C. Assignment of employees to serve in an acting capacity, as defined above, shall be based upon methods determined by the Department Head. Probationary employees shall not be assigned to work in a higher classification and are ineligible to receive Temporary Upgrade Pay.
- D. Prerequisites for being considered for an acting assignment include an overall satisfactory performance evaluation and no discipline for one year preceding consideration.
- E. Any dispute arising out of the provisions of this Section must be brought to the attention of the Department Head or designated representative before the end of the next regularly scheduled workday.

SECTION 3: SPECIALTY PAY**A. Heavy Equipment Operator Pay**

Park Maintenance Worker I(s) assigned to operate a multi-gang mower (heavy equipment) shall be paid a five percent (5%) differential under the following conditions:

1. The 5% differential will only be paid for such assignment when the employee(s) is assigned to operate the multi-gang mower;
2. The assigned Park Maintenance Worker I(s) will receive the 5% differential for those days the Park Maintenance Worker I is assigned to, and does operate the multi-gang mower, provided that assignment is for five or more consecutive days.

B. Sprinkler and Backflow Premium Pay

Park Maintenance Worker I(s) assigned irrigation responsibilities shall be paid a five percent (5%) differential under the following conditions:

1. The 5% differential will only be paid for such assignment when the employee(s) is assigned to irrigation duties;
2. The 5% differential does not apply to training activities of the irrigation crew;
3. The assigned Park Maintenance Worker I(s) will receive the 5% differential for those days the Park Maintenance Worker I is assigned to irrigation duties, provided that assignment is for five or more consecutive days.

C. HVAC/Electrician Pay

Building Maintenance Worker II(s) whose duties specifically assigned by the department consist of 80 percent or more of either HVAC or Electrician duties shall be paid, in addition to base pay, a five-percent (5%) differential under the following conditions:

1. The 5% differential will only be paid for such assignments when the employee(s) is assigned to perform the full range of duties described under the "HVAC" or "Electrical" section of the Building Maintenance Worker II classification specification.
2. The 5% differential does not apply to activities an employee is engaged in while receiving training.
3. The assigned Building Maintenance Worker II(s) will receive the 5% differential only for those specified days that they are assigned to and actually do perform HVAC or electrical duties, provided that assignment is for five or more consecutive workdays.
4. An employee is not eligible to receive more than one differential at a time.

5. The City will report HVAC pay to PERS as (educational incentive) special compensation pay as consistent with State law and PERS rules. The City and the Union understand State law and CalPERS rules are subject to change and that the City will comply with State law regarding any changes related to reportable compensation.

D. Control Systems Pay

Building Maintenance Worker II(s) specifically assigned by the department to perform Control System duties shall be paid, in addition to base pay, a ten percent (10%) differential under the following conditions:

1. The 10% differential will only be paid for such assignments when the employee(s) is assigned to perform the full range of duties described under the "Control Systems" section of the Building Maintenance Worker II classification specification.
2. The 10% differential does not apply to activities an employee is engaged in while receiving training.
3. The assigned Building Maintenance Worker II(s) will receive the 10% differential only for those specified days that they are assigned to and actually do perform control System duties, provided that assignment is for five or more consecutive workdays.
4. An employee receiving the Control System differential is not eligible for the 5% differential under HVAC or electrical duties even though he/she may be required to perform those duties.

E. Asphalt Work Premium

No more than two (2) Street Maintenance Worker II(s) assigned to operate and maintain either the asphalt grinder and/or the asphalt paver shall be paid a five percent (5%) differential during the course of the paving season (effective the first pay period in May and ending the last pay period in October). The 5% differential does not apply to activities an employee is engaged in while receiving training.

SECTION 4: CALL BACK

- A. An employee who has departed from the employee's work location and is called back to work between the end of his/her regular shift and 11:59 p.m. shall be entitled to a minimum of two (2) hours work or, if not provided, a minimum of two (2) hours pay at one and one-half (1-1/2) times the employee's regular hourly rate.
- B. This minimum entitlement does not apply to employees who are called back to work within two (2) hours of their regular starting time.

- C. An employee called back to work after 12:00 a.m. will receive a minimum of three (3) hours pay at time and one-half the employee's regular hourly rate.
- D. An employee called back to work between the hours of 12:01 a.m. and 11:59 p.m. during a regularly scheduled day off shall be entitled to a minimum of four (4) hours work or, if not provided, a minimum of four (4) hours pay at time and one-half the employee's regular time hourly rate. Employees called back to work within the time period compensated for under an earlier call back, will not receive a second callback minimum payment. Such employees will receive additional call back pay if the time required for the additional call back extends beyond the hours initially compensated for.
- E. The maximum hours an employee will be scheduled to work in a non-emergency event will not exceed sixteen (16) consecutive hours unless called out between 10:00 p.m. and 4:00 a.m., in which event the maximum hours worked shall be twelve (12).

SECTION 5: ANNIVERSARY PAY

The City and the Union recognize the benefit of encouraging employees to remain with the City. To this end, the City will award those employees who, during the term of this MOU, complete or have already completed nineteen (19) years of chronological service with a one-time five hundred dollar (\$500) bonus. Modified/part-time schedule employees will receive a pro-rated bonus calculated as a ratio of their full-time equivalent service.

The above amount is a gross amount and is subject to reduction based on the City's obligation to pay increased PERS contributions for employees receiving payments. Amounts distributed to employees shall be subject to individual deductions for Federal and State taxes and any other income-related deductions.

Payment shall be made in the pay period in which the employee's date of hire falls.

SECTION 6: OVERTIME COMPENSATION

A. DEFINITION OF THE WORK WEEK

The parties agree to comply with the FLSA definition of a workweek.

B. PAYMENT OF OVERTIME - GENERAL RULE FOR EMPLOYEES WORKING FORTY HOURS IN FIVE DAYS

Overtime work shall be defined as any time worked beyond the regular workday or beyond the regular workweek.

Except as otherwise provided by the other paragraphs of this Section listed below:

1. All hours worked in excess of the employee's regular workday shall be compensated at the rate of one and one-half times the employee's regular hourly rate of pay.
 2. All hours worked in excess of forty (40) hours per week shall be compensated at the rate of one and one-half times the employee's regular hourly rate of pay.
 3. An employee working sixteen (16) or more consecutive hours shall have a minimum break of eight (8) hours before reporting back to work. If the 8-hour break goes into the employee's next regular shift, the employee shall be paid for the hours not worked in the next regular shift.
- C. All hours worked on observed holidays shall be compensated at the rate of time and one-half the employee's regular hourly rate, in addition to regular holiday pay for eight (8) hours. Employees on a modified/part-time schedule shall be paid on a pro-rata basis.
- D. In situations where the employee's regular work schedule provides for hours of work other than eight (8) hours per day and/or forty (40) hours per week, overtime at the rate of time and one-half the employee's regular hourly rate shall be paid for all work in excess of the regular daily or weekly work schedule.
- E. No employee shall have his/her workday schedule changed in order to avoid meeting overtime pay requirements, except by mutual consent.

F. EMERGENCY OVERTIME

1. For purposes of this section, emergency is defined as a "declared emergency" or a situation where the City Manager has directed all employees to work.
2. After the initial response to an emergency, the standard disaster work shift will be twelve (12) hours, if possible, and in no event will an employee be scheduled to work more than sixteen (16) consecutive hours.
3. Employees will be paid at time and one-half the employee's regular hourly rate for all hours worked which exceed their regular work shift.
4. In disaster situations the City shall:
 - a) Provide meals to employees scheduled to work twelve (12) or more hours;
 - b) Provide accommodations if the employee lives 30 or more miles away;
 - c) Provide critical incident debriefing in the event of response to serious injury or accident or rescue involving trauma or death.

5. Work schedules, whenever possible, will provide for the following:

<u>Work Shift</u>	<u>Break Before Return to Work</u>
12-hour emergency shift	8-hour break
16-hour emergency shift	8-hour break and next shift not to exceed 12 hours
12+ hours and end of disaster	Minimum 8-hour break before return to regular schedule

G. COMPENSATORY TIME OFF

Employees in the classifications of employment represented by this bargaining unit shall be eligible to establish an overtime hours worked account (Compensatory Time Bank).

1. The Compensatory Time Bank cap shall be 240 hours (160 hours worked) per employee at any given time. Overtime hours worked which would result in a compensatory time bank in excess of 240 at any given time shall be automatically cashed out.
2. Employees will be required to irrevocably elect, within the pay period the overtime is worked, whether they wish to receive cash for the overtime worked or to accrue the value of the overtime in a Compensatory Time Off Bank. If employees fail to identify how they wish the time reimbursed, it will automatically be cashed out.
3. Employees will not be able to cash out Compensatory Time Off Banks. Once accrued overtime is banked as Compensatory Time Off, the employee may only access the Compensatory Time Off Bank by taking time off.
4. Compensatory Time Off Banks will be liquidated (cashed out) at separation.

SECTION 7: SAFETY SHOE ALLOWANCE

- A. Effective the pay period that includes July 1, 2013 and the pay period that includes July 1 thereafter for the term of this agreement, the City shall advance each classified employee working in one of the following sections the sum of Two Hundred and Twenty Five (\$225.00) for purchasing and regularly wearing steel-toed safety shoes/boots:

Auto Shop	Parks
Public Buildings	Construction Inspection
Recreation	Survey
Streets	

- B. An employee who is required to wear steel-toed safety shoes/boots for safety reasons must wear them while working and shall be subject to disciplinary action if not worn. All steel-toed safety shoes/boots must conform to minimum safety,

maintenance and appearance standards established by the City unless OSHA standards supersede. An employee may choose not to wear, and therefore not to be paid for, safety shoes/boots unless the City requires their wear and use for safety reasons.

The City shall determine when repair or replacement is necessary. The employee is responsible for maintaining the serviceability of the safety shoe/boot.

- C. New employees shall, within two pay periods after their appointment, receive a pro-rata share of the above allowance in the amount of \$18.75 per month (for employees covered under section A above), for the number of full calendar months falling between the date of appointment and the following July 1st.
- D. An employee who leaves City employment, who by assignment changes to a status of non-entitlement, who is absent from work for reasons other than authorized general leave, holiday or compensatory time off, or who is otherwise no longer covered by this MOU for all of the regularly scheduled work hours in a calendar month, shall not be eligible for nor receive the pro-rata allowance for each month in which such absences occur. Any adjustments in such compensation, either from the City or from the Employee, required due to cessation of eligibility shall be completed prior to the last date of coverage under this MOU.

SECTION 8: TOOL ALLOWANCE

Effective the pay period that includes July 1, 2013 and each July 1 thereafter for the term of this agreement, the City will advance employees in the classifications of Fleet Supervisor, Fleet Mechanic I (Heavy and Light), Fleet Mechanic II, and Mechanic Assistant the sum of Five Hundred and Fifty Dollars (\$550.00) per year for the supply of mechanics tools.

The Union and management have agreed that the Union will have input into what kind of work and to who work from the Auto Shop will be contracted out.

SECTION 9: GLOVE ALLOWANCE

- A. Effective the pay period that includes July 1, 2003 and each July 1 thereafter for the term of this agreement, the City shall advance each classified employee working in one of the following sections the sum of Fifty Dollars (\$50.00) per fiscal year for purchasing and regularly wearing work gloves, other than those required for safety purposes and provided by the City:

Auto Shop
Public Buildings
Streets
Recreation

Parks
Construction Inspection
Survey

- B. New employees shall, as soon as practicable, receive a pro-rata share of the above allowance in the amount \$4.17 per month for the number of full calendar months falling between the date of appointment and the following July 1st.
- C. An employee who leaves City employment, who by assignment changes to a status of non-entitlement, who is absent from work for reasons other than authorized general leave, holiday or compensatory time off, or who is otherwise no longer covered by this MOU for all of the regularly scheduled work hours in a calendar month, shall not be eligible for nor receive the pro-rata allowance for each month in which such absences occur. Any adjustments in such compensation, either from the City or from the Employee, required due to cessation of eligibility shall be completed prior to the last date of coverage under this MOU.
- D. The City shall continue to furnish rubberized gloves for handling hazardous materials.

SECTION 10: UNIFORMS

Laundered uniforms will be provided to employees in classifications designated by the City. All employees receiving uniforms provided by the City shall be required to wear the City-provided uniforms while on duty. Exceptions to the mandatory wearing of City-provided uniforms can be made, in special circumstances, by the Division Head.

ARTICLE 3 - LEAVES

SECTION 1: GENERAL LEAVE

This General Leave Plan replaces all General Leave Plans in effect prior to January 1, 1994. Effective January 1, 1994, the City will establish a New General Leave Program to be administered as follows:

A. DEFINITIONS

For the purposes of this Section, the following terms have the meanings stated below:

1. Old General Leave Bank shall mean all General Leave accrued by the individual employee in this bargaining unit on or before December 31, 1993.
2. New General Leave Bank shall mean all General Leave accrued by the individual employee in this bargaining unit on and after January 1, 1994.
3. Aggregate General Leave shall mean the total number of accrued Old General Leave hours plus New General Leave hours.

4. Benefit Load shall mean the premium, based on an additional cash factor relating to the cost of benefits, which may be liquidated on Old General Leave accrued prior to December 31, 1993, upon separation of employment with the cash value of base salary. The Benefit Load of this bargaining unit is 38.862% of base salary.
5. Sick Leave Bank shall mean leave with pay hours available to employees which may be used for personal illness or illness involving a member of the employee's immediate family requiring the care and/or involvement of the employee.

B. ACCUMULATION AND USE

1. The use of General Leave (established in lieu of vacation leave, sick leave, emergency leave, supplemental leave, and personal leave) was and continues to be for any leave purpose, subject to the current Personnel Rules dealing with leaves.
2. There are two categories of General Leave:
 - a) Scheduled Leave: Any leave that can be reasonably forecast or anticipated, i.e., vacation leave, scheduled medical/dental appointments, "extended weekends", personal leave, etc., shall require prior approval of the employee's supervisor.
 - b) Unscheduled Leave: Any leave that is genuinely of an unanticipated nature, i.e., "sick leave", bereavement leave, etc. Inappropriate or excessive use of unscheduled leave may be grounds for corrective action in accordance with current practice.
 - c) An employee must use all accrued General Leave and compensatory time before a request for leave of absence will be granted, except upon approval of the City Manager.
3. Leave shall be accrued as follows:

Years of Service	Accruable General Leave Hours		Floating Holiday (non-accruable)	Max Limit on Accruable Leave Hours	Max Limit on Sick Leave Hours Rolled Over
	Per Year	Per Pay Period			
Date of hire through 5 years of service	192	7.3846	8	288	350
5 years +1 day through 10 years of service	216	8.3077	8	324	350
10 years + 1 day through 15 years of service	240	9.2308	8	360	350
15 years + 1 day or more of service	264	10.1538	8	396	350

C. MAXIMUM GENERAL LEAVE ACCRUAL LIMIT BEGINNING JANUARY 1, 1994

1. Effective January 1, 1994, employees shall be entitled to accrue a New General Leave maximum accrual limit of one and one half times (1.5) the individual employee's annual General Leave accrual rate based on time in service.

No hours of New General Leave will accrue above the maximum entitlement except as noted in Section D below.

2. General Leave accrued on or before December 31, 1993 will be maintained in a separate "Old General Leave" bank. Old General Leave cannot be replenished once used.

Effective January 1, 1994, the Old General Leave accrual balance which is above the maximum accrual limit described above will not be liquidated for cash during employment. This Old General Leave Bank is available for use as General Leave and will be recorded separately from New General Leave.

3. Aggregate General Leave is the combined number of hours in the Old General Leave Bank and the New General Leave Bank.
4. The City will draw down General Leave accruals based on the "Last In First Out" method.

D. SICK LEAVE BANK OF HOURS

New General Leave hours which accrue above the maximum accrual limit described in paragraph C(1) above shall be placed in a Sick Leave Bank of Hours with a maximum accrual limit of 350 hours plus any "Old" sick leave hours accrued prior to January 1, 1994.

Accrued time in the sick leave bank shall not be compensated for in any manner except as used for sick leave as provided for in the Personnel Rules.

E. LIQUIDATION OF GENERAL LEAVE

1. CURRENT EMPLOYEES

Internal Revenue Service (IRS) regulations require the City to report and withhold taxes on the value of the paid leave an employee is eligible to sell back. In order to ensure compliance with the IRS requirements and to avoid unanticipated tax consequences:

Effective July 1, 2019:

On or by the first pay date in December of each calendar year, eligible employees who want to cash out accrued general leave in the following calendar year shall make

an irrevocable election to cash out up to 40 or 60 hours of general leave accrued in the next calendar year, subject to the conditions set forth in the table below. If elected, accrued general leave will be cashed out at the employee's base rate of pay on the last pay date in the following December.

To be eligible for leave cash-out, an employee must have a combined (old and new) general leave balance of at least 75% of their maximum accruable general leave by the end of the last full pay period in September in the year of the cash-out.

Years of Service	Maximum Accruable Leave	Qualifying Balance (75% Max Acc.)	Maximum Liquidation Limit
15-18	396 hours	297 hours	40 hours
19+	396 hours	297 hours	60 hours

F. LIQUIDATION OF OLD GENERAL LEAVE AT SEPARATION

All Old General Leave Bank hours earned on or before December 31, 1993 and on the books at termination shall be liquidated at separation at an hourly rate based on the following formula:

The monthly base pay in effect at time of separation plus 38.862% of monthly base pay multiplied by twelve (months in the year) divided by 2080 (the number of work hours in a year).

New General Leave accruals will not replenish or replace Old General Leave accruals.

G. LIQUIDATION OF NEW GENERAL LEAVE AT SEPARATION

All New General Leave Bank hours earned on or after January 1, 1994 shall be liquidated at the hourly base rate in effect at separation.

SECTION 2: HOLIDAYS

A. Holidays Recognized and Observed. The following days will be recognized and observed as paid holidays:

1. New Year's Day (January 1 or see B. 4 below)
2. The third Monday in January known as "Dr. Martin Luther King, Jr., Birthday"
3. The third Monday in February, known as "Presidents' Day"
4. The last Monday in May, known as "Memorial Day"
5. July 4, known as "Independence Day"
6. The first Monday in September, known as "Labor Day"
7. November 11, known as "Veteran's Day"

8. The Thursday in November appointed as "Thanksgiving Day"
9. The day following "Thanksgiving Day"
10. Christmas Eve (December 24 or see B. 4 below)
11. Christmas Day (December 25 or see B. 4 below)
12. New Year's Eve (December 31 or see B. 4 below)
13. One Floating Holiday (8 hours); each employee will be credited with 8 hours of non-accruable leave on the effective date of this agreement and each July 1 thereafter (hours to be prorated for new employees hired after July 1).
Hours may be scheduled to be taken as mutually agreeable to the employee and the department. Unused hours may not be carried over from one year to the next.

Every other day appointed by the President or Governor and authorized by the City Manager, or designated by the City Council for a public fast, Thanksgiving or holiday.

B. Regular Holiday Pay. Employees shall be compensated for holidays in the following manner:

1. All employees who are covered by this MOU shall continue to receive eight (8) hours of their current regular pay for each of the holidays listed above.
2. Whenever any of the holidays listed above shall fall on a Saturday, the preceding Friday shall be observed as the holiday.
3. Whenever any of the holidays listed above shall fall on a Sunday, the succeeding Monday shall be observed as the holiday.
4. The following special rules shall apply in connection with December 24 - 25 and December 31 - January 1 holiday periods:
 - a) When December 25 or January 1 falls on a Saturday, the previous Thursday and Friday shall be observed or credited as holidays;
 - b) When December 25 or January 1 falls on a Sunday, the previous Friday and the following Monday shall be observed and credited as holidays;
 - c) When December 25 or January 1 fall on a Monday, the following Tuesday shall be observed and credited as a holiday.
5. Notwithstanding the foregoing, the holidays specially proclaimed or appointed by the President, Governor or City Council (not specifically set forth above) shall be observed or credited only upon the day so proclaimed or appointed.

C. Eligibility Requirements. Employees shall establish their eligibility for holiday pay by working or being in a paid leave status on the regularly scheduled workdays before and after the day upon which the holiday is observed.
Employees who are absent from work without pay on either the scheduled workday

before or after the day upon which the holiday is observed (or holidays if observed on consecutively scheduled workdays) shall not be eligible for nor receive holiday pay.

- D. Work Assigned on Holidays. An employee assigned by the Department Head, or designated representative to work on any of the holidays listed above in Part A will receive one and one-half times his/her regular hourly rate in addition to regular holiday pay.
- E. Holiday hours shall be prorated for employees that work less than a full-time schedule.

SECTION 3: FAMILY LEAVE

The City will comply fully with the requirements of the California Family Rights Act (CFRA), the federal Family and Medical Leave Act (FMLA), California requirements regarding the Pregnancy Disability Act (pregnancy leave), the City of Fremont Personnel Rules (PR&R) regarding Leave Without Pay (LWOP), and the General Leave (GL) Plan.

The City's Administrative Regulations combines the rules and procedures of the above leave types and defines their application to City of Fremont employees.

SECTION 4: PERSONAL LEAVE DONATION

In the event of a medical, personal or family emergency, employees covered under this MOU may donate or receive accrued and/or prospective leave accruals to or from other City of Fremont employees. Donations and use of donated leave time shall be administered through a Personal Emergency Time (PET) Bank, provided as follows:

- A. For purposes of this section, "medical, personal, or family emergency" shall mean circumstances in which an employee needs to take time off from, or reduce, their regular work schedule as the result of the illness or injury of themselves or illness or injury of a family member which requires their care. "Family member" shall be defined as: 1) a biological, adopted, or foster child, a step child, a legal ward under 18 years of age, and an adult dependent child over 18 years of age; 2) a biological, foster, or adoptive parent, a stepparent, a legal guardian, or a person who stood in place of a parent to the employee; 3) a spouse as defined or recognized under State law for purposes of marriage in the State of California; or 4) another relative residing in and a member of the same household or a life partner residing in the same household who is not a legal spouse.
- B. Only accrued vacation or general leave and future, unaccrued vacation or general leave may be donated. Neither sick leave nor compensatory leave time may be donated.

- C. The recipient employee will not accrue seniority during any period of donated leave usage.
- D. The point at which an employee may request use of the PET Bank shall be when all general leave, compensatory time and sick leave banks, as applicable to the recipient employee, have been used down to an aggregate total of forty-five (45) hours and the employee anticipates that he/she will, because of the need to be absent from work more than forty-five (45) hours during the next pay period, use all existing aggregate hours.
- E. The recipient employee will be responsible for payment of taxes due on the salary received when the leave is used.
- F. The donating employee cannot donate future leave accruals beyond the extent of accrued leave available at the time of donation.
- G. The donating employee cannot donate accrued leave in excess of their existing vacation or general leave balance.
- H. The City will determine whether or not a leave of absence will be approved for the recipient employee and the OE3 Business Agent and Stewards will determine whether future leave accruals can be donated for the time off. The City will comply with Federal and State laws at all times and its guidelines will generally provide direction for evaluating leave requests.
- I. Neither the City nor the Bargaining Unit shall discriminate in any way with respect to the donation of accrued leave or future leave accruals based on race, religion, creed, political affiliation, color, national origin, ancestry, sex, marital status, age, sexual orientation, medical condition, or physical or mental disability.
- J. In instances when the receiving employee does not use all donated hours, the hours not used will, at the donating employees' election, either be placed in the PET Bank for use by other eligible employees or returned to the donating parties.
- K. A donating employee may designate a specific recipient to receive donated hours.
- L. Employees in the Bargaining Unit may give or receive hours across bargaining unit lines consistent with reciprocating agreements with other City of Fremont bargaining units.
- M. In the event the City adopts a city-wide PET Bank policy, the parties to this MOU shall meet and confer regarding the impact of implementing a city-wide PET Bank policy.

SECTION 5: ON THE JOB INJURY LEAVE

- A. The City and the Union agree that for injuries occurring on or after December 31, 2000, the first paragraph of Personnel Rule Article XII, Section 2.01, titled "Disability Leave" will no longer apply to employees covered by this agreement, and will be replaced instead by the following provisions.
- B. A full time, regular employee who is unable to work as a result of injury or illness determined to arise out of and in the course of his/her employment with the City of Fremont, shall be paid an amount which, together with the Workers' Compensation benefits to which he/she may be entitled, shall equal:
- 1) His/her regular gross rate of pay for the first sixty (60) calendar days (or hourly equivalent); and
 - 2) 80% of his/her regular gross rate of pay for the sixty-first (61st) through the three hundred sixty-fifth (365th) calendar day (or hourly equivalent).
 - 3) The above benefits will cease when the employee is determined to be "permanent and stationary."
 - 4) Employees on disability leave shall not suffer any loss or reduction of seniority hours.

SECTION 6: BEREAVEMENT LEAVE

In the case of a death in the immediate family, employees may be granted a leave of absence of three (3) days as bereavement leave. Time taken shall be considered paid bereavement leave and will not be charged against the employee's accrued general leave.

"Immediate family" is defined as wife, husband, child, brother, sister, parent or current parent-in-law, grandparent or current grandparent-in-law, except that a relative residing in and a member of the same household, or a life partner residing in the same household who is not a legal spouse, may be considered as of the immediate family.

ARTICLE 4 - INSURANCE

SECTION 1: MEDICAL/DENTAL BENEFITS

- A. The City shall secure and make available to all eligible employees, medical care, dental care, accidental death and personal loss insurance, child care reimbursement and excess medical expense reimbursement under the Alternative Benefits and Compensation Plan (ABC Plan). The ABC Plan is a "cafeteria plan" as defined in Section 125 of the Internal Revenue Code.
- B. Employees in this unit shall not be permitted to enroll in any City sponsored health or dental care plans through December 31, 2007, but shall continue to participate in the

life insurance programs sponsored by the City. It is understood and agreed that the City shall not be held responsible or liable for any matters, including the determination and payment of benefits arising in the administration of the Operating Engineers Health and Welfare Trust Fund for Northern California.

- C. Employees in this unit may enroll in the Operating Engineers Health and Welfare Trust Fund (the OE3 Trust) for Northern California to obtain medical and dental insurance coverage until December 31, 2007, or they may waive coverage in accordance with procedures established by the City. The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

The HBA for employees who elect to waive coverage by the OE3 Trust, shall be Five Hundred Eighty Dollars (\$580.00) per month. Money not used for the purchase of benefits under the Plan will be paid to the employee in taxable cash.

- D. Effective January 1, 2008, Employees in this unit may enroll in medical plans provided through CalPERS to obtain medical insurance coverage and the Operating Engineers Health and Welfare Trust Fund (the OE3 Trust) for Northern California to obtain dental insurance coverage, or they may waive coverage, in accordance with procedures established by the City. The City contribution for insurance and other benefit coverage available under the Alternative Benefits and Compensation Plan is known as the Health Benefits Allowance (HBA).

Effective January 1, 2008, the HBA for employees who elect to waive medical and/or dental coverage in accordance with the provisions established by the City and do not purchase medical and/or dental benefits shall be Five Hundred Eighty Dollars (\$580.00) per month and will be paid to the employee in taxable cash.

- E. Health Benefit Allowance shall be administered as follows:

- 1. Effective July 1, 2019, the HBA for those employees electing medical and dental coverage shall continue to be as follows, or the actual premium amount, whichever is less.

Employee only	\$1,221 per month
Employee +1	\$2,045 per month
Employee +2 or more	\$2,557 per month

- 2. Effective January 1, 2020, the HBA for those employees electing medical and dental coverage shall increase by \$50 to the following amount or the actual premium amount, whichever is less.

Employee only	\$1,271 per month
Employee +1	\$2,095 per month
Employee +2 or more	\$2,607 per month

3. Effective January 1, 2021, the HBA for those employees electing medical and dental coverage shall increase by \$50 to the following amount or the actual premium amount, whichever is less.

Employee only	\$1,321 per month
Employee +1	\$2,145 per month
Employee +2 or more	\$2,657 per month

- F. Employees electing to purchase medical and dental benefits will not be eligible for taxable cash as set forth in Section D above. In the event premiums and/or costs for the selected benefits exceed the amount in the Health Benefits Allowance in Section E.1, E.2 and E.3, the balance will be paid by the employee through automatic payroll deduction, as allowed under Internal Revenue Code Section 125.
- G. For the purpose of description of plans, the coverage's, exclusions, and limitations of the City sponsored plans and the OE3 Trust plans are those in force on January 1, 2007.
- H. In the event that the benefits in this Article become fully subject to federal or state taxation, the City and the Operating Engineers shall meet in a timely manner to discuss the impact.

SECTION 2: HEALTH INSURANCES

In the event the Federal government implements a nation-wide health care plan that mandates changes to the health and welfare programs described in this MOU, the City and the Union agree to meet in a timely manner to discuss the impact.

SECTION 3: MEDICAL INSURANCE FOR RETIRED EMPLOYEES

- A. Effective October 1, 2000, medical premium reimbursement for OE3 retirees is as shown:

<u>Retirement Dates</u>	<u>Medical Reimbursement</u>
<u>From</u> <u>Through</u>	<u>of Health Premium</u>
2-1-77 6-30-87	Employee only = \$57.88 Employee + 1 = \$63.98 Employee + 2 = \$79.85
7-1-87 6-30-91	Up to \$415/month
7-1-91 6-30-92	Up to \$475/month
7-1-92 6-30-97	Up to \$525/month
7-1-97 6-30-98	Up to \$554/month
7-1-98 6-30-99	Up to \$580/month

7-1-99	6-30-00	Up to \$605/month
7-1-00	6-30-01	Up to \$703/month
7-1-01	6-30-02	Up to \$733/month
7-1-02	1-09-06	Up to \$763/month

- B. 1. An employee who is hired on or after January 10, 2006 is eligible for the medical and dental premium reimbursement set forth in Section B.2. below if he/she meets all the following criteria:
- a. retires from the City of Fremont within 120 days of separation,
 - b. is vested with CalPERS,
 - c. has completed at least five (5) years of continuous service with the City,
 - d. is at least age 50 or has received a CalPERS disability retirement as a result of employment with the City of Fremont.
2. The actual amount of medical premium reimbursement the City will contribute on the employee's behalf will be based on the employee's total years of City service as provided in the following chart.

Employee Years of Service at Retirement	City Base Contribution	Adjustment for Years of Service (\$/mo.)	Total City Contribution (\$/mo.)
0 to 5	\$0	\$0	\$0
6 to 9	\$200	\$0	\$200
10 to 14	\$200	\$182	\$382
15 to 19	\$200	\$372	\$572
20 or more	\$200	\$563	\$763

3. Subject to the provisions of Section 3, B, 1, employees hired on or after January 1, 2012, the actual amount of medical premium reimbursement the City will contribute on the employee's behalf will be based on the employee's total years of City service as provided in the following chart:

Employee Years of Service at Retirement	City Contribution
0 to 5	\$0
5 to 24	\$10 per Month per Year of Service
25 or more	\$500

- C. The amount of City reimbursement shall not exceed the premium required for the retiree's particular level of coverage in the plan selected. Retirees are eligible for reimbursement for the OE3 Trust Fund or another medical insurance plan. Retirees must comply with the processes and procedures established by the City for

verification of enrollment, cost of plan and other required information to maintain their eligibility for reimbursement. Failure to comply with reasonable City requirements will result in the retiree forfeiting all future City reimbursements.

It is further understood that should the Union elect to continue medical insurance premium coverage for any or all retired employees, any cost increases occurring and projected at the time of negotiation of a new MOU shall be considered a cost to the new agreement.

SECTION 4: LIFE INSURANCE COVERAGE

All employees covered by this MOU shall be provided Fifty Thousand Dollars (\$50,000.00) of group term life insurance under a program to be selected and administered by the City.

SECTION 5: SHORT TERM/LONG TERM DISABILITY

- A. The maximum amount of insurable salary under the Short Term/Long Term Disability plans shall be the employee's total base salary, not to exceed \$15,000 per month, but not include any special allowances.
- B. The Short Term/Long Term Disability plans will be selected and administered by the City and shall be made available to all members of the unit.
- C. Effective January 1, 2010, any employee electing coverage under the Short Term/Long Term Disability plans will assume responsibility for payment of the entire insurance premium on an after-tax basis. Effective January 1, 2010, the City will credit the employees pay with an amount equal to the premium for the Long Term Disability Plan.
- D. CATASTROPHIC SICK LEAVE BANK.

A Catastrophic Sick Leave Bank of two-hundred fifty (250) hours will be available for use by members of the Union until the City Short Term/Long Term Disability plans are implemented. Once the Short Term/Long Term Disability plans are available this Section of the Memorandum of Understanding will be void

Employees shall be required to exhaust any and all available leave banks for the first thirty (30) days of leave prior to utilization of the Catastrophic Leave Bank. For days thirty one (31) through sixty (60), the employee may request going to a Leave Without Pay status prior to using Catastrophic Sick Leave. The purpose of the Catastrophic Sick Leave Bank is to enable the employee to receive full pay and benefits to the maximum extent possible but not to exceed their regular salary and benefits for the period between the 31st day and 60th day of disability for those employees who shall be disabled and approved for Salary Continuation benefits by the Long Term Disability Insurance carrier upon submitting a claim under the policy. Payment of Catastrophic Sick Leave shall cease upon payment by the insurance

company of Long Term Disability Insurance. Employees requesting use of Catastrophic Sick Leave shall submit a written request which shall be subject to review and approval of the Union's Chief Steward, or designee, and the Personnel Manager or designee.

ARTICLE 5 - RETIREMENT

SECTION 1: PUBLIC EMPLOYEES RETIREMENT SYSTEM

The City will continue to contract with PERS for retirement benefits as outlined in the table below.

	Employees hired before 4/8/12	Employees hired from 4/8/12 – 12/31/12 and Classic PERS Members hired after 12/31/12 (as defined by the Public Employees' Pension Reform Act of 2013 PEPRA)	Employees hired 1/1/13 or later as New PERS Members
Retirement Formula	2.5% at age 55 i	2% at age 60	2% at age 62
Average Highest Comp. Time	Single Highest Year ii	Average of Three Highest Years	Average of Three Highest Years
COLA	3% iii	2%	2%
Normal Member PERS Contribution	8%	7%	50% of the normal cost (currently 6.25%)
Survivor Benefit	4 th Level 1959 iv	4 th Level 1959	4 th Level 1959
Death Benefit/ Remarriage	Eligible	Eligible	Eligible

Effective June 29, 2013 employee cost sharing (5.29% of retirement compensable payroll toward retirement) of the employer rate is eliminated.

SECTION 2: CONVERSION OF EMPLOYER PAID MEMBER CONTRIBUTION TO BASE SALARY

Operating Engineers Local No. 3 and the City jointly acknowledge that Government Code Section 20022 defines compensation for the application of the Public Employees' Retirement Law (Government Code Section 20000 et seq.), and that the Board of Administration is expressly granted the authority to determine what constitutes compensation. Operating Engineers Local No. 3 hereby expressly acknowledges that the City neither represents nor guarantees that items reported in this Chapter as compensation will be included in the calculation of retirement benefits nor does it assume any liability for a determination by PERS or any court or adjudicatory body that

i Negotiated on 08/11/2002
ii Negotiated on 07/01/1987
iii Negotiated on 07/29/2001
iv Negotiated on 07/29/2001

an item is not compensation for the purpose of calculating retirement benefits under the California Public Employees' Retirement Act.

**SECTION 3: IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(H)
(2) EMPLOYER PICKUP**

Effective January 1, 1994, the City increased the base salary of employees encumbering positions represented by Operating Engineers Local No. 3 in the amount of six and sixty-one hundredths percent (6.61%), and employees assumed responsibility for payment of the normal employee retirement contribution to the Public Employees' Retirement System (PERS). The City has designated such payment as an "Employer Pickup" as defined under the provisions of Section 414 (h) 2 of the Internal Revenue Code.

SECTION 4: MILITARY SERVICE CREDIT

The City shall provide the following Public Employment Retirement System optional contract provisions, with the eligible employee required to contribute both the employer's and employee's contributions and interest: Military Service Credit, as specified in Section 20930.3 of the Government Code.v

ARTICLE 6 - HOURS AND SCHEDULING

SECTION 1: ALTERNATE WORK SCHEDULES

The City and the Union entered into a Side Letter of Agreement regarding the implementation of a 9-80 work schedule on April 1, 1994. The parties have agreed to extend the Side Letter through the term of this MOU.

SECTION 2: EARLY SHIFT SCHEDULING

Employees may be assigned to begin working a scheduled shift at or after 6:00 a.m. but prior to 6:30 a.m., and shall end their regular work day after nine (9) hours. The availability of early shifts may vary to accommodate for operational need and seasonal demands and will be determined by the Department Head or his/her designee.

Employees temporarily assigned to begin working a scheduled shift before 6:00 a.m. shall end their regular work day after eight and one-quarter (8 ¼) hours of work but compensation for the day's work shall be for nine (9) hours.

Upon Union ratification and Council approval of this Agreement, employees whose regular assigned duties on the effective date of this agreement are to operate a street sweeper shall have the option to volunteer for a 5:00 a.m. or a 7:00 a.m. starting time

v Effective 09/16/1977

without the reduced work day. Future election shall be at the same time as the “assignment bid.” Current sweeper operators shall keep their assigned routes. Newly hired or promoted sweeper operators will choose their start time (from the two options above) when hired or promoted and may then elect between the two options each year at the same time as the “assignment bid.”

SECTION 3: CLEAN UP TIME

All employees in any of the following sections will be allowed adequate time to clean themselves, the work site, and tools and equipment at the close of each employee's scheduled workday:

- Auto Shop Parks Survey
- Public Buildings Construction Inspection Recreation
- Streets

SECTION 4: ASSIGNMENT BID SYSTEM

- A. Assignment bids shall be used for all Park Maintenance Worker I and II positions, and all Street Maintenance Worker I and II positions.
- B. The bidding of positions will be administered by a joint committee consisting of two (2) management and two (2) union representatives. The joint management/union committee will develop a written procedure for administering the Assignment Bid System. When an impasse in the administration and application of this program exists in the joint committee the Division Head shall make the final decision.
- C. Bidding shall be done in an open meeting with all eligible employees. There shall be two (2) weeks' notice prior to the meeting. Employees unable or not choosing to attend may identify their bid choices, in writing, prior to the meeting, to their union representative.
- D. Once a year on a date to be determined by the joint labor/management committee any employee in a permanent assignment may request inclusion in a reassignment bid:
 - 1. Bids for reassignment will be for all positions volunteered by the incumbent, and
 - 2. Reassignment will be based on the seniority of those employees participating in the reassignment bid.
- E. The employee having the highest seniority will have first choice for a position. Seniority shall be determined based on an employee's original date of hire in their current maintenance series.

If multiple employees have the same department hire date the employee with the most actual hours worked as a City of Fremont employee shall be most senior among them and so on for each in any group of similarly situated employees.

- F. In filling positions for which no bids are received the employee with the lowest seniority will be assigned.
- G. Training assignments are for Parks Maintenance Worker I and Street Maintenance Worker I positions. Training assignments shall be bid by seniority for periods of up to one (1) year when:
 - 1. The employee bidding has less than ten (10) years of service and,
 - 2. The employee bidding has not previously worked in the assignment area.
- H. The following assignments are exempt from the bidding process and shall be made by the Division Head/designee:
 - 1. Temporary assignments less than six (6) months to fill vacancies due to terminations or leaves of absences.
 - 2. Reassignment due to performance or production issues.
- I. Temporary assignments shall not exceed six (6) months. Employees so assigned shall revert to their previously held position upon expiration of the assignment.

ARTICLE 7 - GRIEVANCES

SECTION 1: ARBITRATION

The Union and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any grievance available to an employee covered by the provisions of this MOU shall be by final and binding arbitration. The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of an arbitrator made pursuant to this procedure.

SECTION 2: GRIEVANCE PROCEDURE

A. PURPOSE OF THE PROCEDURE

- 1. To establish orderly procedures providing a method of communication between employees and management concerning matters subject to grievance.
- 2. To provide that grievances shall be settled as promptly as possible and at the lowest possible level of the procedure.

3. To provide employees, individually or with a representative of their own choosing, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure.

B. MATTERS SUBJECT TO GRIEVANCE PROCEDURE

1. Grievances. A grievance shall be defined as any complaint or dispute concerning the interpretation or application of:
 - a) any City ordinance;
 - b) any rule or regulation of the City or the Department governing personnel practices or working conditions;
 - c) the practical consequences of a City's rights' decision on wages, hours, or other terms and conditions of employment, provided said consequences were not previously the subject of "meet and confer"; or
 - d) the interpretation or application of any of the provisions of the Memorandum of Understanding between the Operating Engineers Local No. 3 and the City of Fremont.
2. Exclusions/Limitations. The procedure set forth shall be subject to the following exclusions or limitations:
 - a) Probationary employees who are rejected during probation shall have no right of appeal under this section unless the employee alleges the dismissal was based in whole or in part on their race, religion, creed, color, sex, marital status, age, sexual orientation, physical or mental disability, medical condition, Union affiliation or lawful activities, or national origin;
 - b) Appeals of worker's compensation claims;
 - c) Unemployment Insurance claims; or
 - d) Other matters where dispute resolution has been specifically provided for in State or Federal Law.

C. GENERAL

1. The time limits set forth herein may be extended by mutual consent or for good cause, such as legitimate absence of one or more parties, including representatives, or because of injury, illness, official obligations, or unavoidable personal obligations. An extension of time limits shall be confirmed in writing.

2. If either party raises the question of arbitrability, such question shall be determined by the arbitrator prior to hearing the merits of the case.

D. PROCEDURE

1. Step I. The affected employee(s) shall present the grievance orally to the immediate supervisor within thirty (30) calendar days of the occurrence of the issue grieved or within thirty (30) days from such time as the employee or Union should reasonably have been aware of the occurrence (whichever is lesser).
2. Step II. Should the grievance remain unresolved within ten (10) calendar days after an oral presentation, the employee or his representative may submit the grievance in writing to the immediate supervisor within ten (10) additional calendar days. The written grievance shall make reference to the statute, ordinance, rule, regulation, or MOU provision alleged to be controlling, and shall include the proposed remedy sought. The supervisor shall then render a written decision to the employee within ten (10) calendar days.
3. Step III. Should the grievance remain unresolved, the employee or his representative shall, within ten (10) calendar days after receipt of the supervisor's decision, submit the written grievance to the Department Head.
4. Step IV. Should the grievance remain unresolved, the employee or Union representative and steward may, within ten (10) calendar days after receipt of the Department Head's written response, submit the grievance in writing to the City Manager or his/her designee. The City Manager, or designated representative, shall meet as deemed appropriate, with the affected employee and with the assigned Union representative and steward within ten (10) calendar days of submission and attempt to resolve the dispute.
5. By mutual agreement, the parties may submit the dispute to a mutually-selected mediator or facilitator, or use a self-mediated settlement process. The results of this elective process are non-binding.

The parties will develop a list of prospective mediators and a process for selection and contact. The mediators should have both process and content skills. The parties agree to rotate responsibility for making arrangements. The list will be subject to ongoing review and update.

6. Step V. Should the grievance not be resolved to the satisfaction of the Union, the Union shall request arbitration by written notice to the City within ten (10) calendar days following receipt of the City Manager's decision.
7. Upon notice of intent to arbitrate, the Union and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California

Department of Industrial Relations or, upon mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the Union and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

8. The parties agree to select an arbitrator within 30 days of the request for arbitration. If selection of an arbitrator exceeds 30 days following the date of notification, the other party will select the arbitrator.
9. Decision of the Arbitrator. The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the provisions of California Code of Civil Procedure Section 1280 et seq. The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this MOU and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto.

SECTION 3: MISCELLANEOUS PROVISIONS

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena.

On noticed application by the City, the arbitrator may order the Union to reimburse the City for its costs incurred in paying any City employee for time spent responding to subpoena issued at the request of the Union or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.

- D. The Union and the City agree to share equally all costs of the arbitrator and to be responsible for their own respective costs of making their presentation to the arbitrator.
- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- F. While either the employee or the Union may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- G. The Union, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

ARTICLE 8 - APPEALS ON DISCIPLINE

SECTION 1: ARBITRATION

The Union and the City do hereby agree that, unless earlier resolved under these procedures, the final resolution of any appeal of disciplinary action available to an employee covered by the provisions of this MOU shall be by final and binding arbitration. The City Council hereby formally confers upon the City Manager the responsibility to carry out any lawful decision of an arbitrator made pursuant to this procedure.

SECTION 2: APPEAL PROCEDURE

A. PURPOSE OF THE PROCEDURE

1. To establish orderly procedures providing a method of communication between employees and management concerning matters subject to appeal.
2. To provide that appeals from discipline shall be settled as promptly as possible and at the lowest possible level of the procedure.
3. To provide employees, individually or with a representative of their own choosing, a systematic means of obtaining formal consideration by higher authority, if reasonable efforts fail to resolve such matters through informal procedure.

B. MATTERS SUBJECT TO DISCIPLINARY APPEAL PROCEDURE

For the purpose of this procedure, an "Appeal" shall be defined as a complaint or dispute as to any disciplinary or punitive action and shall include:

- a) dismissal;
- b) demotion;
- c) suspension;
- d) reduction in salary;
- e) transfer imposed for punishment.

C. EXCLUSIONS/LIMITATIONS

The procedure set forth shall be subject to the following exclusions or limitations:

- a) Probationary employees who are rejected during probation shall have no right of appeal under this section unless the employee alleges the dismissal was based in whole or in part on their race, religion, creed, color, sex, marital status, age, sexual orientation, physical or mental disability, medical condition, Union affiliation or lawful activities, or national origin;
- b) Appeals of worker's compensation claims;
- c) Unemployment Insurance claims; or
- d) Other matters where dispute resolution has been specifically provided for in State or Federal Law.
- e) Written reprimands may be appealed to the City Manager within ten (10) calendar days of receipt. The City Manager or designee, other than the Department Head involved, shall review the circumstances and render a written decision within fourteen (14) days of review. The decision of the City Manager/designee shall be final and conclusive.
Employees may request that Letters of Reprimand be removed from their file after three (3) years, provided that there is no recurrence of the same or similar incident.
- f) The parties have already negotiated attendance standards. The standards will be applied in evaluating attendance and attendance-related issues.

D. GENERAL

1. The time limitations may be extended by mutual consent or for good cause, such as legitimate absence of one or more parties, including representatives, or because of injury, illness, official obligations, or unavoidable personal obligations.
2. If either party raises the question of arbitrability, such question shall be determined by the arbitrator prior to hearing the merits of the case.

3. Nothing in these procedures shall be construed to prevent discussion or meetings between parties at any time to clarify the facts in order to conclude any matter as promptly as possible.
4. Supervisors will inform employees of their right to representation, or employees may request and arrange for Union representation at any step in the discipline process. A request for representation will not unnecessarily delay the process.

E. PROCEDURE

The procedure for the pre-disciplinary meeting shall be as described by the Administrative Regulation.

1. **Timeline After “Skelly” Review:** In the event a determination has not been reached within two (2) weeks following the conclusion of the “Skelly” disciplinary review, the Skelly officer will inform the employee and Union how much longer he/she anticipates the investigation will take before a determination is rendered.
2. Before arbitration, the parties may submit the dispute to a mutually-selected mediator or facilitator, or use a self-mediated settlement process.
3. **Selection of Arbitrator:** Should the City or employee not be satisfied with the results of the pre-disciplinary meeting, either party may request arbitration of the decision. The request for arbitration shall be made by written notice submitted to the other party within ten (10) calendar days following receipt of the results of the pre-disciplinary meeting.

Upon notice of intent to arbitrate, the Union and the City shall meet to select an arbitrator. If unable to mutually agree on the selection of an arbitrator, then a list of available arbitrators shall be obtained from the State of California Department of Industrial Relations or, upon mutual consent, from the American Arbitration Association. Upon receipt of such list, the parties shall meet and if unable to mutually select an arbitrator from such list, then a coin shall be flipped and the party correctly calling the coin flip shall strike a name from the list. The parties shall then alternately strike names from the list until only one name remains and that individual shall be the arbitrator. In the event the arbitrator so selected is not available, then the individual whose name was last struck from the list shall be the arbitrator. If that individual is not available, then the Union and the City shall request another list or select an arbitrator through any other mutually agreed upon process.

The parties agree to select an arbitrator within 30 days of the request for arbitration. If selection of an arbitrator exceeds 30 days following the date of notification, the other party will select the arbitrator.

4. **Decision of the Arbitrator:** The decision, opinion, and award of the arbitrator shall be final and binding upon all parties, subject to review only under the

provisions of the California Arbitration Act (C.C.P. Section 1280 et seq). The arbitrator shall not have the power to add to, subtract from, or modify any of the terms of this MOU and shall not have jurisdiction to make any award which would not have been authorized under applicable authority in the absence of this agreement to arbitrate, except by the joint prior authorization of the parties hereto. In any disciplinary appeal from a termination, suspension, reduction in pay, transfer, or demotion, any relief which the arbitrator may grant shall be limited to a rescission of the action appealed from, a restoration of any lost pay and benefits, and, where the arbitrator deems it appropriate, the imposition of substitute discipline composed of a suspension without pay of not more than six (6) months, a reduction in pay, a transfer to an established position, a demotion, or a combination of any or all of these forms of disciplinary action.

SECTION 3: MISCELLANEOUS PROVISIONS

- A. All arbitration proceedings under this part shall be governed by the California Arbitration Act (C.C.P. Section 1280 et seq.), and any action brought by any party to enforce the provisions hereof shall be brought solely and exclusively under said part.
- B. Concurrent grievances alleging violation of the same provision may be consolidated for the purpose of this procedure to be determined in one proceeding.
- C. The City shall prepare in blank and deliver to the arbitrator subpoenas for issuance by him/her. The arbitrator may, in his/her discretion, require a showing of good cause prior to the issuance of any subpoena.

On noticed application by the City, the arbitrator may order the Union to reimburse the City for its costs incurred in paying any City employee for time spent responding to subpoena issued at the request of the Union or any member thereof. Such reimbursement shall be ordered only upon a finding that the compelled attendance of a City employee did not contribute substantially to the resolution of the matter being arbitrated, or that the party compelling such attendance failed to exert reasonable efforts to minimize standby time of the City employee.

- D. The Union and the City agree to share equally all costs of the arbitrator and to be responsible for their own respective costs of making their presentation to the arbitrator.
- E. If by mutual agreement or requirement of the arbitrator, services of a court reporter are utilized, the parties agree to equally share the cost of such service. Any cost for transcription shall be borne by the party requesting it.
- F. The Union and the City endorse the principle that disclosure of information relating to contemplated impositions of employee discipline may, in many instances, serve no public purpose and may be harmful to the City, the Union, and the employee concerned. This endorsement of principle is not intended to create any enforceable rights on the part of any person or entity.

- G. While either the employee or the Union may initiate a grievance under the formal procedure (or they may join together in the procedure), once the grievance has been presented no other grievance concerning the incident or action upon which the complaint is based may be initiated.
- H. The Union, when the initiating party, shall be subject to all policies and assume all rights and responsibilities of the grievance procedure which are granted to or required of the employee.

ARTICLE 9 - UNION ISSUES

SECTION 1: NOTICE TO UNION OFFICE

Whenever the City serves written notice upon representatives of the bargaining unit, a copy of such notice shall be sent directly to the Local Union No. 3 office.

SECTION 2: ORGANIZATION BUSINESS

- A. Union Steward(s) shall be allowed time off with pay when approved by the Municipal Employee Relations Officer (City Manager), or designee, for the purpose of conducting Union business. It shall be the responsibility of each union steward to advise his/her supervisor of the expected absence from regular duties for the conduct of Union business.
- B. With respect to the meet and confer process, four (4) Union representatives shall be the maximum number of employees who will be allowed concurrent time off without loss of compensation. The Union shall submit the names of all such employee representatives to the Municipal Employee Relations Officer. The employee representatives shall request release time from their supervisors in advance of leaving their work assignments to attend meet and confer sessions. Approval of release time shall not be unreasonably denied.

SECTION 3: UNION SECURITY

A. DEFINITIONS

For the purpose of this Section the terms used herein have the following meaning:

1. "Bargaining Unit" shall consist of all persons employed by the City of Fremont in the classifications represented by Operating Engineers, Local No. 3.

B. DUES OR OTHER UNION-SPONSORED BENEFIT PROGRAM DEDUCTIONS

1. The City shall honor OE3 direction/notification of a member's dues paying status, submitted in writing, through electronically recorded phone calls, via online

deduction authorization, or by any other means of indicating agreement allowable under state and federal law, regardless of whether the employee is a member of the Union.

2. Deductions for dues or other Union-sponsored program shall start the pay period after the employer receives notification of the authorization. The employer shall transmit such payments to the Union through electronic funds transfer no later than thirty (30) days after the deduction from the employee's earnings occurs.
3. Requests to authorize dues/other deduction(s), or requests to change status regarding such deductions, shall be directed to the Union rather than the employer. The employer shall rely on the Union's explanations in a certified list, submitted by a representative of the Union who has authority to bind the Union, regarding whether an authorization/change in deductions(s) has been requested by the employee.
4. The Union shall not provide the employer a copy of the employee's authorization unless a dispute arises about the existence or terms of the authorization.
5. The Union shall indemnify the employer for any claims made regarding such deductions.
6. Violations of this Section of the MOU are grievable.

C. DATA PERTAINING TO DEDUCTIONS

Upon request from the Union, the employer shall produce to Operating Engineers' Local Union No 3 a malleable electronic file containing the following information:

1. Full Name (first, middle, last, suffix)
2. Employee Number
3. Job Classification
4. Job Type (full-time, part-time, per diem, as needed)
5. Bargaining Unit
6. Hours worked in the preceding payroll period, which are the basis for the dues deduction amount
7. Pay Step
8. Pay Rate
9. Pay Status (active, on leave, separated from employment, etc.)
10. Department
11. Division (sub code of the department)

D. REGULAR RECEIPT OF BARGAINING LISTS

1. It shall be the City of Fremont's responsibility, once notified by the Operating Engineers Local Union NO.3 to provide a list of all current employees covered by

this Agreement, which shall include each employee's name, home address, home and cell phone numbers, personal and work e-mail addresses, work locations, department, employee identification number, hourly rates of pay, hours worked, gross pay. This list will include all employees newly hired, rehired, reinstated, transferred into or out of the bargaining unit, transferred between departments, promoted, reclassified, downgraded, place on leaves of absence of any type including disability, placed on or recalled from layoff, separated (including retirement), added or deleted from preceding bi-monthly period.

ARTICLE 10 - MISCELLANEOUS

SECTION 1: CREDIT UNION DEDUCTION

The City agrees that for employees covered by this MOU it shall deduct from their paychecks such sums as may be authorized by the employee for payment to either the City and County Employees Credit Union of Alameda County or the Operating Engineers Credit Union of Northern California.

SECTION 2: SAFETY GOGGLES

The City shall provide, at its expense, safety goggles to Park Maintenance personnel. If such goggles prove to be unsatisfactory, the City and representatives of the Union shall meet and confer on alternate methods of providing such safety precautions.

SECTION 3: EMPLOYEE EVALUATION APPEALS

Employees may appeal a performance evaluation in the following manner:

1. The employee must appeal the evaluation in writing to the evaluator's immediate supervisor.
2. Upon receipt of the request for reconsideration of the performance evaluation, the supervisor must notify the employee in writing of the determination of the appeal.
3. If the determination does not satisfy the employee's concerns, the employee may appeal in writing to the appropriate Division Head.
4. Upon receipt of the request for reconsideration of the performance evaluation, the appropriate Division Head must notify the employee in writing of the determination of the appeal.
5. The disposition of an appeal of a performance evaluation by the appropriate Division Head shall be final.

SECTION 4: LIGHT-DUTY ASSIGNMENTS

The City, in granting light-duty assignments, shall first attempt to assign duties to the employee on light-duty which are within the employee's job classification duties.

SECTION 5: AMERICANS WITH DISABILITIES ACT

It is the City's intent to comply fully with the requirements of the Americans with Disabilities Act regarding reasonable accommodation of employees with disabilities.

SECTION 6: SUBSTANCE ABUSE POLICY

The City and the Union have met, discussed, and agreed upon a Substance Abuse Policy. The City and the Union have discussed the development of a program for drug and alcohol testing. The intent is to develop a drug and alcohol testing program to cover all City employees. The City and the Union agree that the presence of drugs and alcohol in the workplace is a serious problem and will cooperate to see that City employees are working in a drug and alcohol free environment.

As a result of the aforementioned discussions, the Union agrees and supports the City's Substance Abuse Policy.

SECTION 7: VARIABLE DEMAND HIRING

The City may hire employees to work for less than twenty (20) hours per week for an unlimited duration. These employees will be used when a department has a specific need to perform work on an ongoing basis which requires fewer than twenty (20) hours work per week.

SECTION 8: PROBATIONARY PERIOD

- A. The probationary period for all classifications covered by this bargaining unit shall be six (6) months unless modified pursuant to part B of this section.
- B. The probationary period for all classifications covered by this bargaining unit will extend to twelve (12) months contingent upon the City reaching agreement with all other City of Fremont labor groups to extend their probationary periods to twelve (12) months.

SECTION 9: CONTINUING DISCUSSION

The Union and the City agree to continue discussions, during the term of this agreement, regarding Commercial Driver's license requirements and maintaining United States Department of Transportation (USDOT) requirements for positions represented by the union.

SECTION 10: JOINT LABOR-MANAGEMENT COMMITTEE

The parties have agreed to convene a Joint Labor-Management Committee to meet and discuss a variety of topics of interest to both parties. The parties have agreed their first task will be to develop ground rules, composition of the Joint Labor-Management Committee, and meeting format and frequency. The parties have agreed to use a facilitator as needed and as available.

SECTION 11: TUITION REIMBURSEMENT

Commencing on the effective date of this MOU, the City will make available a Tuition Reimbursement Program to permanent employees in the unit. Non-probationary employees with at least six months of full time service with the City are eligible for reimbursement. The maximum reimbursement shall be \$1,500 per employee per fiscal year. Courses eligible for reimbursement are those taken at an accredited college or university or educational program (including extension courses) related to employment, including promotional opportunities.

Reimbursement will be provided under the following circumstances:

- A. Courses must be pre-approved as job related by the Department head.
- B. Eligible expenses include required textbooks, tuition, fees, lab fees, and equipment, but will not include parking fees or health fees related to enrollment.
- C. Employees must attain a grade of "C" or better for undergraduate or extension work and "B" or better for graduate work. Courses providing a "pass/fail" option must have a "pass" to qualify for reimbursement.
- D. Requests for reimbursement shall be submitted in accordance with procedures developed by the City. A request for reimbursement will not be considered submitted until it includes the relevant receipts and proof that the necessary grade was earned.
- E. Requests for reimbursement must be submitted within 30 calendar days of the end of a fiscal year to be allocated to that fiscal year.
- F. Monies expended on tuition reimbursement will be subject to the appropriate IRS regulations.

SECTION 12: PERSONNEL RULES & LAYOFF ADMINISTRATIVE REGULATION

The City and OE3 agree to meet and confer on the City's Personnel Rules (Resolution #688) and Administrative Regulation 2.20: Layoff Procedure Implementation during the term of this Memorandum of Understanding.

ARTICLE 11 - TEMPORARY AND PROVISIONAL WORKERS

SECTION 1: EMPLOYMENT OF TEMPORARY WORKERS

The following procedures shall apply to persons employed on a temporary basis in classifications represented by the Union:

- A. Temporary work performed within the scope of a classification represented by the Union shall only be permitted in one of the following circumstances:
1. When filling allocated budgeted position vacancies during the absence of an employee on an approved leave or in a leave without pay status;
 2. When staffing temporary positions established for a specific project(s) with a scheduled time of completion or specific limitation on funding;
 3. When workload requirements necessitate additional staffing and a provisional or probationary appointment cannot be made due to financial, operational or workload considerations, subject to the following limitations: No such assignment shall last for more than two years;
 4. When filling staffing needs on a short duration basis or for tasks beyond those which can normally be accomplished by existing staff on an overtime basis. No employee under this subsection shall be employed in a temporary capacity for more than 999 hours. Under this subsection, no temporarily vacant position shall be filled by a temporary employee for more than 999 hours;
 5. Persons hired through a temporary employment agency are not employees of the City and are excluded from the procedures of this Article.
- B. Persons appointed on a temporary basis shall be so appointed in accordance with the following:
1. Employees hired under this Article will be paid the applicable rate of pay for the classification to which assigned;
 2. Temporary employees hired for periods which are expected to exceed 1000 hours shall receive all health and welfare and pension and other contractual entitlements of classified employees including ABC Cafeteria Plan enrollment from time of appointment;
 3. Temporary employees hired for periods which are expected to be less than 1000 hours in duration shall receive an additional 15% of base pay in lieu of benefits for the duration of the temporary appointment or until such employee becomes eligible for benefits as described in subparagraph 4 below;

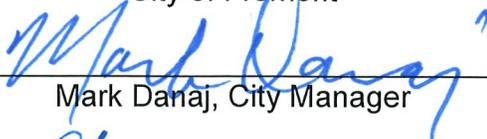
4. Any temporary employee who remains employed beyond 1000 hours shall be eligible for and will be offered the full employee benefit package available under this MOU. Such enrollment shall be effective the first day of the month following the date the employee attains 1000 hours of employment except that enrollment in the Public Employees Retirement System (PERS) shall begin immediately upon attainment of eligibility under the Public Employee's Retirement Law. Upon enrollment in the benefit plans, payment of the 15% benefit in lieu payments shall cease. Additionally, the employee shall be credited with general leave and holiday time (for any holidays which occurred in the first 1,000 hours of work), equal to the amount which would have accumulated by the employee during the period prior to implementation of benefits.

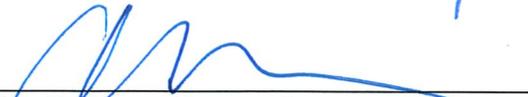
SECTION 2: EMPLOYMENT OF PERSONS IN A PROVISIONAL STATUS

A person who is hired on a provisional basis on or after July 1, 2005 and is subsequently hired into a regular, classified position, shall receive seniority credit for time spent in a provisional status on an hour for hour basis upon completion of the probationary period provided there is no break in service between separation from the provisional position and appointment to the classified position.

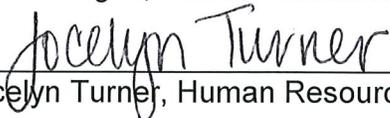
Executed this 11th day of September 2019, by the Employer-Employee representatives whose signatures appear below.

Employer Representatives:
City of Fremont


Mark Danaj, City Manager


Allen DeMers, Human Resources Director

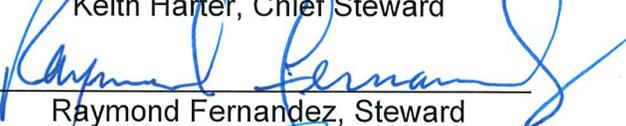

Tina Gallegos, Human Resources Manager


Jocelyn Turner, Human Resources Analyst

Employee Representatives: Operating
Engineers Local #3


Michael A. Eggener, OE3 Business
Representative


Keith Harter, Chief Steward


Raymond Fernandez, Steward

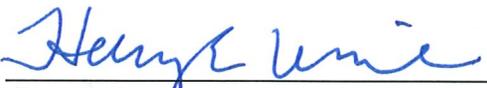
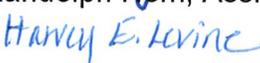

Lyle Travis, Steward


Damian Bruss, Steward


James Anderson, Steward


Shawn McPherson, Steward

Approved as to Form:


Randolph Horn, Assistant City Attorney


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EXHIBIT A
OE3 CLASSIFICATIONS

JOB CODE	JOB TITLE
6430	Building Maintenance Field Supervisor
6446	Building Maintenance Coordinator
6460	Building Maintenance Worker I
6450	Building Maintenance Worker II
5460	Chief Of Party
5445	Construction Inspector
5450	Construction Materials Inspector
6025	Fleet Mechanic I - Heavy
6030	Fleet Mechanic I - Light
6020	Fleet Mechanic II
6021	Fleet Supervisor
6040	Mechanic Assistant
6220	Park Field Supervisor
6260	Park Maintenance Worker I
6250	Park Maintenance Worker II
6580	Recreation Facility & Supply Specialist
6579	Recreation Facility & Supply Worker
5440	Senior Construction Inspector
6055	Street Field Supervisor
6065	Street Maintenance Worker I
6060	Street Maintenance Worker II
5430	Supervising Construction Coordinator
5465	Survey Instrument Operator

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EXHIBIT B

RELEVANT SIDE LETTERS

The following relevant side letter agreements between the City and OE3 are included here as Exhibit B:

- Alcohol and Drug Testing
- Alternate Work Schedules
- GPS Installation
- Providing and Wearing Uniforms
- PSA Assistant and Temp Workers
- Restructuring of Park Maintenance Services
- Standby Duty Agreement
- Weekend Work Duties

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EXHIBIT B - RELEVANT SIDE LETTERS

Alcohol and Drug Testing

**CITY OF FREMONT
ALCOHOL AND DRUG TESTING
OF COVERED-EMPLOYEES
OE - 3**

June 1998

I. PURPOSE

- A. To establish policies and procedures for substance abuse testing for the purpose of preventing accidents and injuries resulting from the misuse of alcohol or use of drugs.
- B. To comply with the requirements of the Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143 Title V) and the regulations mandated by the Federal Highway Administration and general law.
- C. To outline the disciplinary consequences when violations of the agreement occur.

Effective January 1, 1995, the City of Fremont must comply with the United States Department of Transportation regulations implementing the Federal Omnibus Transportation Employee Testing Act of 1991. Specifically, the City must comply with the regulations of the Federal Highway Administration (FHWA) referenced below. Adoption of a policy is one of the City's obligations under the regulations. This agreement sets forth the rights and obligations of covered employees as described in this Administrative Regulation. An employee covered by these new requirements should familiarize himself/herself with the provisions of this agreement BECAUSE COMPLIANCE WITH THIS POLICY IS A CONDITION OF EMPLOYMENT.

If you are an employee covered by this agreement, you should be aware that you are still required to comply with the provisions of the City's drug and alcohol policy which went into effect in November 1991. The obligations and requirements set forth below are in addition to existing obligations and requirements set forth in the policy.

II. POLICY

It is the intent of the City to eliminate substance (drug and alcohol) abuse and its effects from the work place. While the City has no intention of intruding into the private lives of its employees, the City has a concern and obligation to ensure that employees are in a condition to perform their duties safely and efficiently, in the interests of their co-workers

and the public, as well as themselves. The presence of drugs and/or alcohol on the job, and the influence of these substances on employees during working hours, are inconsistent with this objective. The substance abuse testing procedures discussed in this regulation are intended to assist the City in achieving the stated objective.

III. EMPLOYEES AFFECTED

The following employees are affected:

- A. All employees who are required to have a Commercial Driver's License issued by the Department of Motor Vehicles of the State of California as a condition of employment.
- B. Employees in the job classifications set forth in Appendix A are "covered employees" because they perform "safety sensitive functions" as defined below, or have been identified as covered by agreements between the Union and the City, and thus are subject to all of the provisions of this agreement.

Covered employees may not be under the influence or in possession of controlled substances or alcohol during work hours. Further, the regulations of the FHWA prohibit certain conduct (See section VI below) while performing and prior to performing safety sensitive functions as defined below.

IV. REFERENCES

- Drug Free Workplace Act of 1988
- Federal Alcohol Administration Act (U.S.C. Title 27, Chapter 8, Section 214)
- Federal Controlled Substances Act (U.S.C. Title 21. Section 812)
- Uniform Controlled Substances Act of the State of California (Health and Safety Code, Chapter 2)
- Omnibus Transportation Employee Testing Act of 1991 (Public Law 102-143 Title V)
- Department of Transportation 49 CFR Parts 382 et. al. "Controlled Substances and Alcohol Use and Testing"
- Department of Transportation 49 CFR Part 40 "Procedures for Transportation Workplace Drug and Alcohol Testing Programs"
- Department of Transportation 49 CFR Parts 653 and 654 "Prevention of Alcohol and Prohibited Drug Misuse in Transit Operations"
- City of Fremont Substance Abuse Policy

V. **DEFINITIONS**

For these administrative guidelines, the following terms shall have the meaning indicated:

- A. Driver shall mean any person employed in a position in a classification set forth in Appendix A which requires the ability to operate a commercial vehicle. For the purposes of pre-employment testing, driver shall mean a person being considered for selection for a position in a classification which requires the ability to operate a commercial vehicle.
- B. Reasonable suspicion shall mean a belief that a driver has violated the alcohol or drug prohibitions based on specific, contemporaneous, articulable observations by a trained supervisor or other City official concerning the appearance, behavior, speech or body odors of the driver.
- C. Alcohol shall mean the intoxicating agent in beverage alcohol, either alcohol or other low molecular weight alcohol including methyl and isopropyl alcohol, including any medication containing alcohol.
- D. Drugs shall mean those which contain marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.
- E. Safety sensitive function shall mean driving one of the following vehicles:
 - 1. A vehicle with a gross combination weight of at least 26,001 pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds;
 - 2. A vehicle with a gross vehicle weight of at least 26,001 pounds;
 - 3. A vehicle designed to transport 16 or more passengers, including the driver;

or

 - 4. A vehicle used to transport those hazardous materials found in the Hazardous Materials Transportation Act.
- F. Accident shall mean the FHWA definition that an accident occurs when, as a result of an occurrence involving the vehicle, an individual dies or when a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident.

Further, the FTA definition of an accident applies and means the following:

1. When an individual dies as a result of an occurrence involving the vehicle;
2. When an individual suffers bodily injury and a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident; or
3. When a vehicle suffers disabling damage and a State or local law enforcement authority issues a citation to the covered employee for a moving violation arising from the accident. Disabling damage means damage to the vehicle which precludes departure from the scene or damage to vehicles that could have been operated but would have been further damaged if so operated.

VI. PROHIBITIONS

The following conduct is prohibited and may result in discipline, up to and including termination:

- A. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions while having an alcohol concentration level of 0.04 or greater;
- B. Performing a safety sensitive function within four hours of using alcohol;
- C. Being on duty or operating a vehicle described in Section E above, while possessing alcohol;
- D. Using alcohol while performing a safety sensitive function;
- E. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions when the employee used any drug, except if the use is pursuant to the instructions of a physician who has advised the employee that the substance does not adversely affect the employee's ability to safely operate a vehicle;
- F. Reporting for duty or remaining on duty requiring the performance of safety sensitive functions if the employee tests positive for drugs;
- G. Refusing to submit to any alcohol or drug test required by this agreement. A covered employee who refuses to submit to a required drug/alcohol test will be

treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test;

A refusal to submit to an alcohol or drug test required by this agreement includes, but is not limited to:

1. A refusal to provide a urine sample for a drug test;
 2. An inability to provide a urine sample without a valid medical explanation;
 3. A refusal to complete and sign the breath alcohol testing form, or otherwise to cooperate with the testing process in a way that prevents the completion of the test;
 4. An inability to provide breath or to provide an adequate amount of breath without a valid medical explanation;
 5. Tampering with or attempting to adulterate the urine specimen or collection procedure;
 6. Not reporting to the collection site in the time allotted by the supervisor or manager who directs the employee to be tested;
 7. Leaving the scene of an accident without a valid reason as to why authorization from a supervisor or manager who shall make a determination whether to send the employee for a post-accident drug and/or alcohol test was not obtained.
- H. Consuming alcohol during the eight hours immediately following an accident, unless the employee has been informed that his/her actions have been discounted as a contributing factor, or if the employee has been tested.

In addition to the above prohibitions, employees are reminded of their obligations under the Federal Drug Free Workplace Act of 1988. All employees covered by this agreement have previously been provided with a copy of the City's Drug Free Workplace Statement, and have signed an acknowledgment that they have read the Statement and agreed to comply with it.

VII. CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.02 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration level between 0.02 and 0.04 will be removed from his or her safety sensitive position for at least eight hours. The City will then retest the employee. Before the employee may be returned to his/her safety sensitive position, the employee's alcohol concentration must indicate a concentration below 0.02.

Discipline related to an employee having an alcohol concentration level between 0.02 and 0.04 shall consist of the following:

- 1st positive test in a 12-month period -- written warning
- 2nd positive test in a 12-month period -- rehabilitation, plus unpaid suspension until DOT return to work requirements are met
- 3rd positive test in a 12-month period -- termination of employment

VIII. CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON COVERED EMPLOYEES

A. Pre-Employment Testing:

All applicants for classifications which are covered by the DOT regulations (See Appendix A) as well as all employees who transfer from classifications which are not covered to classifications which are covered will be required to submit to pre-employment/pre-duty drug and alcohol testing. Applicants will not be assigned to a safety sensitive position if they do not pass the tests.

B. Post-Accident Testing:

Employees will always be tested if an accident meets the definitions set forth in Section V(F) above. In addition, Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor. Not only will the operator of the vehicle be tested, but so will any other covered employee whose performance may have contributed to the accident.

The decision as to whether or not to test the employee will be left to a supervisory or management employee, in consultation with the on-scene peace officer. The presumption is for testing. The only reason an employee will not be tested following an accident is if a determination is made that the employee's performance could not have been a contributing factor. If a fatality occurs, the

employee will be tested irrespective of whether his/her involvement may be discounted.

Post-accident alcohol tests shall be administered within two hours following an accident and no test may be administered after eight hours. A post-accident drug test shall be conducted within 32 hours following the accident.

If the employee is injured and is unable to give a breath test or a urine sample, a blood test will be conducted.

C. Random Testing:

1. Random alcohol testing shall be administered at a minimum annual rate of twenty five percent (25%) of the average number of driver positions. Each year the Federal Highway Administration (FHWA) will publish in the Federal register the minimum annual percentage rate for random alcohol testing for drivers. The new rate will become applicable on January 1 of the following year.
2. Random drug testing shall be administered at a minimum annual rate of fifty percent (50%) of the average number of driver positions.
3. The selection of drivers for random alcohol and drug testing shall be made by a scientifically valid method such as a random number table of a computer based random number generator that is matched with the drivers' social security numbers, payroll identification numbers, or other comparable identifying numbers. Selection shall be done by the testing facility, and sealed or confidential notices sent to the City. After the testing notices are received from the facility, and prior to notification of the employees, the packet containing the random testing notifications will be opened in the presence of a Union steward. Under the selection process used, each driver shall have an equal chance of being tested each time selections are made. The City may establish a single pool for alcohol and drug abuse testing which provides that all drivers have an equal chance for being selected and tested using the applicable random testing rate.
4. The City shall ensure that random alcohol and drug tests are unannounced and spread reasonably throughout the calendar year.
5. A driver does not have to be notified immediately after being selected for alcohol or drug testing. The City may notify and test the selected driver the first available time after the selection of the driver is made up to the time before the next selection is made. However, the fact that a driver has been selected shall remain confidential until notification. The notification by the

supervisor or agent of the City shall be in person to the extent operationally feasible. Notification shall be both oral and in writing with a written acknowledgment of the notification. Notification shall be by the Division Head or in his/her absence by a designated management employee.

6. The City shall ensure that drivers selected for alcohol or drug testing proceed immediately to the test site upon notification of being selected.
7. A driver shall only be tested for alcohol while the driver is performing safety sensitive functions, immediately prior to performing safety sensitive functions or immediately after performing safety sensitive functions.
8. In the event a driver who is selected for a random alcohol or drug test is on vacation, general leave, or on more than two weeks medical absence, the City can either select another driver for testing or keep the original selection confidential until the driver returns. The City may keep the selection confidential and test the original driver up to the time of the next random selection period.

D. Reasonable Suspicion Testing:

Covered employees are also required to submit to an alcohol or drug test when a trained supervisor has reasonable suspicion to believe the employee is under the influence of alcohol or drugs. The observation must be based on short-term indicators, such as blurry eyes, slurring, unsteady gait, irrational behavior, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

The reasonable suspicion alcohol test will be administered within two hours of the observation. If not, the employer must provide written documentation as to why the test was not promptly conducted. No test may be administered after eight hours following the observation.

To ensure that supervisors are trained to make reasonable suspicion determinations, supervisors vested with the authority to demand a reasonable suspicion drug and alcohol test will attend at least one hour of training on alcohol misuse and at least one hour of training on drug use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. Whenever possible, observations will be supported by additional witness(es).

E. Return To Duty/Follow-up Testing:

A covered employee who has violated any of the prohibitions of this agreement (See Section VI) must submit to a return to duty test before he/she may be returned to his/her position. The test result must indicate an alcohol concentration of less than 0.02 or a verified negative result on a drug test.

In addition, because studies have shown that the relapse rate is highest during the first year of recovery, the employee will be subject to follow-up testing which is separate from the random testing obligation. The employee will be subject to at least six unannounced drug/alcohol tests during the first year back to the safety sensitive position following the violation.

IX. PROCEDURES TO BE USED FOR DETECTION OF DRUGS AND ALCOHOL

A. Alcohol Testing:

Alcohol testing will be conducted by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.

A screening test will be conducted first. If the result is an alcohol concentration level of less than 0.02, the test is considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test will be conducted.

The procedures that will be utilized by the lab for conducting the test are outlined in Appendix B.

B. Drug Testing:

Drug testing will be conducted pursuant to the procedures outlined in Appendix C.

1. The urine specimen will be split into two bottles labeled as "primary" and "split" specimen. Both bottles will be sent to the lab;
2. If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has 72 hours to request that the split specimen be analyzed by a different certified lab;
3. The urine sample will be tested for the following: marijuana, cocaine, opiates, amphetamines, and phencyclidine;
4. If the test is positive for one or more of the drugs, a confirmation test will be performed using gas chromatography/mass spectrometry analysis;

5. All drug test results will be reviewed and interpreted by a physician before they are reported to the employee and then to the City;
6. With all positive drug tests, the physician (a.k.a medical review officer) will first contact the employee to determine if there is an alternative medical explanation for the positive test result. If documentation is provided and the MRO determines that there was a legitimate medical use for the prohibited drug, the test result may be reported to the City as "negative".

X. REFUSAL TO SUBMIT TO AN ALCOHOL AND/OR DRUG TEST

A covered employee who refuses to submit to any required drug/alcohol testing will be treated in the same manner as an employee who tested 0.04 or greater on an alcohol test or tested positively on a controlled substances test.

XI. CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

A positive result from a drug or alcohol test may result in disciplinary action, up to and including termination.

If a covered employee is not terminated, the employee:

- A. Must be removed from performing any safety-sensitive function;
- B. Must submit to an examination by a substance abuse professional. Upon a determination by the substance abuse professional, the employee may be required to undergo treatment to cure his/her alcohol or drug abuse. The City is not required to pay for this treatment;
- C. May not be returned to his/her former safety-sensitive position until the employee submits to a return-to-duty controlled substance and/or alcohol test (depending on which test the employee failed) which indicates an alcohol concentration level of less than 0.02 or a negative result on a controlled substance test;
- D. Will be required to submit to unannounced follow-up testing after he/she has been returned to his/her safety-sensitive position.
- E. The parties acknowledge their mutual support of the concept of rehabilitation for substance abuse issues. The consequences of non-compliance with this DOT policy will result in the following:

1. First Positive Test: Rehabilitation (as defined and outlined by a Substance Abuse Professional) and the development of a return to work agreement. In the event an employee tests positive and declines rehabilitation, or fails to complete rehabilitation and aftercare, the parties understand that termination will result. Testing beyond DOT requirements (6 unannounced tests during the 1-year period following a positive result) will be determined by the City after discussion with the Union, employee, and Substance Abuse Professional.
2. Second Positive Test: Will result in termination, unless the employee volunteered the condition prior to notification of required testing. In the instance where an employee volunteered information about relapse prior to being notified of testing, the City will consult with the employee, Union, and Substance Abuse Professional before determining the level of discipline. Additionally, failure to complete rehabilitation and/or aftercare will result in termination. The frequency and duration of follow-up and unannounced testing will be based on discussion and agreement between the Union, City, employee, and Substance Abuse Professional.
3. The parties agree that an employee shall not be returned to work after a positive drug and/or alcohol test without the following:
 - a) A test indicating an alcohol concentration of less than 0.02 or a verified negative result on a drug test.
 - b) A release from a Substance Abuse Professional.
 - c) Return-to-Work Agreement outlining the following:
 - i) time frame for unannounced testing;
 - ii) completion of rehabilitation and aftercare as defined in the agreement between the Union, City, employee and SAP.

**CITY OF FREMONT
ALCOHOL/DRUG TESTING AGREEMENT
OF COVERED EMPLOYEES
OPERATING ENGINEERS, LOCAL NO. 3**

The foregoing agreement was crafted by the OE-3 Joint Labor Management Committee and is adapted as of the date shown below.

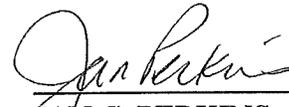
Employee Representatives

Employer Representatives

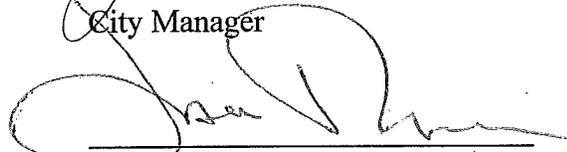
OPERATING ENGINEERS, LOCAL NO. 3

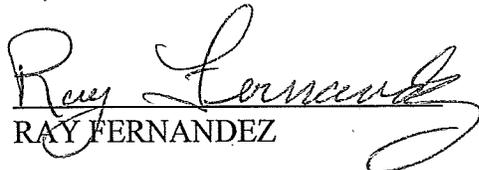
CITY OF FREMONT


BOB MARR
Business Representative


JAN C. PERKINS
City Manager


JEFF EDWARDS

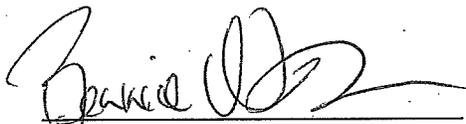

JACK ROGERS

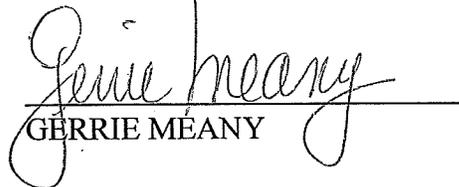

RAY FERNANDEZ


JOHN BARRON


STEVE WALKER


JOHN BETONTE


RENNIE WRUCK


GERRIE MEANY

Date: June 18, 1998

**CITY OF FREMONT
ALCOHOL/DRUG TESTING AGREEMENT**

APPENDIX A

COVERED EMPLOYEE JOB CLASSIFICATIONS

Subject to testing regardless of class of driver's license.

STREET MAINTENANCE

All Street Maintenance I, II, III

Field Supervisors, Supervisors, and Superintendents

PARK MAINTENANCE

All Park Maintenance II and Field Supervisors

Park Maintenance I assigned to Construction

Park Maintenance Workers I hired after February 1, 1997

Park Maintenance Superintendent

FLEET MAINTENANCE

Lead Automobile Mechanic

All Heavy Equipment Mechanics

Fleet Maintenance Superintendent

OTHERS

- PSA's with "B" licenses or above who work in a safety sensitive job.
- Building Trades Workers I/II/III with "B" license or above

**CITY OF FREMONT
ALCOHOL/DRUG TESTING AGREEMENT**

APPENDIX B

PROCEDURES FOR BREATH ALCOHOL TESTING

The following summarizes the procedures established by the Federal Highway Administration regulations implementing drug and alcohol testing under the federal law. These procedures are binding and are subject to change in the event the FHWA or other government agency changes the regulations on alcohol and drug testing for employees in safety-sensitive positions.

- A. When the employee enters the collection site, BREATH ALCOHOL TECHNICAL (BAT) will require him or her to provide positive identification (i.e. photo I.D. or employer identification).
- B. The BAT will explain the test procedure.
- C. Employees will be required to complete and sign various forms used to document the testing process. Refusal to sign the test form(s) will be regarded as a refusal to take the test.
- D. Employees will be instructed to blow forcefully into the mouthpiece for at least 6 seconds or until the Evidential Breath Testing Device (EBT) indicates that an adequate amount of breath has been obtained.
- E. If an employee tests positive during the screening test, s/he shall not eat, drink, put any object or substance in his or her mouth and, to the extent possible, not belch during the 20 minute waiting period before the confirmation test is conducted.
- F. Refusal by an employee to complete and sign the test form, to provide an adequate amount of breath without a valid medical explanation, or otherwise failure to cooperate with the testing process in a way that prevents the completion of the test will be considered a disciplinable offense, up to and including termination.

In the event of conflicting results between the initial test and the confirmation test, the confirmation test results will determine the outcome of the test.

**CITY OF FREMONT
ALCOHOL/DRUG TESTING AGREEMENT**

APPENDIX C

PROCEDURES FOR DRUG TESTING

The following procedures summarize the procedures established by the Federal Highway Administration regulations implementing drug testing under the federal law. These procedures are subject to change in the event the FHWA or other government agency changes the regulations on drug and alcohol testing of employees in safety-sensitive positions.

- A. When the employee enters the collection site, the employee will be required to provide positive identification (i.e. photo I.D. or employer identification).
- B. The employee will be instructed to provide at least 45 ml of urine under the split sample method of collection. This will be done in a specifically designated "donor" bathroom.
- C. The urine sample shall be divided into a primary specimen (30 ml) and a split specimen (15 ml).
- D. If the test result of the primary specimen is positive, the employee may request within 72 hours, that the Medical Review Officer (MRO) direct that the split specimen be tested in the same or a different certified laboratory for presence of the drug(s) for which a positive result was obtained in the test of the primary specimen.
- E. An employee will be removed from the safety-sensitive position pending the result of the test of the split specimen.
- F. If the result of the test of the split specimen fails to reconfirm the presence of the drug(s) or drug metabolite(s) found in the primary specimen, the MRO shall cancel the test.
- G. Employees will be required to complete and sign various forms used to document the testing and chain of custody process. Refusal to sign the test form(s) will be regarded as a refusal to take the test.
- H. Refusal by an employee to complete and sign the test and chain of custody forms, to provide an adequate amount of urine (to be decided on a case-by-case basis), or otherwise failure to cooperate with the testing process in a way that prevents the completion of the test will be considered grounds for disciplinary action, up to and including termination.

In the event of conflicting results between the initial test and the confirmation test, the confirmation test results will determine the outcome of the test.

**CITY OF FREMONT
ALCOHOL/DRUG TESTING AGREEMENT**

APPENDIX D

Types of Drug/Alcohol Testing	Employees Covered By FHWA Regs	Everybody Else
Pre-Employment	Yes, including alcohol	Police (CSOs et al) Maintenance, Fire Dispatchers (no alcohol)
Reasonable Suspicion	Yes, including alcohol	Yes, for federally funded positions; theoretically for everybody
Random	Yes, including alcohol <operational impacts to be analyzed >	No
Post Accident	Yes, including alcohol	Yes, for Police Officers, CSOs, and all Maintenance personnel
Return to Duty/Follow-Up	Yes, including alcohol	Yes, if negotiated on a case- by-case basis

t:\staff\randerson\drugpol.wpd

- Final draft developed by OE-3 JLMC at meeting of 5-26-98
- Final draft faxed to John Betonte for distribution to JLMC members and superintendents on 5-27-98
- Final draft faxed to Business Agent Bob Marr 5-27-98
- OE-3 JLMC has agreed to expand this policy to all employees at Yard after discussion with FACE and FAME bargaining units

CITY OF FREMONT
SUBSTANCE ABUSE POLICY
MAINTENANCE & RECREATION DEPARTMENT
MAY 1999

A. PURPOSE/OBJECTIVE

1. To provide assistance to employees to overcome drug and alcohol abuse problems by actively supporting and encouraging rehabilitation in identified substance abuse cases.
2. To ensure an environment in which all parties work together, free from the effects of drug or alcohol misuse.
3. To establish policies and procedures for addressing possible substance abuse situations with the intent of pursuing rehabilitation where appropriate and preventing accidents and injuries resulting from the misuse of alcohol or drugs.
4. To outline the consequences when violations of the policy occur.

B. POLICY

The parties support the concept of Rehabilitation and, with the assistance of the unions and trained substance abuse professionals, will encourage and assist employees to pursue rehabilitation as discussed in this policy. It is the intent of the all parties to eliminate drug and alcohol abuse and its effects from the work place. The City has no intention of intruding into the private lives of its employees while meeting its obligation to ensure that employees are in condition to perform their duties safely and efficiently. The presence of drugs and/or alcohol on the job, and the influence of these substances on employees during the work shift, including the consumption of alcohol and/or drugs during the lunch break, are inconsistent with a drug free work environment. The substance abuse principles discussed in this regulation are intended to assist the parties in achieving the stated objective.

C. EMPLOYEES AFFECTED

All employees in the Maintenance and Recreation Department are covered by this policy. Employees may not be under the influence or in possession of controlled substances or alcohol during working hours. Additionally, employees required to have a Commercial Driver's License issued by the State of California, Department of Motor Vehicles, are covered by the DOT regulations outlined in the Agreement between OE-3 and the City of Fremont dated June 18, 1998.

D. DEFINITIONS

For these administrative guidelines, the following terms shall have the meaning shown:

1. **Employee** shall mean any person employed by the City and working in the Maintenance and Recreation Department:

DEFINITIONS (continued)

2. **Reasonable suspicion** shall mean a belief that an employee has violated the alcohol or drug prohibition based on specific, contemporaneous, observations by a trained supervisor or other City official concerning the appearance, behavior, speech or body odors of the employee. Reasonable efforts will be made to have an additional trained supervisor corroborate the observations of suspected substance abuse.
3. **Alcohol** shall mean the intoxicating agent in beverage alcohol, either alcohol or other low molecular weight alcohol including methyl and isopropyl alcohol, including any medication containing alcohol.
4. **Drugs** shall mean those which contain marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

E. PROHIBITION

The following conduct is prohibited and may result in discipline, up to and including termination of employment:

1. Reporting to duty or remaining on duty while having an alcohol concentration of 0.02 or greater.
2. Performing employment duties within four (4) hours of using alcohol.
3. Being on duty or operating a City vehicle or equipment while possessing alcohol or having an open container of alcohol in the employee's personal vehicle while it is used for City business.
4. Consuming alcohol while on duty or during the work shift, including the lunch break.
5. Reporting for duty or remaining on duty when the employee has used any drug, except if the use is pursuant to the instructions of a Physician who has advised the employee that the substance does not adversely affect the employee's ability to work safely.
6. Use of a prescribed drug in excess of the recommended dosage, which effects ability to function.
7. Not reporting to the appropriate supervisor when a prescription has been provided by a medical doctor or licensed dentist which restricts the use of equipment or operation of a motor vehicle

F. VOLUNTARY EMPLOYEE DISCLOSURE

Employees are encouraged to acknowledge problems with drugs and/or alcohol and to actively pursue rehabilitation to resolve those problems. In the event an employee voluntarily acknowledges such problem prior to any intervention on the part of the City, and the employee seeks assistance in arranging a program of rehabilitation, the City will provide assistance to the employee in obtaining appropriate assessment and treatment (the City is not required to pay for treatment). Such assistance shall be provided in a confidential manner and the employee shall not be subject to any disciplinary action by the City based upon the employee's disclosure.

G. FITNESS FOR DUTY EVALUATION

Employees are required to report to a City-designated Physician for purposes of fitness evaluation when a trained supervisor has reason to believe the employee is under the influence of alcohol or drugs. A fitness evaluation is defined as a medical assessment by a City-selected Physician. The supervisor's observation must be based on short-term indicators, such as blurry eyes, slurring, unsteady gait, irrational behavior, or alcohol on the breath. The supervisor may not rely on long-term signs, such as absenteeism or tardiness, to support the need for a reasonable suspicion test.

The fitness for duty evaluation will be conducted by a licensed Physician within a reasonable period (two hours) of the referral. If not, the employer must provide written documentation as to why the evaluation was not promptly conducted. No evaluation may be administered after eight hours following the observation.

To ensure that supervisors are trained to make appropriate referrals, supervisors vested with the authority to make fitness for duty referrals will attend at least one hour of training on alcohol misuse and at least one hour of training on drug use. The training will cover the physical, behavioral, speech, and performance indicators of probable alcohol misuse and use of drugs. Whenever possible, observations will be supported by additional witness(es).

A refusal to submit to a fitness evaluation referral required by this policy and as prescribed by a Physician, can result in discipline up to and including termination of employment.

In the event the Physician suspects the employee is under the influence of drugs or alcohol, the employee will be offered the option to take a drug or alcohol test. The employee may decline such test. In the event the employee declines to test, the employer may, based on observations and conclusions of the supervisor and physician, proceed with the proposed discipline up to and including termination of employment.

H. CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.02 OR GREATER BUT LESS THAN 0.04

An employee whose alcohol test indicates an alcohol concentration greater than 0.02 will be removed from his or her position without pay for at least eight hours. The City will then retest the employee before the employee may be returned to his/her position; the employee's alcohol concentration must indicate a concentration below 0.02.

CONSEQUENCES FOR EMPLOYEES FOUND TO HAVE ALCOHOL CONCENTRATION LEVELS OF 0.02 OR GREATER BUT LESS THAN 0.04 (continued)

Discipline related to an employee having an alcohol concentration level between 0.02 and 0.04 shall consist of the following:

- 1st positive test in a 12-month period -- written warning
- 2nd positive test in a 12-month period -- rehabilitation, plus unpaid suspension until return to work requirements are met
- 3rd positive test in a 12-month period -- termination of employment

I. CIRCUMSTANCES UNDER WHICH DRUG AND ALCOHOL TESTING WILL BE IMPOSED ON EMPLOYEES

1. Pre-Employment Testing:

All applicants for classifications covered by these regulations will be required to submit to pre-employment drug and alcohol testing. Applicants will not be assigned to a position if they do not pass the tests.

2. Post-Accident Testing:

Post-Accident drug and alcohol testing will be conducted on employees following an accident where the employee's performance cannot be discounted as a contributing factor. Not only will the operator of the vehicle be tested, but so will any other employee whose performance may have contributed to the accident.

The decision as to whether or not to test the employee involved in an incident where no police report is filed will be left to the discretion of a trained supervisory or management employee. The decision as to whether or not to test the employee involved in an incident where a Peace Officer is on scene will be left to the discretion of the Peace Officer. An employee may not be tested following an accident if the supervisor determines that the employee's performance could not have been a contributing factor. If a fatality occurs, the employee will be tested irrespective of whether his or her involvement may be discounted.

Post-accident alcohol tests shall be administered within two hours following an accident and no test may be administered after eight hours. A post-accident drug test shall be conducted within 32 hours following the accident. If the employee is injured and is unable to give a breath test or a urine sample, a blood test will be conducted.

J. CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST

The parties acknowledge their mutual support of rehabilitation for substance abuse issues. In the event an employee fails a drug and/or alcohol test, the following applies:

1. First Positive Test: The employee will obtain an assessment by a Substance Abuse Professional (SAP). The employee will participate in a Rehabilitation Program prescribed by the SAP (the City is not required to pay for this treatment), and will enter into a Return to Work Agreement.
2. Second Positive Test: Will result in termination, unless the employee volunteered the condition prior to notification of required testing.

CONSEQUENCES OF FAILING AN ALCOHOL AND/OR DRUG TEST (continued)

3. **Relapse:** When an employee volunteers information about relapse prior to being notified of testing, the City will consult with the employee, Union, and Substance Abuse Professional (SAP) before determining the level of discipline. However, failure to complete rehabilitation and/or aftercare will result in termination. The frequency and duration of follow-up and unannounced testing will be based on discussion and agreement between the Union, City, employee and SAP.
4. **Return to Work After a Positive Test:** The parties agree an employee shall not be returned to work after a positive drug and/or alcohol test without the following:
 - a) A test indicating an alcohol concentration of less than 0.02 or a verified negative result on a drug test;
 - b) A release from a SAP;
 - c) A Return to Work Agreement outlining the frequency and timeframe for unannounced follow-up testing and conditions of rehabilitation and aftercare.

K. PROCEDURES TO BE USED FOR DETECTION OF DRUGS AND ALCOHOL

1. Alcohol Testing:

Alcohol testing will be conducted by using an evidential breath testing device (EBT) approved by the National Highway Traffic Safety Administration.

A screening test will be conducted first. If the result is an alcohol concentration level of less than 0.02, the test is considered a negative test. If the alcohol concentration level is 0.02 or more, a second confirmation test will be conducted.

2. Drug Testing:

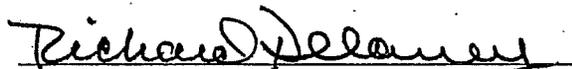
- a. The urine specimen will be split into two bottles labeled as "primary" and "split" specimen. Both bottles will be sent to the lab.
- b. If the urinalysis of the primary specimen tests positive for the presence of illegal, controlled substances, the employee has 72 hours to request that the split specimen be analyzed by a different certified lab. The employee shall be responsible for all costs related to any split-sampling testing.
- c. The urine sample will be tested for the following: marijuana, cocaine, opiates, amphetamines, and phencyclidine.
- d. If the test is positive for one or more of the drugs, a confirmation test will be performed using gas chromatography/mass spectrometry analysis.
- e. All drug test results will be reviewed and interpreted by a Physician before they are reported to the employee and City.

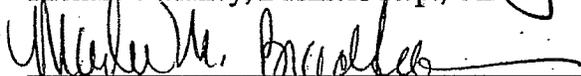
Drug Testing (continued):

- f. With all positive drug tests, the Physician (a.k.a. Medical Review Officer) will first contact the employee to determine if there is an alternative medical explanation for the positive test result. If documentation is provided and the MRO determines that there was a legitimate medical use for the prohibited drug, the test result will be reported to the City as "negative."

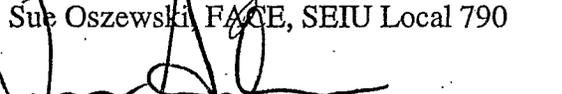
The foregoing Agreement was crafted by a Joint Labor-Management Committee whose representatives have signed below. This policy is adopted as of May 26, 1999

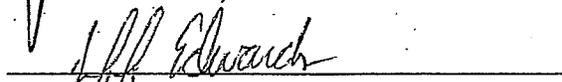
EMPLOYEE REPRESENTATIVES

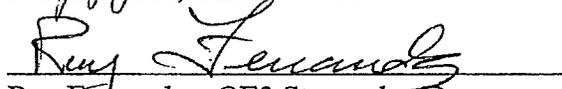

Richard Delaney, Business Rep., OE3

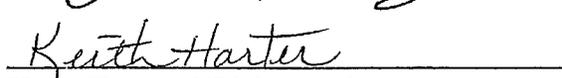

Marsha Bradford, FAME Rep.

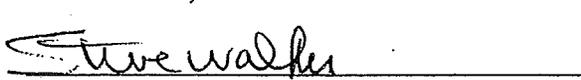

Sue Oszewski, FACE, SEIU Local 790

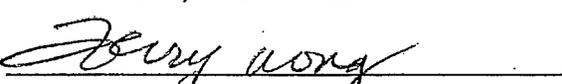

James Anderson, OE3 Steward

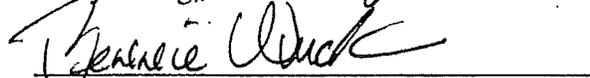

Jeff Edwards, OE3 Steward


Ray Fernandez, OE3 Steward

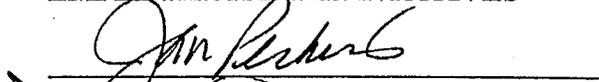

Keith Harter, OE3 Steward


Steve Walker, OE3 Steward

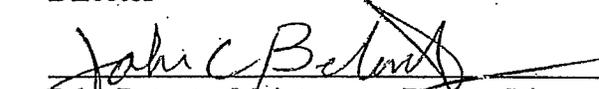

Terry Wong, FACE Steward

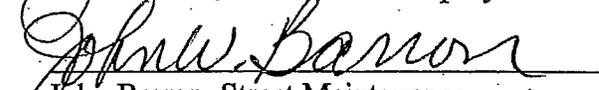

Rennie Wruck OES Steward

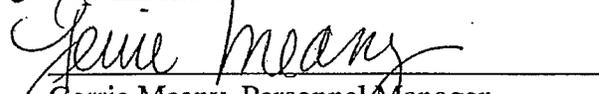
EMPLOYER REPRESENTATIVES


Jan Perkins, City Manager


Jack Rogers, Maintenance & Recreation
Director


John Betonte, Maintenance Deputy Director


John Barron, Street Maintenance
Superintendent


Gerrie Meany, Personnel Manager

Date: 5/26/99

EXHIBIT B - RELEVANT SIDE LETTERS

Alternate Work Schedules

**Side Letter of Agreement
Between the
City of Fremont
and
Operating Engineers Local Union #3**

The City of Fremont, a Municipal Corporation (hereinafter "City"), and Operating Engineers Local Union #3 (hereinafter "Union") acknowledge that they have met and conferred in good faith and have reached agreement to implement the provisions of Chapter 7, Article I (Flexible Work Schedules), of the Memorandum of Understanding.

The City and the Union agree that the Memorandum of Understanding shall be modified or amended, subject to the conditions set forth below, to implement the provisions of Chapter 7, Article I (Flexible Work Schedules), as follows:

1. Chapter 2, Article IV(A) Overtime Compensation - Definition of the Work Week shall be modified as follows:

In implementing the provisions of Chapter 7, Article I (Flexible Work Schedules) of this Understanding, the regular work week shall consist of seven consecutive days beginning at the mid point of the work day on Friday and ending at one minute less than the midpoint of the work day on the following Friday.

2. Chapter 2, Article II (Acting Pay), shall be amended to include the following provision:

Acting pay will not be provided for assignments caused by the regular scheduled Friday days off resulting from implementation of the provisions of Chapter 7, Article I (Flexible Work Schedules), of this Understanding.

3. Chapter 7, Article II (Early Shift Scheduling) shall be modified as follows:

Employees who begin working a regular scheduled shift more than one hour prior to, but less than, one and one half hour before their regular starting time shall end their regular work day after seven and one half (7-1/2) hours of work, but compensation paid for the day's work shall be for eight hours.

Employees who begin working a regular scheduled shift one and one half (1-1/2) hour, or more, before their regular starting time shall end their regular day after seven and one quarter (7-1/4) hours of work, but compensation for the day's work shall be for eight (8) hours.

All Administrative Procedures identified in the Administrative Procedure 9/80 Alternate Work Schedule, which is attached to and made part of this Side Letter of Agreement, shall implement the provisions of Chapter 7, Article I (Flexible Work Schedules), of the Memorandum of Understanding.

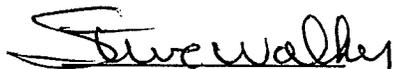
The Flexible Work Schedule and this implementing Side Letter of Agreement shall terminate on September 30, 1994 unless extended by the mutual consent of the City and the Union. The language in the Memorandum of Understanding modified or amended as a result of implementation of this Side Letter of Agreement shall revert to its former construction.

Continuation of the Flexible Work Schedules pilot program during the 6 month trial period (April 1, 1994 through September 30, 1994) shall be subject to the mutual agreement of the City and the Union. Modifications to the Flexible Work Schedules pilot program may be implemented during the trial period through the meet and confer process.

Executed this 1st day of April, 1994, by the Employer-Employee representatives whose signatures appear below for their respective organizations.

Employee Representative
OPERATING ENGINEERS, LOCAL NO. 3


RICHARD S. BURRUSS
Business Representative

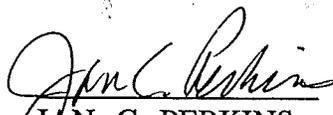

STEVE WALKER
Chief Steward


JOE CAPRIOTTI
Steward

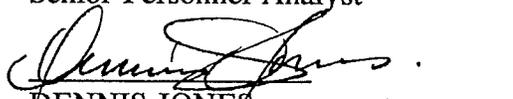

RAY FERNANDEZ
Steward


LARRY HOMEN
Steward

Employer Representative
CITY OF FREMONT


JAN. C. PERKINS
City Manager


DAVID W. HODGKINS
Senior Personnel Analyst


DENNIS JONES
Public Works Operations
Engineer

**ADMINISTRATIVE PROCEDURE
9/80 ALTERNATE WORK SCHEDULE**

1. Pursuant to Administrative Regulation 2.13 (Fair Labor Standards Act), Section VI (B)(3), employees voluntarily choosing to work a 9/80 Alternate Work Schedule shall have a work week consisting of seven consecutive days beginning at the midpoint of the workday on Friday and ending at one minute less than the midpoint of the workday on the following Friday.
2. The 9/80 Alternate Work Schedule shall consist of eight (8) work days of nine (9) hours and one work day of eight (8) hours during two (2) consecutive work weeks. The eight (8) hour day must be the same day of the week as the employee's regularly scheduled day off (e.g. if the employee's regularly scheduled day off is each alternate Friday, then the employee shall be scheduled to work the preceding and subsequent Friday).
3. Employees may work up to nine (9) hours per day in a 9/80 Alternate Work Schedule work week (i.e. seven (7) consecutive days beginning at the midpoint of the workday on Friday and ending at one minute less than the midpoint of the workday on the following Friday) without accruing overtime.
4. Scheduled or Unscheduled General Leave shall be charged in a manner consistent with the employee's 9/80 Alternate Work Schedule (i.e. an employee taking Scheduled or Unscheduled General Leave shall be charged the number of hours the employee was scheduled to work on the particular day).
5. Holidays shall be charged in a manner consistent with the employee's 9/80 Alternate Work Schedule. Holiday Pay shall not exceed eight (8) hours and is prorated for employees working in a Modified Schedule status. If a Holiday occurs on a day the employee is scheduled to work nine (9) hours, the employee shall receive eight (8) hours of Holiday Pay and shall be charged an additional hour of General Leave or Compensatory Time. Prior to receiving approval to work a 9/80 Alternate Work Schedule, the employee must predesignate the order of the available leave banks which shall be charged for Holidays. If the employee does not have any General Leave or Compensatory Time available to be charged for the additional hour to account for the Holiday, the employee shall be charged one (1) hour of Leave Without Pay. For example, assume a Holiday occurs on a Monday and the employee is scheduled to work nine (9) hours on the same Monday. The employee has the day off from work, receives eight (8) hours of Holiday Pay, and is charged one hour of General Leave or Compensatory Time, if available.

If a Holiday occurs on a day of the week which is the employee's regularly scheduled day off the employee shall be obligated to take the next regularly scheduled work day off. If the next regularly scheduled work day on a day the employee is scheduled to work nine (9) hours, the employee shall receive eight (8) hours of Holiday Pay and shall be charged an additional hour of General Leave or Compensatory Time. Prior to receiving approval to work a 9/80 Alternate Work Schedule, the employee must predesignate the order of the available leave banks which shall be charged for Holidays. If the employee does not have any General Leave or Compensatory Time available to be charged for the additional hour to account for the Holiday, the employee shall be charged one (1) hour of Leave Without Pay. For example, assume a Holiday occurs on a Friday and the employee is not scheduled to work on that Friday. The employee takes the following Monday off, receives eight (8) hours of Holiday Pay, and is charged one hour of General Leave or Compensatory Time, if available.

6. Employees shall receive no overtime or compensatory time for Jury Duty occurring on a regularly scheduled day off.
7. Employees voluntarily choosing to participate in the 9/80 Alternate Work Schedule may be assigned to a five (5) day, eight (8) hours per day, work schedule for reasons including, but not limited to, working on special assignments, attending training sessions, etc. Reversion to the five (5) day, eight (8) hours per day, work schedule must occur over a two week period corresponding to the pertinent 9/80 Alternate Work Schedule. Employees required to revert to a five (5) day, eight (8) hours per day, work schedule shall have a work week consisting of seven consecutive days beginning at 12:01 a.m. Sunday and ending at 12:00 p.m. Saturday.
8. Employees on a 9/80 Alternate Work Schedule who are Called Out on a day which is not their regularly scheduled workday shall receive Call Out pay as defined by the provisions of the Memorandum of Understanding between the appropriate bargaining unit and the City of Fremont.

EXHIBIT B - RELEVANT SIDE LETTERS

GPS Installation

February 19, 2002

Side Letter on GPS Installation

The City of Fremont and Operating Engineers Local # 3 have met and agreed to the following in regard to the installation of a Global Positioning System in City of Fremont vehicles. The intent of the system is to provide management data for more efficient operations, not to micromanage employee behavior.

The Union and the City of Fremont agree installation will continue with the following safeguards:

1. The parties would jointly test the validity of the entire system initially, and would periodically test data other than time and location.
2. GPS data will not be used for discipline without prior investigation of the surrounding circumstances.
3. GPS data as primary evidence will be used only for counseling unless the behavior is egregious. The counseling should be documented.
4. Once an employee has been counseled. Management can use GPS data to check for compliance, and may discipline as appropriate.
5. GPS data may also be used as collaborative data for disciplinary action beyond counseling.
6. Management will question employees about GPS data as quickly as feasible after the data is collected. Management may use historic data that is unearthed in the investigation.
7. The union may have access to relevant GPS data in any disciplinary action, including for checking on selective enforcement.
8. Install GPS in management vehicles that are used regularly in the field as a gesture of good faith.

No change will be made to this agreement without meeting and consulting.

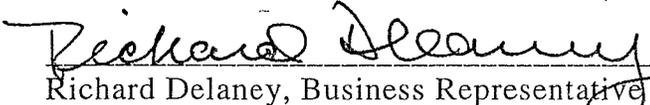
~~The Union would like to be involved in orientation of field supervisors at the time the system goes online.~~

Data will be available to supervisor only on employees with his/her span of control.

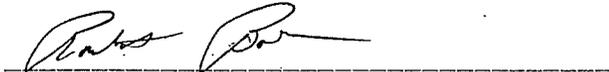
If an employee lies in course of an investigation, concerning information gathered with the GPS system, the lying will be dealt with as a separate issue for purposes of discipline.

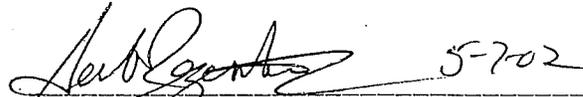
Employee Representative
OPERATING ENGINEERS, LOCAL NO. 3

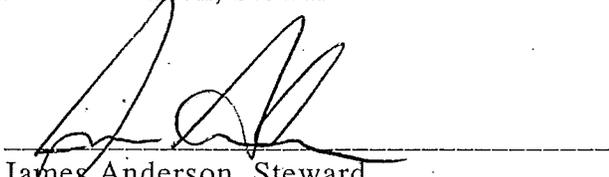
Employer Representative
CITY OF FREMONT


Richard Delaney, Business Representative

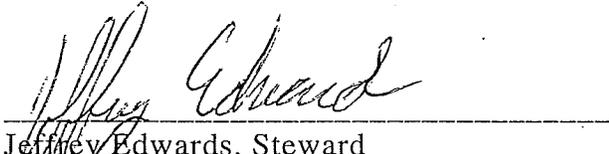

Jack Rogers, MARS

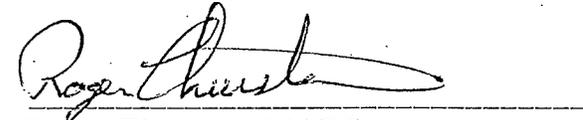

Bob Bohannon, Steward

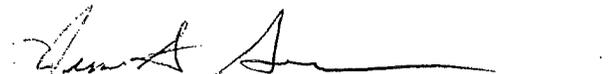
 5-7-02
Herb Rezendes, MARS


James Anderson, Steward

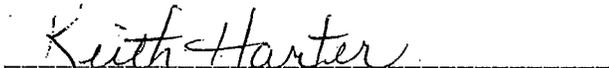

John Barron, MARS


Jeffrey Edwards, Steward


Roger Thurston, MARS


Jesse Gomez, Steward

 5-8-02
Tony Vargas, MARS


Keith Harter, Steward


Maureen Rudy, Steward

EXHIBIT B - RELEVANT SIDE LETTERS

Providing and Wearing Uniforms

6/29/05
3:55pm

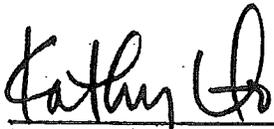
**LETTER OF AGREEMENT
BETWEEN THE
CITY OF FREMONT
AND THE
OPERATING ENGINEERS, LOCAL 3**

The City of Fremont, a municipal corporation (hereinafter referred to as "City") and the Operating Engineers, Local 3 (hereinafter referred to as "Union"), agree to the following letter of agreement regarding uniform jackets for classified employees represented by the Union. This letter of agreement complies with the provisions of Section 3500, et. seq., of the California Government Code, and Chapter 4.5, Title 2 of the Fremont Municipal Code, in that the employer-employee representatives noted herein did meet and confer in good faith and did reach agreement.

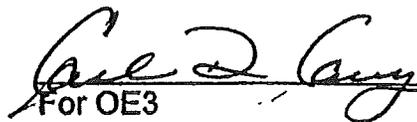
During the Memorandum of Understanding effective July 1, 2005 through June 30, 2007 between the City and the Union, the City agrees to provide each classified employee working in one of the following sections one winter jacket and one windbreaker-type jacket. Employees will be responsible for laundering and maintaining these jackets in good repair.

Auto Shop
Public Buildings
Recreation
Streets

Parks
Construction Inspection
Survey



For the City 6/29/05
Date



For OE3 6/29/05
Date

Joint Labor Management Team Agreement on Providing and Wearing Uniforms

1. Purpose:

This policy will describe the composition of the uniform for each section of Maintenance Services, uniform maintenance, an experiment that provides employees with tee-shirts and uniform jackets, and rules for wearing the uniforms provided by the City.

The City has agreed to provide uniforms for employees in the Maintenance Services Division for the following reasons:

- to provide employee visibility when employees work in traffic,
- to promote ready identification of employees by the public,
- to promote neat and professional appearance of employees,
- to promote and improve employee morale, and
- to address safety concerns when work clothing is laundered at the employee's home.

2. Uniforms Provided by City:

The City will provide each employee in the Maintenance Services Division with eleven sets of uniform trousers and shirts and provide for laundry service. The uniforms are described as follows:

Building Maintenance:	Blue trousers and blue shirts.
Fleet Maintenance:	Blue trousers and blue shirts.
Parks Maintenance:	Blue trousers and safety orange shirts.
Street Maintenance:	Blue trousers and safety orange shirts.

Uniform shirts will be provided with a City of Fremont badge and an employee name tag on the front of the shirt.

Employees may choose either short sleeved or long sleeved shirts, or a combination of each. Employees who spray chemicals must have a long sleeve uniform shirt available for wear when spraying or working in the vicinity of a spraying operation, in accordance with legal requirements.

The following classifications may turn in up to two sets of uniforms and replace them with coveralls:

Automotive Equipment Mechanic,
Mechanic's Assistant,
Park Maintenance Workers I and II assigned to mower operation,
Park Maintenance Workers I and II assigned to the park
construction crew,

Park Maintenance Workers I and II assigned to graffiti removal,
Street Maintenance Workers II assigned to street sweeping.

The following classifications may turn in up to 11 sets of uniforms and replace them with up to 11 sets of coveralls:

Heavy Equipment Mechanic,
Park Equipment Mechanic.

Heavy Equipment Mechanics, and the Park Equipment Mechanic, electing to turn in 11 sets of uniforms must wear coveralls during their entire work shift and will not be allowed to change into non-uniform clothing during their working hours unless attending City authorized training.

During the contract period, from July 1, 1997 to June 30, 2000, the City agrees to provide jackets and tee shirts as described below on an experimental basis. The experiment will be evaluated by a labor-management committee, at least 60 days prior to the end of the contract. The evaluation criteria that will be considered are as follows: cost, employee acceptance, employee appearance, and whether the experiment is meeting the purpose of this policy. This experiment does not obligate the City to continue to provide jackets and tee shirts beyond June 30, 2000.

The City will provide four tee shirts to each employee, one time each year. Employees will be responsible for laundering tee shirts. Employees may purchase additional tee shirts at their own cost. The City will provide employees a source from which to order additional tee shirts.

The City will provide each employee in Parks, except the Park Equipment Mechanic, Street Maintenance, and Construction Inspection one winter jacket and one windbreaker-type jacket. These jackets will be safety orange with reflective safety stripes. Employees will be responsible for laundering and maintaining these jackets in good repair.

The City will provide each employee in Building Maintenance and the Recreation Supply Specialist one blue winter jacket and one blue windbreaker-type jacket. Employees will be responsible for laundering and maintaining these jackets in good repair.

The City will provide each employee in Fleet Maintenance and the Park Equipment Mechanic one black winter jacket and one black windbreaker-type jacket. Employees will be responsible for laundering and maintaining these jackets in good repair.

3. Uniform Jacket Replacement:

The City will replace uniform jackets no sooner than one year from the date of they are issued, and will provide not more than two jackets during a three-year period,

except as otherwise determined by the Deputy Director for Maintenance.

Decisions regarding replacement of jackets will not be grievable, except for decisions about the visibility and reflectivity that would affect employee safety.

4. Wearing of Uniforms:

Employees are responsible to report to work wearing complete, clean, well-maintained uniforms. The complete uniform is defined as the specified uniform shirt, trousers, jacket and tee shirt, except for employees who are authorized to replace 11 sets of uniforms with coveralls. Jackets provided by the City will be a part of the uniform and other types of jackets or shirts will not be worn as an outer garment, except as defined as follows:

City issued rain gear during inclement weather, and safety equipment, such as chemical resistant outerwear, safety harnesses, safety vests, and similar equipment.

5. Allowable Modifications to the Uniform:

Employees may provide, at their own cost, and wear the following modifications to the uniform:

1. A vest the same color as the uniform shirt (blue vests with blue shirts, and orange vests with orange shirts) may be worn as an outer garment. Vests are sleeveless, waist length, garments, covering the upper body, worn for warmth. Vests will be clean and in good repair. Vests will be a single color.
2. An undershirt. The undershirt must be a neutral, single color (tan, beige, grey, etc.), or white. A long sleeved undershirt may be worn under a short sleeved uniform shirt. The undershirt may be a thermal-type shirt (waffle pattern). All undershirts worn with the uniform will be clean and in good repair. Undershirts may not be worn over a uniform tee shirt or uniform shirt as an outer garment. Undershirts may not be worn as an outer garment.
3. A jacket that is worn under, and completely covered by, the uniform jacket may be worn for additional warmth and weather protection. A jacket is a long sleeved outer garment that is about waist length, either with, or without, a collar. The jacket must be black, blue, white, beige, tan, or gray, and solid in color. The jacket may not have a logo or

writing on it. The jacket is to be completely covered by the uniform jacket when worn outdoors. Employees going into City buildings may remove the outer City jacket and wear their personal jacket, if their personal jacket is clean and in good repair.

4. A sweatshirt that is worn under, and completely covered by, the uniform jacket may be worn for additional warmth and weather protection. A sweatshirt with a hood may be worn with the hood exposed if the sweatshirt is solid orange, black, white, blue, tan, grey or beige. The sweatshirt may not have any logos or writing on it. When going into a City building, the sweatshirt must be removed if the uniform jacket is removed.

6. Definitions:

For the purposes of this policy, the following definitions will apply:

Clean – when reporting to work the garment will be free of obvious dirt, soiling, discoloration, or fresh oil or grease stains. Permanent stains that remain after washing will be acceptable if not too large or obvious.

In good repair – garments will not have unrepaired tears or holes, and they will not be excessively worn or frayed.

7. Wearing Tee Shirts as an Outer Garment:

Employees working outdoors in warm weather may remove the uniform shirt and wear City issued tee shirts as an outer garment. Employees working inside buildings may not wear tee shirts as an outer garment. Tee shirts that are torn, badly faded or stretched may not be worn. When told by a supervisor that a tee shirt is no longer appropriate for work, the employee will not wear that tee shirt as part of his or her uniform again. The judgement as to whether a tee shirt is appropriate for wearing as part of the employee's uniform is at the sole discretion of the supervisor, and is not grievable.

8. Application of Previous Uniform Policies:

Previous policies that cover wearing of uniforms still apply.

History:

This policy was developed by a joint labor-management committee in October 1997, and was reviewed and revised November 5, 1997, and reviewed and revised again March 27, 1998.

The Union and management have agreed that the Union will have input into what kind of work and to whom work from the Auto Shop will be contracted out.

ARTICLE VIII: GLOVE ALLOWANCE

A. Each July 1st during the term of this MOU, the City shall advance each classified employee working in one of the following sections the sum of Fifty Dollars (\$50.00) per fiscal year for purchasing and regularly wearing work gloves, other than those required for safety purposes and provided by the City:

Auto Shop	Parks
Public Buildings	Construction Inspection
Streets	Survey
Recreation	

B. New employees shall, as soon as practicable, receive a pro-rata share of the above allowance in the amount \$4.17 per month for the number of full calendar months falling between the date of appointment and the following July 1st.

C. An employee who leaves City employment, who by assignment changes to a status of non-entitlement, who is absent from work for reasons other than authorized general leave, holiday or compensatory time off, or who is otherwise no longer covered by this MOU for all of the regularly scheduled work hours in a calendar month, shall not be eligible for nor receive the pro-rata allowance for each month in which such absences occur. Any adjustments in such compensation, either from the City or from the Employee, required due to cessation of eligibility shall be completed prior to the last date of coverage under this MOU.

D. The City shall continue to furnish rubberized gloves for handling hazardous materials.

ARTICLE IX: UNIFORMS

Laundered uniforms will be provided to employees in classifications designated by the City. All employees receiving uniforms provided by the City shall be required to wear the City-provided uniforms while on duty. Exceptions to the mandatory wearing of City-provided uniforms can be made, in special circumstances, by the Division Head.

CHAPTER 3. LEAVES

ARTICLE I: GENERAL LEAVE

This General Leave Plan replaces all General Leave Plans in effect prior to January 1, 1994. Effective January 1, 1994, the City will establish a New General Leave Program to be administered as follows:

EXHIBIT B - RELEVANT SIDE LETTERS

PSA Assistant and Temp Workers

CITY OF FREMONT
OE-3 JOINT LABOR MANAGEMENT COMMITTEE
POLICY RE: PUBLIC SERVICE ASSISTANTS AND TEMPORARY WORKERS
APRIL, 1999

1. Purpose:

The purpose of this policy statement is to define the understanding and intent of the parties related to the use of non-classified, non-permanent workers in the OE-3 Unit. This statement was developed by the OE-3 Joint Labor Management Committee after a series of discussion by the labor-management representatives executing this Agreement.

2. Definitions:

For purposes of this statement, the following terms will have the meanings shown:

Public Service Assistants (PSA's):

Public Service Assistants are seasonal workers hired to provide seasonal help or to supplement work or service demands on an as-needed basis. PSA's generally do not work more than six (6) months or 999 hours in any fiscal year. PSA's are paid within the salary range established for the City-wide category of PSA and no benefits are provided other than a City-issued work shirt and those required by law (i.e., worker's compensation, social security replacement program, etc.).

Temporary Workers:

Temporary workers are hired to backfill for the long-term absences of permanent workers or to provide vacation relief for the more skilled permanent workers. Temporary workers are experienced, skilled workers and are paid the base hourly rate equivalent to the classified position for which they are hired. After 1,000 hours of work the employee is subject to enrollment in the Public Employees' Retirement System. No benefits are provided other than PERS, the City-issuance of a work uniform, and those required by law.

3. Description of Job Duties for PSA's:

PSA's may be temporarily upgraded to "temporary worker" to provide vacation relief. The duties of a PSA include, but are not limited to, those described below:

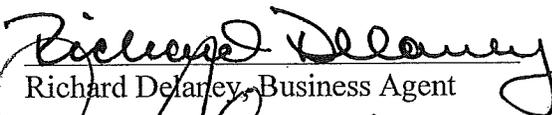
1. PSA's work under the direct supervision of a regular, classified worker or under the direction of a Field Supervisor;
2. Duties assigned are typically those assigned to a Maintenance Worker I at a lesser skill level to free a permanent worker for the more skilled tasks of the job and to create increased efficiency in the workforce;
3. PSA's are required to have only a Class "C" license;
4. Training should be provided for the lower level of tasks assigned to PSA's;
5. PSA's will not be assigned motorized equipment operation but would be allowed to operate motorized hand tools and walk-behind mowers;
6. Examples of PSA job assignments could include extra help for the summer, painting fire hydrants, working as an assistant on a paving crew, etc.

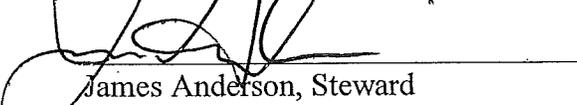
4. Miscellaneous Provisions:

The parties understand and agree that no seniority will accrue to PSA's or temporary workers. Further, the parties understand that the hiring of PSA's and temporary workers is limited to available annual funding and that PSA and temporary positions do not convert to permanent positions absent the addition of permanent workers through the budget process. The parties also acknowledge that the City is responsible for providing required safety gear and protection to PSA's and temporary workers, with the exception of steel-toed safety shoes. Where steel-toed safety shoes are required, they will be the responsibility of the worker to secure. Additionally, the City and Union will jointly develop an orientation program for new hire PSA's which will be provided by Field Supervisors. Finally, the parties acknowledge that the current, streamlined recruitment process for non-classified workers will continue. PSA's and temporary workers do provide a recruitment source in the event of vacancies in permanent positions and PSA's and temporary workers are encouraged to apply when appropriate permanent vacancies are under recruitment.

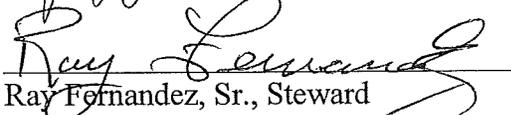
Signed by the labor and management representatives shown below on this 30th day of April, 1999:

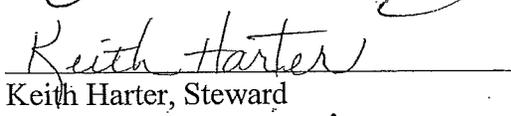
Operating Engineers Local 3

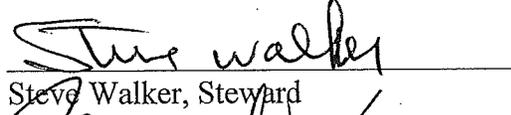

Richard Delaney, Business Agent

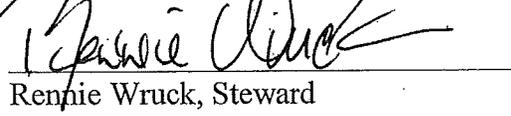

James Anderson, Steward


Jeff Edwards, Steward


Ray Fernandez, Sr., Steward


Keith Harter, Steward


Steve Walker, Steward


Rennie Wruck, Steward

City of Fremont


John Betonte, Deputy Director MARS


John Barron, Street Maintenance Supt.


Gerrie Meany, Personnel Manager

Date: 5-26-99

EXHIBIT B - RELEVANT SIDE LETTERS

Restructuring of Park Maintenance Services

Side Letter of Agreement
Between the
City of Fremont and Operating Engineers Local Union #3
Regarding Restructuring of Park Maintenance Services

The City of Fremont ("City") and Operating Engineers Local Union #3 ("OE3") acknowledge that the City intends to restructure the delivery of some park maintenance services through private contracting. The reorganization will result in the elimination of a number of Park Maintenance Worker positions. The City and OE3 have met and conferred in good faith regarding the restructuring and have reached the following agreements.

SECTION 1:

A. There are 44 park maintenance positions in the City, eleven of which currently are vacant. Nine of these vacant positions are being backfilled by temporary employees. Effective upon implementation of the contract with an outside vendor, the eleven vacant positions are eliminated, and the nine temporary employees filling those positions are released from employment.

B. The nine temporary employees who will be released will be given two weeks' salary as severance pay for each year worked, up to a maximum of two months. Temporary employees with less than a year of service will be given two weeks' salary as severance. In addition, temporary employees who receive health insurance through the City will receive payment to cover two months of premiums. City further agrees, that if there are any 2012 seasonal part-time park maintenance jobs available and unfilled at the time temporary employees are released, if they are in good standing, they will be given the right of first refusal to such position.

C. The work of the eleven eliminated park maintenance positions will be condensed into median and back-up lot maintenance, which services will be provided through a contract with a private vendor rather than City employees. All current regular employees in park maintenance positions within medians and back-up lot maintenance will be transferred into other positions within the park maintenance division.

D. The Park Maintenance October 2012 bid shall be frozen, and the bid shall be resumed in October 2013 pursuant to the Memorandum of Understanding.

E. As of August 1, 2012, the remaining 33 park maintenance positions will be eliminated incrementally through attrition. As current park maintenance employees retire or otherwise separate, their positions will be eliminated and the work will be transitioned to private vendors. The 33 affected positions are:

5 Park Field Supervisors
11 Park Maintenance Worker II's
17 Park Maintenance Worker I's

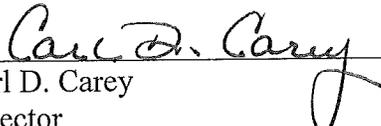
As each individual vacates his or her position, it will be eliminated, and the remaining positions will be redistributed to accommodate current work needs and service delivery. There are currently 3 individuals who are performing mower assignments, one at Central Park, one for the north, and one for the south. These individuals will remain in their assignments until any one of them vacates his position. When that happens, the remaining two mowers will be assigned to Central Park, and mowing for north and south will be transitioned to a private vendor.

F. Effective July 1, 2012, all regular park maintenance employees, regardless of their date of hire, will be subject to the alcohol and drug testing provisions of the June 1998 Side Letter between City and OE3. The provision of the June 1998 Side Letter exempting certain employees hired before February 1, 1997 from compliance with its testing provisions is superseded and repealed by this Side Letter.

SECTION 2: This Side Letter of Agreement shall become effective upon adoption, and shall continue in effect until changed by the parties. It will be incorporated into the MOU during the next bargaining cycle.

Executed and adopted this 6TH day of ^{JUNE}~~May~~, 2012, by the Employer-Employee Representatives whose signatures appear below for the respective organizations.

Operating Engineers, Local No. 3



Carl D. Carey
Director

City of Fremont



Brian Stott
Human Resources Director

EXHIBIT B - RELEVANT SIDE LETTERS

Standby Duty Agreement



Standby Duty Agreement

- A. The Union and the City have met as a Joint Labor Management Committee and have agreed on policy to institute and govern Standby Duty.
- B. The Division head will institute the Standby Duty in order to fill an operational need. When instituting Standby duty the Division head or representative will notify the Union as soon as possible of the planned date of the implementation. If possible notification will be given in advance of the implementation date by the Division head or his/her representative.
- C. The Union and the City agree that the Standby Duty will continue only as long as operationally needed.
1. Standby duty will not be applied to any section on a routine or regular basis without coming back to JLMC for discussion.
 2. The maximum length for standby duty will be for 1 week for each duty period in the absence of a declared emergency or for the duration of a declared emergency declared emergency.
 3. The number of workers to be on standby duty per assignment will be three (3) from Streets and three (3) from Parks.
 4. Standby assignment will be those workers who are qualified as determined by the Field Supervisors. If necessary call the Field Supervisors to setup standby selection during off-hours. If Field Supervisors are not available during off-hours Management may appoint employees as described in this agreement.
- D. The Union and the City agree that when possible and available volunteers will be used to staff the positions required for Standby Duty.
1. In the event no volunteers or not enough volunteers come forward, the needed positions will be filled by selection of qualified worker in reverse seniority order.
 2. Selection of workers for Standby Duty will be by the section head in consultation with the Union shop Steward.
 3. The normal staffing will be from Streets and Parks.
 4. The number of workers necessary for Standby Duty will be expandable under certain circumstances. If at all possible the Stewards and the City will meet and modify the number necessary to meet the operational need.
 5. For weekend and Holiday periods the minimum time for Standby duty will be 24 hours.
-

E. The pay for Standby Duty will be in addition to the normal overtime that results from a call out as described in Chapter 2, Article V of the MOU.

1. The pay for Standby Duty will be \$3.00 per hour for the entire time required.
2. The hours for Standby pay should be submitted to the Supervisor for processing as soon as possible after the Standby Duty is served in order to insure timely payment.
3. The Standby time for purposes of pay will start after the completion of the normal shift just prior to the start of the Standby duty and will end at the beginning of the employee's next regular shift unless other wise arranged with the employee and the City. Normal work shift will be either the normal workday the employee is on duty or the 12 hour work shift if the division is on emergency work schedule.

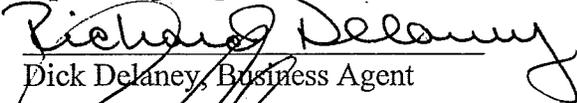
F. The response time for all employees on Standby Duty will be 30 minutes from receipt of page or call until arrival at the corporation yard. Call dispatch to confirm page.

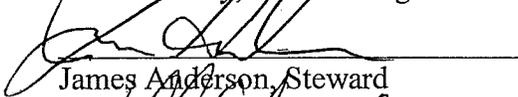
1. If necessary the City will supply a pager and/or cell phone to the employee(s) on Standby Duty.
2. The home phone number of the employee on Standby duty will be supplied to Police and Fire Dispatch.
3. If a call out response is required, Fire or Police dispatch will be contact the Standby duty employee or employees. The employee(s) should call dispatch and confirm the page.

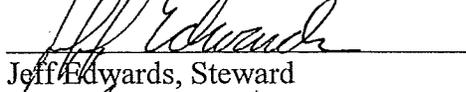
G. Standby duty is to provide service to other departments in the City and to City residents during periods of emergency or when rapid response is needed and not to replace normal weekend call out.

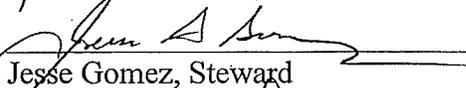
Signed by the labor and management representatives shown below on this 31st day of March, 2000:

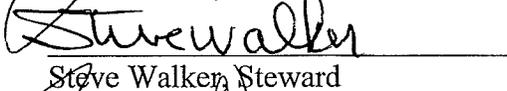
Operating Engineers Local 3

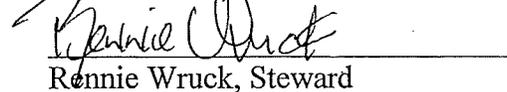

Dick Delaney, Business Agent

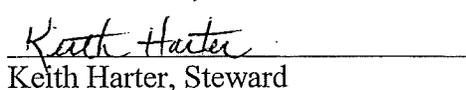

James Anderson, Steward


Jeff Edwards, Steward

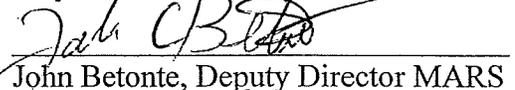

Jesse Gomez, Steward

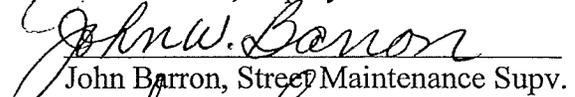

Steve Walker, Steward


Rennie Wruck, Steward


Keith Harter, Steward

City of Fremont


John Betonte, Deputy Director MARS


John Barron, Street Maintenance Supv.


Fern Lane, Personnel Manager

EXHIBIT B - RELEVANT SIDE LETTERS

Weekend Work Duties

meyers | nave riback silver & wilson
professional law corporation



Kathy E. Mount
Attorney at Law
510.808.2000

January 21, 2005

Alan Crowley
Weinberg, Roger, & Rosenfeld
180 Grand Avenue, Suite 1400
Oakland, CA 94612--3752

RE: OE3 Weekend Work Duties

Dear Mr. Crowley:

Attached is a fully signed copy of the Settlement Agreement in this matter. I believe the City has provided a copy directly to Carl Carey.

Thank you for your cooperation in resolving this matter

Very truly yours,

MEYERS, NAVE, RIBACK, SILVER & WILSON

A handwritten signature in cursive script, appearing to read "Kathy E. Mount".

Kathy E. Mount

KEM:kw

Enclosure

c: Nancy Carlson, Human Resources Director

730773

COPY

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into between the City of Fremont and Operating Engineers, Local 3 on January 18, 2005.

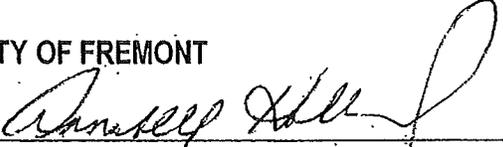
There is presently pending a dispute between the parties related to interpretation of the 2003-2005 Memorandum of Understanding between them, specifically related to the ability of members of the bargaining union to receive compensatory time off for overtime worked in the parks during the 2005 peak season.

In order to resolve this dispute, the parties agree to the following terms and conditions:

1. Members of the OE3 bargaining unit may select between cash payment and compensatory time for overtime work for weekend work during the 2005 peak season.
2. Peak season is defined as April 15 through October 15.
3. Compensatory time accrued for scheduled weekend overtime work in the parks cannot be taken during the 2005 peak season. Compensatory time accrued prior to April 15, 2005 may be taken during the 2005 peak season subject to the City's prior approval. The City's approval will not be unreasonably withheld. Compensatory time accrued for scheduled weekend work in the parks by other than Park Maintenance Workers may be taken in other areas of work than the parks during peak season subject only to the City's approval, which will not be unreasonably withheld. Park maintenance workers who work overtime, other than park weekend duty, and accrue it as compensatory time off, may elect to use this compensatory time off during the peak season, subject to the City's approval, which will not be unreasonably withheld.
4. The ability to accrue compensatory time during peak season shall last only during the 2005 peak season, or until a new MOU is ratified between the parties, whichever occurs first.
5. This agreement does not set precedent for the future and may not be used as an indication of past practice during negotiations of the new MOU. Nor may this agreement be introduced in any arbitration or other hearing to establish past practice.
6. The union hereby dismisses its appeal of the denial of the grievance and cancels the pending arbitration. The parties will split any fee imposed by the arbitrator and court reporter for cancellation of the arbitration.

January 18, 2005

CITY OF FREMONT


By Annabell Holland, Director of Parks and Recreation

Nancy A. Carlson for Fred Diaz

By Fred Diaz, City Manager

OPERATING ENGINEERS, LOCAL 3

Carl D. Carey

By Carl D. Carey, Business Representative

Edmund J. All

APPROVED AS TO FORM:

Kathy E. Mount

Alan Crowley

Alan Crowley

**LETTER OF AGREEMENT
BETWEEN
THE CITY OF FREMONT
AND
OPERATING ENGINEERS LOCAL #3**

The City of Fremont ("City") and Operating Engineers Local #3 ("Union") having met and conferred pursuant to California Government Code Section 3500 et. seq. do hereby agree to a side letter of agreement with regards to work schedules for employees regularly assigned to operate street sweepers.

SECTION 1: The City and Union agree to the following terms as a Side Letter Agreement to the 2019-2021 Memoranda of Understanding between the City and the Union.

1. This Side Letter Agreement is effective during the term of the current MOU (July 1, 2019 through June 30, 2021) and will thereafter be incorporated into the body of the successor MOU. (As shown in Attachment A)
2. During the term of this Side Letter, the following scheduling terms apply to employees assigned to operate Street Sweepers:
 - a. Employees who are regular assigned to operate a street sweeper shall have the option to volunteer for a start time of either 5:00 a.m. or 6:00 a.m. without a reduced workday. Election shall occur during regularly scheduled assignment bidding. Current sweeper operators shall keep their assigned routes.
 - b. Newly hired or promoted sweeper operators will choose their start time (from the two options 5:00 a.m. or 6:00 a.m.) when hired or promoted and may change their elected start time of 5:00 a.m. or 6:00 a.m. each year during assignment bidding time.
 - c. Both the 5:00 a.m. and the 6:00 a.m. starting schedules may be shifted to a start time of 4:00 a.m. as determined by the Department Head or his/her designee to ensure safe and proper sweeping while avoiding heavy traffic. The 4:00 a.m. start time schedule is exempt from the reduced workday provision.

SECTION 2: This Agreement shall be effective immediately upon execution.

SECTION 3: Executed and adopted the 16 day of Oct, 2019 by the Employer-Employee Representatives whose signatures appear below for the respective organizations.

FOR THE CITY OF FREMONT:

FOR UNION:



Brian Stott, Assistant City Manager

 10/16/19

Michael Eggener, Business Agent for OE3

APPROVED AS TO FORM:



Harvey Levine, City Attorney

Side Letter of Agreement between OE3 and the City of Fremont

Re: Early Shift Scheduling (Article 6 Section2)

The following paragraph;

Upon Union ratification and Council approval of this Agreement, employees whose regular assigned duties on the effective date of this agreement are to operate a street sweeper shall have the option to volunteer for a 5:00 a.m. or a 7:00 a.m. starting time without the reduced work day. Future election shall be at the same time as the "assignment bid". Current sweeper operators shall keep their assigned routes. Newly hired or promoted sweeper operators will choose their start time (from the two options above) when hired or promoted and may then elect between the two options each year at the same time as the "assignment bid".

Shall be replaced by the following paragraph;

~~Upon Union ratification and Council approval of this Agreement~~ Effective the date of this contract (2019-2021), employees whose regular assigned duties are to operate a street sweeper shall have the option to volunteer for a start time of either 5:00 a.m. or 6:00 a.m. without the reduced workday. Future election shall be at the same time as the "assignment bid". Current sweeper operators shall keep their assigned routes. Newly hired or promoted sweeper operators will choose their start time (from the two options above) when hired or promoted and may then elect between the two options each year at the same time as the "assignment bid". Both the 5:00 a.m. and the 6:00 a.m. starting times come with the understanding that on these shifts there will be a need on specific days to start at 4:00 a.m. as determined by the Department Head or his/her designee to ensure safe and proper sweeping while avoiding heavy traffic. This 4:00 a.m. start time is exempt from the reduced workday.

**OE3 MOU
2019-2021
INDEX**

ABC PLAN.....	18	HOLIDAYS RECOGNIZED AND OBSERVED.....	14
AGGREGATE GENERAL LEAVE.....	11	HOURS AND SCHEDULING	24
ALTERNATE WORK SCHEDULES ...	24	IMPLEMENTATION OF INTERNAL REVENUE CODE SECTION 414(H) (2) EMPLOYER PICKUP	24
AMERICANS WITH DISABILITIES ACT	37	INSURANCE	18
ANNIVERSARY PAY	7	JOINT LABOR-MANAGEMENT COMMITTEE	38
APPEALS ON DISCIPLINE.....	30	LEAVES	11
APPLICABILITY OF PROVISIONS.....	1	LIFE INSURANCE COVERAGE	22
ARBITRATION	26, 30	LIGHT-DUTY ASSIGNMENTS.....	37
ASPHALT GRINDER/PAVER PAY ..	5, 6	LIQUIDATION OF GENERAL LEAVE – CURRENT EMPLOYEES	13
ASSIGNMENT BID SYSTEM.....	25	LIQUIDATION OF NEW GENERAL LEAVE AT SEPARATION	14
BENEFIT LOAD	12	LIQUIDATION OF OLD GENERAL LEAVE AT SEPARATION	14
BEREAVEMENT LEAVE.....	18	MATTERS SUBJECT TO DISCIPLINARY APPEAL PROCEDURE.....	30
CALL BACK	6	MATTERS SUBJECT TO GRIEVANCE PROCEDURE.....	27
CATASTROPHIC SICK LEAVE BANK	22	MAXIMUM GENERAL LEAVE ACCRUAL LIMIT BEGINNING JANUARY 1, 1994	13
CITY COUNCIL APPROVAL.....	1	MEDICAL INSURANCE FOR RETIRED EMPLOYEES	20
CLASSIFICATIONS	43	MEDICAL/DENTAL BENEFITS.....	18
CLEAN UP TIME.....	25	MILITARY SERVICE CREDIT.....	24
COMPENSATORY TIME OFF	9	NEW GENERAL LEAVE BANK	11
CONTINUATION OF EXISTING BENEFITS.....	1	NO DISCRIMINATION	2
CONVERSION OF EMPLOYER PAID MEMBER CONTRIBUTION TO BASE SALARY	23	NOTICE TO UNION OFFICE	34
CREDIT UNION DEDUCTION	36	OLD GENERAL LEAVE BANK	11
DECISION OF THE ARBITRATOR....	32	ON THE JOB INJURY LEAVE	18
DEFINITION OF THE WORK WEEK ...	7	ORGANIZATION BUSINESS.....	34
EARLY SHIFT SCHEDULING.....	24	OVERTIME COMPENSATION	7
ELIGIBILITY REQUIREMENTS	15	PARTIES TO UNDERSTANDING.....	1
EMERGENCY OVERTIME	8	PAYMENT OF OVERTIME - GENERAL RULE FOR EMPLOYEES WORKING FORTY HOURS IN FIVE DAYS	7
EMPLOYEE EVALUATION APPEALS	36	PERSONAL LEAVE DONATION	16
EMPLOYMENT OF PERSONS IN A PROVISIONAL STATUS	40	PERSONNEL RULES & LAYOFF ADMINISTRATIVE REGULATION .	38
EMPLOYMENT OF TEMPORARY WORKERS.....	39		
FAMILY LEAVE.....	16		
GENERAL LEAVE.....	11		
GLOVE ALLOWANCE	10		
GRIEVANCES.....	26		
HBA.....	19		
HEALTH INSURANCES.....	20		
HOLIDAYS	14		

PROBATIONARY PERIOD 37
PUBLIC EMPLOYEES RETIREMENT
SYSTEM..... 23
RECOGNITION..... 2
REGULAR HOLIDAY PAY 15
RELEVANT SIDE LETTERS..... 45
RETIREMENT 23
SAFETY GOGGLES 36
SAFETY SHOE ALLOWANCE..... 9
SALARIES..... 4
SCHEDULED LEAVE..... 12
SELECTION OF ARBITRATOR..... 32
SHORT TERM/LONG TERM
DISABILITY 22
SICK LEAVE BANK OF HOURS..... 13

SKELLY..... 32
STATE LAW COMPLIANCE 1
SUBSTANCE ABUSE POLICY 37
TEMPORARY UPGRADE PAY..... 4
TOOL ALLOWANCE 10
TOTAL AGREEMENT 2
TUITION REIMBURSEMENT 38
UNIFORMS 11
UNION ISSUES 34
UNION SECURITY..... 34
UNSCHEDULED LEAVE 12
VALIDITY OF MEMORANDUM 3
VARIABLE DEMAND HIRING..... 37
WORK ASSIGNED ON HOLIDAYS ... 16