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# AGREEMENT

Between

**CLACKAMAS COUNTY, OREGON**

and

**WATER ENVIRONMENT SERVICES EMPLOYEES OF CLACKAMAS COUNTY,  
OREGON**

Affiliated With

CLACKAMAS COUNTY, OREGON, PUBLIC EMPLOYEES'  
LOCAL 350 and Council #75, AFSCME, AFL-CIO

## PREAMBLE

This agreement is entered into by Clackamas County, Oregon, herein after referred to as the COUNTY, and the Water Environment Services Employees of Clackamas County affiliated with Local 350 and Council 75 of the American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the UNION.

The parties agree as follows:

### ARTICLE 1- DEFINITIONS

**1. CONFIDENTIAL EMPLOYEE**

As defined in Oregon Revised Statute 243.650, Paragraph (6).

**2. EMERGENCY**

An unforeseen or unusual circumstance or a combination of circumstances which, in the opinion of the COUNTY, calls for immediate action.

**3. SUPERVISORY EMPLOYEE**

As defined in Oregon Revised Statute 243.650, Paragraph (14).

**4. TEMPORARY EMPLOYEE**

Any non-regular employee appointed to a position of six (6) months duration or less. These employees are not part of the bargaining unit.

**5. REGULAR EMPLOYEE**

An employee who has successfully completed his/her initial one (1) year probationary period from date of appointment to a regular position.

**6. REGULAR PART-TIME EMPLOYEE**

A regular employee who works less than full time, but works at least 1040 hours per year.

**7. SHOP STEWARDS**

Employees selected by the UNION to act as UNION representatives shall be known as "stewards". The names of employees selected as stewards and the names of other UNION representatives who may represent employees shall be certified in writing to the COUNTY by the UNION.

**8. PROBATIONARY PERIOD FOR INITIAL HIRE**

For new hires the probationary period shall be defined as twelve (12) months from the date of appointment to a regular position.

**9. PROBATIONARY PERIOD FOLLOWING ACCEPTANCE OF ANOTHER POSITION**

For regular status employees who are appointed to another position in the County, the probationary period shall be defined as six (6) months from the date of appointment to the new position.

**ARTICLE 2 - RECOGNITION**

The COUNTY recognizes the UNION as the sole and exclusive bargaining agent for the purposes of negotiation with the COUNTY for all regular and regular part-time employees that are or will come under the jurisdiction of the Water Environment Services, a Department of Clackamas COUNTY, with the exception of confidential or supervisory employees as defined by ORS 243.650 and employees who work less than 1040 hours per year.

**ARTICLE 3 - PRESERVATION OF PUBLIC RIGHTS**

The UNION recognizes that an area of responsibility must be reserved to the COUNTY if COUNTY government is to effectively serve the public. Therefore, the COUNTY shall have the full and complete right to manage and to direct its business, and it is recognized that the following responsibilities of management are exclusively functions to be exercised by the COUNTY and are not subject to negotiation except as modified by the specific terms of this agreement.

By way of illustration and not by way of limitation, these rights include:

- A. The determination of the governmental services to be rendered to the citizens of Clackamas County.
- B. The determination of the COUNTY's financial, budgetary and accounting procedures.

- C. The management and direction of the work force including, but not limited to, the right to determine the methods, processes and manner of performing work; the right to hire, promote, transfer within the same pay range and retain employees; the right to discipline or discharge for proper cause; the right to lay off for lack of funds or for other legitimate reasons; the right to abolish positions or reorganize the sections or divisions; the right to determine schedules of work; the right to purchase, dispose and assign equipment or supplies; the right to determine levels of staffing, assign personnel and distribute overtime; the right to make, publish and enforce rules and regulations; and the right to contract or subcontract any work.
- D. The right to declare emergencies and suspend the appropriate provisions of the contract during the time of the declared emergency, provided that wage rates and monetary fringe benefits shall not be suspended.
- E. The right in times of financial exigency to lay off or reduce the work week with corresponding wage and fringe benefit reduction, or furlough employees without pay after giving the UNION at least thirty (30) calendar days notice of the intended action. In situations due to external circumstances beyond the County's control where the COUNTY has less than thirty days notice, the UNION will be notified as soon as possible after the County receives notice. This language does not apply to normal layoff situations which would be covered under Article XVI.

#### **ARTICLE 4 - UNION SECURITY AND CHECK-OFF**

The COUNTY and the UNION agree to a "Fair Share" agreement for all regular and regular part-time employees described and included in Article II of this Agreement.

Inasmuch as it is required that the UNION represent every employee within the bargaining unit, making each employee thus a recipient of the UNION's services, it is mutually agreed and recognized by the parties that each employee who is a member of the bargaining unit set forth in Article II to which the UNION serves as the bargaining agent, but who is not a member and chooses to remain not a member of the UNION, shall proportionately and fairly share in the cost of the collective bargaining process. Therefore, the cost per employee is fixed proportionately at the amount of dues uniformly required of each member of the UNION, which amount shall be deducted monthly from each UNION member's and each non-UNION member's compensation and remitted monthly to the Treasurer of the UNION.

Such uniform amounts as the UNION Treasurer certifies to the COUNTY as the monthly dues approved by the members of the UNION shall remain as the reasonable amount to be deducted hereunder.

A like amount in lieu of dues will be automatically deducted from employees in the bargaining unit who have not signed an authorization form requesting UNION membership dues deduction. It is understood that the like amount in lieu of dues shall only be used as directed by the constitution and bylaws of the UNION and by the majority vote of the membership. Employees terminating with less than ten (10) working days in any calendar month will not be subject to dues or a like amount in lieu of dues deduction.

Any individual employee objecting on bona fide religious tenets or teachings of a church or religious body of which such employee is a member will inform, in writing, the COUNTY and the UNION of his/her objection. The employee will meet with representatives of the UNION and establish a mutually satisfactory arrangement for distribution of a contribution of an amount of money equivalent to regular UNION membership dues to a non-religious charity.

The COUNTY will not be held liable for checkoff errors, but will make proper adjustments with the UNION for errors as soon as is practicable if notified within ten (10) days of the error. In no case shall such an adjustment extend beyond the following pay period. In order for both parties to have adequate information on dues checkoff, an updated list of eligible members of the bargaining unit will be delivered to the UNION. Such list shall include all members paying dues in the previous pay period.

The County will notify the Union monthly of all new employees who are members of the bargaining unit. The Union will be allowed to hold one fifteen (15) minute meeting on County paid time in total per month to orient all new Union members. One Union member will be allowed work time to lead the orientation process. This orientation meeting will be coordinated with the Department Director or designee with the intent on selecting a time and County location with the least impact on business. Attendance by the employees is voluntary and it is the Union's responsibility to notify the new employee of the meeting time and place.

## **ARTICLE 5 - PUBLIC EMPLOYEES ORGANIZED TO PROMOTE LEGISLATIVE EQUALITY**

1. The COUNTY agrees to make payroll deductions from the pay of those employees who request, in writing, to deduct from their earnings regular payroll deductions in such amounts authorized by the employees to be paid to the Treasurer of the National Public Employees Organized to Promote Legislative Equality (PEOPLE) Committee.

2. The COUNTY shall remit the aggregate deductions of all employees, together with an itemized statement showing the name and social security number of each employee from whose pay deductions have been made and the amount deducted during the period covered by the remittance, to AFSCME Council 75

3. All PEOPLE Contributions shall be voluntary and may be revoked at any time by giving written notice to the UNION and the COUNTY. It is expressly understood that PEOPLE contributions are not required as a condition of employment.

4. The UNION shall indemnify and save the COUNTY harmless against any and all claims, damages, suits or other forms of liability which may arise out of any action taken or not taken by the COUNTY for the purpose of complying with the provisions of this Article.

## **ARTICLE 6 - HOURS OF WORK**

### **1. REGULAR HOURS**

The regular hours of work each day shall be consecutive except for interruptions for lunch period and emergencies.

### **2. WORK WEEK**

The work week shall be set by the COUNTY, but in no event would the regularly scheduled work week exceed forty (40) hours. The COUNTY will not set work weeks so that employees will have less than two (2) consecutive days off. It is mutually agreed that whenever possible, consistent with the needs of the COUNTY, the COUNTY will consider the requests of the UNION to change or modify existing work schedules.

### **3. WORK DAY AND WORK SCHEDULES**

All employees shall be scheduled to work on a regular work shift, and each work shift shall have regular starting and quitting times except as modified by an approved flexible schedule (see #4 of this article). Work schedules showing the employees' shifts, work days, and hours shall be posted on all department bulletin boards at all times. Changes of work schedules, shift or station assignments shall be posted three (3) work days prior to change.

The County and the union recognize that in order to adequately serve the public, the employee and supervisor may mutually agree to a schedule other than the standard County schedule, provided that: the agreed upon schedule is consistent with the needs of the County; the schedule does not establish a work day that is less than four (4) hours nor more than ten (10) hours; the schedule has start and end times in fifteen minute increments beginning on the hour; and the schedule does not establish a work week in excess of 40 hours, except as referenced below, and the schedule shall be in place thirty (30) days or more. Nothing in this Article shall be construed to supersede the right of management to determine schedules as provided in this article, section 2.

A. Work Day and Work Week. Within the parameters outlined above, the work week and the work day may be defined by mutual agreement between the employee and supervisor. Examples are, but are not limited to:

- 1) Five (5) consecutive days of eight (8) hours each;
- 2) Four (4) consecutive days of ten (10) hours each (40 hour work week);

- 3) Five (5) nine hour days one week, followed by three (3) nine hour days and one (1) eight hour day the next week (a "9-80");

Overtime shall be paid in accordance with Article 13(8). Holidays shall be paid in accordance with Article 7(2) and Bereavement Leave shall be paid in accordance with Article 8(2).

#### **4. FLEXIBLE WORK SCHEDULE**

Employees may request Flexible scheduling for personal reasons which permits infrequent modification of hours of work on a case-by-case basis. The purpose of this flexibility is to allow employees, with approval from management, the ability to adjust the hours of a work shift. Utilization of Flexible Scheduling must meet the following criteria:

- a. Employee requests for Flexible Scheduling must be submitted at least twenty-four (24) hours in advance and in writing, unless the COUNTY waives said requirement(s).
- b. Adjustments to hours of work must:
  - Be mutually beneficial to employees and the COUNTY
  - Not negatively affect other employees
  - Not impede customer service or normal work process
  - Not generate additional labor costs or overtime
  - Occur during the same work week

#### **5. REST PERIODS**

All employees' work schedules shall provide for a fifteen (15) minute rest period during each one-half (1/2) shift. Rest periods shall be scheduled at the middle of each one-half (1/2) shift whenever reasonable. Employees who, for any reason, work beyond their regular quitting time into the next shift shall receive a fifteen (15) minute rest period before they start to work on the next succeeding shift, when it is anticipated the overtime is expected to extend a minimum of one and one-half (1-1/2) hours.

#### **6. MEAL PERIODS**

All employees shall be granted a lunch period on employee time of at least one-half (1/2) hour during each work shift. Whenever possible, such meal period shall be scheduled in the middle of the shift. The COUNTY shall permit any employee who is requested to and does work more than two (2) hours beyond his/her regular quitting time, one-half (1/2) hour off for his/her meal on employee time.

#### **7. CLEANUP FACILITIES**

The COUNTY shall provide the required cleanup facilities for the employees' cleanup.

#### **8. EMERGENCIES**

This Article may be deviated from during times of emergency.

## **ARTICLE 7 - HOLIDAYS**

### **1. HOLIDAYS**

The following days shall be recognized and observed as paid holidays:

- New Year's Day (January 1)
- Martin Luther King Jr. Day (Third Monday in January)
- President's Day (Third Monday in February)
- Memorial Day (Last Monday in May)
- Independence Day (July 4)
- Labor Day (First Monday in September)
- Veteran's Day (November 11)
- Thanksgiving Day (Fourth Thursday in November)
- Christmas Day (December 25)
- Every day appointed by the Board of County Commissioners as a paid holiday.
- Floating holiday - one (1) eight (8) hour work day off per calendar year with pay. The Floating Holiday shall be credited to each employee on January 1. Floating holidays may be used as one entire day off, or may be used incrementally in hour units. Any floating holiday, or portion thereof, that is not used by the end of the calendar year will be converted to vacation hours provided the additional hours do not extend beyond the employee's vacation limitation. Upon termination of an employee for any reason, or in the event of the death of an employee, any floating holiday, or portion thereof, that is not used shall be paid either to the employee or their heirs, whichever the case may be.

New employees, who qualify for paid holidays, are eligible for a floating holiday after 90 calendar days of employment.

### **2. HOLIDAY PAY**

Eligible employees shall receive pay for each of the holidays listed above on which they perform no work as follows:

- 1) If on a five (5) day eight (8) hour work week schedule, eight (8) hours;
- 2) If on a four (4) day ten (10) hour work week schedule, ten (10) hours;
- 3) If on an eighty (80) hours in nine work day schedule, nine (9) hours;

### **3. WEEKEND HOLIDAYS**

For employees on an eight (8) hour five (5) day work week or a 9/80 schedule, whenever a holiday shall fall on the first day off, the preceding day in the regular work week shall be observed as a holiday. Whenever a holiday shall fall on the last day off, the following day of the regularly scheduled work week shall be observed as a holiday. Whenever a holiday shall fall on the middle day of three consecutive days off, the employee may request to observe the holiday on either the last work day preceding the holiday or the next regularly scheduled work day, consistent with the needs of the COUNTY.

For employees on a ten (10 hour four (4) day work week, whenever the holiday falls on a Friday or Saturday, the preceding Thursday shall be observed as a holiday. If the holiday falls on a Sunday, the following Monday shall be observed as a holiday.

**4. HOLIDAY DURING LEAVE**

Should an employee be on authorized paid leave when a holiday occurs, such holiday shall not be charged against such leave.

**5. HOLIDAY WORK**

If an employee works on any of the holidays listed above, he/she shall, in addition to his/her holiday pay, be paid for all hours worked at the rate of time and one-half (1-1/2) his/her regular rate of pay. When computing overtime, all paid leave shall be considered as time worked.

**ARTICLE 8 - SICK LEAVE**

**1. ACCRUAL**

Paid sick leave shall accrue at the rate of eight (8) hours of leave for each full calendar month of service to be used in the event of his/her illness or illness of a member of his/her immediate family. Sick leave shall be accrued without limit. Seasonal, temporary and part-time exempt employees shall not accrue sick leave. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue sick leave for the next month. Sick leave shall accrue on the first work day of the month for each preceding calendar month worked. Appropriate documentation of illness may be required as deemed necessary by management. If the employee is under a doctor's care, a doctor's certificate shall be considered appropriate documentation.

**2. COMPASSIONATE LEAVE**

In addition to regular sick leave, an employee shall be granted not more than three (3) days leave in event of death in the immediate family of the employee, as approved by the Department Director or designee, to make household adjustments or to attend funeral services.

Consistent with the needs of the COUNTY, an employee shall be granted not more than three (3) hours of compassionate leave to attend the funeral or memorial service for a current Clackamas County employee or retiree.

**3. IMMEDIATE FAMILY**

An employee's immediate family shall be defined as spouse, domestic partners (as defined by the Benefits Review Committee), parents, children, brother, sister, grandparents, stepchildren, stepparents, father-in-law, mother-in-law, sister-in-law, brother-in-law, and grandchildren. In relationships other than those set forth above, under exceptional circumstances, such leave of absence may be granted by the Department Director upon request.

**4. UNUSED ACCRUED SICK LEAVE AT TIME OF RETIREMENT**

Pursuant to ORS 237.153, the COUNTY shall report all allowable sick leave hours to PERS upon an employee's separation from COUNTY employment.

**5. REGULAR PART-TIME EMPLOYEES**

Regular Part-Time Employees shall be granted sick leave on a pro rata basis using a 2080 hour base.

**6. USE OF SICK LEAVE**

Employees may utilize their allowance of sick leave when unable to perform their work duties by reason of illness, off the job injury, pregnancy, necessity for medical or dental care, exposure to contagious disease under circumstances by which the health of the employees with whom associated, or member of the public necessarily dealt with would be endangered by the attendance of the employee, or by serious illness or death in their immediate family requiring the presence of the employee, for such period as the employee has sick leave credit provided the employee calls in at the beginning of his/her work shift no later than fifteen (15) minutes prior to the start of the work shift or at the earliest possible time.

**7. LEAVE DONATION**

Leave Donation will be granted in accordance with Employment Policy and Practice #46, dated October 1, 1998.

**ARTICLE 9 - VACATION LEAVE**

**1. ACCRUAL**

Vacation leave with pay shall accrue at the rate shown on the first day of the month for each preceding full calendar month worked in accordance with the following schedule. Employees in a paid status for 88 hours (prorated for FTE status) or more in any month shall accrue vacation leave for the next month. It is recognized that in all cases service shall be interpreted to mean continuous County service, including rights set forth in ORS Chapter 236.

**A. Basic Vacation Plan**

Employees hired prior to January 1, 2002 who have elected not to participate in the Vacation Sell Back Program shall accrue vacation in the following manner:

- 1) Employees having served in the County service for six (6) consecutive full calendar months, shall be credited with fifty-two and two-tenths (52.2) hours of vacation leave.
- 2) After six (6) months, but less than (5) years of service: 104.4 hours per year accrued at the rate of 8.7 hours per month. Vacation leave not to accumulate beyond 218 hours.

- 3) Five (5) to ten (10) years, but less than ten (10) years of service: 128.4 hours per year, accrued at the rate of 10.7 hours per month. Vacation leave not to accumulate beyond 218 hours.
- 4) Ten (10) to fifteen (15) years, but less than fifteen (15) years of service: 152.4 hours per year, accrued at the rate of 12.7 hours per month. Vacation leave not to accumulate beyond 258 hours.
- 5) Fifteen (15) to twenty (20) years, but less than twenty (20) years of service: 176.4 hours per year, accrued at the rate of 14.7 hours per month. Vacation leave not to accumulate beyond 258 hours.
- 6) After twenty (20) years of service: 200.4 hours per year, accrued at the rate of 16.7 hours per month. Vacation leave not to accumulate beyond 258 hours.

**B. Vacation Sell-Back Plan**

Employees hired after January 1, 2001 participate in the Vacation Sell-Back plan and shall accrue vacation in the following manner:

1. Employees having served in the County service for six (6) consecutive full calendar months, shall be credited with seventy-two (72) hours of vacation leave, and thereafter, vacation leave shall be accrued at the rate of twelve (12) hours per month regardless of years of service. Vacation leave not to accumulate beyond 250 hours.

2. Employees who have used at least forty (40) hours of vacation time in a calendar year may elect to sell up to forty (40) hours of vacation during that same calendar year. To receive compensation in lieu of time off, the employee must submit a completed request to Sell Vacation form to Payroll no later than December 31<sup>st</sup> of that calendar year.

- C. Some employees hired prior to January 1, 2001 have made a one-time election to enroll in the Vacation Sell Back Plan by submitting a written request to Payroll no later than February 1, 2001. Once enrolled in the Vacation Sell Back Plan, an employee may not enroll in the Basic Vacation Plan.

**2. ACCRUAL FOR REGULAR PART-TIME EMPLOYEES**

Regular part-time employees shall be granted vacation leave on a pro rata basis using a 2080 hour base.

**3. VACATION TIMES**

Employees shall be permitted to choose either a split or entire vacation. Whenever possible, consistent with the needs of the COUNTY and requirements for vacation relief, employees shall have the right to determine vacation times, but in any case, vacation times shall be selected on the basis of classification seniority; however, each employee will be permitted to exercise his/her right of classification seniority only once. Notice of

the day or days selected shall be given to the COUNTY at least twenty-four (24) hours in advance, unless the COUNTY waives said requirement.

#### **4. TERMINATION OR DEATH**

After six (6) months of service, upon the termination of an employee for any reason, or in the event of the death of an employee, all accumulated vacation shall be paid either to the employee or his/her heirs, whichever the case may be.

### **ARTICLE 10 - OTHER LEAVES**

#### **1. LEAVE OF ABSENCE**

Leaves of absence without pay for a limited period, not to exceed ninety (90) days, shall be granted for any reasonable purpose, consistent with the needs of the COUNTY, and such leaves may be renewed or extended for any reasonable period. No leave will be granted to an employee to accept employment in any other capacity. Notice of the day or days selected shall be given to the COUNTY at least seven (7) days in advance, unless the COUNTY waives said requirement. A leave of absence in excess of ninety (90) days must be approved by the Board of County Commissioners.

#### **2. JURY DUTY**

When an employee is called for jury duty or is subpoenaed as a witness in any litigation or administrative hearing process involving the COUNTY, the employee will be granted absence from work and continued at full salary for the period of the required service; provided, however, the employee shall be required to give reasonable advance notice of such subpoena or other legal requirement to appear and provide the COUNTY with a copy of the subpoena or other legal document requiring his/her presence. The copy of the subpoena or legal document will be given to the COUNTY in advance of the hearing or jury duty or, if that is not possible, then the copy must be furnished within 72 hours after the hearing or jury duty date. All money received as witness or jury fees must be signed over to the COUNTY unless such fees, or any portion of them, are earned on an employee's day(s) off or during other authorized leave of absence. Employees will be required to report to work all hours of his/her normal work shift that his/her presence is not required as a juror or witness. If an employee is subpoenaed as a witness in any litigation or administrative hearing process not involving the COUNTY, the employee shall submit proof to the COUNTY of such requirement and shall take vacation leave; or if vacation is exhausted, leave without pay.

#### **3. VOTING TIME**

Employees who are registered electors shall be granted two (2) hours on employee time to vote on any election day if, due to shift scheduling, they would not be able to vote.

#### **4. UNION BUSINESS**

Not more than one (1) employee at any one time, elected to any UNION office or selected by the UNION to do work which takes them from their employment with the COUNTY may, at the written request of the UNION, be recommended by the Board of

County Commissioners for a leave of absence exceeding thirty (30) days. Members of the UNION selected by the UNION to participate in any other UNION activity may be granted a leave of absence at the request of the UNION. Any employee who has been granted a leave of absence and who, for any reason, fails to return to work at the expiration of said leave of absence, shall be considered as having resigned his/her position with the COUNTY, and his/her position shall thereupon be declared vacated; except and unless the employee, prior to the expiration of his/her leave of absence, has made application for and has been granted an extension of said leave or has furnished evidence that he/she is unable to return to work by reason of sickness or physical disability.

#### **5. PARENTAL LEAVE**

Parental Leave will be granted in accordance with State and Federal law and will be administered as described in the Employment Policy and Practice #10 and the Personnel Ordinance.

#### **6. FAMILY MEDICAL LEAVE**

Family Medical Leave will be granted in accordance with State and Federal law and will be administered as described in the Employment Policy and Practice #10 and the Personnel Ordinance.

#### **7. EDUCATIONAL LEAVE**

After completing three (3) years of service, an employee, upon request, may be granted a leave of absence without pay for educational purposes at an accredited school, when it is related to his/her employment and is consistent with the needs of the COUNTY. The period of such leave of absence shall not exceed twelve (12) months in any three (3) year period.

Employees may also be granted leaves of absence with or without pay for educational purposes, for reasonable lengths of time, to attend conferences, seminars, briefing sessions, or other functions of a similar nature that are intended to improve or upgrade the individual's skill or professional ability, provided it is consistent with the needs of the COUNTY.

#### **8. MILITARY AND OTHER SERVICE LEAVES**

Except as provided in the following paragraph of this section, for all periods of annual active duty for training as a member of the National Guard, National Guard Reserve or of any reserve component of the Armed Forces of the United States or of the United States Public Health Service, any employee of the Water Environment Services Department is entitled, upon application therefore, to a leave of absence from their duties for a period not exceeding 15 working days in any one federal fiscal/training year, without loss of time, pay or regular leave and without impairment of efficiency rating or other rights or benefits to which the employee is entitled.

Unless an employee has been employed by any Oregon public employer for a period of six months next preceding their application, no officer or employee is entitled to receive pay for any period during which an employee is on military leave.

## **ARTICLE 11 - HEALTH AND WELFARE**

### **1. MEDICAL COVERAGE**

The COUNTY agrees to contribute toward the monthly composite premium for each medical plan for fulltime employees and their eligible family members, effective on the first day of the month following the benefit-waiting period described in Section 9. The design of the medical plans and eligibility of family members shall be determined by the Benefits Review Committee as described in Section 10.

Effective July 1, 2009, the COUNTY agrees to contribute an amount equivalent to 95% of the monthly composite premium for each medical plan up to a maximum of \$1034.82.

Effective January 1, 2010, the County agrees to contribute an amount equivalent to 95% of the monthly composite premium for each medical plan up to a maximum of \$1117.61.

Effective January 1, 2011, the County agrees to contribute an amount equivalent to 95% of the monthly composite premium for each medical plan up to a maximum of \$1207.02.

Effective January 1, 2012, the County agrees to contribute an amount equivalent to 95% of the monthly composite premium for each medical plan up to a maximum of \$1303.58.

The COUNTY agrees to pay cash back to employees who provide proof of other medical coverage and who opt out of medical coverage through the COUNTY.

Effective July 1, 2009, cash back will be \$103.00 per employee per month.

Effective January 1, 2010, cash back will be \$112.00 per month.

Effective January 1, 2011, cash back will be \$121.00 per employee per month.

Effective January 1, 2012, cash back will be \$130.00 per employee per month.

### **2. FLEXIBLE BENEFITS**

The COUNTY agrees to provide a Clackamas County Flexible Benefit program to employees who are working in a position regularly scheduled for 30 hours or more per week.

**3. LIFE INSURANCE**

The COUNTY agrees to contribute up to the full premium amount for life insurance coverage with a face value of \$50,000. The design of the life insurance plan shall be the authority of the Benefits Review Committee as described in Section 10.

**4. DENTAL INSURANCE**

The COUNTY agrees to provide dental insurance to fulltime employees and their eligible family members, effective on the first day of the month following the benefit-waiting period described in Paragraph 9. The COUNTY agrees to contribute monthly an amount equal to 100% of the composite premium for employee and family dental coverage to continue during the life of the contract. The design of the dental plan(s) and the eligibility of family members shall be the authority of the Benefits Review Committee as described in Section 10.

**5. DISABILITY INCOME INSURANCE**

The COUNTY agrees to provide non-duty disability insurance coverage to fulltime employees, effective on the first day of the month following the benefit-waiting period described in Paragraph 9. The design of the disability plan shall be determined by the Benefits Review Committee as described in Paragraph 10.

The COUNTY agrees to contribute up to the full premium amount for disability insurance coverage with a benefit of 60% of covered salary, including longevity, up to a maximum covered salary of \$3333 per month.

**6. POSTHUMOUS BENEFITS**

In the event of the death of an employee, the COUNTY shall continue Hospital/Medical/Surgical and Dental Insurance Benefits for surviving eligible dependents for a period of six (6) calendar months.

**7. FULL-TIME EMPLOYEES**

For the purpose of eligibility for benefits, full-time employees are those employees regularly working thirty (30) or more hours per week.

**8. BENEFITS FOR REGULAR PART-TIME EMPLOYEES**

Regular part-time employees working at least twenty (20) hours per week shall be entitled to COUNTY-paid medical insurance as described in Paragraph 1 and shall be entitled to purchase dental insurance as described in Paragraph 4.

**9. BENEFITS WAITING PERIOD**

Benefits shall become effective on the first day of the calendar month following two (2) full calendar months of continuous employment. Two (2) full calendar months of continuous employment shall be defined as being in a paid status on the first working day of the month and continuously thereafter for two full calendar months, except that an employee may take an approved leave without pay not to exceed ten (10) working days, or eight (8) working days for employees on a four-day work week, or the prorated equivalent for part-time employees.

## **10. BENEFITS REVIEW COMMITTEE**

A Labor-Management Benefits Review Committee shall be formed and shall have the responsibility for deciding the level, scope, and design of benefit plans offered to employees for medical and vision coverage, dental coverage, and for disability and life insurance. The primary emphasis in plan design shall be to provide a comprehensive, competitive benefits program at a reasonable cost.

The Committee shall be comprised of members from management and from COUNTY bargaining units. Each bargaining unit adopting the provisions of this Article shall be entitled to appoint one voting member to the Committee for every two hundred (200) members in their bargaining unit with a minimum of one (1) member. It is understood that bargaining units which do not adopt the provisions of this Article will be entitled to appoint one nonvoting member to the Committee. Management membership will consist of voting members in a number equal to the voting bargaining unit membership. However, a bargaining unit or the County may appoint fewer voting members than it is entitled, but retain the same number of votes as described above. The County or the Union may invite other nonvoting members to attend meetings as needed to facilitate committee business. The Committee shall meet at least quarterly, or more frequently as required. Decisions of the Committee will be made by a majority of votes.

The Committee shall make plan design decisions for medical, vision, dental, disability, and life insurance plans at least 120 days prior to the succeeding plan year, unless the County waives such requirement.

Payment for and funding of benefit plans selected by the Committee shall be in a proportion and manner determined through collective bargaining with each separate bargaining unit.

The COUNTY shall provide administrative coordination and support for the Committee. The Committee at its request shall be provided all financial information and related reports as may be available.

The COUNTY will make decisions on the following issues after consideration of Committee recommendations: carrier selection, third party administrator selection, employee benefits consultant selection, selection of alternate funding arrangements, and other optional benefit programs.

The County and the Union will make an assertive effort to support plan design changes through the Benefits review Committee as may be needed to keep the total annual increase at or less than eight percent (8%) each year.

## **11. Health Reimbursement Account (HRA)**

The County shall provide each employee covered by this agreement a HRA consistent with the agreement as outlined in Appendix C.

## **12 PLAN CHANGES REQUIRED BY LAW OR INSURANCE CARRIER**

The COUNTY shall act to update any mandated coverage or changes caused by Federal or State laws, rules and regulations and may make changes to take advantage of any enhancements made available by the insurance carriers. The COUNTY does not guarantee against unilateral changes in benefits initiated solely by the insurance carriers.

## **ARTICLE 12 - WORKERS' COMPENSATION**

### **1. COVERAGE**

All COUNTY employees will be insured under the provisions of the Oregon State Workers' Compensation Act for injuries that arise out of and occur in the course and scope of their work for the COUNTY. Both parties agree to the principle that the employee should suffer no financial disadvantage nor shall the employee have a financial advantage by being in disability status.

### **2. COMPENSATION PAYMENT**

The COUNTY shall compensate the employee from the COUNTY'S Risk Management Claims Fund for on-the-job injuries where the claim has been accepted in an amount equal to the injured employee's regular pay, including any regular additional pay, such as longevity, that the employee was receiving at the time of the injury and would have continued to receive had there been no injury.

Compensation under this Article shall be subject to the following conditions:

- a) The day of injury shall be considered a workday, and the employee will receive his/her normal salary for that day.
- b) The waiting period as described in ORS 656.210, will be charged to sick leave.
- c) The employee's regular pay will be subject to all standard deductions, such as income tax and employee benefits, as required or allowed under Federal and State law.
- d) While the employee is receiving wage continuation under this provision, he/she will continue to receive all other COUNTY health and welfare benefits he/she was enrolled in at the time of the injury unless prohibited by law, rule, regulation or provider contract.
- e) If the absence due to injury reaches a period of six (6) months or more, in order to continue receiving the supplemental portion of disability compensation (that amount beyond the amount guaranteed under the Workers' Compensation statutes) and health benefits, the injured employee must present to the Board of County Commissioners a request for extension. It must include a physician's statement setting forth the nature of injuries, current condition, and anticipated length of absence or date of return. After said six (6) month period, it shall be at

the discretion of the Board whether or not to continue supplemental payment and benefits. This determination will be based upon the treating physician's prognosis as to additional time for the employee to return to work.

### **3. EFFECTIVE DATE**

This Article shall become effective July 1, 1983, for all employees currently receiving or hereafter entitled to Workers' Compensation Benefits where the claim has been accepted.

## **ARTICLE 13 - WAGES**

### **1. WAGES AND CLASSIFICATION SCHEDULE**

For the Fiscal year 2009 – 2010, employees shall receive a 0% cost of living increase.

Effective July 1, 2010, employees shall be compensated for the fiscal year 2010-2011 with a minimum increase of 1.5 % and a maximum of 4.5% cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: Urban Wage Earner and Clerical Workers, Portland-Salem, OR-WA. The change in the CPI-W is calculated by comparing the six-month period (July through December) of the applicable year's available data to the same six-month period of the previous year.

Effective July 1, 2011, employees shall be compensated for the fiscal year 2011-2012 with a minimum increase of 2.0 % and a maximum of 4.5% cost of living increase equal to the percentage increase in the US Consumer Price Index, CPI-W: Urban Wage Earner and Clerical Workers, Portland-Salem, OR-WA. The change in the CPI-W is calculated by comparing the six-month period (July through December) of the applicable year's available data to the same six-month period of the previous year.

All less than half time regular part time employees and temporary employees in regular classifications in AFSCME WES positions will be paid at the same salary schedule as the regular AFSCME WES counterparts.

When any classification not listed on the wage schedule is established, the COUNTY shall designate a pay range for the position. In the event that the UNION disagrees with the range, the UNION and COUNTY shall open negotiations to establish a pay range for the classification.

Increases in wages by incremented steps in the salary range as posted on the COUNTY Internet shall be based on the performance of the employee in meeting the standards established for the employee's job classification. Standards shall be jointly reviewed at the beginning of the performance period by the employee and manager. They shall be objective, quantifiable, and shall measure performance of the essential job functions.

Evaluation of an employee's performance for consideration of an increase within the salary range will occur at intervals of not greater than one year, except after the initial appointment

or promotion, where it will occur after six (6) full months. If performance does not meet standards, the manager will immediately establish a ninety (90) calendar day performance improvement plan for the employee which is intended to bring the employee's performance into compliance with performance expectations. At the end of the ninety (90) calendar day period, or earlier by mutual agreement, the employee's performance will again be reviewed. If performance meets standards, the employee will be granted the increase, effective the date of the most recent review. If the employee receives a step increase resulting from the first ninety (90) calendar day review, the employee's anniversary date will remain unchanged. If a step increase is not achieved until a later date, the employee's anniversary date will change to the date of the increase.

For the following job class titles and for the designated salary range step, in addition to meeting performance requirements, the employee must achieve the stated conditions:

<u>Class Title</u>	<u>Step</u>	<u>Conditions</u>
Wastewater Plant Operator 2	4	Attainment of Class III Certification
	5	Documented successful demonstration of knowledge and skill to operate primary and solids handling processes at their assigned plant
	6	Documented successful demonstration of knowledge and skill to operate the secondary process and the process control at their assigned plant
Collection System Technician 1	5	Attainment of Class II Certification
Collection System Technician 2	6	Attainment of Class III Certification

**2. LONGEVITY PAYMENT**

Employees will be eligible for longevity pay as a percent of gross salary for years of COUNTY service in the following amounts. Employees hired prior to July 1, 1994, will be eligible based upon total years of COUNTY service. Employees hired or rehired after July 1, 1994, will be eligible based upon years of service unbroken by separation from COUNTY employment.

5 years .....	1.0%
10 years .....	1.5%
15 years .....	2.0%
20 years .....	2.5%
25 years .....	3.5%
30 years .....	4.0%

The calculation for longevity shall be based on the employee's service date minus thirty days. For example, if the service date is 5/15, for purposes of calculating longevity the date shall be 4/15.

### **3. OUT-OF-CLASS WORK**

Out-of-class pay shall be granted an employee if the employee performs any work for more than four (4) hours in any shift in a classification above that in which the employee is normally classified. The supervisor will prepare a memorandum stating the need for the out-of-class work and why he/she considers the employee qualified to perform such higher class work and receive authorization from the Director of WES or his/her designee, except for training purposes.

When an employee is assigned by his/her supervisor to perform the duties of a higher paid classification, the employee shall receive an increase to the minimum of the salary range of the higher classification or receive an additional 5% of the base salary added to the employee's regular salary, whichever is higher. If an employee is assigned full time out-of-class work for a continuous period of longer than six (6) months, the employee will receive performance reviews and be eligible for step increases in accordance with Section 1.

An employee who has not been previously qualified cannot be required to work in a higher classification except during emergencies.

No out-of-class pay will be allowed unless the employee has previously been qualified by the COUNTY and has been authorized to perform such out-of-class work by his/her immediate supervisor.

The COUNTY can, at its sole discretion, require employees to perform work in a classification above that in which the employee is normally classified provided the employee has been qualified by the COUNTY to perform such higher class work.

Out-of-class pay is intended to apply only to work situations where the difference between work levels and duties and responsibilities are clear. These situations are temporary in nature and not intended to provide higher level pay for an employee who gradually or through normal assignment believes him/herself to be working at a higher classified level, which situation is to be addressed through the normal classification procedures provided by the Clackamas County Personnel Ordinance.

### **4. PERS/OPSRP PAYMENT**

The COUNTY agrees to pay the employee's share of contribution on behalf of employees as set by Oregon legislature.

In the event that during the life of this agreement, it becomes impossible for reasons of law, regulation or decisions for the COUNTY to pay the six percent (6%) employee contribution to PERS/OPSRP, the COUNTY and the UNION agree to re-open this paragraph to negotiate the impact of such action. It is the intent of the parties that the employees will be made whole in terms of the six percent (6%) retirement contribution made by the COUNTY, such as having that sum contributed on behalf of the employee to a retirement benefit, such as a transition account, state retirement account, County deferred compensation plan, or other individual retirement account.

## **5. REGULAR REPORTING TIME**

When employees report for their regularly scheduled shift, work will be provided.

## **6. ELECTRONIC REMOTE OPERATIONS**

An Electronic Remote Operation shall be defined as any authorized work where the employee does not physically report to a work location but performs a work function through electronic access.

An employee who is called to work outside of his/her regular scheduled shift and volunteers to respond by means of an Electronic Remote Operation shall be paid for a minimum of two (2) hours at the rate of time and one-half (1-1/2) the employee's regular hourly rate of pay but, compensation shall not be paid twice for the same hours. If the work function necessitates that the employee physically report to a work location, the time paid under Electronic Remote Operations response will be rolled into the Call-In Time provided in Article XIII subsection 7 of the current collective bargaining agreement but, compensation shall not be paid twice for the same hours.

Any dispute which may arise between the parties involving the application, meaning or interpretation of this memorandum shall first be brought to the Labor Management Partnership Committee for resolution. If the Labor Management Partnership Committee is unable to resolve the dispute the parties agree to follow Article XVII of the current collective bargaining agreement. The time lines for step one of Article XVII shall begin when the Labor Management Partnership Committee reaches impasse.

## **7. CALL-IN TIME**

Any employee called to report to work outside of his/her regular scheduled shift shall be paid for a minimum of four (4) hours at the rate of time and one-half (1-1/2) the employee's regular hourly rate of pay but compensation shall not be paid twice for the same hours.

## **8. OVERTIME**

Time and one-half (1-1/2) the employee's regular hourly rate of pay shall be paid for work under any of the following conditions, but compensation shall not be paid twice for the same hours:

1. All authorized work performed in excess of:
  - a. Eight (8) hours in a day or forty (40) hours in a regularly scheduled work week for employees on a eight hour five day work week; or
  - b. Ten (10) hours in a day or forty (40) hours in a regularly scheduled work week for employees on a ten hour four day work week; or
  - c. Nine (9) hours in a day or eighty (80) hours in a pay period for employees on a regular 9/80 schedule.
2. All authorized work performed fifteen (15) minutes before or after any scheduled work shift, in half (1/2) hour units as outlined below:

- a. 0-14 minutes paid @ time and one-half (1 ½) for actual time worked;
- b. 15 – 30 minutes paid for ½ hour @ time-and-one-half (1 ½); and
- c. 31+ paid @ time and one-half (1 ½) for actual time worked.

3. Part-Time Employees:

- a. Employees who work a part-time schedule shall not be required to work hours beyond their regular part-time schedule;
- b. If a part-time employee requests to work beyond their regular schedule, they shall be paid straight time for work until they reach the daily standard schedule for the work group;
- c. If required by management to work hours beyond their regular part-time schedule they shall be paid time and one-half (1 ½) for time in excess of that schedule as outlined in (2) above.

4. All paid leave shall be considered time worked for purposes of calculating overtime.

**9. DISTRIBUTION**

Overtime work shall be distributed equally as is reasonable among employees with comparable skills within the same job classification at each permanent reporting place who voluntarily place their name on a roster to work overtime work; provided, however, that exceptions may be made subject to mutual approval by the COUNTY and the UNION. If an employee whose name is on the voluntary overtime roster declines overtime work for other than valid reasons as determined by the COUNTY two separate times within a thirty (30) day period, that employee's name may be removed from the roster for ninety (90) days. If a sufficient overtime work force cannot be provided by the use of the voluntary roster, either because of a deficiency in the number of individuals on the roster or a lack of qualified individuals, then overtime will be required for all employees and distributed equally as is reasonable among employees with comparable skills within the same job classification at each permanent reporting place. Failure to work required overtime may be subject to disciplinary action short of discharge.

In the event this article or portion thereof becomes unenforceable and/or problematic due to unforeseen circumstances, either party may submit a request, in writing, and be granted a meeting in order to attempt to resolve the issue in question.

**10. COMPENSATORY TIME OFF**

Compensatory time off is equal to one and one-half (1-1/2) hours off for each hour of overtime worked in lieu of overtime pay, consistent with conditions contained within this section.

A. Accrual

1. If the overtime is voluntary, the employee shall only be entitled to receive overtime pay. For purposes of this section, voluntary is defined as work that the employee has the right to decline.
2. If the overtime is mandatory, the employee shall have the right to either overtime pay or compensatory time. For purposes of this section mandatory is defined as work that the County determines must be done regardless of how it is assigned.

#### B. Use

Employees shall have the right to determine compensatory time off consistent with the needs of the County and such use shall not be denied in a manner that is arbitrary or capricious. Compensatory time may not be used under the following conditions:

1. In conjunction with use of vacation leave;
2. If it creates the need for overtime or temporary out of class within the department;
3. If the employee fails to request use of compensatory time at least twenty-four (24) hours in advance;
4. If staffing levels or needs do not permit

The supervisor shall have the discretion to waive any of the above conditions..

Compensatory time shall be earned and then used within the following time frames. Compensatory time unused by these dates will be paid on the paycheck that includes earnings for each end date:

1. July 1 through October 31;
2. November 1 through February 28;
3. March 1 (or February 29 in a leap year) through June 30.

In the event the employee leaves COUNTY employment for any reason, accrued compensatory time shall be reimbursed in cash to the employee at his/her current straight time rate of pay.

#### **11. TRAVEL PAY**

Whenever an employee is required to report for work at any location more than 15 miles from his/her established place of reporting, he/she shall be paid at the current County Travel Policy rate per mile from the established reporting place for the use of his/her personal transportation to and from the temporary new location.

**12. PORTAL TO PORTAL PAY**

Employees shall report to their permanent place of reporting at the designated starting time of the shift and shall return to their reporting place so as to be off work by the designated quitting time.

An exception may be made to this section for an employee who voluntarily requests to begin and/or end his/her shift at a place other than his/her permanent place of reporting. Employees who request to make exception to this section shall not travel on their own time and shall be paid at the current County Travel Policy rate per mile from the established reporting place for the use of his/her personal transportation.

**13. PAYDAY**

Employees shall be paid based on a bi-weekly pay period. Paydays will be every other Friday.

In the event an administrative error is made by management which results in a shortage of at least \$25 net pay, the COUNTY shall, at the request of the employee, issue a check for the difference within three (3) working days of the employee's notice to the COUNTY.

**14. COMPUTATION OF HOURLY RATE**

Hourly rates are listed in appendix "A" and "B" of this contract and/or posted on the COUNTY Internet as Pay Plans.

**15. RECLASSIFICATION/PCQ REVIEW**

If the employee is reclassified into a currently existing classification, the employee shall be reclassified effective the date the employee and/or supervisor signed the Position Classification Questionnaire (PCQ), whichever signed first, and shall receive retroactive pay, if any, to that date. The employee's merit date shall be changed to one year from the effective date of the reclassification.

If the employee is reclassified into a newly developed classification, the employee's reclassification date will be the date the new classification was approved by the County Administrator. The employee's merit date shall be changed to one year from the effective date of the reclassification. The employee may be eligible for up to six months retroactive temporary out of classification pay (TOC) if it is determined that the employee was performing at least 75% of the new classification's duties prior to the new classification creation.

When it is determined that an employee has been performing the work of a higher classification and the employee is not subsequently reclassified since management decided to remove the higher level duties, the employee shall receive temporary-out-of-

class (TOC) pay for the period starting from the **date** the employee and/or supervisor signed the PCQ, whichever came first.

If, however, there are special circumstances that affect completion of a reclassification, the Director of Employee Services may authorize retroactive TOC pay which exceeds 6 months and is not limited to the current fiscal year. Such decision shall not be subject to the grievance and arbitration process.

#### **ARTICLE 14 - PERSONNEL RECORDS AND INFORMATION**

The parties agree as follows in regard to personnel records and information.

- a) For the purpose of this section, "personnel file" shall refer to the formal file or files of personnel documents maintained by the Department of Employee Services and/or by the employee's department or division.
- b) Employee personnel files are protected from access by persons other than those authorized by: (1) the employee, or (2) the custodian of the file.
- c) An employee or his/her representative, with written consent of the employee, may inspect that employee's personnel file. Upon written request, an employee or his/her authorized representative shall be given a copy of any materials in his/her departmental personnel file.
- d) An employee shall be furnished a copy of any statement written for inclusion in the employee's personnel file concerning the employee's conduct or work performance.
- e) The employee shall have the opportunity to submit a written statement in opposition to all derogatory materials placed into his/her personnel file.
- f) Any document reflecting caution, consultation, warning, admonishment, and reprimand placed in an employee's personnel file shall be retained for a maximum of three (3) years, unless there is evidence in the file of repeat occurrences. If evidence of a repeat occurrence is found in the file, all related documents will be retained and removed three (3) years from the date the last incident occurred. Other material will be retained as per OAR 166-40-080. No document reflecting critically on an employee shall be placed in an employee's personnel file which does not bear the signature of the employee indicating they have seen a copy of the material. If an employee refuses to sign, it shall be so noted by the supervisor, and if the employee so requests, a copy of the document shall be sent to the UNION.
- g) The COUNTY will make a good faith effort to remove a document from an employee's file on the date its minimum retention span expires. Any expired document found in a file will be removed by the COUNTY upon notification of its

presence. Documents shall be removed prior to the expiration of the retention period stated above, if such removal is agreed to by the COUNTY and the UNION as part of the settlement of a grievance, or if removal is ordered by a grievance arbitrator appointed under this agreement, ordered by the Employment Relations Board, or ordered by a court.

## **ARTICLE 15 - DISCIPLINE AND DISCHARGE**

### **1. EMPLOYEES SUBJECT TO DISCIPLINARY ACTION**

Employees may, in good faith for just cause, be subject to disciplinary action by oral or written reprimand, suspension, discharge, or demotion; provided, however, in the case of regular employees, such action shall take effect only after the supervisor gives written notice of the action and cause to the employee except for cases of oral reprimand.

### **2. REPRIMANDS SUBJECT TO APPEAL**

Any regular employee in the bargaining unit who is disciplined in writing, demoted, suspended, or discharged shall have the right to appeal the action through the Grievance Procedure. The UNION shall submit such grievance at Step I of the Grievance Procedure not later than ten (10) working days after the effective date of the disciplinary action.

### **3. MANNER OF REPRIMAND**

If the COUNTY has reason to reprimand an employee, every reasonable effort will be made to accomplish the reprimand in a manner that will not embarrass the employee before other employees or the public.

### **4. PREDISMISSAL HEARING**

When the Employer believes there is just cause for discharge, the employee involved will be suspended for five (5) days with pay or be allowed to continue work during the period of review. The employee and the UNION will be notified in writing at the time the action is taken that the employee is subject to discharge. Such notification shall state the reasons for which the employee is being discharged. The Employer shall provide to the employee an opportunity to respond to the charges at an informal predissmissal hearing, which may be recorded, with the person or persons having the authority to impose or revoke the disciplinary action. The employee shall be entitled to have a representative of their own choosing at the predissmissal hearing for the purpose of providing advice and counsel to the employee.

The employee may be granted additional time, at the discretion of the Employer, to prepare for the predissmissal hearing.

### **5. INITIAL PROBATIONARY EMPLOYEES GRIEVANCE**

A probationary employee who has not completed their initial twelve month probationary period with the County shall be afforded the opportunity to grieve any alleged violation, misapplication and/or misinterpretation of this agreement; however, this shall not include any matter involving discipline and/or discharge.

## **ARTICLE 16 - LAYOFF**

### **1. NOTIFICATION**

In the event it becomes necessary to effect a reduction in the work force, in any classification or position in any work unit, the COUNTY shall notify affected employees and the union in writing at least fifteen (15) calendar days in advance of the effective date, except in emergency situations. Such notification will include a list of positions/classifications based on seniority and salary range to which the employee may be qualified to bump.

Employees who wish to participate in the bumping process must notify the Department of Employee Services in writing by 4:00 p.m. of the fifth working day after receiving their notice. At this time, the employee will also identify in writing those available positions/classifications the employee wishes to bump into and a list of his/her experiences, qualifications, skills and abilities relevant to the identified positions/classifications.

### **2. LAYOFF ORDER**

Within a classification and department, temporary, initial probationary and other employees who do not have regular status will be laid off before employees with regular status. A layoff order shall be established within the bargaining unit on the basis of seniority. Employees who have never attained regular status with the COUNTY and who are laid off, will not be placed on layoff registers and do not have displacement/recall rights. No temporary employees will be hired to fill laid off bargaining unit positions.

An employee who has not completed a probationary period following promotion or reclassification as a result of department reorganization, is subject to the layoff rules at the previously held position.

For employees hired prior to July 1, 1994, seniority will be based upon total years of COUNTY service. For employees hired, rehired, or transferring into the WES Department, on or after July 1, 1994, seniority will be based upon years of continuous service within the COUNTY. If it is found that two (2) or more persons within the same classification have equal seniority, seniority for these individuals shall be determined by the date the employees were appointed by the department. If a tie still exists, the tie shall be broken by drawing lots. In computing seniority, the following factors will be taken into account:

- a. Part-time work and job share in a regular status position will count on an accumulative prorated basis of full-time employee (FTE) status.
- b. Time spent on all authorized leaves, including leave without pay, will count.

- c. Time spent in unclassified appointment status will not count.
- d. Initial time spent in temporary or provisional status in the same classification will not count.
- e. Time spent on layoff will not count; however, employees recalled from layoff within two (2) years shall regain previously accrued seniority.
- f. Time spent in previous government service will count if the employee transferred in accordance with ORS 236.610 through 236.650.

Seniority shall be forfeited by discharge for cause, voluntary termination exceeding ninety (90) days or involuntary termination due to expiration of a layoff register.

The COUNTY may make an exception to the order of layoff when the retention of employees with needed skills or performance abilities are necessary for the efficient operation of the department. Such actions shall be taken only for articulated, job-related reasons and substantiated by written documentation.

### **3. BUMPING**

When an employee is laid off due to a reduction in the work force, the employee shall be permitted to exercise the following rights:

- a) Accept the layoff, be placed on the recall register for his/her classification and proceed through the recall procedures as outlined in section 5, or
- b) Exercise bumping rights by moving to a vacancy or by displacing an employee with least seniority in the same or lower salary range in the department, provided that the bumping employee is qualified to do the work. Employee will be placed on the recall register for his/her classification.

The qualifications of an employee to bump shall depend upon that employee's demonstrating current possession of the required certifications, knowledge, and skill to meet the minimum qualifications of the position prior to bumping. In addition, bumping employees must demonstrate the ability to perform on the job at a satisfactory level of performance within thirty (30) working days. Between the twentieth (20th) and thirtieth (30th) day of this period, the COUNTY will provide the employee with notification of satisfactory performance or a minimum of ten (10) working days notice of intention to terminate the employee. Any such terminated employee will retain all layoff rights related to the classification from which he/she was originally laid off.

For bumping purposes, seniority will be defined as length of continuous service within the COUNTY. However, for employees hired prior to July 1, 1994, seniority will be based upon total years of COUNTY service. For employees hired, rehired, or transferring into the WES Department, on or after July 1, 1994, seniority will be based upon years of continuous service within the COUNTY.

Employees cannot bump to a classification with a higher salary range. This is a promotion and shall be accomplished only by normal appointment procedure.

No employee shall have any bumping rights over another employee working under regular appointment in another department.

An employee who displaces an employee in a different classification will be placed on the layoff register for the classification previously held. If an employee displaces another employee in a classification with a lower salary range the employee will be paid at the step in the lower salary range which most approximates their current pay rate. However, no bumping employee shall be paid at a rate that exceeds the maximum step of the lower salary range. The employee may request and shall be paid for all accrued compensatory time at the rate being earned prior to layoff.

Those employees who are left with no position to bump into as provided above, shall be laid off from employment and shall be eligible for recall per Section 4.

#### **4. RECALL**

Employees are eligible for recall for a period of three (3) years from the date of layoff. Employees on layoff must keep the COUNTY informed of their current address and telephone number during the period of layoff.

Recall shall be on the basis of seniority, with senior employees being called before junior employees, and any new hires or transfers, provided the employee is qualified for the position as described above in Section 3.

For purposes of recall, seniority shall be based on the date of seniority that the employee had on the day the employee received the layoff notice.

All temporary work within the department shall first be offered in order of seniority to qualified bargaining unit members on any layoff register. Filling a temporary position will not constitute recall from layoff.

Upon recall to a position in the classification held at time of layoff, the employee will return to the same pay range and step, subject to any cost-of-living adjustments or salary range changes. The employee will serve no probationary period and will be eligible for a merit increase, if applicable, after working the remainder of the merit evaluation period that existed prior to layoff. The employee's merit anniversary date will be adjusted to one (1) year following the date of merit increase eligibility.

Upon recall to any position in the WES Department, a recalled employee shall have restored all accruals of sick leave, vacation accrual rate and seniority in effect on the date of layoff.

Employees on layoff status, applying for a bargaining unit position, shall be afforded all rights in Article XIX section 7 paragraph c.

#### **5. RECALL TO OTHER CLASSIFICATIONS**

A regular status employee will be placed on the layoff register for recall to the classification held at the time of layoff. The employee may also request placement on additional layoff register(s) for recall to a position at the same or lower salary range without loss of seniority. Length of time on the layoff register is for a period of two (2) years. All requests must be made in writing to the Director of Water Environment Services within thirty (30) days of the date the employee is laid off. The Director's decision shall be based on job related reasons and is final unless decision is shown to be arbitrary or capricious.

If recalled to a position in a previously held classification, the employee will return to the same pay range and step, subject to any cost-of-living adjustments or salary range changes. The employee will serve no probationary period and will be eligible for a merit increase, if applicable, after working the remainder of the merit evaluation period that existed prior to layoff. The employee's merit anniversary date will be adjusted to one (1) year following the date of merit increase eligibility.

If recalled to a position in a classification not held at time of layoff, the employee will be placed in the step in the new salary range which most closely approximates his/her pay rate at the time of layoff, subject to any cost-of-living adjustments or salary range changes. Such employee shall be placed on probation for six (6) months and will be eligible for a merit increase, if applicable, on the first of the month following successful completion of the probation period. The employee's merit anniversary date will be adjusted to one (1) year following the date of merit increase eligibility.

No recalled employee shall be paid at a rate that exceeds the maximum step of the classification's salary range.

### **ARTICLE 17 - SETTLEMENT OF DISPUTES**

#### **1. GRIEVANCE AND ARBITRATION PROCEDURE**

To promote better employer-employee relationships, all parties pledge their immediate cooperation to settle any grievances or complaints that might arise out of the application of this Agreement. Before filing a grievance concerning a non-disciplinary matter, the aggrieved employee and/or Union will attempt to resolve the issue informally. Any grievance or dispute which may arise between the parties involving the application, meaning or interpretation of this Agreement shall be settled in the following manner:

**STEP I.** A UNION representative, with or without the employee, may take up the alleged violation or dispute with the employee's immediate supervisor within ten (10) working days of its occurrence; if at that time the representative is unaware of the

alleged violation or dispute, s/he may take it up within ten (10) working days of the date upon which s/he knew or should have known of its occurrence.

The immediate supervisor, the Union Representative, and the employee at his/her option, shall meet at a mutually scheduled time to discuss and attempt to resolve the issue. If the issue remains unresolved, the immediate supervisor shall respond to the Union representative in writing within ten (10) working days.

**STEP II.** If the alleged violation or dispute remains unresolved a grievance may be alter filed by the Union representative or the Union Grievance Committee to the manager within ten (10) working days after the immediate supervisor's response is due. The manager, union Representative, and the employee at his/her option, shall meet at a mutually scheduled time to discuss and attempt to resolve the grievance. If the grievance remains unresolved, the manager shall respond to the Union representative or the Union Grievance Committee in writing within ten (10) working days.

Under no circumstances may the grievance or dispute be taken up more than one hundred twenty (120) calendar days after its actual date of occurrence.

**STEP III.** If the grievance remains unresolved, it may be filed by the UNION representative or the UNION Grievance Committee to the Department Director within ten (10) working days after the immediate supervisor's response is due. The Department Director, the Union Representative, and the employee at his/her option, shall meet at a mutually scheduled time to discuss and attempt to resolve the grievance. If the grievance remains unresolved, the Department Director shall respond to the UNION representative or the UNION Grievance Committee in writing within ten (10) working days.

**STEP IV.** If the grievance still remains unresolved , it may be presented by the UNION representative or the UNION Grievance Committee to the Board of County Commissioners or to its designee(s) within ten (10) working days after the response of the Department Director is due. The Board of County Commissioners or its designee(s) shall meet at a mutually scheduled time to discuss and attempt to resolve the grievance. If the grievance remains unresolved, the Board of County Commissioners or their designee shall respond in writing within ten (10) working days.

**STEP V Arbitration.** If the grievance is still unsettled, the Union, within ten (10) working days after the reply of the Board of County Commissioners is due, by written notice may, request arbitration.

If arbitration is requested, the parties shall forthwith agree upon an arbitrator who shall act as sole arbitrator of the dispute. The parties agree that any decision of the arbitrator which is within the scope of this Agreement shall be final and binding upon them. In the event that the parties fail to agree upon the selection of an arbitrator, a list of arbitrators shall be requested from the Employment Relations Board of the State of Oregon. The

list requested shall consist of an odd number of arbitrators. Each party shall, in turn, strike one arbitrator at a time from the list until one name remains. The arbitrator whose name remains shall act as the arbitrator of the dispute. The arbitrator shall not have the authority to modify, add to, alter or detract from the express provisions of this Agreement. The arbitrator shall exercise all power relating to admissibility of evidence, conduct of the hearing and arbitration procedures, provided that in doing so he/she shall not contravene any provisions of this Agreement. The compensation of the arbitrator and all expenses incurred by him/her shall be borne by the party against whom the arbitrator's decision is adverse.

When the Board of County Commissioners has denied a grievance and arbitration is requested, the parties must, within one year of the date the Board of County Commissioners denies the grievance: 1.) select an arbitrator 2.) request a date for the arbitration hearing. If these actions are not taken, the grievance is considered closed without prejudice to the issues presented by the grievance.

## **2. MEDIATION**

By mutual agreement between the UNION and the COUNTY, any grievance filed under the terms of this article may be referred to mediation at any time during the grievance process. The UNION and COUNTY agree to equally split the cost of such mediation

## **3. CLASS ACTION GRIEVANCE**

If there is a breach of any provision of this Agreement affecting a group of employees, the UNION shall have the right to take up such breach

## **4. PROCESSING GRIEVANCES**

UNION officials and stewards may investigate and process grievances during working hours within reasonable limits without loss of pay.

# **ARTICLE 18 - CONTRACT WORK**

At least 30 working days notice will be given to the UNION before the COUNTY may contract out or subcontract any public work now performed by employees covered by this Agreement. The COUNTY will attempt to place any employees laid off as a result of such action in a position for which the employee is deemed qualified should a vacancy exist at the time of the layoff.

After notification of a proposal for contracting out of an entire functional division of WES, at least 90 days notice will be given to the UNION before the COUNTY may contract or sub-contract out any work now performed by employees covered by this agreement.

The COUNTY will supply all comparative analysis data used in the decision process to the UNION. Contracting out must show substantial savings with no loss of service. All safety regulations now in place will be adhered to. The contractor must

supply equipment and related supplies. If the UNION can show a competitive counter proposal, the COUNTY will drop the contracting out proposal.

## **ARTICLE 19 - GENERAL PROVISIONS**

### **1. NO DISCRIMINATION**

The provisions of this Agreement shall be applied equally to all employees in the bargaining unit without unlawful discrimination as to age, sex, marital status, race, color, creed, disability, national origin, or political affiliation. The UNION shall share equally with the COUNTY the responsibility for applying this provision of the Agreement.

All references to employees in the Agreement designate both sexes and whenever the male gender is used, it shall be construed to include male and female employees.

The COUNTY agrees not to interfere with the rights of employees to become members of the UNION, and there shall be no discrimination, interference, restraint, or coercion by the COUNTY or any COUNTY representative against any employee because of UNION membership or because of any employee activity in an official capacity on behalf of the UNION, or for any other cause, provided such activity or other cause does not interfere with the effectiveness and efficiency of COUNTY operations in serving and carrying out its responsibility to the public.

### **2. BULLETIN BOARDS**

The COUNTY agrees to furnish and maintain a suitable bulletin board at each staffed location in the Water Environment Services Department. Bulletin boards shall only be used to post information relevant to COUNTY and UNION business. The UNION shall limit its posting of notices and bulletins to such bulletin boards. The COUNTY shall make a good faith effort to post all available COUNTY job openings on or before the opening date. The bulletin boards shall be the official place for such postings.

### **3. VISITS BY UNION REPRESENTATIVES**

The COUNTY agrees that accredited representatives of the UNION, whether local UNION representatives, District Council representatives, or International representatives, may have reasonable access to the premises of the COUNTY to investigate working conditions upon twenty-four (24) hours notice to the Department unless an emergency arises requiring the immediate attention of the UNION representative. In this instance, the UNION representative will announce himself/herself to the person in charge.

### **4. RULES**

The COUNTY agrees to furnish to the UNION copies of all future work rules to be posted prominently on the bulletin boards for a period of five (5) work days, by the conclusion of which the rules will be deemed accepted and approved by the UNION.

## **5. PROTECTIVE CLOTHING**

If any employee is required to wear unique protective clothing or any type of unique protective device, such unique protective clothing or unique protective device shall be furnished to the employee by the COUNTY. The cost of maintaining the unique protective clothing or unique protective device including tailoring, cleaning and laundering shall be paid by the COUNTY.

Employees in the following classifications shall be required to wear safety-toed ANSI approved protective boots when performing their assigned duties: Wastewater Plant Operators, Wastewater Mechanic, Bio-solids Applicator, Collection System Technicians, Surface Water Technicians, Engineers, WES Assistants, Technical Service Specialists and Technical Services Coordinators, and Industrial Pretreatment personnel. Employees in the following classifications shall be required to wear closed-toe and closed-heel leather footwear: Lab Analyst and Lab Technician. Except, however, protective foot wear need not be worn in work situations where no hazard exists. The COUNTY will provide up to \$150.00 per year for purchase or repair of such protective footwear subject to the employee providing a receipt. Any new or existing classification required by the COUNTY to wear protective footwear will be included in this section.

Employees who wear COUNTY-provided protective clothing shall be given the last ten (10) minutes of their shift to change their clothes. Employees who have been in direct, substantial contact with sewage must change clothes and shower as soon as reasonably possible.

Employees will not appear in public places wearing protective clothing that, because of its condition, detracts from the image of the department.

## **6. LAUNDERING**

The COUNTY agrees to provide daily an adequate number of clean pants, shirts, jackets, and coveralls for the following classifications and personnel:

- Wastewater Plant Operators
- Bio-Solids Applicators
- Wastewater Mechanics
- Collections Systems Technicians
- Industrial Pretreatment personnel
- WES Assistants

The COUNTY also agrees to provide daily an adequate number of Lab Coats for the following classifications:

- Laboratory Analysts
- Laboratory Technicians

All employees are required to wear the clothing provided.

**7. POSITION VACANCIES**

A. It shall be a policy and practice of the Department to train and equip Department employees for promotional opportunities. Where classifications are designated “promotive”, the COUNTY will use a promotive register to fill vacancies.

B. The COUNTY and UNION agree that positions classified as “promotive” will be filled in the following manner: First by recalling names from an existing layoff register by seniority. If none exists, then a list will be certified from the promotional register. A certified list will consist of not more than five (5) names, nor fewer than one (1) name. Employees shall be certified from the promotional register in order of their placement on the register. If no names are on the promotional register, the COUNTY shall conduct a recruitment and the COUNTY shall provide a list of up to five (5) names to the Department, with bargaining unit members selectively certified first.

The following classifications shall be designated “promotive”:

<u>Promotive Classification</u>	<u>From</u>
Accounting Specialist 2	Accounting Specialist 1
Accounting Specialist 3	Accounting Specialist 2
Biosolids Program Coordinator	Bio-Solids Applications Tech.
Senior Civil Engineer	Civil Engineer
Engineering Technician 4	Engineering Technician 3
Laboratory Analyst	Laboratory Technician
Office Specialist 2	Office Specialist 1
Wastewater Plant Operator 2	Wastewater Plant Operator 1
Collection System Technician 2	Collection System Technician 1
Collection System Coordinator	Collection System Technician 2
Industrial Pretreatment Coordinator	Industrial Pretreatment Specialist
Source Control Specialist	Source Control Technician
Biosolids Application Technician 2	Biosolids Application Technician

Employees are placed on the promotional register after demonstrating their qualifications for the promotive classifications by completing an approved training/development program. New classifications added to the bargaining unit will be discussed and assessed by the Labor-Management Partnership committee (LMPC) for determination of potential inclusion as a Promotive Classification. The LMPC shall make a recommendation to the Director of Employee Services for approval of new promotive classifications.

C. The COUNTY and UNION agree that positions not classified as “promotive” will be filled in the following manner:

1. First by recalling names from an existing layoff register by seniority.

2. If no layoff register exists, the COUNTY shall provide a list of up to five (5) names to the Department, provided that the list may be expanded to five (5) plus bargaining unit members ranked sixth or lower who pass the final screening stage in the recruitment.

#### **8. VACATION AND SHIFT SELECTION SENIORITY.**

A. Classification seniority shall apply in the matter of vacation selection. Consistent with the needs of the COUNTY, classification seniority will be a consideration in shift selection and location. It is not the COUNTY's intention to be arbitrary, capricious, or discriminatory in administering this clause.

B. Classification seniority shall be defined as meaning an employee's total length of service within the job classification. In the event that time spent in the classification is equal, seniority shall be determined based on total continuous service within the UNION. Should seniority still be equal, it will be determined based on continuous service with the COUNTY.

C. For the purpose of computing seniority, all authorized leave shall be considered as time worked. Employees who are laid off as a result of a reduction in positions and who are subsequently reinstated shall retain full seniority except for such periods of lay off.

#### **9. NEGOTIATING SESSIONS**

The Board of County Commissioners or its designee(s) shall meet at mutually convenient times with the UNION negotiating committee. All negotiating sessions shall be held on the COUNTY's premises. The UNION negotiating committee shall consist of not more than three (3) members selected by the UNION. Employees participating in UNION-COUNTY negotiation sessions shall be permitted to do so without prejudice to their compensation, subject to advance notice to the COUNTY of the nature, purpose and extent of the session.

#### **10. AGREEMENT PUBLICATION COSTS**

Copies of the Agreement shall be made available to the parties provided that any and all costs and expenses incurred in the publication or duplication of same shall be borne by the UNION and COUNTY equally.

#### **11. LABOR/MANAGEMENT COMMITTEE**

The COUNTY and the UNION agree to the establishment of a joint labor/management committee. The committee shall meet at least once each quarter and, upon agreement, may meet at any other time. The committee meetings shall be held during working hours, on the COUNTY's premises, and without loss of pay. The committee is a vehicle for communication adjusting pending grievances, discussing procedures for avoiding grievances, and to promote harmonious labor/management relations.

#### **12. ELECTRONIC MAIL**

- A. UNION representatives (those persons holding positions as officers within the UNION) may use the COUNTY email system to communicate concerning collective bargaining matters.
- B. "Collective bargaining matters" means any of the following:
  - 1) official UNION announcements to the UNION membership (such as meeting subjects, dates and times);
  - 2) the meaning, interpretation or application of this Agreement;
  - 3) the presentation and adjustment of grievances under Article XVII of this Agreement;
  - 4) matters directly related to the collective bargaining relationship between the COUNTY and the UNION.
- C. UNION members may use the COUNTY email system to contact UNION representatives regarding collective bargaining matters, including any of the following purposes:
  - 1) to arrange a date, time and location for a meeting concerning the meaning, interpretation or application of this Agreement;
  - 2) to ask a question regarding the meaning, interpretation, or application of this Agreement;
  - 3) to present a grievance regarding the meaning, interpretation or application of this Agreement;
  - 4) to request UNION representation in matters concerning the meaning, application or interpretation of this Agreement.
- D. It is understood that there is no expectation of confidentiality or privacy concerning communications sent over the COUNTY email system, and that the COUNTY reserves the right to access and disclose all messages sent over the COUNTY email system for any purpose.
- E. The COUNTY email system will not be used for political purposes at any time, and this limitation shall override any of the permissible uses of the email system listed above. "Political purposes" shall include matters related to support or opposition to candidates or measures in any election (county elections, union candidate elections, or otherwise).

## **ARTICLE 20 - DRIVER/OPERATOR LICENSE SUSPENSION POLICY**

Many classifications within WES require the employee to maintain a valid driver's license. When a driver's license is suspended or revoked, the COUNTY will make reasonable efforts for the employee to continue performing their regular duties. Such efforts will be based on the percentage of driving required by the position and work availability. Decisions concerning situations shall be fact driven and based on departmental work loads and availability of productive work.

## **LICENSE SUSPENSION POLICY**

This policy covers all WES employees required to hold an Oregon Drivers License and/or Commercial Drivers License to perform the essential functions of their job, and is subject to all applicable State and Federal laws.

Any revocation or suspension of license(s) is subject to the following:

### **1. Employees requiring a “Class C” Driver License**

- a) For a loss of driving privileges up to, and including, forty-five (45) calendar days, the COUNTY will assign/provide work at the employee's current pay rate that he/she can perform without the requirement of the license, if such work is available. The employee may be subject to a “Last Chance Agreement”.
- b) For the loss of driving privileges exceeding forty-five (45) calendar days, up to and including ninety (90) calendar days the COUNTY will not provide work. The employee may use any accumulated vacation or comp time during this period. The employee may return to regular duties upon acquiring the appropriate driving privilege (or license reinstatement). The employee’s return to duty may be subject to a “Last Chance Agreement”.
- c) For the loss of driving privileges exceeding ninety (90) calendar days, the employee may be discharged.
- d) If any loss of driving privileges is due to substance abuse – either alcohol, prescription drugs, or non-prescription drugs, and treatment is ordered by the court or other legal authority, the employee will provide written verification to the COUNTY from the treatment provider verifying that the employee has undergone the appropriate treatment.

### **2. Employees requiring a “Commercial Driver License” (CDL)**

- a) For any loss of driving privileges up to, and including, forty-five (45) calendar days, the COUNTY will assign/provide work at the employee's current pay rate that he/she can perform without the requirement of the license, if such work is available. The employee may be subject to a “Last Chance Agreement”.
- b) For the loss of commercial driving privileges (CDL) exceeding forty-five (45) calendar days up to one (1) year, where the employee is able to utilize their class "C" driver license, the COUNTY may assign/provide work at a reduced pay rate that he/she can perform without the requirement of the CDL license, if such work is available. This reduced rate shall be one (1) step below their current pay step in their current classification. The employee may return to regular duties, at their regular rate of pay, upon acquiring the appropriate driving privilege (or license reinstatement). If the COUNTY does not provide work for the employee, the UNION will be notified within five (5) working days and the employee will be placed on any applicable layoff register as written in Article XVI, Sections 4. and 5. The employee may be subject to a “Last Chance Agreement”.

- (c) For the loss of all driving privileges (CDL & class "C") exceeding forty-five (45) calendar days, up to and including ninety (90) calendar days the COUNTY will not provide work. The employee may use any accumulated vacation or comp time during this period. The employee may return to regular duties upon acquiring the appropriate driving privilege (or license reinstatement). The employee may be subject to a "Last Chance Agreement".
- (d) For the loss of all driving privileges (CDL and Class C), exceeding ninety (90) calendar days, the employee may be discharged.

**3. Probationary Employee**

Probationary employees who lose driving privileges shall be subject to termination.

**ARTICLE 21 – ALCOHOL AND DRUG ABUSE ASSISTANCE POLICY**

1. Employees seeking treatment for drug or alcohol abuse will be encouraged and supported in doing so.
2. The employee may return to his/her position upon completion of an inpatient/residential treatment program and/or may remain in his/her regular position while participating in an ongoing outpatient treatment program without penalty or jeopardizing his/her employment with the COUNTY.
3. Time used for purposes of assessment, evaluation, counseling, and treatment of alcohol and drug dependency may be charged against accrued and available sick leave. Use of accrued and available vacation leave for the above-stated purposes related to alcohol or drug dependency shall be in accordance with the same requirements which would apply to any other illness or injury. If no sick leave or vacation time is available for an employee to use for these purposes, an employee may use leave without pay as long as the employee's supervisor is notified in writing.
4. A voluntary, confidential support network of fellow Water Environment Services employees may be available to employees with alcohol and/or drug dependency problems to be utilized in times of need.

Given the importance of having our employees aware of available help, we suggest the COUNTY provide updated information on available assistance from the Employee Assistance Program on a continuing basis.

**ARTICLE 22 - SAVINGS CLAUSE**

Should any Article, Section or portion thereof of this Agreement be held unlawful and unenforceable by any Court of competent jurisdiction, such decision of the Court shall apply only to the specific Article, Section or portion thereof, directly specified in the decisions; upon the issuance of such a decision, the parties agree immediately to negotiate a substitute, if possible, for the invalidated Article, Section or portion thereof.

## **ARTICLE 23 – OVER/UNDERPAYMENTS**

Any employee receiving unauthorized payments has the obligation to call such error to the attention of his or her supervisor.

### **A. Underpayments**

When an error occurs resulting in a negative impact on the employee, upon notification by the employee, in writing to the Payroll Supervisor, and verification by the payroll division, payment in correction of the error shall be made in the employee's paycheck for the current pay period.

### **B. Payments in Error**

When an employee receives payments due to a clerical, technical, or computer error, through no fault of the employee and where the employee did not and could not reasonably have known that the error occurred, the employee will only be liable for, and the County shall only recover, the overpayment for a period of one-hundred and eighty (180) days preceding the date of discovery of the error. If the discovery of the error is made by the employee who notifies the Payroll Supervisor in writing within ten (10) working days of discovery of the error that they believe their pay is incorrect and the County does not subsequently make a correction to stop the overpayment by the next payroll period after notification, the employee will not be liable for additional overpayments that occur following the date of notification..

### **C. Repayment to the County**

As soon as the overpayment is known, the County will make every effort to recover overpayments by payroll deduction over a reasonable period of time.

1. The County Payroll Supervisor shall notify the employee in writing of the overpayment which will include information supporting that an overpayment exists, and the amount of wages and/or benefits to be repaid. For purposes of recovering the overpayments by payroll deduction, the following shall apply:
2. The employee and the County shall meet and attempt to reach mutual agreement on a repayment schedule within thirty (30) calendar days following the written notification.
3. If there is not mutual agreement at the end of thirty (30) calendar days, the County shall implement the repayment schedule stated in subsection (D) below.
4. If the overpayment amount to be repaid is more than twenty-five (\$25) dollars, the overpayment shall be recovered in amounts not to exceed twenty-five (\$25) dollars per payroll period. If an overpayment is less than twenty-five

(\$25) dollars, the overpayment shall be recovered in a lump sum deduction from the employee's paycheck.

5. An employee who has a factual disagreement with the County's determination that the overpayment has been made to the employee may grieve the determination through the grievance procedure.
  6. This article/section does not waive the County's right to pursue other legal procedures and processes to recoup an overpayment made to former employees.
- D. Employees can elect to either establish a payment plan through payroll deductions as described under 23(C)(4) or may elect to pay overpayment in one lump sum. In the event the employee chooses to make a lump sum payment to the County, the County will adjust the amount owed for any tax paid, and will reduce the amount of employees' wages for the year on the employee's W2 form by the amount repaid.

#### **ARTICLE 24 - TERMINATION**

1. This agreement shall become effective as of July 1, 2009, and shall remain in full force and effect until the 30th day of June, 2012, or the date of signing of a subsequent Agreement whichever last occurs. It shall be automatically renewed on July 1, 2012, and each year thereafter unless either party shall notify the other in writing not later than January 1 that it desires to either terminate or modify this Agreement. In the event notice to modify is given, negotiations shall begin not later than February 1. In the event that notification of termination is given, it shall become effective thirty (30) days after the date notice is received.

2. This Agreement may be amended at any time by mutual agreement of the UNION and COUNTY; such amendments shall be in writing and signed by both parties.

IN WITNESS WHEREOF, the parties hereto have set their hands this day \_\_\_\_\_  
of \_\_\_\_\_, 2010.

\_\_\_\_\_  
Board of County Commissioners

\_\_\_\_\_  
Mark Prottengeier  
Negotiating Team Member

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Kim Wollenberg  
President-AFSCME

\_\_\_\_\_  
Dan Henniger  
Negotiating Team Member

\_\_\_\_\_  
Rob Hungerford  
Vice President - AFSCME

\_\_\_\_\_  
Gordon Dawson  
Negotiating Team Member

\_\_\_\_\_  
Stacy Chamberlain  
AFSCME Council Representative

\_\_\_\_\_  
Liz Garcia  
Negotiating Team Member

\_\_\_\_\_  
Doug Harbough  
Negotiating Team Member

\_\_\_\_\_  
Michael Kuenzi  
Water Environment Services Director

\_\_\_\_\_  
Mark C. Stotik  
Chief Negotiator

**APPENDIX A – COMPENSATION SCHEDULE FOR AFSCME-WES**

WAGE SCHEDULE  
JULY 1, 2009 – JUNE 30, 2010

COLA: 0%

## APPENDIX B -

### MEMORANDUM OF UNDERSTANDING

Memorandum of Understanding  
By and between  
AFSCME WES  
And  
Clackamas County

All requests for exception should be made to the employee's supervisor at least two (2) weeks prior to the date the employee is requesting the exception to take place. Individual employees may request exceptions to the four-day work week, as established below, for personal or business reasons by filling out the "Employee Request for Schedule Adjustment during Four-Day Workweek" form. Requests for personal exceptions, excluding ADA, medical exemptions or religious reasons, shall be made to the employee's direct supervisor

#### Exceptions to the Four Day Work Week

Exceptions may apply where required for business purposes or public service reasons. Personal exceptions may be made for ADA or medical accommodations, child or family care, educational or transportation commitments, or other personal reasons or community service commitments.

Allowances for exceptions will be made consistent with the needs of the county and may include: flexible schedules as defined in Article VI, Section 4., alternative work schedules allowing work on Friday via alternative work location, telecommuting, or other creative options.

Requests for individual exceptions to the regular schedule will be prioritized by the following order of importance:

1. ADA or medical accommodations (requires application and physician documentation) or religious accommodation requests. **This category of importance will be reviewed through DES.**
2. Child care or family care center hours and contractual obligations to drop off or pick up family.
3. Educational commitments (previously scheduled classes) or transportation schedules (need to catch a bus, carpool that have limited options for alternate times).
4. Other personal reasons or community service commitments.

If the request is denied, the employee may appeal the Supervisor's decision:

- 1) To the Department Director.
- 2) If an employee's personal exception request is denied by the Director, the employee may appeal the denial to the DES Director, or designee, whose decision will be final and not subject to the grievance and arbitration process of the collective bargaining agreement.

Denials of requests must be in writing and provide an explanation for the denial. Denials cannot be for arbitrary and capricious reasons

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For Clackamas County

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For AFSCME

**APPENDIX C -**  
**MEMORANDUM OF UNDERSTANDING**  
**HEALTH REIMBURSEMENT ACCOUNT**

MEMORANDUM OF UNDERSTANDING  
Between  
AFSCME & Clackamas County

AFSCME and Clackamas County Agree to the following in regarding to the funding of a HRA:

- 1) Upon ratification by both parties of the Collective Bargaining Agreement (CBA) for 2009 - 2012, the parties shall negotiate the funding for a HRA, which shall be subject to ratification by each party;
- 2) Such negotiations shall be completed no more than six months after the date of ratification of the CBA;
- 3) Each party shall appoint their own members to the negotiations but not to exceed four (4) members per organization, excluding any experts or consultants that maybe used to help develop the HRA;
- 4) The purpose of such negotiations will be to determine cost neutral funding & County contributions for the employee HRA. There shall be no parameters set on what may be discussed as a possible source of funding.
- 5) Within six (6) months or as soon as practicable after ratification of the collective bargaining agreement, the County shall pay \$100 into each employee's HRA account.

Agreed to and signed this \_\_\_\_\_ day of \_\_\_\_\_, 2010

\_\_\_\_\_  
For AFSCME

\_\_\_\_\_  
For Clackamas County

ATTACHEMENT  
DRUG & ALCOHOL TESTING POLICY

WATER ENVIRONMENT SERVICES

DRUG AND ALCOHOL TESTING POLICY

for

Employees covered by the  
Federal Highway Administration  
U.S.D.O.T. (US DOT) Regulations

2009

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[\*] Terms used throughout this policy are defined in Appendix A

[†] Breath testing results are given in grams of alcohol per 210 liters of breath (g/210L)

## **POLICY STATEMENT**

Clackamas County Water Environment Services (WES) or “the County” is strongly committed to providing a safe, drug-free workplace. In addition, an employee substance abuse testing program is mandated for all entities regulated by the Department of Transportation (DOT). For these reasons, WES has implemented a substance abuse testing policy which applies to all applicants for, and employees who hold, “covered driver” positions.

WES recognizes each individual’s value and contribution to the services we provide to the public. Therefore, this Policy includes assistance to employees who wish to overcome an alcohol or drug dependency problem (see “Employee Assistance Program and Self-Referral”).

This Drug and Alcohol Testing Policy (“Policy”) is intended to comply with FHWA DOT regulations, changes in which will supersede specific policy provisions. To view revisions to this policy made by the Federal Motor Carrier Safety Administration (FMSCA) or the Federal Highway Administration (FHWA) since this publication, and additional information such as testing procedures, service providers, etc., go to;

[http://web1.clackamas.us/mydepartment/3004.jsp?q\\_dept=DES&q\\_pagename=drugtesting.htm](http://web1.clackamas.us/mydepartment/3004.jsp?q_dept=DES&q_pagename=drugtesting.htm)

EFFECTIVE DATE: March 1, 1995      POLICY REVISED: August, 2002, April, 2003, July, 2006, June 2010

## **WHO WILL BE TESTED AND WHEN**

Covered drivers are defined as those who are required to hold commercial driver’s licenses for their jobs. Such applicants and employees fall under the Federal Highway Administration (FHWA) Federal Motor Carrier Safety Administration (FMCSA) drug and alcohol testing regulations (“Controlled Substances and Alcohol Use and Testing,” 49 CFR Part 382). Generally, covered drivers are operators of commercial motor vehicles which are 1.) greater than 26,000 pounds GVWR; 2.) carry hazardous materials in placardable quantities; or 3.) carry 16 or more passengers, including the driver.

Covered drivers may be tested for drugs or alcohol whenever they are on duty.

For the purposes of this Policy, “on duty” is defined as any time an individual is on the job and ready to perform safety-sensitive functions. Time spent in association with drug testing specimen collection and/or alcohol testing shall be considered “on-duty” time.

## **EDUCATION AND TRAINING**

The County will distribute information to employees on the Drug and Alcohol Testing Policy; the dangers of drug and alcohol abuse in the workplace; and drug counseling, rehabilitation, and employee assistance resources. Employees will be required to sign a form acknowledging receipt of this information.

At the time of hire, new covered drivers will receive specific information regarding the County Drug and Alcohol Testing Policy and be informed of their responsibilities with respect to compliance with federal drug and alcohol testing regulations.

Supervisors of covered drivers who may be required to make “reasonable suspicion” determinations will receive training on recognition of the physical, behavioral, speech and performance indicators of probable alcohol and controlled substances use. The duration of the training will be at least sixty minutes EACH for 1) alcohol and 2) controlled substances use recognition, with additional follow up training to be provided, to maintain and increase supervisory proficiency.

## **EMPLOYEE ASSISTANCE PROGRAM AND SELF-REFERRAL**

An employee who wishes to seek confidential medical treatment for a drug or alcohol problem may refer to and follow Clackamas County’s Employment Policy and Practice # 10 regarding Family Medical Leave.

UNDER THE COUNTY’S INDEPENDENT AUTHORITY, WES will support treatment efforts for covered drivers with drug/alcohol problems who, prior to official discovery, voluntarily seek assistance. Under these circumstances, there will be no adverse consequences to the self-identification. The admission must not be made in order to avoid testing or after notification of an upcoming test.

When a covered driver or covered operator voluntarily reports a drug/alcohol problem BEFORE it is discovered through a drug or alcohol test, he/she will immediately be removed from duty and provided with a contact number for the County’s EAP program and a list of locally available Substance Abuse Professionals. The employee may work with EAP, select a SAP of their choice, or a qualified drug/alcohol counselor of their choice for evaluation and recommendation of treatment.

The County's Designated Employer Representative (DER) will provide information about existing leave and medical benefits provided under employment policies applicable to the driver/operator.

In the event an employee who self refers enters into an outpatient treatment program, the County will provide appropriate work for the employee while undergoing treatment for a period of up to 12 consecutive weeks on a one time basis. In the event an employee who self refers enters into an inpatient treatment program and is on a wait list for an opening, the County will provide appropriate work for the employee for a period of up to 12 consecutive weeks on a one time basis. The employee will provide to the County a statement from the facility that the employee is on a wait list and the approximate date a bed will become available.

Covered drivers who have self-referred must be evaluated, undergo treatment, if required, and be recommended for return to driving duties by the drug/alcohol evaluation expert. A negative drug and/or alcohol test is required prior to the resumption of driving duties. Follow-up drug testing, if recommended by the treatment provider, will be conducted under the County’s independent authority and processed as non-DOT tests.

Time used for purposes of assessment, evaluation, counseling, treatment, and testing may be charged against available sick, vacation, or compensatory time leave accruals. If paid time is not available, the employee will be allowed to use leave without pay or a leave of absence as allowed under the current bargaining agreement.

## **PRESCRIPTION MEDICATIONS**

WES does not request information about the condition for which medication is prescribed, only that it has been prescribed. In some cases, it may be necessary to temporarily re-assign covered drivers until the course of medication is completed.

If a driver is in doubt about a medication's effect on work performance, he/she should ask the prescribing physician or pharmacist for clarification.

Prescription medications can present a danger to employees and their co-workers due to their effects on alertness and job performance. Covered drivers should ask their physicians for specific instructions as to how much medication they should take and when they should take it to ensure safe use relative to work. Non-compliance with the recommended dosage of medications which results in an incident or accident will be considered a violation of this Policy.

Under the County's independent authority, all covered drivers are specifically required to notify their immediate supervisors when they are taking medications associated with warning labels (for example, relating to the operation of vehicles, heavy equipment, or machinery). An employee who is taking such medications should write, date, and sign a brief note stating that he/she has discussed use of the medication with his/her doctor in relation to job duties; the type of medication; beginning and ending dates of treatment. The employee should give the note in a sealed envelope to his/her direct supervisor for confidential delivery to the DER. The DER working in conjunction with WES management will then determine whether to require written medical authorization to work from a prescribing health care practitioner or if any accommodations are necessary.

The County will restrict access to medical information to those with a need to know, and will protect the confidentiality and security of the information.

All medicines brought onto WES property/premises must be in their original containers with the pharmacy label showing the patient's name and dosage instructions. Use of another person's prescription is a violation of federal law and of this policy.

Failure to notify management of the use of medication that could affect the performance on the job can lead to disciplinary action, up to and including discharge.

### **“Medical Marijuana”**

Marijuana is a Class I controlled substance; its use is illegal under federal law. Although some states permit the use of marijuana to treat medical conditions when supported in writing by a licensed medical doctor, this is not an acceptable explanation for a positive drug test under this Policy. The Medical review officer will automatically verify such tests as positive.

## **PROHIBITIONS**

FHWA/FMSCA REGULATIONS SPECIFY the following prohibitions:

- 1) Covered drivers must not use alcohol within four (4) hours prior to reporting for duty (“pre-duty use”).
- 2) Covered drivers are prohibited from possessing alcohol while on duty; from using alcohol while on duty; and from having alcohol present in their systems at a level of 0.02 g/210 L[+] or greater while on duty. Those with levels of 0.02 or greater as demonstrated by breath alcohol testing are subject to immediate removal from duty for a minimum of 24 hours (see “Discipline”).
- 3) Covered drivers are prohibited from using alcohol after an on-the- job accident until:
  - a. The Designated Employer Representative or his/her designated alternate has determined that alcohol testing is not required, OR
  - b. A breath alcohol test has been completed, OR
  - c. Eight (8) hours have passed since the accident.
- 4) Covered drivers must not show evidence of the use of controlled substances without a valid prescription.
- 5) Refusal by a covered driver or to submit a urine, saliva or breath specimen when required by federal regulations will have the same consequences as a positive drug test result, or a breath alcohol test result of 0.04 or greater, (see “Discipline” section), and result in the immediate removal of the employee from duty. In addition, refusal of a test after a fatal accident may result in more severe penalties under Federal law.

## **INVESTIGATION OF PREVIOUS TESTING**

As a condition of employment, applicants for covered driver positions will be required to provide written consent for WES to obtain the following information from DOT regulated employers who have employed the applicant during any period during the three (3) years preceding the date of application or transfer:

Names and addresses of previous DOT covered employers;

Alcohol tests with a result of 0.04 or greater;

Verified positive drug tests;

Refusal to be tested (including verified adulterated or substituted drug test results);

Other violations of DOT agency drug and alcohol testing regulations; and

If the applicant violated a DOT drug and alcohol regulation, documentation of the applicant’s successful completion of DOT return to duty requirements. (Note: If the previous employer does not have information about the return to duty requirements WES must seek to obtain this information from the applicant.)

The County must ask the applicant whether he/she has tested positive, or refused to test, on any pre-employment drug or alcohol test administered by an employer to which the applicant applied for, but did not attain, a DOT- regulated safety-sensitive transportation position during the two years preceding date of application. (If the

applicant admits that he/she had a positive test or refusal to test, the applicant must document successful completion of the return to duty process.)

## **TYPES OF DRUG AND ALCOHOL TESTING REQUIRED**

The following are occasions for drug and alcohol testing under this policy:

**Pre-employment Testing** Pre-employment drug testing is required for all covered driver positions. A notice will be posted that drug testing is a requirement of the application process. Anyone who does not wish to proceed with the application may withdraw without question. Applicants will be notified that drug testing is a requirement of the application process.

Under WES's independent authority,, and as permitted by the DOT, a negative dilute result is unsatisfactory on a pre-employment test. Applicants will be given one additional opportunity to provide a valid specimen. The result of the second test will determine whether the applicant is eligible for employment as a covered driver.

A drug test result which is verified as positive for unauthorized use of controlled substances, or found to be substituted or adulterated, will disqualify the applicant for the covered driver position.

### **Random Testing**

Definition of Random Test. A random test is a test that is unannounced, and where every person in the random selection "pool" has an equal chance of being selected for testing each time a selection occurs. Random testing is considered to be an effective deterrent to substance abuse. Covered drivers are required to be randomly tested under DOT regulations.

Method of Random Selection: WES has contracted with an outside drug testing management service (see Appendix D) to perform computerized random selections on its covered employees. Selections occur monthly on a randomly selected date. Selections are therefore spread reasonably throughout each 12-month period.

A number of drug tests equal to at least 50% of the number of individuals in the program will be completed annually, as required by DOT drug testing regulations; a number of alcohol tests will be completed annually, as required by current DOT regulations.

Procedure for Notification and Specimen Collection/Testing:

- 1) The drug testing management service will maintain a secure data base of individuals covered by the Federal Highway Administration's drug and alcohol testing regulations.
- 2) On a randomly selected date, the service will transmit a list of individuals who have been selected for testing to the Designated Employer Representative.
- 3) The Designated Employer Representative or his/her designated representative will notify the individual in person or by telephone that he/she has been selected to provide a urine and/or breath specimen for testing. The date and time of notification will be recorded on the employee instruction card.
- 4) IMMEDIATELY after being notified, each individual selected for testing must proceed to a specimen collection and/or alcohol testing facility. If the individual is in a remote

location, the Designated Employer Representative will arrange for him/her to go to a local clinical facility so that specimen collection and/or breath testing are completed expeditiously.

### **Reasonable Suspicion Testing**

“Reasonable suspicion” means that an individual has given a supervisor or other responsible manager reason to believe that he/she may be impaired, intoxicated, or under the influence of a controlled substance or alcohol.

A reasonable suspicion test will be required under the following conditions:

- 1) WES shall require a driver to submit to an alcohol test when the WES has reasonable suspicion to believe that the driver has violated the prohibitions of this policy concerning alcohol. WES’s determination that reasonable suspicion exists to require the driver to undergo an alcohol test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver.
- 2) WES shall require a driver to submit to a controlled substances test when WES has reasonable suspicion to believe that the driver has violated the prohibitions of this policy concerning controlled substances. WES’s determination that reasonable suspicion exists to require the driver to undergo a controlled substances test must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech or body odors of the driver. The observations may include indications of the chronic and withdrawal effects of controlled substances.

The “reasonable suspicion” behavior should be witnessed by at least two supervisors if at all feasible, but only one observation is required. Those who make a decision to test an employee will be trained in identifying appearance or conduct that indicates the possible use of controlled substances or misuse of alcohol.

Any “reasonable suspicion” incident will be documented as soon after the incident as possible. WES will ensure that the employee involved is immediately removed from the workplace and is escorted by a supervisor to a urine specimen collection, or alcohol testing site. The employee will NOT be allowed to proceed to the site unaccompanied. Under WES’s independent authority,, and as permitted by the DOT, a negative dilute result is unsatisfactory on a reasonable suspicion test. Employees will be given one additional opportunity to provide a valid specimen. The result of the second test will prevail.

Employees will have access to union representation, if requested, at every step of the “reasonable suspicion” testing procedures, except during specimen collection.

### **Post-Accident Testing**

A reportable accident under Federal Highway Administration regulations is defined as an accident in which a covered driver was operating a commercial motor vehicle and in which:

- 1) A fatality occurred; or
- 2) The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; or

3) The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.

\*\*Covered WES drivers see Appendix B.

UNDER FHWA/FMCSA REGULATIONS, employees involved in a reportable accident are required to be:

- Tested for alcohol as soon as possible, but in no case later than 8 hours after the incident.
- Drug tested as soon as possible, but in no case later than 32 hours after the incident.

WES will ensure that the employee involved in a reportable accident will be immediately removed from duty, and escorted to a collection/testing site. A union representative shall be notified immediately upon the request of the employee. This representation shall not delay established testing procedures. A list of qualified union representatives will be provided to the County.

An employee who is seriously injured and cannot provide a specimen for testing may be requested to authorize the release of relevant hospital reports and other documentation that would indicate whether there were any controlled substance(s) in his/her system at the time of the incident.

WES will provide its covered drivers with any necessary information and procedures to enable them to meet federal requirements for post-accident testing.

Covered drivers are prohibited from using alcohol for eight (8) hours following an accident/crash or until they have undergone a post-accident alcohol test, whichever occurs first.

An alcohol test should be administered within two (2) hours following the accident/crash, but no later than eight hours.

A drug test should be administered as soon as possible but no later than thirty-two (32) hours after the occurrence of an accident/crash.

#### **Return To Duty and Follow-up Testing**

FHWA/FMCSA regulations and this Policy require return to duty and follow-up drug and/or alcohol testing when a covered driver has been evaluated by a Substance Abuse Professional and has been found to need assistance with resolving his/her drug abuse and/or alcohol misuse problem. A negative drug and/or alcohol test is required prior to return to duty. Follow-up testing may continue for no longer than sixty months following return to duty. WES will comply with any mandated testing requirements outlined by the SAP.

Please refer to "Return to Duty Procedures " and " Disciplinary Action and Procedures " for additional information.

#### **Costs of Testing**

The County will be responsible for payment of all pre-employment, pre-duty, post-accident, random, and reasonable suspicion tests.

The County will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a test result of negative, or canceled.

The employee will be responsible for payment of any requested split tests, return to duty, and follow-up tests with a positive result. The County agrees to pay for the test and then collect from the employee.

## **DRUG AND ALCOHOL TESTING PROCEDURES**

### **Drug Testing**

- 1) Urine specimen collection for drug testing will be performed by qualified individuals in conformance with current standards of practice, using chain of custody procedures specified by DOT regulations (49 CFR Part 40) and with respect for the privacy and dignity of the person giving the specimen. Drug test specimens will be collected to provide at least 30 mL of urine in a “primary specimen” shipping bottle and at least 15 mL of urine in a “split specimen” shipping bottle.
- 2) If an employee is unable to provide an adequate volume of urine on the first attempt (“shy bladder”), he/she will have an opportunity to drink up to 40 ounces of fluids within three hours. At the end of this period, if no sample of adequate volume has been provided, the employee will be referred to a physician acceptable to the MRO to determine whether the incident constituted a refusal to test per 49 CFR 40.193.
- 3) Only laboratories certified by the Substance Abuse and Mental Health Services Administration (SAMHSA) of the U.S. Department of Health and Human Services (previously NIDA”) will perform drug testing.
- 4) When an initial screening test for drugs is positive, a second, confirmatory test will automatically be performed. Confirmatory Confirmed positive drug tests will be reported by the testing laboratory to the MRO for verification (see “Drug Test Results Review”).
- 5) As a quality assurance measure, WES’s drug testing management service will submit at least (3) three blind samples to the certified laboratory for every 100-applicant/employee samples submitted as required by DOT regulations (49 CFR Part 40). A summary of the results of this quality assurance program will be provided to the County annually.

### **Breath Alcohol Testing**

- 1) Breath alcohol testing will be performed only by qualified Breath Alcohol Technicians. Testing will be conducted using evidential breath alcohol testing devices listed on the Conforming Products List of the National Highway Traffic Safety Administration.
- 2) Breath alcohol tests with results below 0.02 require no further action.
- 3) Tests with results of 0.02 or above will be confirmed as follows:
  - a. The individual being tested is instructed not to smoke, use mouthwash, drink, or eat for a period of 15 minutes.
  - b. Within 30 minutes of completion of the initial screening test, a confirmatory breath test is conducted per 49 CFR Part 40. The result is recorded in the “Confirmation Test Results” section of the Alcohol Test Form.

- 4) If the result of the confirmed breath alcohol test is 0.02 or greater, the Breath Alcohol Technician must immediately notify the Designated Employer Representative or his/her designated representative, who will arrange for transportation of the individual from the alcohol testing site. The Breath Alcohol Technician will then forward a copy of the Alcohol Test Form to the Designated Employer Representative.

**DRUG TEST RESULTS REVIEW**

A drug test result on a covered driver will be considered positive ONLY if it has tested positive initially, been confirmed positive by gas chromatography-mass spectrometry (GC-MS), and been reviewed and verified by the Medical Review Officer (MRO).

Drug test results on a covered driver which are reported as positive, adulterated, or substituted by the testing laboratory will be reviewed and verified by the Medical Review Officer (MRO).

A POSITIVE drug test result is defined as the detection of any one or more of the substances listed in the table shown below.

Substance or Class	Initial Screening Cut-off	Confirmation Cut-off
Amphetamines	1000 ng/mL	500 ng/mL
Cocaine	300 ng/mL	150 ng/mL
Marijuana (THC)	50 ng/mL	15 ng/mL
Opiates	2000 ng/mL	2000/10 ng/mL
Phencyclidine (PCP)	25 ng/mL	25 ng/mL

A confirmed positive test from a certified laboratory does not automatically identify an employee or applicant as having used drugs in violation of a DOT regulation. The MRO brings detailed knowledge of possible alternate medical explanations to his/her review of the test results. This review is performed by the MRO prior to the transmission of results to the County.

**Medical Review Officer Reporting Options and Employer Actions**

“Negative” – self explanatory

“Negative Dilute” – Upon receipt of a “negative dilute” the employee shall be required to immediately retest provide another specimen. The retest collection shall be given conducted with the minimum possible advance notice and the employee shall be escorted to the testing collection facility by the Designated Employer Representative, Supervisor, or other designated person. In the event the second test result is “negative dilute” no further action will be taken and the second test shall become the test of record. If the employee is directed to take a second test and the employee declines to do so, this is a “Refusal to Test” under the regulations.

“Canceled – Split specimen test could not be performed.” This will occur when the primary specimen was positive, and the donor requests an independent test, and the split specimen is not available for testing. The employer must ensure an immediate

collection of another specimen, under direct observation, with no advance notice to the donor.

“Canceled – Test Not Performed, Fatal Flaw (with flaw stated) or Uncorrected Flaw.” -- No further action required unless a “Negative” test result is required for pre-employment, return to duty, or follow up. A canceled drug test is neither positive nor negative and no consequences must be attached to it.

“Cancelled Invalid Result” – An “invalid result” means the laboratory was unable to obtain a valid result when attempting to test the specimen. If the MRO has accepted the donor’s explanation as to why the laboratory was unable to obtain a valid result, then the MRO will advise the employer “direct observation not required”. The employer is not required to take any further action unless a “negative result is required (i.e., pre-employment, return to duty, or follow up). If the MRO has not accepted the donor’s explanation, then the MRO will advise the employer “a second collection must take place immediately under direct observation”.

“Positive or Positive Dilute” – The employer must comply with the requirements for a positive test under the regulations.

§ Immediately remove employee from safety-sensitive functions; and

§ Referral to a SAP – If the employee is terminated they are to be furnished with a list of SAP resources (names, addresses, and telephone numbers).

§ Return to Duty provisions must be followed.

“Adulterated-Refusal to Test” – Follow same procedures as required on a positive test result.

“Substituted-Refusal to Test” – Follow same procedures as required on a positive test result.

### **MRO Verification Without Notifying the Employee**

The MRO is permitted to verify a test as positive, or as a refusal to test because of a laboratory report of a positive adulterated, or substituted specimen without interviewing the employee under the following circumstances:

- The employee expressly declines the opportunity to discuss the test with the MRO;
- The DER has successfully made and documented a contact with the employee, and instructed the employee to contact the MRO, and more than 72 hours have passed since the time the DER contacted the employee.

NOTE: If a test is verified positive under the latter circumstances, the donor may give the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented him/her from contacting the MRO. On the basis of this information, the MRO may re-open the verification, allowing the donor to present information concerning a legitimate explanation for the positive test. If the MRO concludes that there is a legitimate explanation, the MRO shall verify the test as negative.

Upon verifying a test result as positive, the MRO will inform the donor of the option for having the “split” portion of his/her specimen tested. The donor must notify the MRO of a desire to exercise this option within 72 hours of being notified of the positive result.

The MRO will not delay reporting of a verified positive test result pending “split” specimen testing. If a donor requests testing of the “split” specimen but none is available, the MRO will cancel the test.

### **Communication of Results**

The MRO or his/her designated representative will report test results ONLY to the DER authorized by the County to receive them. Confidentiality will be strictly maintained. If the result is positive, the MRO or his/her authorized representative will report the identity of the controlled substance.

Employees and applicants may obtain copies of their test results by requesting them in writing from the MRO within 60 days of being notified of the results.

### **FAILURE TO COOPERATE**

Failure to cooperate with any aspect of this Policy, including but not limited to falsifying or attempting to falsify test results or specimens or refusing to cooperate in testing will subject the employee to progressive discipline, up to and including discharge. Any covered driver who refuses to take a drug or alcohol test to comply with FHWA/FMCSA regulations (49 CFR Part 382) will be immediately removed from duty as required by these federal regulations.

### **DISCIPLINARY ACTION AND PROCEDURES**

- 1) An otherwise qualified applicant for a covered driver position whose drug test results are negative and who has documented satisfactory participation in a previous employer’s drug and alcohol testing program, will be considered qualified for the position offered. Applicants with verified positive drug test results will be considered ineligible for the position.
- 2) Any covered driver found to be in violation of this Drug and Alcohol Testing Policy will be removed from duty and will be subject to progressive discipline, up to and including discharge. Violations include:
  - a. Alcohol possession or use in violation of the prohibitions stated in this Policy (e.g. pre-duty, post-accident; see page 3)
  - b. An alcohol test result of 0.04 or greater
  - c. A verified positive drug test result
  - d. Refusal to test or to cooperate
- 3) A covered driver determined to have evidence of alcohol in his/her system in the range of 0.02 – 0.039 will be subject to progressive discipline.
  - a. On any occasion in which a covered driver has a breath alcohol test result of 0.02 or greater, but less than 0.04, he/she will be immediately removed from work for a period of 24 hours. Employee may deduct this time away from work from any available paid time except sick leave, or choose leave of absence without pay. No further alcohol testing will be required prior to resuming work at the end of the 24-hour

period. These occasions will be considered violations of this Policy, and will subject the employee to progressive discipline.

4) Covered drivers who have come forward and voluntarily entered into drug and/or alcohol evaluation and treatment programs shall not have that admission used as a step against them in progressive disciplinary proceedings.

5) **ALCOHOL RESULT OF 0.04 OR ABOVE**

Under the County's independent authority, any covered driver who has had a confirmed alcohol result of 0.04 or above shall be subject to progressive disciplinary procedures. Before returning to duty, they must agree to meet all return to duty requirements of the FMCSA. Additionally, any confirmed alcohol test result of 0.04 or above, a verified positive drug test, or a refusal to test while the employee is undergoing required treatment and/or testing, or within 5 years of a prior positive test or refusal to test shall result in termination. (A pre-dismissal hearing will be allowed.)

6) **POSITIVE DRUG TEST**

Under the County's independent authority, any covered driver or covered operator who has had a verified positive drug test shall be subject to progressive disciplinary procedures. Before returning to duty, he/ she must agree to meet all return to duty requirements of the FMCSA. Additionally, any verified positive drug test or confirmed alcohol test result of 0.04 or above or refusal to test while the employee is undergoing required treatment and or testing, subsequent to the employee's return to duty, or within 5 years of a prior positive test or refusal to test shall result in termination. (A pre-dismissal hearing will be allowed.)

## **RETURN TO DUTY PROCEDURES**

The following statements reflect the return to duty and follow-up testing requirements of the FHWA/FMCSA:

- 1) Covered drivers who have had alcohol test results of 0.04 or greater must be evaluated, undergo treatment, if required, and be recommended for return to work by the Substance Abuse Professional. A "return to duty" alcohol test with a result less than 0.02 is required prior to resumption of safety-sensitive or covered driving functions.
- 2) Covered drivers who have had verified positive drug tests must be evaluated, undergo treatment, if required, and be recommended for return to work by the Substance Abuse Professional. A negative "return to duty" drug test is required prior to resumption of safety-sensitive or covered driving functions.
- 3) Covered drivers may be subject to periodic unannounced follow-up alcohol and/or drug testing as determined by the Substance Abuse Professional who evaluated the employee.

Under the County's independent authority, covered drivers who have had alcohol test results of 0.04 or greater and/or a verified positive drug test and are awaiting recommendation for return to duty shall deduct this time away from work from any

available paid time except sick leave (unless provided by law), or choose leave of absence without pay.

## **RECORD KEEPING PROCEDURES**

WES's Designated Employer Representative will maintain drug/alcohol testing records in a secure filing system, separate from the County Personnel files, with information available only on a "need to know" basis.

A driver is entitled, upon written request, to obtain copies of any records concerning his/her use of alcohol or controlled substances. Requests for such information may be directed to the Designated Employer Representative or to the County drug testing management service.

The County shall release information regarding a covered driver's records to a subsequent employer upon receipt of a specific written request by the covered driver authorizing release of the records to an identified person.

Information regarding an individual's drug test results or rehabilitation may be released only upon written consent of the individual, except:

- 1) Such information must be released to the Secretary of Transportation, any DOT agency, or any state or local officials with regulatory authority over the employer or any of its drivers.
- 2) Such information may be disclosed in a lawsuit, grievance, or other proceeding initiated by or on behalf of the covered driver and arising from an alcohol test and/ or a verified positive drug test or from WES's determination that the driver engaged in conduct prohibited by FHWA/FMCSA regulations.
- 3) When requested by the National Transportation Safety Board as part of an accident investigation, WES will disclose information regarding post-accident alcohol and/or drug testing.

**Record Retention Schedule**

The following schedule of record keeping will be maintained by the Designated Employer Representative and his/her authorized agents:

- |            |   |
|------------|---|
| 1 Year     | Negative drug test results<br>Alcohol test results less than 0.02   |
| 2 Years    | Records related to the alcohol and drug collection process. These include:<br>Custody control forms.<br>Documents related to random selections<br>Reasonable suspicion determinations.<br>Post accident determinations.<br>Medical evaluations for insufficient amounts of urine and breath.            |
| 3 Years    | Previous employer records.  |
| 5 Years    | Alcohol test results of 0.02 or greater.<br>Verified positive test results.<br>Refusals to test.<br>Follow-up tests and follow-up schedules.<br>Employee evaluation and referrals to SAPs.<br>Yearly summaries of tests performed and results.<br>EBT calibration documentation.<br>Annual MIS reports. |
| Indefinite | Supervisor education and training records are to be saved for an indefinite period plus two years after ceasing to perform functions.   |

## APPENDIX A

### DEFINITION OF TERMS

For the purposes of this Policy, the following definitions apply.

Accident:

**Reportable accident** (covered drivers): An accident involving a commercial motor vehicle in which:

- a. A fatality occurred; OR
- b. The driver received a citation for a moving traffic violation AND a person involved in the accident needed medical care away from the scene of the accident; OR
- c. The driver received a citation for a moving traffic violation AND one or more vehicles involved in the accident needed to be towed from the scene of the accident.
- d. As described in Appendix B for WES covered employees.

**Adulterated Specimen:** A specimen that contains a substance that is not expected to be present in human urine, or contains a substance expected to be present but is at a concentration so high that it is not consistent with human urine.

**Alcohol:** Ethyl alcohol or ethanol

**Alcohol Screening Device (ASD):** 49 CFR 40.3 – A breath or saliva device, other than an EBT, that is approved by the National Highway Traffic Safety Administration (NHTSA) and placed on a conforming products list (CPL) for such devices.

**Breath Alcohol Technician:** An individual who has been trained to proficiency in the operation of the evidential breath testing device he/she is using as required under 49 CFR Part 40.

**Breath Alcohol Testing Site:** A location which affords visual and aural privacy for the performance of breath alcohol testing. No unauthorized person shall be permitted access to the breath alcohol testing site when the evidential breath testing device is unsecured or at any time when testing is being conducted. In unusual circumstances, e.g. after an accident when a test must be conducted outdoors, the breath alcohol technician must provide visual and aural privacy to the greatest extent practicable.

**CFR:** United States Code of Federal Regulations

**Chain of Custody:** Procedures to account for the integrity of each urine specimen by tracking its handling and storage from point of specimen collection to final disposition of the specimen. These procedures shall require that an appropriate drug testing custody form from a Department of Health and Human Services (DHHS), Substance Abuse and Mental Health Services Administration (SAMHSA) certified laboratory be used from time of collection to receipt by the laboratory.

**Collection Site:** A designated clinic/facility where applicants or employees may present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs.

**Collector:** A person who instructs and assists applicants and employees through the urine specimen collection process.

**Confirmation Test:** A second analytical drug testing procedure to identify the presence of a specific drug or metabolite which is independent of the initial test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. Gas chromatography/mass spectrometry (GC-MS) is the only authorized confirmation method for DOT mandated drug testing.

**Controlled Substances:** Substances listed on Schedules I through V in 21 U.S.C. 802 as they may be revised from time to time (21 CFR 1308). Controlled substances include illicit drugs and drugs which may be authorized for use by a physician or dentist for certain medical uses, but which are subject to misuse or abuse.

**County:** Clackamas County and/or Water Environment Services

**Covered Driver:** Individual who is required to hold a Commercial Driver's License (CDL) for his/her job with WES and who is subject to drug testing under Federal Highway Administration, Department of Transportation regulations (49 CFR Parts 40 and 382).

**DER:** Designated Employer Representative – An employee authorized by the employer to take immediate action(s) to remove employees from safety-sensitive duties and to make decisions in the testing and evaluation processes. The DER also receives test results and other communications for the employer, consistent with the requirements of Part 40.

**Dilute Specimen:** 49 CFR 40.3 – A specimen with creatinine and specific gravity values that are lower than expected for human urine.

**DOT:** United States Department of Transportation

**FHWA:** Federal Highway Administration

**FMCSA:** Federal Motor Carrier Safety Administration

**GVWR:** Gross Vehicular Weight Rating; size criterion for determining classification of a commercial motor vehicle under federal regulations.

**Initial or Screening Test:** An immunoassay screen to eliminate "negative" urine specimens from further consideration.

**Medical Review Officer (MRO):** A licensed doctor of medicine or osteopathy with knowledge of drug abuse disorders and drug testing who is responsible for reviewing and verifying drug testing results prior to their communication to the Designated Employer Representative.

**Negative Drug Test:** A test in which initial or confirmation testing under DOT procedures did not show evidence of a prohibited drug in an employee's or applicant's system above established levels; OR, a test which is verified as negative by the MRO (e.g. review showed positive test was due to prescription medication or other authorized use of controlled substance).

**On Duty:** Under this policy, a covered driver is “on duty” when he/she is at work and ready to perform safety-sensitive functions, e.g. qualified and available to drive a commercial motor vehicle.

**Positive Drug Test:** A urine drug test result which indicates the presence of controlled substances beyond the cut-off levels specified by 49CFR Part 40.

- **Confirmed Positive Drug Test:** A positive drug test which has undergone an initial “screening” test AND a confirmation test which validates the first result. Drug tests are confirmed by the SAMHSA certified laboratory, which performs the analyses.
- **Verified Positive Drug Test:** A confirmed positive drug test (see above) after investigation by the MRO, who has determined that no legitimate explanation exists for the presence of the controlled substance that was detected.

**Pre-Duty Alcohol Use Prohibition:** Four (4) hours prior to the performance of scheduled duty.

**Prohibited Drugs:** Marijuana, cocaine, opiates, phencyclidine (PCP), and amphetamines.

**Random Testing:** Computerized random selection and testing for drugs in which each person in the computer data base has an equal chance of selection each time a selection occurs, in accordance with regulatory requirements.

**Reasonable Suspicion:** Observations of an employee’s condition or performance that indicate possible drug or alcohol use. Examples include deteriorating work performance, poor attendance, tardiness, appearance (including, for example, noticeable odor of an alcoholic beverage), behavior, or speech of the employee.

**Refusal to Submit:** Refusal by an individual to provide a urine or breath specimen after receiving notice of the requirement to be tested in accordance with this Policy.

**Safety Sensitive Functions:** Ready to perform, performing, or just finished performing, the following duties: waiting to be dispatched, inspecting equipment, driving, loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate a vehicle, repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

**SAMHSA:** Substance Abuse and Mental Health Services Administration, a division of the US Department of Health and Human Services (DHHS) which is responsible for certifying laboratories to perform federal workplace drug testing. Formerly National Institute on Drug Abuse (NIDA).

**Screening or Initial Test:** Immunoassay screen to eliminate “negative” urine specimens from further consideration.

**Split Specimen Collection Procedure:** A collection procedure in which a urine specimen is divided or “split” between two shipping bottles, both of which are transported to the testing laboratory.

**Split Test:** If the results of the initial screening and confirmation tests of the “primary” specimen are positive, the “split” specimen may be tested at another qualified laboratory.

**Substance Abuse Professional:** Under DOT regulations, individuals who may serve as substance abuse professionals include:

- \* licensed physicians (Medical doctors or Doctors of Osteopathy) or
- \* licensed or certified psychologists, social workers, employee assistance professionals, or addiction counselors (certified by the National Association of Alcoholism and Drug Abuse Counselors Certification Commission) with knowledge of and clinical experience in the diagnosis and treatment of alcohol-related disorders.

Under this Policy, the Designated Employer Representative must inform employees or applicants who are found to have violated the alcohol prohibitions or who have had verified positive drug tests of qualified Substance Abuse Professionals in the local area.

**Substituted Specimen:** A specimen with creatinine and specific gravity values that are so diminished that they are not consistent with human urine.

## **APPENDIX B POST ACCIDENT TESTING**

Under the County’s independent authority, any covered driver employed by WES directly involved in an injury accident on the job (an injury of a serious nature requiring professional medical care) or is involved in an accident while operating County equipment (resulting in property damage in excess of \$1500.00 ) may be required to undergo drug and /or alcohol testing. Data derived from this test will be used as a tool in the overall evaluation of the incident.

Determination of when testing is necessary shall be made by the Designated Employer Representative or his/her designated representative in conjunction with WES management. Drug and Alcohol tests conducted under the County’s independent authority will be processed as non-DOT tests..