

**Memorandum of Understanding**

**between**

**AFSCME Rank & File Unit**

**and the**

**City of Hawaiian Gardens**

**for the period**

**July 1, 2017 thru June 30, 2020**

**Memorandum of Understanding  
AFSCME Rank and File Unit – 2017-2020**

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## **I. RECOGNITION**

- A. The City of Hawaiian Gardens recognizes the American Federation of State, County and Municipal Employees, AFL-CIO, Local 3624, Council 36, (hereinafter "AFSCME" or "Union") as the exclusive bargaining agent for all regular full time and part time employees. "Regular" full time and part time employees shall include, but not be limited to, all employees in the City of Hawaiian Gardens in the job classifications listed in Appendix A and all regular full time and part time employees who are not management, confidential, seasonal, temporary, or fourteen (14) hours or less per week.

Whenever the word "employees" is used in this agreement it shall mean the regular full time and part time employees in the bargaining unit as described above. Whenever the words "temporary employee" are used, they shall mean a temporary employee doing work normally done by employees in this bargaining unit. Whenever the words "seasonal employee" are used, they shall mean a seasonal employee doing work normally done by employees in this bargaining unit.

- B. No temporary employee shall work for more than five (5) consecutive months; also, no temporary employee shall work for more than a total of seven hundred and twenty (720) hours in a calendar year. A seasonal employee shall be restricted to employment during the months of May, June, July, August and September. However, the Recreation Department may have one SYEP Coordinator restricted to the months of May, June, July, August, September, and October.
- C. No work normally performed by an employee covered by this agreement shall be contracted out unless it can be done without transfer or layoff. Bus drivers covered by the agreement shall not have their overtime diminished by the City contracting out or chartering out. However, when all City buses are in use, or cannot reach rider ship demand, and all regular bus drivers are working or otherwise unavailable, then the City shall have the right to charter out a bus or buses from private companies in order to preserve City services on a temporary basis.

This section applies both retrospectively and prospectively. In other words, the City cannot bring in a contractor and lay off employees. But the City also can not lay off employees without bringing in a contractor and then after the layoff is announced or begins, or at any time while the employees are still on layoff, bring in a contractor to do any part of the employee's work. That too is banned by this section.

This collective bargaining agreement covers all employees represented by AFSCME and establishes their wages, benefits, hours, working conditions

and rights. Seasonal, fourteen (14) hour a week or less part time, temporary, and any and all other persons doing work normally performed by workers covered by this agreement shall not receive less than the beginning step salary or wage rate of the relevant classification covered by this agreement.

Part time employees hired to work fourteen (14) hours or less per week shall be covered by this agreement for the entire calendar if they work more than one hundred and eighty- two (182) hours for the City in that quarter.

- D. Interns for professional positions shall not be covered by this agreement, except that they shall not be employed by the City for longer than six (6) months. Interns for professional positions shall not perform any duties of laid off employees. There shall not be interns for non-professional positions.
- E. Whenever the word "seniority" is used in this agreement, it shall mean classification seniority except in the case of Article X, Layoff, Section A through K, where seniority shall mean Citywide seniority.
- (1) Classification seniority shall mean the total time employed by the City of Hawaiian Gardens in the classification since the most recent appointment to the classification plus any time in a classification or classifications which have been bridged over.
  - (2) Citywide seniority shall mean the total time employed by the City of Hawaiian Gardens in any classification or classifications covered by this agreement, plus any time in a classification or classifications which have been bridged over.
  - (3) In the case of both classification seniority and citywide seniority, an employee who has quit or ceased to be employed for any reason and returns to work within forty-five (45) days or less shall retain their previous seniority (i.e., "bridge over").
  - (4) It is understood by the parties that seniority in this agreement is based on date of hire and not total hours worked.
- F. If a group of employees covered by this MOU wish to decertify AFSCME, the process for such decertification is exclusively as provided in this section. During the period of ninety days (90) to one hundred and twenty (120) calendar days prior to the expiration of this MOU, employees covered by this MOU may submit decertification cards stating that they no longer want AFSCME, Local 3624 to represent them as their exclusive bargaining agent. Such decertification cards shall cause a decertification election only if the following three (3) conditions are fully met:

- (1) When they are submitted, such decertification cards shall have the signature of fifty percent (50%) or more of the employees represented in the bargaining unit covered by this MOU;
- (2) AFSCME's local Union President and business agent are notified in writing within two (2) working days of the submission of these cards; and
- (3) Employees who change their mind or who did not realize what they were signing have five (5) working days after AFSCME is notified in conformance with (2) above to withdraw their cards, and the employees requesting decertification have remaining out of the original cards at least fifty percent (50%) of the employees in the bargaining unit; during these five (5) working days for withdrawal, no additional cards for decertification may be obtained or turned in to the City.

If the above conditions are not met, the Union shall not be decertified. If the above conditions are met, the Union and the City shall arrange for the American Arbitration Association to conduct the decertification election. AAA will consider any legitimate unfair labor practice charges by the petitioning party or by AFSCME. The initiating party shall pay the entire cost of any unfair labor practice arbitration. It shall require fifty percent (50%) plus one of those voting to decertify AFSCME. The polls shall remain open at least thirty-six (36) hours.

- G. The City of Hawaiian Gardens is responsible for the administration of the Crossing Guard Program. If it is legally determined that the Crossing Guard program should be under the jurisdiction of the School District, the City will participate in transitional negotiations with the School District and the Union.

## **II. SALARIES AND COMPENSATION**

- A. Across-the-board – 2017 Effective July 1, 2017 all employees covered by this MOU shall receive from the City a two percent (2%) across-the-board salary increase.
- B. Across-the-board – 2018 Effective July 1, 2018, all employees covered by this MOU shall receive from the City a two percent (2%) across-the-board salary increase.
- C. Across-the-board – 2019 Effective July 1, 2019, all employees covered by this MOU shall receive from the City a two percent (2%) across-the-board salary increase.

The increases in Sections "A", "B", and "C" of this Article are contained in Appendix G of this MOU.

- D. Employees in Public Works shall receive a boot allowance of four hundred dollars (\$400) per fiscal year. Human Services Employees assigned to Fedde Sports Complex shall receive one \$100 boot allowance a fiscal year. Employees in the Transportation Division and Public Safety shall receive a boot allowance of one hundred dollars (\$100) a fiscal year. Crossing Guards will receive one hundred dollars (\$100) per year shoe allowance.
- E. The City shall make every reasonable effort to avoid errors or shortages on employees' paychecks. When the City makes an error on an employee's paycheck, the City will correct the error within 3 workdays of notification of the City's finance department, if not sooner.
- F. Longevity Pay
- Longevity Plan: All full-time and part-time employees shall receive longevity pay calculated to the nearest dollar, subject to the following schedule and terms and conditions:
- (1) Two and one half (2.5%) percent of the base pay at the completion of the tenth (10) year of continuous employment.
  - (2) An additional Two and one half (2.5%) percent of base pay at the completion of the twentieth (20) year of continuous employment for a total of five (5.0%) percent.
  - (3) Longevity payments shall be effective on the first day of the biweekly pay period following the completion of the required length of service.
  - (4) Leaves of absences without pay, or disability leaves of absence, shall not be considered employment time for the purposes of computing longevity except for employees pregnancy disability leave and/or paid temporary total disability.
- G. Any employee, who is laid off, discharged, or quits shall be paid any wages owed with seventy-two (72) hours of such discharge, resignation or layoff. Notwithstanding any other provisions of this MOU, or of the laws of the State of California, an employee who has given at least seventy-two (72) hours notice of his or her intention to quit shall receive her or his entire wages at the time of quitting. Likewise, an employee who has been laid off by the City shall receive his or her wages owed at time of layoff.
- H. All vacation, sick leave, and comp time accrued at time of discharge, resignation or layoff shall be considered as wages in accordance with Section "G" above and paid in accordance with that section. This section does not apply to Crossing Guards. However, effective January 1, 2014,

Crossing Guards shall receive in "lieu of payments" for vacation, sick and holiday time, at the time of a City layoff, in compliance with Section H of Article VI (Vacation Article).

- I. Employees who use their personal vehicles for City work shall be reimbursed in accordance with the rate allowed by the Internal Revenue Service (IRS).
- J. All employees shall be properly classified with a title, job description, and classification which fit with their job duties.
- K. Employees shall receive step increase when due. Step increases shall be automatic unless the employee receives an evaluation with an overall rating of unsatisfactory. If the evaluation is not completed and given to the employee within fifteen (15) working days of the due date, the step increase shall automatically be given retroactive to its due date and shall not be withdrawn regardless of what the evaluation says. The City shall immediately cause employees to receive evaluations at the time of each step increase.
- L. However, AFSCME and the City agree that, when an employee reaches the top step of the salary schedule for his/her classifications, she/he shall not be reclassified or "adjusted" for the sole or primary purpose of continuing to receive step or additional increases. The Union will work diligently with Management and the City Council to stop this practice.
- M. After employees reach the top step of their classification, they shall continue to receive evaluations on a yearly basis even though they are no longer eligible to receive step increases.
- N. Education reimbursement shall be continued by the City. Educational reimbursement, per employee, shall be one thousand two hundred dollars (\$1,200) per quarter, one thousand seven hundred dollars (\$1,700) per semester or a maximum of two thousand nine hundred dollars (\$2,900) per calendar year. The City shall provide education reimbursement on the following basis:
  - (1) The City shall fully reimburse current full time and part time employees for job-related courses, job related degree programs, or job related vocation training. Courses outside the scope of job-related degrees, job-related vocational training, or related to City classifications do not qualify for reimbursement.
  - (2) The City shall provide full-time employees 6 years of reimbursement and part-time employees 4 years of reimbursement for job related courses, job related degree programs, or job related vocation training, as follows:

- (3) Employees enrolled in degree courses must maintain a minimum grade of "C" or "pass" in a pass/fail class. Grades shall be based upon a scale of "A" through "F". The employee must provide written evidence of having satisfactorily completed the courses approved.
- (4) The City Manager shall approve the course for reimbursement prior to the employee's enrollment in the course.
- (5) Courses, which meet the criteria of this section, shall be approved by the City Manager. Receipts for books, materials, tuition, or other course cost shall be provided to the City prior to any reimbursement for same.
- (6) This section does not apply to Crossing Guards.

- O. Effective with the signing of this MOU, full time and part time employees shall have the option of purchasing a computer through a non-interest bearing loan from the City not to exceed one thousand five hundred dollars (\$1,500). Employees can purchase multiple computers so long as it does not exceed \$1,500 maximum. Such loan shall be repaid thru payroll deductions over a twenty-four (24) month period. *This section does not apply to Crossing Guards.*
- P. Bi-lingual pay shall be one hundred twenty five dollars (\$125.00) per month and Bi-lingual Written Translation shall be one hundred forty five dollars (\$145.00) per month.

Employees hired on or after July 1, 2009 requesting Bi-lingual pay will be required to take a test administered by the City's Human Resources Manager.

Effective September 28, 2011, the City shall restrict Bi-lingual pay for employees hired after this MOU is signed and in effect to those new employees who speak Spanish, Chinese, Japanese, Vietnamese, Tagalog or Korean. This section does not apply to Crossing Guards.

- Q. Education Incentives – The City shall continue the following educational incentive program for all employees covered by this MOU whose date of hire with the City was any date prior to July 1, 2005:
- (1) Each employee who completes and obtains an Associate Art's Degree shall receive a 2.5% differential.
  - (2) Each employee who completes and obtains a Bachelor's Degree shall receive a 5% differential.
  - (3) Each employee who completes and obtains a Masters' Degree shall receive a 7.5% differential.

Employees who currently hold these degrees shall continue to receive these differentials. This section does not apply to Crossing Guards.

- R. Employees authorized for cellular phone reimbursement are eligible for a \$40 per month reimbursement.
- S. Maintenance classifications who receive State or other agency approved certifications in electrical or plumbing and who are required to perform corresponding duties for the City will receive a 5% skill pay differential.
- T. "ME TOO"

If AFSCME Management or any other employee organization receives during the life of this agreement, an across-the-board salary increase of more than that received by employees covered by this MOU, the City shall provide a similar salary increase to employees covered by this agreement.

### **III. WORKING OUT OF CLASS**

- A. Definition: An employee who spends a majority of her or his time performing duties of a higher level which are not generally included in her or his class specification. Such out of class pay occurs under this agreement even when the employee covered by this agreement works out of class in a management, confidential position not covered by this agreement.
- B. An employee working out-of-class for three (3) work days or more in a span of fifteen (15) workdays shall receive out-of-class pay beginning the first day of working out of class.
- C. Out-of-class pay shall be salary increase to the first step on the new range which would provide for at least a five (5%) raise.
- D. The City will rotate out-of-classification opportunities of longer than two (2) calendar weeks' duration when more than one interested employee in the chain of command meets the minimum qualifications. The rotation shall be in equal increments with a minimum of one week per rotation
- E. When no employee within the chain of command meets minimum qualifications for the position, eligibility for the position (or for rotation) will be based upon possession of the greatest number of standards related to minimum qualifications.

#### **IV. BENEFITS**

- A. Effective July 1, 2017, the City shall offer CalPERS health insurance for qualifying full-time City employees eligible for PERS retirement (and for each qualified retired City employee in accordance with H. of this Section).
- B. Effective July 1, 2017, the City shall offer qualifying part-time employees who work on average 30 hours per week or more or who are hired to work on average 30 hours per week or more with up to an \$500 monthly contribution for the purchase of Employee, Employee plus one, or Family health plan to be established as soon as practical. This section does not apply to any part-time employees hired before July 1, 2017. Part time employees hired before July 1, 2017, that qualify for CalPERS health insurance under the plan, Subsection C. of this Section applies.
- C. For qualifying full-time City employees CalPERS health insurance under the plan, the City shall pay an amount for each employee up to the CalPERS premium rate for PERS Choice-Family plus \$200 per month. Employees will be responsible for any portion of their selected premium above the PERS Choice-Family plus \$200 per month maximum City Contribution. Employees may use their cafeteria allowance to pay for any portion of the medical premium above the maximum per month rate.
- D. In addition to the amount provided under Section "A" above, the City shall provide a cafeteria amount of \$80.00 to each qualifying full time employee
- E. In addition to the amount provided under Section "B" above, the City shall provide a cafeteria monthly amount of \$60 to each qualifying part time employee.
- F. Full time employees and PERS Health Care eligible part time employees, in accordance with Sections A and B above, with more than one (1) year of seniority who have comparable coverage through an alternative medical plan may elect to opt out of medical coverage and receive from the City compensation of four hundred dollars (\$400) a month, provided that such employee certifies in writing that he or she is covered by another medical plan, names the plan, and specifies, in conformance with the facts, the means by which she or he receives the plan. The option in this section shall be fully available also to married employees, both of whom are working for the City of Hawaiian Gardens.
- G. Employees who opt out of medical coverage are not entitled to Cafeteria Money.
- H. Qualifying full-time and part-time employees may spend all or part of their cafeteria money on any available qualifying plans.

- I. The City shall continue to pay the full premium for employee, employee plus one and full family coverage for Delta Dental yearly maximum of two thousand dollars (\$2,000), life insurance of ten thousand dollars (\$10,000), and VSP Vision for all full time employees. Effective July 1, 2010, or as soon as possible thereafter, the City shall provide a new yearly maximum with Delta Dental of two thousand five hundred dollars (\$2,500), or an agreed upon carrier of two thousand five hundred dollars (\$2,500).
- J. Effective July 1, 2015, the City will contract with CalPERS to allow for a two (2) tier post-retirement health benefit program. The City shall contribute a percentage of the employer contribution for post-retirement health benefits for each retired employee hired on or after July 1, 2015, or the effective date of the CalPERS contract amendment in compliance with the rules established by CalPERS and the vesting schedule set forth by Government Code Section 22893 as follows:

<u>Credited Years of City Service</u>	<u>Percentage of Employer Contribution</u>
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90
19	95
20 or more	100

- K. Sections "A" through "J" do not apply to Crossing Guards. The City will however, provide a ten thousand dollar (\$10,000) life Insurance to the Crossing Guards.
- L. The City shall continue to make State Disability available to employees as in the past and shall continue to provide state unemployment insurance for employees.
- M. The City shall continue to comply with all provisions of all appropriate Federal, State, and local laws affecting employee rights such as FLSA, FMLA, ADA, CFRA and etc.

## V. RETIREMENT

- A. For employees hired before January 1, 2013, the City shall continue the current 2.7%@55 California Public Employees' Retirement System pension benefit for the duration of this contract. The City shall provide PERS retirement to the following employees covered by this agreement:
- (1) All Full Time Employees
  - (2) All Part Time Employees who are paid one thousand (1000) hours or more per fiscal year
- B. Per the Public Employees' Pension Reform Act of 2013, membership in the Public Employees' Retirement System (PERS) is as follows: Employees hired after January 1, 2013 who are new to Cal-PERS, or are returning members with a break in service greater than six months, will be enrolled into the 2% @ 62 retirement plan formula. Qualifying returning members with a break in service less than six months may be enrolled into the 2.7%@ 55 retirement plan formula. The City shall provide PERS retirement to the following employees covered by this agreement:
- (1) All Full Time Employees
  - (2) All Part Time Employees who are paid one thousand (1000) hours or more per fiscal year
- C. All PERS options in effect before signing of this agreement or gained as a result of this agreement shall be continued. It is agreed that the words in the previous sentence –“options in effect before signing of this agreement” are meant by the parties to include (but are not limited to):
- (1) Credit for Unused Sick Leave (20965)
  - (2) Public Service Credit for Periods of Layoff (21022)
  - (3) Public Service Credit for Peace Corps, AmeriCorps VISTA, or AmeriCorps Service (21023.5)
  - (4) Public Service Credit for Service Credit Rendered to a California Nonprofit Corporation (21026)
  - (5) Military Service for Retired Persons (21027)
  - (6) Pre-Retirement Optional Settlement 2 Death Benefit, Post- Retirement Survivor Allowance (21624) and (21626)
  - (7) Military Service Credit as Public Service (21024)
  - (8) One-Year Final Compensation (20042)

- D. Sections "A", "B" and "C" do not apply to Crossing Guards. Effective December 1, 2010, Crossing Guards with five (5) or more consecutive years of service with the City of Hawaiian Gardens will receive one thousand two hundred dollars (\$1,200) per year in lieu of Retirement and Health Insurance, on December 1<sup>st</sup> of each year during the life of this agreement.

**VI. VACATION**

- A. Full time employees with 0-5 years of full time employment with the City shall accumulate 9.375 hours of vacation leave with full pay for each month of full time employment. Full time employees with 5 – 15 years of employment with the City shall accumulate 14.0625 hours of vacation leave with full pay for each month of full time employment. Full time employees with 15 or more years of employment with the City shall accumulate 16.875 hours of vacation leave with full time pay for each month of full time employment. Full time employees shall be paid their regular salary plus differentials for 9.375 hours for a vacation day taken (or 8.3334 hours for employees on a 9/75 schedule or 7.5 hours for employees on a five day week).

**B. Part Time Vacation Accruals**

Vacation Accruals Adjustments: Employees that have been promoted from part time to full time employees, after September 30, 2002 with no break in service, and with at least five (5) years of total service time will have their vacation time reviewed.

Those employees will submit their annual PERS Statement for the period July 1, 2007 to June 30, 2008 to the Human Resources Manager to determine if they are eligible for an adjustment in their vacation accrual hours.

The Annual PERS Statement for the period July 1, 2007 thru June 30, 2008 will be utilized as the basis to make any accrual adjustments to the employee's accrual rate and shall be effective July 1, 2009 and every July 1, thereafter for the previous twelve (12) months.

- C. Part time employees shall receive vacation leave on the following basis:

Employees who average 14 to 30 hours per week	30 hours of paid vacation per fiscal year
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Employees who average 31 to 37 hours per week	35 hours of paid vacation per fiscal year
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- D. Full time employees may accumulate vacation to a maximum of three hundred (300) hours. Part time employees may accumulate vacation to a maximum of seventy-five (75) hours. On the first pay date of June and December of each year, employees will be paid on a one for one basis for all hours in excess of maximum 300 hours for full-time or 75 hours for part-time employees. Employees may at their discretion be paid for accumulated vacation hours on a one for one basis for any hours they have accumulated as of the designated pay-out date, June or December of each year, with written request.
- E. Vacation accruals may be used after six (6) months of employment, and on a case by case basis may be used earlier upon written permission of the City Manager.
- F. Vacation requests for employees with six (6) or more months of employment with the City shall not be unreasonably denied. Where there are more vacation requests for a single time period than can be reasonably accommodated, rotation in seniority order shall be used. For important holiday periods, such as Fourth of July, Christmas, Spring Break, etc., an employee who receives a vacation for that holiday period on the basis of seniority shall go to the bottom of the seniority list if there are more candidates for vacation the next year when that exact same holiday period comes around (rotational seniority for highly prized vacation periods.)
- G. Upon resignation, death, or termination, all vacation leave accrued to the employee shall be granted and a cash payment shall be made. In the case of death, the payment shall be made to the beneficiary of record or to the estate, as the case may be. (See Article II, Sections G and H).
- H. Sections "A" through "F" do not apply to Crossing Guards. Effective December 1, 2010, in lieu of Vacation, and Holiday Time Crossing Guards will receive four hundred dollars (\$ 400) per year on December 1<sup>st</sup> of each year during the life of this agreement.
- I. The City of Hawaiian Gardens shall not discharge or in any way discriminate against an employee who is a parent of one or more children of the age to attend kindergarten or grades 1 to 12, inclusive, or a licensed child care provider, for taking off up to 40 hours each year, for the purpose of either of the following child-related activities:
- (a) To find, enroll, or re enroll his or her child in a school or with a licensed child care provider, or to participate in the activities of the school or licensed child care provider of his or her own child, if the employee, prior to taking the time off, gives reasonable notice to the City of

Hawaiian Gardens of the planned absence. Time off shall not exceed eight (8) hours in any calendar month of the year; or

- (b) To address a child care provider or school emergency, if the employee gives notice to the City.

If more than one parent of a child is employed by the City, the entitlement under the first paragraph above of a planned absence as to that child applies, at any one time, only to the parent who first gives notice to the City, such that another parent may take a planned absence simultaneously as to that same child under the conditions described in paragraph one above only if he or she obtains the City's approval for the requested time off. It is agreed by the parties that the employee shall utilize existing vacation, personal leave, or comp time off for the purpose of the planned absence authorized by this section. An employee also may utilize time off without pay for this purpose, to the extent the City makes time off without pay available to other employees in the City. The employee, if requested by the City, shall provide documentation from the school or licensed child care provider as proof that he or she engaged in child related activities permitted in this section on a specific date and at a particular time. For purposes of this section, "documentation" means whatever written verification of parental participation the school or licensed child care provider deems appropriate and reasonable. Any employee who is discharged, demoted, suspended, or discriminated against in terms and conditions of employment by the City because the employee has taken time off to engage in child related activities permitted by this section shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by the acts of the City. If the City willfully refuses to rehire, promote, or otherwise restore an employee who has been determined to be eligible for rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law shall be subject to a civil penalty in an amount equal to three times the amount of the employee's lost wages and work benefits.

## **VII. HOLIDAYS**

- A. Full time employees shall continue to receive the following holidays and shall be paid their regular salary plus differentials for 9.375 hours for the observance of these holidays (or 8.3334 hours for employees on a 9/75 schedule or 7.5 hours for employees on a five day week).

- (1) Independence Day
- (2) Labor Day
- (3) Veteran's Day
- (4) Thanksgiving Day
- (5) Day after Thanksgiving
- (6) Christmas Eve Day
- (7) Christmas Day

- (8) New Year's Day
- (9) Martin Luther King, Jr. Day
- (10) Lincoln's Birthday
- (11) Washington's Birthday
- (12) Cesar Chavez's Birthday
- (13) Memorial Day
- (14) Personal Holiday (must be taken by June 30 of each fiscal year; if not taken, it is lost)
- (15) Employee's Individual Birthday

All Days Declared a Holiday by the City Council, the Legislature, Congress, Mayor, Governor, or the President of the United States.

- B. When a holiday falls on a Friday or Saturday, the preceding workday shall be observed as the holiday. When a holiday falls on a Sunday, the next day shall be observed as the holiday. However, employees shall not necessarily receive Christmas Eve Day when it falls on Saturday or Sunday.
- C. The employee must have paid hours in the pay period including the holiday to receive holiday pay.
- D. A full time employee who is authorized to work on a holiday and works the holiday shall be compensated at time and one half (1 ½) regular pay for the time worked, plus a day off with pay.
- E. Part time employees shall receive the following holidays with five (5) hours pay:
  - (1) Thanksgiving Day
  - (2) Christmas Day
  - (3) Independence Day
  - (4) One "Floating" Holiday (must be taken by June 30 of each fiscal year; if not taken, it is lost)
- F. Strict seniority shall be used when assigning part time staff to work during holidays. Employees by job title shall be asked in seniority order if they wish to volunteer for holiday work. If sufficient number does not volunteer, then in inverse order of seniority by job title they shall be assigned the work.

A part time employee who is authorized to work a holiday which is a holiday for part time employees shall be compensated at time and one half (1.5) regular pay for time worked. Plus equivalent straight time off with pay. A part time employee who is scheduled to work during the employees' annual Hawaiian Gardens Christmas Party and wishes to attend the Christmas Party shall be treated by the City in the following manner: he or she shall be allowed by the City to attend the party, and

the City shall pay the employee his or her straight salary for the normal hours he or she would have worked. Additionally, part time employees scheduled to work during City recognized full time holidays and during the City's YMCA camp shall be compensated at the time and one half (1.5) regular pay for time worked.

- G. Finally, whenever the City declares Christmas Eve day a holiday, or sends full time employees home early on that day and pays them full pay for the day, the part time employees scheduled to work on that day shall receive full pay for the hours they were scheduled.
- H. Sections "A" through "G" do not apply to Crossing Guards.

### **VIII. SICK AND OTHER LEAVES**

- A. Full time employees shall receive eight and one third (8.33 hours of paid sick leave for each month of work to a maximum accumulation of one hundred days. One for two cash out upon termination. As long as they have the necessary hours accumulated, full time *employees may use 9.375 hours of sick leave with full pay for each day of sick leave (or 8.3334 for employees on a 9/75 schedule or 7.5 hours for employees on a 5 day week)*. This section does not apply to Crossing Guards.
- B. Beginning the 30<sup>th</sup> day of employment, part time employees shall receive six (6) hours of paid sick leave for every three (3) months of work to a maximum accumulation of two hundred (200) hours.
- C. On the first pay date of June and December of each year, employees will be paid on a one for two (1 = 0.5) basis for all hours in excess of seventy five (75) days. Employees may at their discretion be paid for accumulated sick leave hours on a one for two basis for any hours they have accumulated as of the designated pay-out date up to a zero balance, with written request.
- D. Sick leave with pay may be used for sickness, incapacity, quarantine, maternity, doctor visits and the illness or doctor visits of immediate family.
- E. Sick leave shall not be abused. Sick leave abuse shall be subject to progressive discipline.
- F. Management may not require doctor's verification for sick leave of three (3) days or less.
- G. Pay for jury duty shall be limited to ten (10) working days in any one calendar year. Subpoenaed time shall be paid by the City in an identical manner to jury duty, where the employee is not the plaintiff and where the employee has not been charged with a crime; however, employees shall

not be paid for more than three (3) days of subpoenaed time in a fiscal year.

- H. Full time employees shall be entitled to three (3) days of bereavement leave with pay upon the death of:
- (1) Any blood relative who is a member of the employee's household under the same roof.
  - (2) Spouse
  - (3) Parents
  - (4) Child
  - (5) Brother or Sister
  - (6) Grandparents or Grandchild
  - (7) Aunt or Uncle, Niece or Nephew
  - (8) Father-in-law, Mother-in-Law, Son-in-Law, Daughter-in -Law, Grandparent-in-Law, Grandchild-in-Law
  - (9) Great Grandparent or Great Grandchild

Such bereavement leave with pay shall not be deducted from sick leave. This section does not apply to Crossing Guards.

- I. Part timers shall receive three (3) days off with full pay in the event of the death of a spouse, child, parent, brother or sister and one (1) day off with full pay in the event of death of an aunt or uncle, niece or nephew mother-in-law or father-in-law and brother-in-law or sister-in-law.
- J. Personal leave without pay may be granted only by the City. It shall not be unreasonably denied.
- K. Upon request, and automatically renewable on a year by year basis, the City shall grant AFSCME, Local 3624 President or her or his designee a one full year unpaid leave of absence for Union related work. The City shall accept any reasonable proposal by AFSCME to reimburse the City fully for continued PERS retirement contribution and health and fringe benefit contribution. Sick leave, vacation, comp time shall remain on the books for such Local President or designee. (The parties agree that the City shall be able to replace the Union President or designee with a temporary employee for the entire length of the leave and that such replacement is not a violation of this MOU.

## **IX. FAMILY AND MEDICAL LEAVE**

- A. If leave is requested by an employee under the Family Medical Leave Act, and the request is for leave because of the illness or injury of a member of the employee's immediate family (defined here as spouse, mother, father, child) then the decision as to whether the employee wants to utilize his or her own sick leave with pay before going on Family Medical Leave under the Family Medical Leave Act is strictly the employee's. If the injury or illness is to a member of the employee's family other than spouse, mother, father, or child, then the City may at its discretion require the employee to utilize paid sick leave before utilizing leave under the Family Medical Leave Act.
- B. *Calculations of Leave:* An employee is entitled to twelve (12) weeks of leave in one year. This will be calculated based on whether the employee took any Family and Medical Leave in the one (1) year period immediately preceding the start date of the new request for leave. Thus, an employee who requests Family and Medical Leave starting on February 5, 2006, will be entitled to twelve (12) weeks going forward for the next three hundred sixty five (365) days as long as he or she has not taken any Family and Medical Leave in the year immediately preceding the start date of the new leave, i.e. between February 5, 2005, and February 5, 2006.
- C. *Reinstatement:* Upon expiration of the twelve (12) weeks, the employee will be reinstated to the same or comparable position unless the employee would not otherwise have been entitled to that position for reasons unrelated to such leave (e.g., layoff) in which case the City's obligation to continue health and dental or other benefits shall cease.

## **X. HOURS WORKED**

- A. For employees with a date of hire with the City of July 1, 2005, or any date before July 1, 2005, the regular work day for **(1)** employees at City Hall and the Executive Assistant in Recreation shall be 8:00 AM to 5:00 PM, Monday through Friday with every other Friday off (the "9/75 plan"); the regular two **(2)** week work period shall be seventy-five (75) hours; such employees shall receive an uninterrupted lunch period of forty (40) minutes a day; **(2)** the Lead Bus Driver shall be nine (9) hours and twenty (20) minutes a day, four (4) days a week, Monday through Thursday; their regular work week shall be thirty-seven and one-half (37 ½) hours; their lunch period will be forty (40) minutes three (3) times a week with a thirty (30) minute lunch period once a week; and **(3)** the remaining full time employees in Recreation and the employees in Maintenance shall be seven and one-half (7 ½) hours a day, five days a week, Monday through Friday; their work week shall be thirty-seven and one-half (37 ½) hours; they shall receive an uninterrupted lunch period of thirty (30) minutes a day.

- B. For employees with a date of hire with the City later than July 1, 2005 , the City may schedule them for five (5) consecutive days either Monday through Friday, or Tuesday through Saturday, as long as their job classification and title is one of the following: Neighborhood Counselor, Outreach Coordinator, Bus Driver, Senior Bus Driver, Senior Recreation Leader III, Recreation Coordinator, Assistant Pool Manager Lead person, Parking Control Officer, Code Enforcement Officer, Coordinator/ Supervisor, Senior Recreation Leader I, Maintenance Worker I or Maintenance Worker II. For all full time employees with a date of hire with the City of later than July 1, 2005, in a classification and title not listed in the first sentence of this Section B, the parties agree that the City shall schedule such full time employees only in the manner as required by Section A of this Article. For example, if the City hired a full time Accounting Specialist after July 1, 2005, and the employee was a new employee for the City of Hawaiian Gardens, such employee would be scheduled Monday through Friday one (1) week out of two (2) and Monday through Thursday, the next week, 8:00 AM to 5:00 PM, as required by Section A above.
- C. It is agreed that there are two exceptions to "A" and "B" above, The first is the Cable TV Production Specialist/Webmaster who (1) may with the City's permission work from home and (2) who may be scheduled by the City any time Sunday through Saturday. The second and last exception is the Event Coordinator, who regardless of date of hire, may, at the City's sole discretion, be scheduled Monday through Friday five (5) days a week or Tuesday through Saturday five (5) days a week.
- D. The parties agree that nothing in this MOU shall prevent the City and an employee from mutually agreeing, without coercion, to an alternative work week, as long as the AFSCME President and the Business Representative are notified at least twenty-four (24) hours before the agreement between the City and the employee is consummated and the employee is informed that she or he may have union representation when discussing such a change.
- E. Employees who are requested by the City to be on standby duty shall receive two (2) hours of pay or fifty dollars (\$50) whichever is higher, for every twenty-four (24) hours on standby. Employees on standby are required to respond to calls as needed. Also, employees on standby are required to respond to calls within twenty (20) minutes of the time called. For employees on standby, as well as all other employees, there shall be a minimum guarantee of two (2) hours for call out.
- F. For part time employees and those full time employees who are on the four day week, the City shall pay time and one-half (1 ½) for all hours worked beyond nine (9) hours and twenty (20) minutes in one (1) calendar day and time and one-half (1 ½) for all hours worked beyond thirty-seven and one-half (37 ½) in one calendar work week. For full time employees

who are on the 9/75 plan, the City shall pay time and one-half (1 ½) for all hours worked beyond eight (8) hours and twenty (20) minutes in a work day, time and one-half (1 ½) for all hours worked beyond thirty-three (33) hours and twenty (20) minutes in one (1) calendar week when that week is the employee's short week ( that week which contains their Friday off), and time and one-half (1 ½) beyond forty-one (41) hours and forty (40) minutes in one (1) calendar week when that week is the employee's long week (that week which does not contain their Friday off). For full time employees who are scheduled to work five (5) consecutive days a week, the City shall pay time and one-half (1 ½) for all hours worked beyond seven and one-half (7 ½) hours in a work day, and time and one-half (1 ½) beyond thirty-seven and one-half ( 37 ½) hours in one calendar week. For both full and part time employees, regardless of schedule, vacation, sick leave, holidays, compensatory time, jury duty, paid subpoena time and any and all other paid leave shall count as time worked.

- G. If mutually agreed to by the employee and the Department Head, the employee may receive "Comp Time" off with pay rather than premium pay for overtime. "Comp Time" shall be earned at time and one half released time with pay for each hour of overtime worked. There shall be no exceptions. Requests for "comp time" off shall not be unreasonably denied.
- H. Part time employees that are scheduled to work on part time holidays are eligible receive time and one-half for hours worked during the holiday. This is irrespective of whether or not the part time employees work over thirty-seven and one-half (37 ½) in one calendar work week.
- I. "Comp Time" accumulation shall not exceed at any time eighty (80) hours. The parties recognize that at the time of the signing of this MOU some employees have accumulated more than eighty (80) hours of "Comp Time". Accordingly, the City shall buy back accumulated comp time above eighty (80) hours on a one for one basis (such comp time already having been accumulated on a one and one-half (1 ½) basis). When employees are charging to a grant, employees must be paid overtime.
- J. When employees compete for available overtime opportunities, such overtime shall be rotated in seniority order, provided the employee is capable of performing the work. Overtime declined (with at least thirty-six (36) hours notice) shall count as overtime worked for purposes of rotation (and shall not be paid).
- K. Even in overtime situations, no employee shall be asked or required by the City to report back to work on the next day with less than eight (8) hours rest. The only exception to this will be a genuine emergency.

- L. When converting monthly rates to hourly rates for purposes of computing hourly overtime, the City shall divide the monthly salary rate by 162.5 hours rather than by 173.33 hours or any other factor.
- M. Sections "A" through "I" and "K" do not apply to Crossing Guards. The parties agree that effective immediately the City will reduce Crossing Guards hours to four (4) hours per day. The parties further agree that such a reduction in hours is consistent with the agreement made at the bargaining table. Thereafter, the parties agree that the City will continue to offer Crossing Guards a minimum of four (4) hours a day or not to exceed twenty (20) hours per week.
- N. The following programs will continue to be offered to Crossing Guards, as in the past, unless the programs are eliminated. If the programs are not eliminated, but reduced in size, then the City may reduce the number of Crossing Guards assigned to the program.
  - (1) MCDBG Cleanup
  - (2) Summer recreation or lunch program work
  - (3) Special Events including Halloween
  - (4) Public Health Programs, including but not limited to flu shots, immunizations, etc.
  - (5) Emergency call out of City employees

**XI. LAYOFF, RECALL AND RESIGNATION**

- A. A layoff shall occur only for lack of work or funds.
- B. No layoff shall occur until and unless all employees in the affected class or classes have been given the opportunity to transfer to any vacant position in the City regardless of family of jobs. If the employee substantially meets the minimum qualifications, such employee shall be placed in the vacant position. "Substantially meets" means meeting eighty-five percent (85%) or more of the minimum qualifications for the position.
- C. Seasonal, temporary, contract and fourteen (14) hour or less part timers shall be laid-off first. The parties understand this to mean all seasonal, temporary and fourteen (14) hour or less part timers regardless of where they work in the City and regardless of whether or not their department or area is affected by the layoff. Thereafter, layoffs shall be accomplished in reverse order of seniority within family of jobs.

However, a displaced employee can displace ("bump") another employee in seniority order only:

- (1) Laterally to a classification with the family of jobs.

- (2) Down to a lower paid classification within the family of jobs
  - (3) Laterally or down to a classification of previous standing in another family of jobs. (i.e. in a layoff an employee cannot "bump" upward)
- D. When a layoff occurs the City shall notify the employee laid off that he or she has seven (7) full workdays to notify the City of a decision to "bump" into another position. After receiving such notice, an employee must notify the City within seven (7) full workdays of a decision to bump into another position. The City shall promptly give to the union president and business agent the written decision by an employee to "bump".
- E. When an employee in a layoff "bumps" down to a lower paid classification within the family of jobs, or to a classification of previous standing, she/he shall receive a step placement on the new salary range which will give her/him the least decrease in salary.
- F. Family of jobs is specified in Appendix A.
- G. An employee with less than three (3) years of employment with the City shall be given forty-five (45) calendar days written notice prior to layoff, an employee with three (3) years of employment or more shall be given ninety (90) calendar days of written notice prior to layoff. Copies of such written notices shall promptly be given by the City to the President and Business Agent of the Union.
- H. Notwithstanding "G" above, any employee hired after August 1, 1999, shall be given thirty (30) calendar days written notice of layoff, until such employee has been with the City for four (4) or more years, at which point in time he or she shall be given forty-five (45) calendar days written notice of layoff.
- I. No temporary, contract or seasonal employee, as well as no part time employee fourteen (14) hours a week or less, shall be hired by the City in any department or area of the City while a layoff has been announced or has occurred among City employees. This shall be liberally interpreted by the parties so that regardless of what a person is called they shall not be hired.
- J. Recall from layoff shall be in direct order of seniority within family of jobs. Recall rights shall exist for thirty-six (36) months from the date of layoff. Seasonal, temporary and fourteen (14) hours or less part timers shall be called back to work after employees covered by this agreement.
- K. Employees will not have their hours reduced in a layoff unless mutually agreed to in writing by the City and AFSCME.

- L. Employees who return from layoff shall not be requested or required to take a physical.
- M. Resignation: When an employee resigns and is rehired within forty-five (45) calendar days of the last day paid by the City such employees shall retain her or his seniority, title, step placement, vacation accumulation rate, anniversary date and all other advantages gained under this agreement by extended service. In such an instance, this shall be called by the City a "reinstatement".

Employees shall refrain from taking advantage of this section by resigning solely for purposes of cashing in their vacation and other benefits with the intent to return immediately to employment with the City. The City shall police this section by educating members of the staff as to how to avoid misuse of this section.

- N. No non-bargaining unit employee, including but not limited to mid-management employees, shall be allowed to bump into the bargaining unit covered by this MOU.

## **XII. PROMOTIONS AND IN-SERVICE**

- A. Whenever a vacancy occurs, the City shall post the opening on all four (4) Union bulletin boards for five (5) working days before interview are conducted and jobs filled.
- B. Whenever possible, the City shall fill jobs by promotion from within the City if there are qualified candidates available. The City shall use closed promotional lists whenever and wherever possible. The selecting authority shall be given the names of the three (3) employees who stand highest on the promotion list for one vacancy, and an additional name for each additional vacancy if more than one (1) position is to be filled at one time. When there are no recall rights existing, the selecting authority shall make the appointment from the three (3) employees standing highest on the promotion list plus any legitimate transfer or demotion requests. Promotional list shall remain in effect for six (6) months. Promotional lists may be extended by the City for an additional six (6) months.
- C. When a full-time employee is promoted, he or she shall be advanced to the first step on the new salary range which provides at least a five percent (5%) raise. The next step advancement date shall be six (6) months from the date of promotion and shall occur yearly thereafter until the employee reaches the top of the salary range for her or his new classification. No employee shall be placed off step.
- D. Employees who transfer or promote shall not be requested or required to take a physical.

- E. There shall be frequent workshops and in-services training for all employees.

**XIII. PROBATIONARY PERIOD**

- A. All new employees hired to positions covered by this agreement shall be for a probationary period of six (6) months. During this period, the employee may be released at any time with or without cause. This section and entire Article shall cover both full and part-time employees. (Please note: the first step increase for part-timers shall be after twelve (12) months of employment not six (6) months).
- B. All probationary periods for promotions, and for transfers between classifications at the same salary range ("lateral transfer"), shall be for six (6) months. Also, probationary periods for voluntary demotions, other than in layoffs, shall be for six (6) months. There shall be no probationary period for demotions in layoff.
- C. An employee rejected during the probationary period from a position to which he or she has been promoted, demoted, or transferred between classifications shall be returned to the position from which he or she was promoted, demoted, or transferred between classifications. The decision during the probationary period to return an employee to his or her previous position shall not be grievable or appealable. He or she shall not serve a new probationary period.

**XIV. SAFETY**

- A. The City shall provide safe and healthy working conditions.
- B. There shall be established a safety committee with three (3) members named by the City and one (1) member named by AFSCME Rank and File and one (1) member named by Management.
- C. When there is exposure to lead contamination, the City shall offer and pay for both a lead test and a ZPP test.
- D. Earthquake supplies and preparedness training shall be provided by the City to members of the City's safety committee and to appropriate City employees.
- E. The City shall develop an effective, City-wide Emergency Plan by December 1, 2009.
- F. The City will provide the following Safety Equipment to the Crossing Guards.

- (1) Stop Paddle

- (2) Orange cones
- (3) PED sign to place over cone
- (4) Chair
- (5) Whistle
- (6) 2 way radio
- (7) Small first aid kit

**XV. DISCIPLINE, DISCHARGE AND TRANSFER**

- A. No employee shall be negatively evaluated, written up, suspended, demoted, transferred, discharged, terminated or otherwise disciplined without just cause.

However, the City may terminate a new employee at its discretion, any time during the probation period. The parties agree that this means that, during the probationary period a new employee may be rejected at any time by the appointing power without cause and without the right to appeal or grieve. Notification of rejection in writing shall be given to the employee and a copy filed with the Human Resources Director. The parties further agree that the words "new employee" in this section means both (1) any person hired by the City for the first time as well as (2) any person who formerly worked for the City and has been rehired *but does not qualify* for reinstatement, as per Article XI, Layoff, Section M. (The parties agree that no one can qualify for reinstatement based on an initial employment of only temporary or seasonal.)

- B. No employee shall be asked or required by the City to take a polygraph examination.
- C. The right of a public employee to a private life shall be protected.
- D. The Nepotism, Drug and Alcohol, Sexual Harassment Policies and negotiated by the parties and passed by City Council are hereby attached to this agreement as appendices and made a full part of this agreement.
- E. The City's Standards of Conduct is as follows:
- F. Generally, each person is expected to act in a mature and responsible way. However, to avoid any possible confusion some of the more obvious unacceptable activities are noted below. These activities are not to occur on the job:

**Serious Violations**

- Horseplay
- Dishonesty

- Insubordination
- Tardiness
- Excessive absenteeism
- Sleeping on the job
- Destruction of city property without permission
- Poor work performance
- Leaving before the end of the work day without permission
- Not calling that you are going to be absent
- Taking important city property home without permission
- Negligence
- Rudeness towards the public
- Profane or abusive language towards a manager, employee, or the public uttered in a serious, provocative way

Violations listed above are usually met with progressive discipline – verbal warning, written warning, suspension, dismissal. The violations listed below are so serious that depending upon the circumstances, they are either met with suspension and then dismissal or immediate dismissal (to be violation, they too must occur on the job).

*Very Serious Violations*

- Harassment based on sex, gender, race, disability, age, or national origin
- Stealing
- Possession or sale of illegal drugs; drinking; getting high; reporting to work intoxicated (multiple incidents or, in the alternate, single incidents which would not be met with rehabilitation under Appendix H, Drug and Alcohol Policy, because such incidents were associated in fact with other very serious violations; for example, being obviously drunk and engaging in a fist fight with co-workers)
- Fighting
- Unauthorized possession of dangerous or illegal firearms, weapons or explosives

- Improperly threatening others
- Obscenity
- Gross Negligence
- Extreme insubordination: so grave that it consists of a willful and deliberate defiance of a direct order given by a supervisor with a clear intent to humiliate and challenge the supervisor's authority in a provocative and escalating dialogue where the employee was clearly made aware that immediate discipline was a penalty for insubordination
- Taking city records without permission
- Lewd conduct
- A deliberate action that endangers the life or safety of another person
- Falsifying documents
- Extremely profane or abusive language towards a manager, employee, or the public which either is clearly meant to provoke an incident or is so grossly negligent when it is uttered that it is beyond rational thought or explanation

The purpose of these rules is not to restrict your rights, but rather to be certain that you understand what conduct is expected and necessary. When each employee is aware that she or he can fully depend upon fellow employees to follow the rules of conduct, then our City will be a better place to work for everyone.

If you have any questions concerning these rules, please contact your supervisor, AFSCME steward, or Department Head.

- G. Except in Worker Compensation cases, the parties agree that the following rules involving the use of Private Investigators by the City in discipline or discharge cases shall be followed: Whenever the City uses services of a Private Investigator to investigate possible misconduct or poor performance by a bargaining unit employee, the City shall disclose in writing to AFSCME's Local 3624 President and to AFSCME's Business Representative either at least one hour prior to the first investigation of any bargaining unit employee, or simultaneously with the start of any such interview in which AFSCME has been asked to attend, either by the employee to be interviewed, or by the City:

- (1) The name of that Private Investigator as that name is registered with the State of California's Bureau of Security and Investigative Services;
- (2) Whether such Private Investigator has, within the previous ten (10) calendar years, had her or his Private Investigator's license denied, suspended, or revoked, and/or whether such Private Investigator has received administrative fines assessed by the State of California's Bureau of Security and Investigative Services. If such Investigator has received any such denial, suspension, revocation, or fine, the City shall also disclose in writing the nature of the offense(s) causing these penalties to be assessed by the above named California Bureau;
- (3) A list of all previous services provided to the City by the Private Investigator; and
- (4) The contract between the City and the Private Investigator.
- (5) Such Private Investigator shall not record any conversation or interview with a bargaining unit member without that employee's advance written consent. Any recording obtained without such advance written consent shall not in any respect be used or relied upon in connection with, and shall not be admissible under any circumstances in, any disciplinary or other proceeding(s). (To enforce this particular section, the parties agree that AFSCME may file and pursue a grievance in its own name.)
- (6) In the event that such Private Investigator obtains the advance express written consent of a bargaining unit employee to record a conversation or interview, any such recording shall be provided both to the employee and to AFSCME within twenty four (24) hours.
- (7) In the event such Private Investigator (a) testifies in a disciplinary or other proceeding related to a bargaining unit employee, including, but not limited to, a *Skelly* hearing, arbitration, or civil service proceeding; or (b) submits a report or findings to the City, whether written or oral, in connection with his or her investigation, all notes, correspondence, reports, drafts, recordings, transcripts, and any other documents in the possession, custody or control of the Private Investigator related to her or his investigation, regardless of whether such material will be or was relied on by the Private Investigator in his or her testimony, report, or findings, shall be produced to AFSCME thirty (30) calendar days prior to such testimony, or within ten (10) calendar days of submission of the report or findings to the City, whichever is earlier. In the event the Private Investigator submits a report or findings to the City in connection with her or his investigation, there shall be no further proceedings until such

material has been provided to AFSCME, and done so in a manner compliant with the timelines described above.

- (8) In the event a Private Investigator submits a report or findings to the City, whether written or oral, related to possible misconduct or poor performance by a bargaining unit employee, the City shall ensure that the Private Investigator shall make herself or himself available to testify at AFSCME's request in any subsequent disciplinary or other proceeding related to the bargaining unit employee.

## **XVI. GRIEVANCE AND ARBITRATION PROCEDURE**

- A. Any dispute, difference, or controversy related to wages, hours or working conditions shall be resolved in the following manner:

Step 1	Supervisors' Level	In discussion between the Steward and the Supervisor
Step 2	Department Level	In discussion between the Chief Steward and the Department Head
Step 3	City Manager's Level	In discussion between the Union President and Business Agent and City Manager
Step 4	City Council Level	In discussion between the Union and City Council
Step 5	Arbitration	Before an Arbitrator

- B. Grievances shall be initially presented to the City at Step 1 by AFSCME within twenty (20) calendar days from the occurrence of the dispute or the date on which AFSCME could reasonably have known of the alleged violation or grievable event, whichever occurs later.
- C. No Grievance shall remain unresolved at any step for longer than seven (7) work days; after seven (7) work days, AFSCME shall have the right to take it to the next step. AFSCME shall forfeit the grievance if it fails to take the grievance to the next pre-arbitration step (i.e., from step 1 to 2, 2 to 3 or 3 to 4) within twenty (20) calendar days of the date it was taken to the current step or if it fails to take the fourth (4<sup>th</sup>) step grievance to arbitration within twenty (20) calendar days from the date such grievance was taken to the fourth (4<sup>th</sup>) step.
- D. The timelines for initially filing a grievance and for moving a grievance to the next step or to arbitration may be extended by the parties at any time.

- E. There shall not be reprisals of any kind against grievants or participants in the grievance process.
- F. AFSCME may refer an unresolved grievance for arbitration to an arbitrator designated by the American Arbitration Association in accordance with its rules. The parties agree that Expedited Labor Arbitration Rules of the American Arbitration Association reduce costs and avoid delays. Accordingly, it is hereby agreed by the parties that the Union may, on any unresolved grievance processed through the steps, initiate arbitration under the Expedited arbitration demand to the City and then wait at least eleven (11) calendar days before submitting to the AAA. If the union chooses not to file under the AAA's Expedited Arbitration Rules, then the parties shall proceed, both in the selection of the arbitrator, and the conduct of the hearing, under the regular Labor Arbitration Rules of the American Arbitration Association.
- G. Questions of arbitrability shall be decided by the arbitrator.
- H. The Arbitrator's award shall be final and binding. The arbitrator shall have no power to add to or subtract from or modify any of the terms of this agreement. The fees and expenses of the arbitration shall be borne equally by the parties.

## ***XVII. UNION RIGHTS AND DUES DEDUCTION***

- A. All benefits and past practices not covered by this agreement shall be continued.
- B. The Union shall be permitted to use the City's e-mail in order to transmit Union information and bulletins to Union members in the City.
- C. The City shall provide AFSCME, Local 3624 with four (4) bulletin boards at no cost to the budget of the City. These boards shall be located in:
  - (1) City Hall Lounge
  - (2) Recreation Center
  - (3) Maintenance Yard
  - (4) Clarkdale Park
- D. Employees shall have a reasonable amount of time to process grievances.
- E. The Union shall be entitled to an aggregate one hundred sixty (160) hours of paid release time each fiscal year for use by the Union President and/or other Union representatives as designated by the Union President for the purpose of Union business. The Union shall give the City reasonable notification in advance of days to be taken. Union release hours are not carried over year over year.

- F. The City recognizes the employee's right to representation by a steward or Union officer at such time as the employer contemplates disciplinary action or any time thereafter.
- G. The City shall make the employee available for meetings between new employees and an AFSCME staff member or officer for the purpose of informing such employees of their scope of representation and benefits available. Such meetings shall occur during the first three (3) weeks of employment.
- H. An employee is entitled to review the content of their Personnel File. An AFSCME representative may assist such employee. Material not in an employee's file at the time of a disciplinary action may not be used against an employee in any subsequent hearing.
- I. Only one official personnel file may be maintained by the City on each employee. This file shall be kept by the Personnel Officer in City Hall. No site files may be maintained on employees.
- J. Upon receipt of an authorized card, membership dues of AFSCME members shall be deducted by the City from the paycheck of the member. Maintenance of membership shall be in effect with the window period for withdrawing:

February 1 to February 28<sup>th</sup> of 2020

- K. Agency Shop shall be in effect for all employees. The parties shall comply with all relevant case law on this matter. In the event of bona-fide religious objections, the City Council shall select the charity.

Employees shall be covered by Agency Shop fees if they voluntarily join the Union and have dues deducted by the City and then withdraw from membership as provided for in "J" above.

- L. Administration of Agency Shop
  - (1) As a condition of employment, all members of the bargaining unit represented by AFSCME, shall, within ninety (90) calendar days of the date of hire, become a member of AFSCME, or pay the Agency Shop fee.
  - (2) In regards to the Agency Shop fee, the non-member may either pay such fee directly to AFSCME or authorize the City to pay such fee through payroll deduction, the City shall, upon written notice from AFSCME, and after the expiration of ninety (90) calendar days reference above, withhold such fee without authorization and pay such fee to AFSCME.

- (3) The City shall distinguish fees from dues when transmitting same to AFSCME.
- (4) The City will instruct new hires (and new inclusions in the bargaining unit) in regard to AFSCME, its bargaining status, the MOU, and Agency Shop requirements. This shall be accomplished both through the posting of vacant positions and orientations.
- (5) Payroll deductions from both AFSCME dues and Agency Shop fees shall be every payroll period, except for the third (3<sup>rd</sup>) payroll period in a month, when there shall be no deduction (as is practiced now).
- (6) The City shall inform AFSCME whenever a temporary goes permanent; a federal, state or private charity or non-profit employee assigned to the City goes on the City payroll; or a fourteen (14) hour or less employee goes over fourteen (14) hours for the calendar, or is budgeted for more than fourteen (14) hours.

M. Negotiations for a successor agreement shall begin no later than October 1, 2019.

#### ***XVIII. MANAGEMENT RIGHTS***

Any of the rights, powers, or authority the City had prior to the signing of this agreement are retained by the City, except those abridged, delegated or modified by this agreement, and then only to the extent that they are so abridged, delegated or modified, provided that such management rights do not restrict employees from filing grievances.

The parties understand that the authority of the City to manage the City has not changed: As long as the City does not violate this Memorandum of Understanding, State or Federal Law, or past practice or benefits, the City has the right.

- To determine the nature and extent of services to be performed, as well as the right to determine and implement its public function and responsibility
- To manage all facilities and operations of the City, including the methods, means and personnel by which the City's operations are to be conducted
- To direct the work force
- To hire, promote and transfer employees
- To discipline, demote and discharge employees

- To determine processes, techniques, methods and means of City operations, responsibilities and functions
- To determine the size and composition of the work force
- To establish, assess and implement employee performance standards, including, but not limited to, quality and quantity standards, the assessment of employee performance, and the procedures for said assessment
- To schedule the operations of the City
- To schedule hours of work
- To propose new job classifications during the life of this MOU, and to utilize the procedures of this MOU in order to meet and confer on rates of pay and family of jobs for such new classifications, and to establish and determine thereby such new job classifications
- To promulgate, modify and enforce work and safety rules and regulations
- To take such other and further action as may be necessary to organize and operate the City in the most efficient and economical manner and in the best interest of the public it serves.

**XIX. DRESS CODE ISSUES**

Employees in each department coordinate with their Department Head to establish their own specific standards of grooming. The Employee should dress in good taste and according to the position. Normally, it shall be the City's responsibility to decide what constitutes proper attire, but questions of employees cost, social custom, or safety shall be proper subjects of meet and confer.

The City will provide each Crossing Guard five (5) orange Polo Shirts and 2 white Polo Shirts with City Logo, baseball cap and or visor with City Logo, reflective vest, jacket and rain boots if necessary, which are required to wear.

**XX. SAVINGS AND AMENDMENT**

- A. If any of the provisions of the Agreement are held to be contrary to law by a court of competent jurisdiction, such provisions will not be deemed valid and subsisting except to the extent permitted by law, but all other provisions will continue in full force and effect.
- B. This Memorandum of Agreement may only be modified or amended by written agreement between the parties.

**XXI. NO STRIKE**

- A. There will be no strike or work stoppage by the Union during the term of this agreement. AFSCME officers will actively discourage any rumored wildcat strike. Employees who strike may be subject to discipline up to and including termination by the City under the provisions of the agreement.
- B. The City will not engage in a lockout of employees during the term of this agreement.

**XXII. Zipper Clause**

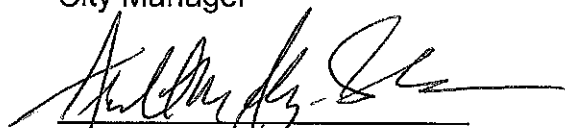
The parties agree that all negotiable items have been discussed during negotiations leading to this MOU and further agree to reopen negotiations on any item during the life of this MOU only by mutual agreement between the two parties.

**XXIII. DURATION**

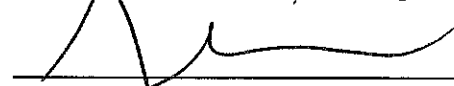
This agreement shall remain in full force and effect from July 1, 2017 to June 30, 2020. In addition, all terms of this agreement will remain in effect at the conclusion date and until a subsequent MOU has been successfully agreed upon.

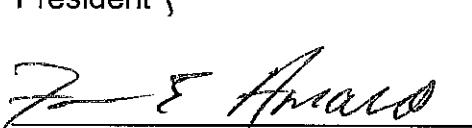
City of Hawaiian Gardens:

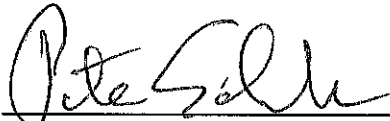
  
\_\_\_\_\_  
Ernie Hernandez  
City Manager

  
\_\_\_\_\_  
Arnold Glasman  
City Attorney

AFSCME President, Local 3624:

  
\_\_\_\_\_  
Fred Licon  
President

  
\_\_\_\_\_  
Frank Amaro  
Vice President



Pete Schnauffer, Business Rep.  
AFSCME, Council 36

Date: \_\_\_\_\_

Date: 8/29/17

Approved as to FORM:

\_\_\_\_\_  
Jay G. Trinnaman  
Labor Attorney

**Appendix A**  
**City of Hawaiian Gardens**  
**AFSCME Rank and**  
**File Family of Jobs**

1. **Maintenance Specialist**  
**Maintenance Worker II**  
**Maintenance Worker I**  
**Maintenance Worker (part-time position)**
  
2. **Deputy City Clerk**  
**Administrative Specialist**  
**Senior Accounting Specialist**  
**Accounting Specialist**  
**Executive Assistant (non-confidential)**  
**Senior Account Clerk**  
**Senior Clerk**  
**Staff Assistant II**  
**Account Clerk**  
**Staff Assistant I**  
**Administrative Aide**  
**Clerk (part-time position)**
  
3. **Code Enforcement Officer**  
**Community Relations Officer**  
**Administrative Technician**  
**Rehabilitation Specialist**  
**Housing Technician II**  
**Neighborhood Counselor**  
**Parking Control Officer**  
**Planning Aide (part-time position)**
  
4. **Senior Para transit Driver**  
**Para transit Driver**
  
5. **Video Production Specialist/Webmaster**
  
6. **All remaining recreation titles, both full and part-time, arrange in descending order by rate of pay, highest pay first. Effective with the signing of this 2017-2020 MOU shall include Senior Program Coordinator.**
  
7. **Crossing Guards.**

**Appendix B**  
**City of Hawaiian Gardens**  
**DRUG AND ALCOHOL POLICY**

Purpose/Policy

The purpose of this policy statement is two fold.

To publish the City's intent and obligation to provide a work environment which fosters the health and safety of its staff and protects the integrity of its business and business practices.

To comply with the Drug-Free Workplace Act of 1988, which requires the City in its capacity as a recipient of Federal funding to, among other things, establish, implement and administer a policy.

The City of Hawaiian Gardens is dedicated to maintaining a drug-free workplace. It is against City Policy for employees to report to work, under the influence of alcohol or illegal drugs.

Prohibitions

The City of Hawaiian Gardens prohibits, during work hours, while on City premises, including parking lots or on City business and or in City vehicles:

The possession, consumption, distribution, sale or purchase of illegal drugs or unauthorized controlled substances, on City premises, including parking lots or on City business and or in City vehicles.

Being under the influence of any unauthorized controlled substance, illegal drug, or alcohol on City premises, including parking lots or on City business, in City vehicles or while performing assigned work.

Possession, distribution, sale or purchase of illegal drugs, controlled substances or alcohol off City premises that result in a conviction that adversely affects an employee's work performance, or his/her own or other's safety at work.

Consumption of illegal drugs, controlled substances or alcohol off City premises that adversely affects an employee's work performance, or his/her own or other's safety at work.

Refusing to submit to an inspection of lockers, desk, or other City property which is under the control of the employee when, based on a reasonable and articulable belief, a supervisor has a reasonable suspicion that an employee is under the influence of, or in possession of illegal drugs, unauthorized controlled substances, and or alcohol.

Refusing consent to blood or urine testing when requested by Management or the employee's Supervisor where such request is in conformance with the guidelines contained in this policy.

Possession of, or storing in a locker, desk, automobile, or other repository on City premises, any illegal drug, any unauthorized controlled substance; storing alcohol in a locker, desk or other repository on City premises, where the intent is to consume the alcohol or drugs on City premises or while on duty.

Failure to notify the City of the use of any prescribed drugs the use of which would cause, or tend to cause, significant danger to other employees or the public. In order to protect the privacy of the employee, the employee, under normal circumstances, shall not be required to name the prescription drug being used, just the active ingredient; in any regard, the City will make every reasonable effort to protect both the privacy of the employee and the information provided.

Failing to adhere to the requirements of any drug or alcohol treatment or counseling program in which an employee is enrolled.

### Inspections

Whenever the City has a reasonable and articulable belief that an employee's work performance or on-the-job behavior may have been affected by alcohol or illegal drugs, the City may search the employee's locker, desk or other City property under the control of the employee.

### Testing for Drugs and Alcohol

#### Circumstances Requiring Testing

A blood, urine, or other drug/alcohol screening test will be required of City of Hawaiian Gardens' employees in the following circumstances:

#### Reasonable Suspicion

Whenever a supervisor has a "reasonable suspicion" that an employee has been using or is under the influence of illegal drugs, unauthorized controlled substances, or alcohol. For purposes of this policy "reasonable suspicion" of a supervisor means a reasonable and articulable belief that the employee is using a prohibited drug or alcohol on the basis of specific, contemporaneous physical, behavioral, or performance indicators of probable drug or alcohol use. When possible, the employee should be observed by two supervisors prior to being required to submit to testing

#### Prior Violations

Whenever an employee has tested positively for the presences within the preceding twenty-four (24) month period, he/she shall be subject to random testing at the discretion of management.

## Procedures for Testing

Whenever the City of Hawaiian Gardens requires an employee to submit to a Blood or urine test under the circumstances set forth in this policy, it shall be conducted in accordance with the following procedures:

The employee will be ordered to report immediately to a federally certified clinic designated by the City to take an appropriate test for drug or alcohol use.

A supervisor will accompany the employee to the designated medical facility.

The City will bear the cost of the examination and will provide transportation to and from the medical facility. The employee will be paid for time spent at the examination. The City will make every effort through the federally certified clinic to protect the chain of custody of the employee's sample.

If the employee test positive, he/she will be given the opportunity to enter a Drug and Alcohol Rehabilitation program as provided in Section VI below. If an employee tests positive a second time within twenty four (24) months of the first incident, he or she shall be subject to discipline up to and including discharge, subject to the provisions of this MOU. Prior to the imposition of disciplinary action the employee will be given the opportunity to explain the test results and any disciplinary action will follow the standard administrative process.

If the results of the test are inconclusive, the employee will be retested.

Any employee required to submit to a test for drug or alcohol use shall be informed of the reason(s) he/she is being required to undergo testing. If the employee refuses or deliberately fails after a two-hour period or prior to the end of a work day to submit a specimen, he/she shall be informed that such failure or refusal constitutes insubordination and shall be grounds for discipline up to and including termination.

## Confidentiality

All test shall be kept confidential and will be revealed to the employee tested; supervisory and management staff as required; and to union representatives when authorized by the employee.

Normally the only drugs prohibited by this policy are those drugs prohibited by the DOT Drug and Alcohol Testing Policy (see Appendix G) but the parties agree that other illegal drugs which are generally considered by health care professionals to have such a corrosive effect on an employee's judgment and job performance that it creates a safety hazard for other employees are also banned.

Consequences for Violation of City of Hawaiian Gardens Drug and Alcohol Policy.

Violation of this policy will initially result in referral to a rehabilitation facility. A second violation within 24 months of the first incident will result in discipline, up to and including discharge. The disciplined employee may utilize the grievance and arbitration policy of this MOU.

The City may, in addition to disciplinary action, require employees to enter and complete a qualified rehabilitation program designated by the City and the union as a condition of continued employment.

#### Employee Assistance Program

The City strongly encourages early, voluntary treatment of Employees with personal alcohol or drug abuse problems. An Employee who takes the initiative of advising his/her supervisor that he/she has a medical problem with regard to alcohol or drug use will be eligible for an unpaid leave of absence for up to 60 days for the purpose of entering a treatment program authorized by the City. The City will try to reasonably accommodate any employee who wishes to voluntarily enter and participate in an alcoholic or drug abuse rehabilitation program, provided that this reasonable accommodation does not impose an undue hardship on the City. An employee who voluntarily advises his/her supervisor and/or seeks treatment prior to any testing of the employee will not be subject to disciplinary action.

Employees who have voluntarily identified themselves to supervisors as having alcohol and or drug problems and have sought treatment, will be eligible to return to work after successful completion of an authorized rehabilitation program and upon providing the City with competent medical evidence indicating that the employee has overcome his/her substance abuse problems. Upon return to work following the treatment, an employee will be subject to random urine and/or blood testing for a period of 12 months, at the discretion of management.

#### Disciplinary Referrals

In addition to any disciplinary action for a positive test for drugs or alcohol, the City may, at the discretion of management, refer employees with apparent drug and or alcohol abuse problems, with otherwise satisfactory employment records to an authorized treatment program. Employees may be eligible for an unpaid leave of absence for up to 60 days for purpose of entering and completing an authorized treatment program. Employees may be eligible to return to work upon providing the City with competent medical evidence indicating that the employee has overcome his/her substance abuse problems. Any employee treated and reinstated under this section must agree in writing to submit to random urine and/or blood testing for a period of 24 months at the discretion of management. **REPEAT VIOLATIONS WILL BE GROUNDS FOR TERMINATION.**

**APPENDIX C  
AMENDMENT TO THE  
DRUG FREE WORKPLACE POLICY  
IN ORDER TO COVER DRUG AND ALCOHOL TESTING  
FOR CERTAIN CITY DRIVERS**

This agreement amends Drug-Free Workplace Policy between the parties and hereby adds the language below to this policy, this language is fully enforceable through the grievance and arbitration provisions of the collective bargaining agreement between the parties:

The Transportation Department has developed guidelines to implement City and Federal regulations on drug and alcohol prevention. The aim of the Federal regulations is to control substance abuse in safety-sensitive positions. Substance abuse, the misuse of drugs and alcohol, is not a new issue but one of growing concern to employers. Research has shown that substance abuse affects organizations as evidenced by increased medical benefit claims, increased absenteeism, increased industrial accident claims and decreased productivity. Substance abuse poses serious safety and health risks, not only to the user but also to those who work with or come into contact with the user. As a result, employers have become even more concerned about the misuse of drugs and alcohol by employees in the organization.

The City of Hawaiian Gardens is committed to maintaining a safe and productive working environment. In November 2005, the City adopted a drug-free workplace policy, consistent with the Omnibus Transportation Employee Testing Act of 1991. As part of this policy, the City shall provide training, regarding the impact of substance abuse, to all employees. Additionally, the policy brought the City into compliance with the U.S. Department of Transportation (DOT), Federal Transit Administration (FTA) regulations requiring transit employees to be tested for drug use.

The FTA has combined its drug and alcohol testing regulations. Therefore, this amendment to the Drug and Alcohol policy incorporates FTA's letters of interpretation, audit findings, newsletters, training classes, safety seminars, and public speaking engagements. In addition, this policy conforms with FTA's rule to the Department of Transportation's (DOT) revised drug and alcohol testing rule published on December 19, 2000.

## **REQUIREMENTS**

This entire amendment shall immediately become null and void if the federal government's Omnibus Transportation Employee Testing Act of 1991 is superseded by an Act that does not require testing of these certain drivers, is revoked, or is declared contrary to law by a court of competent jurisdiction.

The City by affirmative action on its own part shall directly through the federally certified testing laboratory promote to the maximum extent possible individual privacy in the collection of specimen samples.

## **OBJECTIVE**

The objective of this policy is to prevent the effects of substance abuse in the Workplace. Hawaiian Gardens Transportation Department (HGTD) employees must be able to perform their duties safely, effectively, and efficiently. HGTD's concern includes off-duty substance abuse when it affects on-duty job performance or places any HGTD employee or any member of the public at risk of injury or death.

The following Transportation Department guidelines revise the Department's previous *Substance Abuse and Employee Assistance Program Policy* and *Substance Abuse and Employee Assistance Program Procedures* to address changes in Federal law, **and to conform to 49 CFR Part 655.**

## **BACKGROUND**

The Omnibus Transportation Employee Testing Act of 1991 (the Act) mandated the Secretary of Transportation to issue regulations to combat prohibited drug use and alcohol misuse in the transportation industry. (Public Law 1202-143, October 28, 1991, FTA sections codified at 49 U.S.C. 5331).

In December 1992, FTA issued two Notices of Proposed Rule Making (NPRM's) to prevent prohibited drug use and alcohol misuse by "safety-sensitive" employees in the transit industry. In February 1994, FTA adopted drug and alcohol testing rules, which were published at 49 CFR Parts 653 and 654.

## **CONTACT PERSON**

Questions regarding the Transportation Department's Drug and Alcohol Testing Guidelines should be referred to your Supervisor, AFSCME steward, or Department Head.

## **AFFECTED EMPLOYEES**

Under 49 CFR Part 655, safety sensitive employees are subject to this policy.

## **PROHIBITED BEHAVIOR**

a. Alcohol Use: No HGTD driver covered by this policy shall report for duty where he or she is to drive a vehicle covered by this policy while having an alcohol concentration of 0.04 or greater. No driver while driving a vehicle covered by this policy shall possess alcohol. No driver shall drive a vehicle covered by this policy within four (4) hours of using alcohol.

b. Drug Use: No HGTD driver shall report for work or remain on duty requiring the driving of a vehicle covered by this policy when the driver uses a drug in an amount

which would test positive under these provisions, except when the use of such controlled substance is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the driver's ability to drive a vehicle covered by this regulation. "Drug" in this policy shall mean marijuana, cocaine, opiates, amphetamines (including methamphetamine), and PCP.

The City may require an HGTD driver who is covered by this policy to inform the City when he or she is taking a prescription drug containing opiates or any other "drug" which would test positive under these provisions.

### **EMPLOYEE ASSISTANCE PROGRAM**

Federal regulations require the provision of a Substance Abuse Professional (SAP) to evaluate employees who have tested positive for alcohol or drugs under the regulations. A SAP is defined as a licensed physician or a licensed or certified psychologist, social worker, employee assistance professional or addiction counselor with knowledge of and clinical experience in the diagnosis and treatment of drug and alcohol-related disorders.

The City of Hawaiian has an Employee Assistance Program (EAP) which provides screening and initial counseling for employees. Employees needing help in dealing with drug and/or alcohol problems are encouraged to use either the EAP or individual health insurance plans. Conscientious efforts made by the employee, and not required under these guidelines, to seek such help will not jeopardize any employee's job, and will not be noted in his or her personnel file.

Being directed to attend an EAP program; if required under these guidelines, will not be considered a conscientious effort.

### **COVERAGE**

Employees whom the City may drug or alcohol test as a condition of employment are those employees only who as a part of their regular duties drive a motor vehicle used in commerce to transport passengers or property if the motor vehicle:

has a gross vehicle rating of 26,001 or more pounds; or

is design to transport sixteen (16) or more passengers, including the driver.

Such employees may be tested only under the following circumstances:

- a) Pre-employment: prior to the first time an employee drives one of the vehicles described above.
- b) Post-accident: only if the accident involves a loss of human life or the driver receives a moving traffic violation; an event is an "accident" only if the City vehicle is operating on an open road and there results

bodily injury to a person who immediately receives medical treatment away from the scene,

one or more vehicles is disabled and must be towed away from the scene, or

death

Random: tests equivalent to twenty five percent (25%) of covered employees each year for alcohol and fifty percent (50%) for those drugs covered by this amendment.

Reasonable Suspicion: a supervisor's belief must be based on specific, contemporaneous, articulable observations concerning the appearance, behavior, speech, or body odors of the driver. Whenever possible, more than one (1) supervisor shall observe the driver. If they disagree, the driver shall not be tested.

Reasonable suspicion shall not be based in any way on anonymous tips.

### **CIRCUMSTANCES REQUIRING TESTING**

655.41 Pre-Employment Testing

655.43 Reasonable Suspicion Testing

655.44 Post-accident testing

### **TESTING GUIDELINES**

Post-accident drug and alcohol tests will be performed as soon as possible.

### **RANDOM TESTING**

The process for testing will be unannounced as well as random to avoid predictability. Once the employee has been notified that he or she has been selected for testing, he or she must then report immediately to the collection site. Failure to do so will be considered a "Refusal to Test".

### **RETURN TO DUTY TESTING**

Before any employee is allowed to return to duty to perform a safety-sensitive function following a verified positive drug test result, an alcohol result 0.04 or greater, a refusal to submit to a test, or any other activity that violates Federal regulations, that employee must first be evaluated by a substance abuse professional and pass a return to duty test.

### **FOLLOW-UP TESTING**

Once allowed to return to duty, an employee will be subject to unannounced follow-up testing for at least 12 but not more than 36 months.

Follow-up testing is separate from and in addition to the regular random testing program. Employees subject to follow-up testing will remain in the standard random pool and must be tested whenever their names come up for random testing.

### **REFUSAL TO BE TESTED**

If an employee refuses to be tested he or she will be subject to disciplinary action up to and including termination.

### **TESTING PROCEDURE**

Alcohol and drug tests shall be conducted in conformance with current Federal regulations as specified in "Procedures for Transportation Workplace Drug and Alcohol Testing Programs" (49 CFR Part 655).

### **MEDICAL REVIEW OFFICER**

FTA regulations require that all drug testing laboratory results be reviewed by a qualified Medical Review Officer (MRO)

### **SUBSTANCE ABUSE PROFESSIONAL**

FTA regulations require that any individual who has a verified positive drug and/or alcohol test result must be immediately removed from his or her safety-sensitive job duties. In addition, he or she must be advised of the resources available to evaluate and resolve problems associated with drug abuse, including the names, addresses, and telephone numbers of substance abuse professionals and counseling and treatment programs. The employee must be evaluated by a Substance Abuse Professional (SAP) who will determine what assistance, if any, the employee needs in resolving problems associated with prohibited drug use and/or alcohol misuse.

The role of the SAP is to:

Evaluate whether a safety-sensitive employee who has refused to submit to a drug or alcohol test, or who has a verified positive drug test result or who has an alcohol test result of 0.04 or greater, is in need of assistance in resolving problems associated with prohibited drug use or alcohol misuse.

Evaluate whether a safety-sensitive employee who has a verified positive drug or alcohol test has complied with the SAP's recommendations.

Recommend whether the employee should also be subject to return to duty and follow-up testing for both alcohol and drug use.

## **ALCOHOL TESTING**

FTA regulations prohibit any employer from allowing an employee with an alcohol concentration of 0.04 or greater to perform any safety-sensitive duties until he or she has been evaluated by a SAP and has passed a return to duty test. An employee with an alcohol concentration of 0.02 or greater but less than 0.04 must be removed from safety sensitive duty for eight (8) hours. It is the City's policy that the employee will not be allowed to work and cannot return to active duty until a retest shows an alcohol concentration of less than 0.02.

## **ALCOHOL-RELATED CONDUCT**

FTA regulations require employers not to permit safety-sensitive employees to perform safety-sensitive functions if an employee has violated any of the following provisions:

Using alcohol while performing safety-sensitive functions.

Using alcohol within four hours prior to performing safety-sensitive functions.

Performing a safety-sensitive function with an alcohol concentration of 0.04 or greater.

Using alcohol within eight hours following an accident which requires the employee to take an alcohol test, unless the employee has already taken a post-accident alcohol test.

## **ACTION TO BE TAKEN WHEN DRUG OR ALCOHOL TEST IS POSITIVE**

### Pre-Employment Testing

The individual will not be hired for the safety-sensitive position if that individual tests positive for alcohol or the controlled substance(s) covered by these guidelines.

### Reasonable Cause, Post Accident and Random Testing

As stated in the City's policy and these guidelines, a positive test result for prohibited drugs and alcohol will result in the employee's removal from his or her safety-sensitive job. He or she shall be referred to a Substance Abuse Professional and may be subject to disciplinary action.

Following notification of a positive drug or alcohol test result, the Transportation Department Head or designee will contact the employee.

## **CONFIDENTIALITY**

Laboratory reports or test results shall not appear in an employee's personnel file. Information of this nature, however, will be included in a separate confidential medical folder maintained in a confidential manner.

## **EMPLOYEE EDUCATION AND TRAINING**

Drugs and alcohol pose a threat to an individual's fitness for duty and endanger the HGTD operations, the safety of the public, the employee and fellow employees. The HGTD will conduct drug and alcohol training for all of its safety-sensitive employees.

### Training Covered Employees

Covered employees must receive at least 60 minutes of training on the effects and consequences of prohibited drug use on personal health, safety and the work environment, and on the signs and symptoms that may indicate prohibited drug use.

### Supervisors

Supervisors and/or other City officers authorized by the employer to make reasonable suspicion determinations shall receive at least 60 minutes of training on the physical, behavioral, and performance indicators of probable drug use and at least 60 minutes of training on the physical, behavioral, speech, and performance indicators of probable alcohol misuse.

In accordance with F.T.A. regulations, the City will require any contractor who has employees performing safety-sensitive functions for the City to abide by these regulations.

## **EFFECTIVE DATE**

The effective date of these guidelines is the date wherein these guidelines have been adopted by Hawaiian Gardens City Council.

## **DISTRIBUTION OF POLICY**

Every active safety sensitive employee will be given a copy of this policy within thirty (30) days of its adoption, and each will be required to sign a receipt indicating that he or she has received a copy of the policy, has been given training sufficient to understand the policy, and will adhere to it. Every new safety sensitive employee will be required to sign a similar receipt upon hiring.

## **SAFETY STANDARDS**

No driver covered by this amendment shall report for duty where he or she is to drive a vehicle covered by this amendment while having an alcohol concentration of 0.04 or greater. Similarly, no driver while driving a vehicle covered by this agreement shall possess alcohol unless authorized by the City. No driver shall drive a vehicle covered by this agreement within four (4) hours of using alcohol.

No driver shall report for work or remain on duty requiring the driver of a vehicle covered by this amendment when the driver uses a drug in an amount which would test positive under these provisions, except when the use is pursuant to the instructions of a physician who has advised the driver that the substance does not adversely affect the drivers ability to drive a vehicle covered by this amendment.

The City shall not require a driver covered by this amendment to inform the City of any therapeutic or legal drug use.

### **TESTING**

The City may test employees covered by this amendment for the following only:

Marijuana metabolites  
Delta-9-tetrahydrocannabinol-9-carboxylic acid (THC)

Cocaine metabolites  
(Benzoylecgonine)

Phencyclidine (PCP)

Amphetamines  
Amphetamine  
Methamphetamine

Opiate metabolites  
Codeine  
Morphine  
6acetylmorphine

Alcohol

Collection of drug and alcohol specimens and testing of specimens under this amendment may be performed only by the federally certified testing lab.

Employees covered by this amendment shall be selected for test by entirely non-discriminatory and impartial methods.

### **POSITIVE TEST RESULTS**

The federally certified testing lab shall report positive test results to the City only if:

there are no possible alternate medical explanation and

the following drug cut off levels have been exceeded:

<u>Type of Drug or Metabolite</u>	<u>Initial Test</u>	<u>Confirmation Test</u>
Marijuana Metabolites	50	
Delta-9-tetrahydrocannabinol-9 -carboxylic acid (THC)	15	
Cocaine metabolites (Benzoylecgonine)	300	150
Phencyclidine (PCP)	25	25
Amphetamines	1000	
Amphetamine	500	
Methamphetamine		500 (Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL)
Opiate metabolites	2000	
Codeine	2000	
Morphine	2000	
6acetylmorphine	10	
Test for 6-AM in the specimen. Conduct this test only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.		

***All cutoff concentrations are expressed in nanograms per milliliter (ng/mL)***

In no instances shall the federally certifies testing laboratory report that the employee tested less than the cutoff point but more than zero. (For example, the lab may not report trace elements.) In all such cases, it shall simply report to the City that the results were negative.

Tests for alcohol must be conducted with evidential breath test devices (EBT's) approved by the National Highway Traffic Safety Administration (NHTSA).

Test results shall be considered positive, as above, only when they show an alcohol concentration of 0.04 or more on both the initial test and the second test or when the initial test shows 0.02.- 0.04 alcohol concentration and the second test, given fifteen (15) to twenty (20) minutes later, still demonstrates 0.02 or higher.

**CONSEQUENCES FOR POSITIVE RESULTS**

The consequences for positive results shall be those contained in the Omnibus Transportation Employee Testing Act of 1991.

**SAVINGS CLAUSE**

If any provision of these guidelines is found to be unlawful, the remaining provisions that are not found to be unlawful will remain in full force and effect.

## **APPENDIX D** **NEPOTISM POLICY**

The purpose of this policy is to give and set direction on the employment of the City of relatives and the appointment of relatives to Commissions and committees.

“Relative” is defined as spouse, parent, child, grandchild, grandparent, brother, sister, nephew, niece, aunt, uncle, first cousin, grand nephew, and grand niece, step-relatives shall be considered the same as relatives.

The City shall actively monitor the hiring practices to ensure that relatives of City employees and relatives of City Commissioners shall not be given preferential treatment in the recruitment and selection process.

City employees shall not participate in the hiring selection, promotion, or supervision of any relative. Supervision includes through a chain of command.

Due to broad responsibilities across departmental lines, the City Manager, Assistant City Manager, all Department Heads, and all Superintendents are considered to be a part of every chain of command in the City. (However, the marriage of any two City employees prior to September 15, 2002, shall not, as a result of this new nepotism policy, cause either employee to be terminated by the City or be transferred to a new position within the City. Nor shall these employees be prevented from receiving a promotion or appointment to a new position. Status quo shall prevail in the case of any two such employees.)

Every employee is responsible for promptly bringing to the attention of their respective Department Head any relationship with another employee (or prospective employee, when that is know) which falls within the scope of this policy.

No relative of a member of the City Council or the member’s spouse shall be employed by the City or hold appointive position on City Commission or committees.

**GRANDFATHER OR GRANDMOTHER CLAUSE:** No employee, Commissioner, or committee member shall be discharged or otherwise removed because of the subsequent election of a relative to the City Council. Likewise, the marriage of a City Council member or City Commissioner shall not cause the discharge of an employee or the removal of a Commissioner or committee member. However, in no event shall a member of the City staff be supervised by a relative (except in the narrow sense of being in the same chain of command where such placement in every chain of command came as a result of the adoption of this new nepotism policy, and where marriage between two employees came before September 15, 2002; see Sections 3 and 4 above).

**APPENDIX E**  
**CITY OF HAWAIIAN GARDENS**  
**HARASSMENT IN THE WORK PLACE**

**PURPOSE:**

To define and issue to all employees the City's policy on the prohibition of harassment in the work place.

**POLICY:**

Harassment of an applicant or employee by a Councilmember, Commissioner, supervisor, management employee or co-worker on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age will not be tolerated.

**DEFINITION:**

Harassment includes, but is not limited to:

- (1) **Verbal Harassment** – For example, epithets, derogatory comments or slurs on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age.
- (2) **Physical Harassment** – For example, assault, impeding or blocking movement, or any physical interference with normal work or movement when directed at an individual on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age.
- (3) **Visual Forms of Harassment** – For example, derogatory posters, notices, bulletins, cartoons, or drawings on the basis of race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status, sex or age.

**Sexual Favors** - Unwelcome sexual advances, request for sexual favors, and other verbal or physical conduct of a sexual nature which is conditioned upon an employment benefit, unreasonably interferes with an individual's work performance or unreasonably creates an offensive work environment.

**PRE-GRIEVANCE PROCESS:**

An individual who has been harassed on the job should inform the employer, its agents or supervisors of the grievement. To accommodate the unique nature of harassment complaints, a pre-grievance process is provided for the primary purpose of resolution of a complaint at the earliest possible date. Elements of this process are:

**Complaint Advisors** – The City Manager or his designee will be available to receive harassment complaints. Actions to be taken will include, but may not be limited to:

Counsel the individual and outline the options available.

Obtain a factual written statement of the complaint for the affected Department Head.

Assist in follow-up investigation, interview accused, witnesses and supervisors as appropriate, and recommend disposition of the complaint.

**Department Head and or City Manager** - Authorizes investigation of the complaint, reviews factual information collected to determine whether the alleged conduct constitutes harassment, giving consideration to the record as a whole and the totality of circumstances, including the nature of the verbal, physical, visual or sexual favor aspect of the advance and the context in which the alleged incidents occurred. Takes and/or authorizes appropriate action.

**Confidentiality** – Effort will be made to protect the privacy of parties involved in a complaint. Files pertaining to complaints handled under the pre-grievance process will not be made available to the general public.

#### **FORMAL GRIEVANCE PROCESS:**

Formal grievance procedures of the City are available for resolution of complaints alleging harassment if the complaint is not adjusted to the satisfaction of the individual in the pre-grievance process. Members in the bargaining unit will follow the grievance procedures in the current M.O.U., all others employees must notify the City Manager, in writing within five (5) working days of the completion of the pre-grievance process of his/her desire to have the formal grievance process initiated.

**Extension of Time Requirements** - Time limits specified in the formal grievance procedures may be extended if pre-grievance procedures for a harassment complaint were initiated within the applicable time limits for filing a formal complaint. In these instances, if the complaint is not adjusted to the satisfaction of the individual the time limits for filing a formal grievance should begin as of the date of notification of action taken by the City Manager.

If an individual did not initiate pre-grievance procedures within the time limits of the applicable normal grievance procedures, the City Manager or his designee may recommend extension of the filing deadline for a formal complaint. It should be reemphasized that the City wishes to know of any complaint alleging harassment as soon as possible after it occurs.

**Waiver of Informal Step** - Preliminary informal steps to resolve a grievance may, depending on circumstances of the complaint, be waived by the City Manager and the formal grievance initiated at an appropriate higher step in the process.

**Dissemination of Policy** - All Councilmember's, Commissioners, employees, supervisors, and managers shall be sent copies of this Policy and this Policy shall be posted in appropriate places.

**PLEASE NOTE: Harassment as defined above, violates Title VII of the Civil Rights Act of 1964, the California Government Code, and regulatory guidelines of the Equal Employment Opportunity Commission, and the California Fair Employment and Housing Commission.**

**Depending upon the severity of the incident violations of this policy shall generally constitute just and reasonable cause for discipline, up to and including termination where applicable.**

**APPENDIX F**  
**CITY OF HAWAIIAN GARDENS**  
**VIOLENCE FREE WORKPLACE POLICY**

**A. Statement of Policy**

The City of Hawaiian Gardens recognizes that workplace violence is a growing concern among employers and employees across the country. The City is, therefore, committed to providing a safe, violence-free workplace. In this regard, the City strictly prohibits employees, consultants, Appointed Officials, Elected Officials, Commissioners, customers, contractors, visitors, vendors, persons attending City Council meetings, Commission meetings or City events or anyone else while on City property or premises, or while performing services on behalf of or for the City of Hawaiian Gardens, from engaging in threats of violence or acts of violence.

The City believes that prevention of workplace violence begins with recognition and awareness of potential early warning signs and has established procedures within Human Resources for responding to any situation that presents the possibility of violence as described in sections B, C, D, E, F, and G below.

**B. Workplace Violence Defined**

“Acts of Violence” includes any act or conduct used to frighten, intimidate, kill and/or injure another person, or to damage or destroy the property of another person or of the City regardless of whether it is intended to do so or actually do so. Violent acts include, but are not limited to:

1. Striking, punching, slapping, or assaulting another person;
2. Fighting or challenging another person to fight;
3. Engaging in dangerous or threatening horseplay;
4. Possession, use, or threat of use, of a gun or other weapon, real or perceived, of any kind on City property or premises, including parking lots, other exterior premises, City vehicles, or while performing services for or on behalf of the City in other locations, unless such possession or use is a requirement of the job, or the employee, consultant, Appointed Officials, Elected Officials, Commissioners, customer, contractor or visitor has a lawfully valid concealed weapon permit;
5. Harming another person with malicious intent;
6. Damaging or destroying, without permission the property of a City employee, of the City itself, or of the vendors, consultants, Appointed Officials, Elected Officials, Commissioners, customers, contractors, and/or visitors.

“Threats of Violence” includes a direct or implied expression of intent, either verbally or otherwise, to frighten, intimidate, kill and/or injure another person, or to damage or

destroy the property of another person or of the City, regardless of whether there is an intent to carry it out, that a reasonable person would perceive as a threat to physical safety or property. The following are some examples, but not an inclusive list, of behavior that may be considered threats:

Statements, jokes, or other actions which threaten by their very nature to injure, kill, frighten or intimidate, as long as such statements, jokes, or other actions would be perceived as a threat of violence by a reasonable person.

Verbally spoken or written threats of violence, which include descriptions of what the speaker (or writer) intends to do.

Threatening conduct, such as intimidating others, showing off in a violent or out-of-control manner, or brandishing a weapon.

### **C. Reporting**

If any employee observes or becomes aware of any of the above-listed actions or behavior by an employee, customer, Appointed Officials, Elected Officials, Commissioners, consultants, visitors, or anyone else, he or she should notify Human Resources immediately.

Further, employees should notify Human Resources if any restraining order is in effect which has as its purpose protecting an employee of the City against violence, or if a potentially violent non-work-related situation exists, that could result in violence in the workplace.

### **D. Investigation**

All reports of workplace violence will be taken seriously and will be investigated promptly and thoroughly. The City will maintain the confidentiality of the reporting employee and of the investigation, unless compelled to breach such confidentiality by a lawful order of a court. The City will not tolerate retaliation against any employee who reports alleged workplace violence.

### **E. Corrective Action and Discipline**

If the City determines that workplace violence has occurred, the City will take appropriate corrective action and will impose discipline on offending employee(s) consistent with the applicable MOU. The appropriate discipline will depend on the particular facts, but may include written or oral warnings, suspension, or termination. If the violent behavior is that of a non-employee, the City will take appropriate corrective action in an attempt to ensure that such behavior is not repeated and to protect others.

When an employee reports to the City that he or she may have violent intentions, or psychological problems that normally would be perceived to lead to violence, and does so before this policy has been violated, the City may suggest that the employee take a medical leave of absence for purposes of going through a rehabilitation and / or

counseling program, or to seek appropriate medical treatment. If the employee declines the request, the City may nevertheless place such an employee on a medical leave of absence if, and only if, it meets the following standard: *that a reasonable person would perceive such person as imminently dangerous in the work place.*

**F. Training**

The City will provide training by an expert in the area of violence in the workplace every two years to help employees understand and recognize how to identify, avoid and address violent behaviors at work.

**G. Employee Assistance Program**

An employee who believes that he or she may have a problem that could lead to violent behavior is encouraged to use the City's Employee Assistance Program. The EAP is a professional, confidential counseling service that is available to help resolve emotional difficulties, marital and family conflict, stress, chemical dependency, conflicts at work, and other concerns. The EAP counselor can help to clarify a problem and to develop an action plan during the counseling session. EAP services are prepaid by the City.

Information regarding the City's Employee Assistance Program may be obtained from the Human Resources Manager.