

LABOR AGREEMENT
BETWEEN
THE CITY OF PORTLAND
AND
THE PORTLAND POLICE
COMMANDING OFFICERS
ASSOCIATION



July 1, 20106 – June 30, 20130

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LABOR AGREEMENT
between
THE CITY OF PORTLAND
and
THE PORTLAND POLICE COMMANDING OFFICERS ASSOCIATION

PREAMBLE

This contract entered into on this 1st day of July, 2010~~6~~, between the City of Portland, Oregon, hereinafter referred to as the City, and the Portland Police Commanding Officers Association, hereinafter referred to as the Association, has as its purpose the promotion of harmonious relations between the City and the Association; the establishment of an equitable and peaceful procedure for the resolution of differences; and the establishment of rates of pay, hours of work, and conditions of employment.

ARTICLE 12 - DEATH LEAVE

Up to three (3) days shall be allowed a commanding officer without deduction in pay by reason of the death of a relative. A relative includes spouse, parent, grandparent, child, grandchild, stepchild, sister, brother, sister-in-law, brother-in-law, mother-in-law, or father-in-law. With the approval of the Chief of Police or his designee, an additional three (3) days leave with no deduction in pay may be allowed for necessary funeral travel time. If the death is of the officer's spouse or child, the Chief shall have the discretion to approve up to a total of thirty (30) days of paid death leave, including the leave described elsewhere in this article. The Chief's decision shall be final, and shall not be subject to the grievance procedure.

ARTICLE 13 - FAMILY LEAVE

To provide employees the opportunity to balance their family commitments with their employment obligations, the City shall grant to employees in accordance with the Federal Family and Medical Leave Act of 1993 and the Oregon Family Leave Act (ORS 659.470 through 659.494), and as designated in the City's personnel rules and/or administrative procedures.

Any subsequent changes in the law or the Administrative Rules will be incorporated into this Agreement. Specific rules and/or administrative procedures are available from Bureau timekeepers or the Bureau of Personnel.

During periods of leave covered by the Federal Family and Medical Leave Act and the Oregon Family Leave statutes identified above, eligible employees shall be required to use accrued or accumulated paid leaves, including vacation and, when applicable, sick leave, prior to a period of unpaid leave of absence. The use of sick leave shall be governed by Article 14 except as indicated below in this article.

Parental Leave: In cases where an employee is eligible for Oregon Family Leave and has been granted leave to care for an infant or newly adopted child under 18 years of age, or for a newly placed foster child under 18 years of age, or for an adopted or foster child

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older than 18 years of age if the child is incapable of self-care because of mental or physical disability ("parental leave"), such employee shall be allowed to use sick leave, vacation credits or compensatory time off during the period of parental leave, as provided by state law. Parental leave entitlement under federal and state law may only be taken on an intermittent basis with member's supervisor's approval for each instance of intermittent leave requested.

If an employee is eligible for Oregon Family Leave and has been granted leave to care for a family member with a serious health condition and has exhausted all other forms of paid leave allowed in this article and in Article 14 - Sick Leave, the employee may use additional sick leave. For purposes of this provision, "serious health condition" and "family member" are as defined in ORS 659.470 to 659.494.

If the duration of the employee's family leave is longer than the amount of the employee's accrued paid leave (not including sick time) the employee may choose to be placed on unpaid leave of absence or sick leave for the duration of the family leave after using all other accrued leave. In no event may an employee use sick leave under this section to extend family leave beyond twelve (12) weeks per calendar year.

Pregnancy Leave will be granted for disability due to pregnancy or a period of absence for prenatal care. The time for commencing and terminating such leave will be a medical decision certified by the attending physician. Sick leave and vacation credits may be used to cover all or part of the absence. Leave without pay for a pregnancy-related disability will be granted upon request.

ARTICLE 15 - HEALTH AND WELFARE

A. Labor/Management Benefits Committee.

1. The parties agree to the continuation of the City-wide Labor/Management Benefits committee. The committee will consist of twelve (12) members. One member shall be appointed from each of the following labor organizations: the District Council of Trade Unions (DCTU), the Portland Fire Fighters' Association (PFFA), the City of Portland Professional Employees Association (COPPEA), AFSCME, Local 189 representing Emergency Communications Operators (BOEC), Municipal Employees, Local 483 representing Recreation Instructors (Recreation) and the Portland Police Commanding Officers Association (PPCOA). The remaining six members shall be appointed by the City.

2. A quorum of ten (10) voting members is required for the committee to take action. An absent committee member may designate a substitute with full voting authority. Any committee member may invite one or more visitors to attend committee meetings.

3. The committee shall select its chairperson, who shall serve at the will of the committee.

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4. In order to make a recommendation to the City Council, at least ten (10) committee members must vote in favor of the recommendation. The committee shall be responsible for establishing internal committee voting and decision-making processes.
5. Members of the committee shall be allowed to attend committee meetings on on-duty time. In the event meetings are scheduled outside the regular shift hours of a committee member, the City shall make every effort to adjust the shift of the member to allow the member to attend while on duty.
6. The committee shall meet at least quarterly, and shall make written recommendations regarding plan design changes in the employee benefits program to the City Council no later than April 1st of each year.
7. The City Council shall retain the discretion to implement or reject any of the committee's recommendations. In the event the committee makes a recommendation that is consistent with the committee's authority, is actuarially sound and meets all the requirements of federal, state and local laws, and Council rejects the recommendation, any reductions in plan costs that may have occurred due to the change in plan design, will be treated as having occurred for the purposes of calculating the maximum City contribution under this agreement. These costs will be calculated by evaluating the premiums and/or rates as if the changes had occurred, the rates and/or premiums absent the changes and the number of participants under the plan(s) involved. (For example, if the self-insured plan two party rate would be \$298 per employee per month with the addition of a benefit design change "X", but Council rejects the design change and therefore the two-party rate is \$350 per month per employee, the City contribution will be increased \$52 per month per employee on the self-insured plan to give credit for the change.)

B. Benefits Eligibility

1. Permanent full-time employees shall be eligible for medical, dental, vision and life insurance coverage the first of the month following thirty (30) days of eligible service. Medical, dental, vision and life insurance benefits will be paid at 100% of the City contribution for those employees who have a Standard Hours designation of at least seventy-two (72) hours in a pay period in a benefits eligible, budgeted position.
2. Permanent part-time employees will be eligible for medical, dental, vision and life insurance coverage the first of the month following 174 hours of eligible service. Medical, dental, vision and life insurance benefits will be paid at 50% of the City contribution for any permanent employee who has a Standard Hours designation of at least forty (40) hours but less than seventy-two (72) hours in a pay period in a benefits eligible, budgeted position.

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3. Medical, dental, vision and life insurance benefits may be denied to employees who are in a pay status for less than eighty (80) hours during a calendar month by the withholding of City-paid premiums for the subsequent month.

C. Plan Options

By the end of the Open Enrollment period for the 20106 – 201107 Plan Year, employees will enroll in the following healthcare plan options: CityCore/VSP, Kaiser NW HMO/Kaiser Vision, ODS Dental, Kaiser NW Dental.

D. City Contributions

~~Effective July 1, 2006, and for~~ For the duration of this Labor Agreement, unless mutually agreed to by the parties, the City shall contribute ninety-five percent (95.0%) of the combined total medical, vision and dental rates adopted by City Council for the one party, two-party or family enrollees (whichever applies) for each of the medical, dental and vision options provided.

Benefit coverage for domestic partners will continue. Availability of domestic partner benefit is subject to continuing availability from the City's benefit employee benefit insurance carriers. The Committee will recommend eligibility rules governing domestic partner benefit coverage to the City Council.

E. Employee Contributions

~~Effective July 1, 2006, each~~ Each payday, except for the third payday in a month, each employee shall contribute five percent (5%) of the combined total medical, vision, and dental rates adopted by City Council for the one party, two-party or family enrollees (whichever applies).

F. Health Fund Reserves

1. The Health Fund shall be maintained with adequate reserves to meet fund obligations, which include claims, Incurred But Not Reported Claims Reserves, and Large Claim Reserves. The committee shall make recommendations to the City Council on creating other reserves as appropriate.

2. The term "excess reserves", as used in this agreement, shall be defined as the monies in the Health Fund that are not needed to meet fund obligations. Excess reserves shall remain in the Health Fund, but shall be subject to separate reporting to the committee.

3. The Health Fund and all reserves associated with the Fund must be maintained in an interest bearing account. Fund reserves shall be pooled, and shall not be allocated on an individual employee or employee group basis.

G. Survivor Benefits

The City shall provide to the spouse and eligible dependent children of an employee who is killed on the job, the same medical, dental and vision benefit plans available to active employees. The City agrees to continue the City contribution for the spouse and

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dependent children until the spouse becomes eligible for federal Medicare coverage or remarries and for each dependent child to the age which meets the eligibility requirements of the health plan in which they are enrolled.

The promise of the City to provide insured plans is dependent upon the continuing availability of such plans from an insurance carrier and the qualification by the retired employee with the plan while the retiree was employed with the City. Should an insurance carrier terminate the plan, the City shall attempt to replace it.

H. Life Insurance

1. The City shall provide each employee with a life insurance policy; said policy shall be secured and maintained in accordance with the City's existing practices.

2. The City shall make available supplemental life coverage on a voluntary, employee paid basis.

I. Federal Health Legislation

If the Federal Government enacts Federal Health Legislation, or if any taxing authority taxes or otherwise limits or restricts health care benefits paid by the City, the City and the Union will immediately negotiate on the effect of that legislation as it pertains to this Article.

J. Disability Insurance

The City shall modify the benefits plan to include the addition of disability insurance for employees if recommended by the Labor/Management Benefits Committee and approved by the Portland City Council.

K. Funeral Expenses

In the event a commanding officer is killed in the line of duty, or dies from injuries sustained in the line of duty, the City shall pay the sum of Twelve Thousand Dollars (\$12,000) ~~\$5,000.00~~ toward funeral and connected expenses to the commanding officer's surviving spouse (or, if none, to the commanding officer's heirs), regardless of amounts paid from other sources.

L. Voluntary Participation in a Dependency Program

Information regarding treatment of commanding officers in chemical dependency programs shall remain confidential and shall not be released to the public except as required by law.

ARTICLE 19 - HOLIDAY COMPENSATION

~~Commanding officers shall receive twelve (12) holidays per year. Eight (8) of the holidays shall be personal holidays to be taken at the mutual convenience of the commanding officer and the City. The remaining four (4) holidays shall be New Years Day, Independence Day, Thanksgiving and Christmas, and shall be recognized and observed as guaranteed paid holidays.~~

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Effective January 1, 201~~10~~¹⁴, commanding officers shall receive ~~eleven~~ six (11~~6~~) holidays per year. ~~Seven (7)~~ Two (2) of the holidays shall be personal holidays, to be taken at the mutual convenience of the commanding officer and the City. The remaining four (4) holidays shall be New Years Day, Independence Day, Thanksgiving and Christmas, and shall be recognized and observed as guaranteed paid holidays.

Personal holidays which have not been used during the calendar year in which they accrue shall be forfeited.

Commanding officers shall not normally be scheduled to work on any of the four (4) designated holidays. If a commanding officer is ordered to work on one of the designated holidays, he/she shall receive premium compensation of time and one-half in addition to regular pay in the form of either wages or compensatory time off, the form being at the sole discretion of the commanding officer.

A commanding officer whose scheduled day off falls on one of the four (4) designated holidays shall receive a postponed holiday, with pay, to be taken at the mutual convenience of the commanding officer and the City. The number of hours credited to the commanding officer's account will be determined by the regular shift he/she was assigned to on the day before and the day after the holiday. For example, a commanding officer working an 8-hour shift shall receive eight (8) hours of holiday pay versus a commanding officer who normally works 10-hour shifts who shall receive ten (10) hours of holiday pay.

Eligibility for holiday pay under the preceding paragraph is contingent upon the commanding officer being in pay status on the work day preceding the designated holiday and on the work day following the holiday.

Compensatory time accrued under this section; not exceeding sixty (60) hours may be carried from one calendar year to the next. Upon termination from service for any reason, or in the event of death, the commanding officer, or his or her heirs, shall be entitled to an immediate lump sum payment for compensatory time accrued under this section.

ARTICLE 30 - DISCIPLINARY ACTION

Disciplinary action or measures shall include only the following: written reprimand; suspension; or in lieu thereof, with the commanding officer's concurrence, loss of vacation or non-FLSA compensatory time; demotion or discharge. Disciplinary action shall be for just cause and subject to the grievance procedure of this Agreement. This section shall not apply to counseling and instruction. Verbal reprimands will not be used as the basis for subsequent disciplinary action unless the commanding officer is notified at the time of reprimand, and if notified, the matter will be subject to the grievance procedure.

If the City has reason to reprimand or discipline a commanding officer, it shall be done in a manner that is least likely to embarrass the commanding officer before other employees or the public.

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A commanding officer who is suspended, demoted, or discharged may choose between two avenues of appeal: (1) the commanding officer may exercise appeal rights under the Bureau of Human Resources Administrative Rules of the City of Portland, or (2) the Union may, in lieu of those provisions established pursuant to the City Charter, be allowed to take up the matter at Step II of the Grievance Procedure. These two avenues of appeal do not apply to a commanding officer who fails to successfully complete the twelve (12) month's probationary period in a promotional position and is reverted to his/her former classification. The twelve (12) month probationary period for a promotional position excludes any period of time off exceeding 120 consecutive work hours, or 160 total work hours. In these instances, the commanding officer's probationary period will be extended by the time in excess of 120 consecutive working hours or 160 total working hours.

A commanding officer who fails to complete the probationary period may be removed from the position without a statement of cause. A promoted individual so removed shall have return rights to a classification in which the commanding officer formerly held status, beginning with the most recently held classification, unless he/she has been dismissed for cause.

If the City requires a commanding officer to submit to a fitness for duty evaluation, the commanding officer shall have the right to obtain copies of all documents generated as a result of the evaluation. If the City's evaluation is that the commanding officer is not fit for duty, the commanding officer shall have the right to obtain a second non-binding opinion at the commanding officer's own expense. The expense of the second opinion may be submitted for reimbursement to the City's health insurance system consistent with the City's Health Plan.

The City's Employeeearly Information Warning System and the information developed therein shall not ~~constitute nor~~ form the basis for disciplinary action. Nothing in this agreement prevents the City from making appropriate use of the underlying data which appears in EIS, that is maintained separately by the City and is simply reflected in the EIS, in disciplinary, transfer or promotion decisions.

The parties continue to agree that CITY Resolution No. 35326 adopted by Council on November 2, 1994, shall apply to disciplinary matters concerning PPCOA members for conduct on or after December 9, 1995.

ARTICLE 32 - SALARY

1. Effective July 1, 2011~~06~~, Schedule "A" wage rates will be increased by the Portland-Salem, OR-WA CPI-W with a minimum of one percent (1%) and a maximum of five percent (5%) 2.8% at each step of the Salary Rates.

Upon adjustment of the 2010-11 salary schedule on July 1, 2011 for cost-of-living increase as described above, an additional three percent (3%) increase shall be applied to the salary schedule as an adjustment to the market (based on the

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following comparable cities: Fresno, Long Beach, Milwaukie, Oklahoma City, Sacramento, Seattle).

2. Effective July 1, 2012~~07~~, Schedule "A" wage rates will be increased by the Portland-Salem, OR-WA CPI-W with a minimum of one two percent (12%) and a maximum of five percent (5%) at each step of the Salary Rates.

~~3. Effective July 1, 2008, Schedule "A" wage rates will be increased by the Portland-Salem, OR-WA CPI-W with a minimum of two percent (2%) and a maximum of five percent (5%) at each step of the Salary Rates.~~

34. LONGEVITY. Upon the completion of their fifteenth year of service with the Bureau, commanding officers shall receive longevity pay of 2.0%. Upon the completion of their twentieth year of service with the Bureau, commanding officers shall receive longevity pay of an additional 2.0%, for total longevity pay of 4.0%. Upon the completion of their twenty-fifth year of service with the Bureau, commanding officers shall receive longevity pay of an additional 2.0%, for total longevity pay of 6.0%.

Longevity pay shall be calculated on the basis of the commanding officer's regular rate of pay.

For purposes of this section, time worked for another law enforcement agency by a commanding officer who has transferred to City employment under ORS 236.605 to 236.640 (Transfer of Public Employees) shall be considered to be time worked with the Bureau.

4. PHYSICAL FITNESS. Effective July 1, 2011, members passing the Bureau's Health & Fitness test shall receive a premium in the amount of 1% of Top Step Lieutenant. To receive the premium, members must qualify annually. The Bureau's Health & Fitness test will be administered once per year; individuals who do not pass the first time will be allowed to take the test a second time.

5. In the event that City revenue sources should be decreased by the passage or impact of a tax limitation measure; legislatively mandated change, cut back in Federal and/or State revenue sharing, or any other conditions causing a worsening of the City's financial position, the City Council and the signatory labor organizations agree that they will meet and discuss the economic impact and, by mutual agreement, will put forth a good faith effort to arrive at alternatives to a reduction in the work force.

ARTICLE 33 - EXECUTIVE LEAVE/MANAGEMENT LEAVE/FLEX TIME
The parties acknowledge that a variety of paid leave practices, under a variety of labels, related to members' having or being granted time off in exchange for time worked in excess of the directed work day have been allowed prior to and since recognition of this bargaining unit.

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The parties agree that except as expressly provided below, no form or practice of Executive Leave, Management Leave, Flex Time, or any other form of compensatory time off or leave, whether known or unknown to the Chief of Police or the Bureau of Human Resources, is prospectively authorized or allowed, and all grievances, Unfair Labor Complaint allegations, and other claims are hereby waived and released. The parties further agree that the arbitration award issued in PPCOA v. City of Portland on December 7, 2010 by Arbitrator David Stiteler is rendered moot by this provision.

Exceptions:

1. Absence Of Less Than One Day (aka Partial-day Absence) shall be allowed pursuant to current HRAR 8.03, which sets out the City's Absence Of Less Than One Day policy for FLSA-exempt employees. The City reserves the right to modify or eliminate HRAR 8.03; in the event the City modifies or eliminates the Administrative Rule, the City agrees that PPCOA shall have the right to reopen this section to bargain the implementation and impact of such change.

Absence Of Less Than One Day paid leave requires advance approval by the member's supervisor, and requires that the member work no less than half of his or her shift on the day leave is sought. Additionally, Absence Of Less Than One Day may not be taken contiguous to (either before or after) paid vacation leave.

2. Adjusted Day Off schedule revisions shall only be allowed upon approval by a member's RU Manager; RU Managers' Adjusted Day Off schedule revisions shall only be allowed upon approval by the Chief of Police or the Assistant Chief in the member's chain of command.

Commanding officers shall be entitled to executive leave as set forth below:

1. In lieu of overtime and any form of "on-call pay" or "pager pay", paid executive leave of up to one hundred twenty (120) hours per calendar year will be granted by the Chief, the Assistant Chief or any Deputy Chief to those employees who have demonstrated a commitment in that calendar year toward furthering the goals and objectives of the Police Bureau by their efforts, performance or achievements.

2. A commanding officer who believes that his/her request for executive leave was unreasonably denied may file a grievance under Article 31 in this Agreement. However, minimal or occasional involvement in Police Bureau activities or routine management work performed outside normal work hours will not justify the granting of executive leave.

3. Executive leave shall be recorded separately and shall not accrue. Executive leave which is granted but not used by the end of the calendar year shall be paid

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~~to the commanding officer in cash as a separate check following the first pay period in January.~~

~~4. The use of executive leave will be arranged by mutual agreement between the commanding officer and his/her supervisor.~~

~~5. In the event a commanding officer is in layoff status at the time executive leave is paid off under section "c." above, they shall receive payment for their unused leave at the base hourly rate which was applicable prior to layoff.~~

ARTICLE 35 - VOLUNTARY EMPLOYEE BENEFICIARY ASSOCIATION (VEBA)

A. The City shall allow commanding officers to participate in a Plan(s) which is defined to include a Voluntary Employee Beneficiary Association (VEBA), a Section 457 plan or any other form of non-qualified deferred compensation program.

B. In October 2002 the PPCOA VEBA and the Portland Police Association (PPA) VEBA entered into a merger agreement. All payments made on behalf of retiring PPCOA members shall be made to the "PPA Benefit Trust."

C. For every commanding officer who is covered under the FPD&R retirement system under Chapter 5 of the City Charter, the City shall, upon that commanding officer's retirement from the City, contribute to the PPA VEBA trust to the credit of the commanding officer 100.0% of the unused sick leave which otherwise would be paid to the commanding officer under Article 14 at the time of the commanding officer's retirement, as well as all vacation leave which is currently cashed out under Article 17 at the time of the commanding officer's retirement and any compensatory time off cashed out under this Agreement.

D. The amount of unused leave credits to be deposited into the Plan or Plans upon retirement under Section C above shall be established periodically by the Association. The Association shall be responsible to notify the City when the election for all Association members is modified.

E. A commanding officer who is covered under the Public Employees Retirement System (PERS), and who signs a commitment to retire in a specific calendar year, shall be allowed to cash out their unused vacation leave in one lump sum. A commanding officer who elects how to have unused vacation leave cashed out upon retirement must do so in writing at least two weeks prior to retirement. No cash payment will be made prior to the commanding officer's actual retirement.

F. For every commanding officer who is covered under PERS, the City shall, upon that officer's retirement, deposit into the account of the commanding officer in a Plan or Plans a maximum of 100.0% of unused vacation leave which is currently cashed out under Article 17 at the time of the commanding officer's retirement and any compensatory time off cashed out under this Agreement.

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G. ~~Effective January 1, 2004, t~~The City shall withhold ~~two one~~ percent (21%) of Top Step Lieutenant's Pay from each individual commanding officer's gross wages per pay period. This amount shall be contributed on the commanding officer's behalf to the PPA Benefit Trust each pay period or monthly, the interval to be determined by the City. The withholding shall be made on a pre-tax basis.

H. If at any time during the operation of the Plan or Plans it is determined that (1) deposits may not be made on a pre-tax basis or (2) that plan earnings are not tax-exempt or (3) payments from the Plan or Plans are not tax exempt or if participation in the Plan or Plans or operation of the Plan or Plans is in violation of any federal or state law or regulation, then in that event the parties agree to negotiate a substitute provision in order to carry out the original intention of the Agreement.

ARTICLE 43 - TERMINATION AND DURATION

This Contract shall be effective on the date of execution of this agreement, except as otherwise specified in this agreement, and shall remain in full force and effect until June 30, 20130.

Negotiations for a successor Agreement shall begin not later than March 15. This Contract shall remain in full force and effect during the period of negotiations.

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ATTACHMENT SCHEDULE "A" - SALARY RATES

Rates as of July 1, 20106

<u>JOB TITLE</u>	<u>ENTRY RATE</u>	<u>AFTER 1 YEAR</u>
Police Lieutenant	<u>\$46.77</u> 39.71	<u>\$48.89</u> 41.50
Police Captain	<u>\$53.75</u> 45.63	<u>\$56.18</u> 47.69
Police Commander	<u>\$60.41</u> 51.28	

ATTACHMENT "B" - MEMORIALIZATION OF OTHER AGREEMENTS

The parties acknowledge that the Portland City Council adopted ordinances during the term of the parties' 2006-2010 Collective Bargaining Agreement, and upon expiration during hiatus, concerning police oversight reform, including but not limited to changes to the duties, powers, and processes of the Independent Police Review division of the Auditor's Office, the Police Bureau's Police Review Board, and the Citizen Review Board. The parties further acknowledge that, pursuant to said ordinances, the City (including the Police Bureau and Independent Police Review Division) have adopted changes to police oversight policies and protocols. The parties agree that any PECBA obligations related to said ordinance, policy, and protocol changes are fully met and discharged.

The parties further agree that Drug Testing shall be conducted pursuant to Bureau Policy separately Tentatively Agreed to. Random testing there under shall not be conducted prior to July 1, 2011. The parties agree that any PECBA obligations related to random drug testing pursuant to said policy are fully met and discharged.

LETTER OF AGREEMENT

This Letter of Agreement is between the CITY OF PORTLAND ("CITY") and the PORTLAND POLICE COMMANDING OFFICERS ASSOCIATION ("PPCOA"). The parties agree to the following.

On November 2, 1994, the CITY adopted Resolution No. 35326, purporting to change disciplinary procedures and practices relating to FLSA-exempt employees. The PPCOA filed a grievance, alleging that the City's attempt to apply the resolution to PPCOA members was a violation of the collective bargaining agreement. The parties now wish to fully resolve the pending grievance.

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The parties acknowledge that December 9, 1995 was the date of issuance of Arbitrator John Hayduke's interest arbitration award concerning the collective bargaining agreement. Therefore, the parties agree that CITY Resolution No. 35326 shall apply to disciplinary matters concerning PPCOA members for conduct on or after December 9, 1995.

Upon ratification of this Letter of Agreement by both parties, the PPCOA will withdraw its pending grievance.

MEMORANDUM OF AGREEMENT

— The City of Portland and the Portland Police Commanding Officers Association (PPCOA) agree to the following with respect to the Voluntary Employee Beneficiary Association (VEBA):

- 1. — The City will not report as income contributions made to the VEBA on the members' W2s.
- 2. — The parties agree that effective December 31, 1999 Article 35(D) is null and void and shall not be considered as part of the parties' collective bargaining agreement.
- 3. — If the IRS provides a private letter ruling which states that including paragraph 35(D) as part of the VEBA contract article does not constitute constructive receipt, paragraph 35(D) will be reinstated into the collective bargaining agreement.
- 4. — If the IRS advises the parties that the contributions to the VEBA plan are taxable, the parties agree to meet and confer in good faith over the VEBA article.
- 5. — The City and PPCOA agree that their willingness to enter into this agreement does not constitute a waiver of either parties' respective position in this matter and by entering into this agreement neither party has waived its arguments, claims or defenses in this matter.

Dated: September 20, 2000

Jeff Barker

President, PPCOA

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Dated: September 21, 2000David Shaff
City of Portland
Employee Relations

Manager

Approved as to Form:


Marianna Kanwit
Senior Deputy City Attorney 2.17.11
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SUBSTANCE ABUSE POLICY

I. INTRODUCTION

To insure the safety of officer and citizens, reinforce the integrity and trustworthiness of the Bureau, and assure compliance with the Federal Drug-Free Workplace Act of 1988, the Bureau has adopted this policy to address drug and alcohol abuse by sworn personnel.

The Bureau will not tolerate any illegal drug use or drug or alcohol use which could affect an officer's job performance. The citizens of the City of Portland have a right to expect that sworn personnel will carry out their duties in a safe and reliable manner, free from the effects of drug or alcohol use. This policy replaces, except where contrary to contractual obligations, any and all earlier policies or procedures based on or expanding upon the Drug-Free Workplace Act, but it does not replace or in any way supplant any other policies or procedures including, but not limited to, the Portland Police Bureau's rules and procedures or HR Administrative Rules.

It is the general intent of the policy to balance accountability with accommodation; both discipline and treatment are important aspects of the plan. Drug and alcohol testing, which will be part of the program, is intended in part as a means of identifying those who need help. Prior to the implementation of this policy, all officers will receive up to three hours educational training in the effects of drugs and alcohol in general as well as in the workplace. The training shall also include a review of this policy. All such training will occur on Bureau time.

These procedures are significantly more comprehensive than the Federal Drug-Free Workplace Act requirements. The Portland Police Bureau must, by law, comply with that Act and report our drug-free workplace activities to the Federal government. The Act requires the adoption of a policy, some training, informing sworn personnel of the availability of help, and requiring sworn personnel to report convictions for drug crimes committed on the job. Notwithstanding the Act, the Bureau believes more must be done than minimal statutory requirements. There are four important ways in which these procedures are broader and more effective than the Drug-Free Workplace Act:

- in addition to disciplinary consequences, incorporate treatment and counseling;
- employ drug and alcohol testing procedures to both protect the public and facilitate help and treatment as appropriate;
- require that all sworn personnel attend comprehensive awareness and training programs;
- set up a supervisor support phone system so that those who will be applying these procedures day-by-day can do so effectively, comfortably, and legally.

These procedures apply to all sworn personnel and, where contracts specifically allow, to Bureau contractors. The Bureau reserves the right to modify these procedures in whole or in part in accordance with law and contractual procedures.

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II. DEFINITIONS

A. Controlled Substance - any drug included in ORS 475.005, plus anabolic steroids and prohormones. The term does not include the use of prescribed drugs which have been legally obtained and are being used for the purpose for which they were prescribed.

B. Illegally-Used Drug - any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes, all designer drugs not listed in ORS 475.005 (for example, but not limited to: MDA, fentanyl), and any other over-the-counter or non-drug substances (for example, but not limited to: airplane glue) being used for other than their intended purpose.

C. Alcohol - colorless, volatile and flammable liquid that is the intoxicating agent in fermented and distilled liquors. It includes, but is not limited to, beer, wine and liquor. It does not include alcohol used in chemical processing, cleaning or testing.

D. City or Bureau Property - includes buildings, offices, facilities, equipment, vehicles, land, and parking lots owned, loaned, utilized or leased by the City or Bureau. It also includes any other site at which business of the Bureau is transacted whether on or away from City or Bureau owned, loaned, or leased property.

E. Drug Paraphernalia - any item which is clearly intended for use for the administering, transferring, manufacturing, testing or storing of a controlled substance and which is not authorized or intended for use in the course of legitimate law enforcement activities.

F. Reasonable Suspicion of Drug and/or Alcohol Use - the reasonable suspicion standard for drug testing of sworn personnel is based upon a specific articulable, objective fact(s) and reasonable inferences drawn from that fact(s) in light of experience that the individual may be involved in the use of any illegally-used drug, controlled substance, or alcohol. Although reasonable suspicion does not require certainty, mere "hunches" are not sufficient to meet this standard. Examples would include one or more of the following:

1. Observable phenomena, such as direct observation of on-duty alcohol use or possession, direct observation of on-duty or off-duty use or possession of illicit drugs, and/or direct observation of the on-duty odor of alcoholic beverage or display of behaviors which appear to be indicative of the use of any illegally-used drug, controlled substance, or alcohol and are not attributable to other factors, or report of such observable phenomena by an individual that the Bureau reasonably views as a reliable/credible source of information;

2. A pattern of abnormal conduct, erratic behavior or deteriorating work performance, including but not limited to, frequent absenteeism, excessive tardiness, or frequent accidents, not attributable to other factors and which appears to be related to drug and/or alcohol abuse;

3. Arrest, indictment, or conviction for a drug-related offense;

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4. Newly discovered evidence that the officer has tampered with a prior drug/alcohol test;

5. Repeated or flagrant violations of the Bureau's rules and procedures which are determined by a supervisor to pose a substantial risk of injury or property damage and which are not attributable to other factors and appear to be related to drug and/or alcohol abuse.

G. Refusal to submit to a drug or alcohol test means:

1. Refusing an order to take a required test;
2. An inability to provide a specimen or breath sample without a valid medical reason (confirmed by a physician);
3. Tampering, adulterating, or substituting a specimen or any other attempt to defeat or obstruct a drug or alcohol test;
4. Delaying arrival at the designated collection site;
5. Leaving the collection site before the drug or alcohol testing process is complete;
6. Failing to permit an observed or monitored collection when required;
7. Failing to take a second test when required;
8. Failing to undergo a medical evaluation when required;
9. Failing to cooperate with any part of the testing process; or
10. Leaving the scene post incident without authorization before submitting to a drug or alcohol test.

H. Under the Influence of a Controlled Substance, Illegally-used Drug and/or Alcohol - The presence of a .02 alcohol content in the blood, or a verified positive drug test, at levels specified by the Substance Abuse and Mental Health Services Administration (SAMHSA), for an unauthorized controlled substance or an illegally-used drug.

I. Medical Review Officer (MRO) - A licensed physician responsible for receiving laboratory drug testing results who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate a positive test relative to an employee's medical history and other relevant biomedical information.

Exhibit A**III. PROHIBITED CONDUCT**

The following conduct by sworn personnel is prohibited:

- A. Unauthorized use, possession, manufacture, distribution, dispensation or sale of a controlled substance, illegally-used drug, drug paraphernalia, or alcohol on City or Bureau property, on City or Bureau business, in City or Bureau supplied vehicles, in vehicles being used for City or Bureau purposes, or during working hours. A positive drug test presumptively establishes a violation under this section;
- B. Unauthorized storage in a desk, locker, automobile or other repository on City or Bureau property of any illegally-used drug, controlled substance, drug paraphernalia, or alcohol;
- C. Being under the influence of an unauthorized controlled substance, illegally-used drug or alcohol on City or Bureau property, on City or Bureau business, in City or Bureau supplied vehicles or vehicles being used for City or Bureau business or during working hours;
- D. Working within four hours after consuming alcohol, controlled substances, or illegally used drugs, except as specifically directed by a supervisor after the member has advised the supervisor of their alcohol or drug consumption.
- E. Using prescription or nonprescription medication before reporting to work or while at work, unless the medication will not interfere with the safe and effective performance of duties or operation of City equipment or vehicles, or failing to report ingestion of prescription or non-prescription medication that interferes with a members ability to do his or her job.
- F. Failing to report prohibited use, possession, distribution or sale of drugs.
- G. Possession, use, manufacture, distribution, dispensation or sale of illegally-used drugs or controlled substances while off duty;
- H. Switching or adulterating any urine or blood sample or any attempt to do so;
- I. Refusing consent to testing or refusing to submit a breath, urine, or blood sample for testing
- J. Failing to adhere to the terms of any Rehabilitation Agreement (sample attached) which the officer has signed;
- K. Voluntary diversion or conviction under any drug or alcohol statute, or conviction of a motor vehicle crime or violation involving the use of alcohol or drugs;
- L. Failure to immediately notify the Bureau of any arrest or conviction under any drug or alcohol statute;
- M. Refusing to sign a) a receipt for the Bureau's Substance Abuse Policy, b) the Consent and Release Form, c) the Chain of Custody Form, or d) a Rehabilitation Agreement.

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IV. TESTING

Sworn personnel of the Portland Police Bureau will be tested for drugs and/or alcohol under the following circumstances:

A. Pre-Employment Testing - All applicants for the position of Sworn Police Officer will be required to submit to a drug test. The Bureau will not knowingly employ as a Sworn Police Officer any individual who actively abuses alcohol, or uses or abuses an illegally-used drug or a controlled substance. All applicants for the position of Sworn Police Officer will be advised in connection with their application for employment that, prior to being offered a position, they will be required to submit to a drug screen. Failure to consent to such a test, or a verified positive result, will disqualify the applicant for employment in a position subject to pre-employment testing.

B. Reasonable Suspicion of Drug and/or Alcohol Use - Sworn personnel will be tested for drugs and/or alcohol when a supervisor who has been trained in making determinations of reasonable suspicion has made such a determination. Referrals for reasonable suspicion testing will be made using the procedures set forth in Appendix A of these procedures.

C. Random Testing -. In a joint desire to achieve and maintain a work force that is 100% drug free, the parties agree that sworn personnel shall be subject to random drug testing to be conducted through a fair, reasonable, and objective testing system. Employees shall be selected for testing on a purely random basis. No more than 660 The total number of random drug tests of PPCOA members shall be equal to Two-Thirds (2/3) of the number of unit members or 32 tests, whichever is greater, conducted in any fiscal year.

D. Follow-up Testing - Sworn personnel referred by the Bureau to treatment, and who undergo any form of treatment for substance abuse, will be subject to unannounced testing for a period of thirty-six months following a return to full duties (which shall be subject to a medical certification that the officer is qualified to safely carry a weapon).

E. Drug tests will consist of determinations of the presence of these five drugs, classes of drugs, or their metabolites: marijuana metabolites, cocaine metabolites, opiate metabolites, phencyclidine (PCP), and amphetamines. Provided, however, that the City may add anabolic steroids and prohormones, and other substances to which the PPCOA agrees, to the list of drugs for which random tests are given.

1. In the course of testing for Reasonable Suspicion of Drug and/or Alcohol Use, other drugs or their metabolites may be tested for if their particular use is suspected. Such other drugs may include, but need not be limited to: illegal steroids, lysergic acid diethylamide (LSD), methaqualone, barbiturates, and benzodiazepines.

2. All urine testing will be performed under the guidelines described in Appendix C "Procedures for Drug Testing". These procedures call for the use of an immunoassay screen (i.e. "EMIT") with all positives tested for confirmation using Gas Chromatography/Mass Spectrometry (GC/MS) technology.

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3. Where reasonable suspicion exists to test for alcohol, the officer shall be given the option of submitting to either a breath screen test or a blood alcohol test. All breath screen tests shall be administered by a certified collection site facility utilizing Department of Transportation (DOT) approved equipment and DOT procedures. All blood alcohol tests shall be administered by a certified collection site facility following procedures identified in Appendix C for identification and chain-of-custody safeguards.

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V. CONSEQUENCES OF A POSITIVE TEST

A. Sworn personnel who receive a verified positive test result for a controlled substance as defined, other than marijuana, will be subject to termination. However, where the officer's only violation is a positive test of less than .08 alcohol concentration for alcohol, or a positive test for marijuana, or illegally- used drugs, and it is the officer's first offense, the City shall offer voluntary submission to the following alternative program:

- up to a 40-hour suspension without pay,
- execution of a Rehabilitation Agreement and submission to treatment/rehabilitation,
- placement in an administrative position and restriction of police powers upon return to work, and
- submission to follow-up testing as described above.

B. Notwithstanding Section A above, members who report for work or remain on duty while having an alcohol concentration of .08 or above shall be discharged.

C. Failure to sign or comply with the terms of the Rehabilitation Agreement either during or after the suspension period would constitute a separate violation of this policy and shall result in a recommendation of termination.

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VI. CONSEQUENCES OF VIOLATION OF THE POLICY

A. Any violation of the Substance Abuse Policy shall lead to disciplinary action up to and including termination. Except for instances of positive test subject to termination under Consequences Of A Positive Test, the severity of the disciplinary action chosen will depend on the circumstances of each case, particularly whether the violation is directly or indirectly related to another act of misconduct. The City may, at its discretion, suspend any disciplinary action while an officer is undergoing substance abuse treatment subject to a Rehabilitation Agreement (see "Consequences of a Positive Test" above). Refusing to sign a Rehabilitation Agreement shall result in termination.

Refusing to submit to a drug or alcohol test (except as regards Condition of Promotion testing), or switching or adulterating any blood or urine sample, shall result in termination.

Failure to adhere to the terms of the rehabilitation agreement shall result in disciplinary action up to and including termination.

A verified positive test result for a controlled substance as defined, other than marijuana, or alcohol of .08 alcohol concentration or greater, shall result in termination.

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APPENDIX A

REASONABLE SUSPICION - REFERRAL PROCEDURES FOR SUPERVISORS

The Bureau's supervisors are responsible for being alert to declining job performance, erratic behavior or other symptoms of possible substance abuse. Whenever a supervisor who has been trained in the making of determinations of reasonable suspicion of drug and/or alcohol use (as defined in Section II of these procedures) makes such a determination the following steps will be taken:

A. The supervisor will document in writing all circumstances, information and facts leading to and supporting his/her suspicion. At a minimum, the report will include appropriate dates and times of suspect behavior, reliable/credible sources of information, rationale leading to referral for testing and the action(s) taken.

B. Prior to referring an officer for testing, the supervisor will discuss the problem with the officer in a private location. Caution will be taken not to accuse the officer of substance abuse, but the officer will be presented with instances of questionable behavior. If the officer does not have an explanation for his questioned behavior that satisfies the supervisor, the supervisor will continue with the procedures set forth in this section. Nothing in this procedure is intended to prevent the officer from invoking any Weingarten rights or other rights to representation the officer may have.

C. The supervisor shall consult with the Personnel Division Manager or his/her designee and they shall jointly decide whether to refer an officer for testing. All persons involved in the decision-making process will have received training in the identification of actions, appearance, and conduct which are indicative of the use of alcohol and/or drugs.

D. In those cases where the supervisor determines that the person's behavior poses a potential threat of harm to himself or others, the officer will be immediately removed from the work site, and where there is no other misconduct resulting in suspension, the officer shall be placed on administrative leave and shall be subject to customary restrictions of such leave.

E. Once a determination has been made to refer an officer for testing, it will be the responsibility of the supervisor to advise the officer of such decision and to transport the officer to a collection facility. The supervisor should remain with the officer at the collection site facility until testing is concluded. In the event that leaving the scene and/or remaining with the officer is not feasible, the supervisor will 1) arrange transportation to the collection facility (the officer will be instructed not to drive a vehicle), 2) notify the collection facility that the officer is being sent for testing, 3) request that the collection facility notify the supervisor when collection procedures are completed, 4) arrange transportation for the officer following the collection process, and 5) notify the officer that he or she is not to return to work pending receipt of the test results by the City.

F. Upon conclusion of the examination, the supervisor will ensure that the officer is transported escorted to his/her destination. The supervisor will direct the officer not to drive himself/herself to his/her destination. The officer will be relieved from duty with pay

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pending receipt by the City of the test results and the officer will be notified of this change in status.

G. In those cases where a supervisor discovers an officer who possesses what appears to be a controlled substance, illegally-used drug or alcohol, he or she will proceed as described above for instances where reasonable suspicion exists, and, if the substance in question appears to be a controlled substance or illegally-used drug, will in addition perform the following steps:

1. Immediately confiscate the substance and all equipment or paraphernalia directly employed with the substance. Wrap them in any available clean material (e.g. paper towel, copier paper, handkerchief). The supervisor will keep the package on his or her person or where he or she can be absolutely sure it cannot be tampered with and shall strive to process the materials as soon as possible.

2. As soon as the supervisor can, he or she will put the wrapped materials, still in the wrapping, into a large envelope and seal the envelope completely. The supervisor's initials will be written over the seam of the envelope in several places.

3. The supervisor will write the officer's name, his or her own name, and the date at the top of the envelope, will promptly notify his or her commanding officer, and will turn the envelope over as soon as possible to the Bureau. The supervisor will witness the signing and dating of the envelope by the person to whom he or she turns it over.

4. All persons who subsequently and for whatever reason have possession of the envelope will sign and date it in the presence of the previous supervisor.

H. A procedural error hereunder shall not, of itself *per se*, constitute the basis for overturning any discipline related to the violation of the Substance Abuse Policy unless the error impacts the accuracy of the result.

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APPENDIX B

REHABILITATION AGREEMENT

Name: _____ Date: _____

Bureau: _____

Dear _____:

On _____, 19____, the Portland Police Bureau agreed to your request to seek counseling and referral to a rehabilitation program for alcohol and/or drug abuse. The following conditions apply to your rehabilitation program:

1. You must authorize your treatment provider to provide proof to the City of enrollment in a rehabilitation program and proof of attendance and participation at all required sessions on a monthly basis. Your attendance and level of participation will be monitored closely, and the Bureau will initiate appropriate disciplinary action up to and including termination if you do not regularly attend all sessions.
2. You must adhere to all of the requirements of the drug or alcohol treatment or counseling program in which you are enrolled.
3. If you are absent from work during the rehabilitation period without prior authorization, you must promptly submit a written doctor's certificate explaining the reason for such absence. The Bureau will take disciplinary action up to and including termination if you are absent as a result of alcohol or drug use.
4. You will pay for all costs of rehabilitation which are not covered under the employer's health plan.
5. During the thirty-six months following the completion of your rehabilitation program, the Bureau will test you for alcohol and/or drug use both on a random and suspicion-based basis. The Bureau will take prompt disciplinary action up to and including termination if you refuse to submit to testing or if you test positive during this period.
6. You must meet all established standards of conduct and job performance. The Bureau will institute appropriate disciplinary action up to and including termination if your on-the-job conduct or job performance is unsatisfactory.
7. Failure to comply with all of the above conditions will result in the institution of appropriate disciplinary action, up to and including termination.

I hereby voluntarily agree to all of the above conditions and authorize my treatment provider to provide the Bureau with proof of my enrollment, attendance, and participation at the recommended rehabilitation program. I sign this rehabilitation agreement of my own free will, and without duress.

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APPENDIX C

PROCEDURES FOR DRUG TESTING

All drug tests administered pursuant to the Bureau's Substance Abuse Policy will be conducted in strict accordance with the following procedures:

1. Laboratory Qualifications: The Portland Police Bureau (the Bureau) has retained a laboratory certified by the Substance Abuse and Mental Health Services Administration (SAMHSA). The use of a certified laboratory ensures that the highest standards of forensic toxicology are being met.

2. Controlled Substances: The following cutoff concentrations shall apply:

	Initial Test Cutoff Concentration (nanograms/milliliter)
Marijuana (Cannabinoids)/metabolites	50
Cocaine/metabolites	300
Opiates (including heroin and morphine)/metabolites	2000
Phencyclidine (PCP)	25
Amphetamines (including methamphetamine, MDMA, MDA, MDEA)	1000
	Confirmatory Test Cutoff Concentration (nanograms/milliliter)
Marijuana (Cannabinoids)/metabolites	15
Cocaine/metabolites	100
Opiates (including heroin and morphine)/metabolites	2000
Acetylmorphine	10
Phencyclidine (PCP)	25
Amphetamines (including methamphetamine, MDMA, MDA, MDEA)	250
Barbituates	200
Benzodiazepines	100

3. Security and Chain of Custody: The selected laboratory will maintain strict security at its laboratory facilities and will strictly adhere to the chain of custody procedures mandated by Department Of Transportation and the Department of Health and Human Services. This will include:

a. Use of a standard drug testing custody and control form;

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- b. Use of a clean, single-use specimen bottle that is securely wrapped until filled with the specimen, or use of a clean, single-use collection container that is securely wrapped until utilized;
- c. Use of a tamperproof sealing system designed to ensure against undetected opening and the use of a specimen bottle with a unique identifying number which is identical to the number appearing on the custody and control form;
- d. Use of a shipping container in which the specimen and related paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering;
- e. Written procedures, instructions and training to ensure the integrity of the process shall be provided to collection personnel.

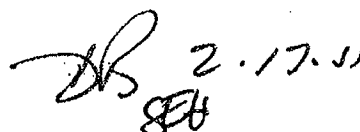
4. Specimen Collection Procedures:

- a. All specimens will be collected at designated collection sites which have necessary personnel certified by the laboratory in accordance with SAMHSA standards, materials, equipment and supervision to provide for specimen collection, security, temporary storage facilities, and shipping or transportation to the laboratory;
- b. Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe a person may alter or substitute the specimen to be provided. The following are the exclusive grounds constituting reason to believe an individual may alter or substitute a specimen:
 - 1. The officer presents a specimen which falls outside normal temperature range (32.5°-37.7°C/90.5°-99.8°F); and
 - a. The person refuses to provide a measurement of oral body temperature; or,
 - b. Oral body temperature varies by more than 1°C/1.8°F from the temperature of the specimen.
 - 2. The last urine specimen provided by the officer was determined by the laboratory to have a specific gravity of less than 1.003 or a creatinine concentration below .2g/L;
 - 3. The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g. substitute urine in plain view, blue dye in the specimen presented, etc.); or,

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4. The officer has previously been determined to have used a controlled substance without medical authorization and the test was being conducted under Bureau procedures providing for follow-up testing upon or after return to service. In any case where a determination is made by a collection site person to observe a specimen collection, a higher-level supervisor of the collection site person, or the Bureau, shall review and concur in such decision in advance. In any case where collection is monitored by non-medical personnel, the person shall be the same gender as the person providing the specimen.
- c. The procedures used to ensure the integrity and identity of the specimen shall be those mandated by Department Of Transportation and the Department of Health and Human Services.
1. Toilet bluing agents will be placed in the toilet tanks whenever possible so the reservoir remains blue. Where practical, there shall be no other source of water in the enclosure where urination occurs. If there is another source of water, it shall be effectively secured or monitored so as to ensure it is not used as a source for diluting the specimen.
 2. Upon arriving at the collection site, the officer to be tested shall present the collection site person with proper identification to ensure that he/she is positively identified as the person selected for testing (e.g., by presenting a driver's license or other photo ID, or by identification by the Bureau. If the officer's identity cannot be established, the collection site person shall not proceed with the collection, and the Bureau shall be notified. If requested by the officer, the collection site person shall show his or her identification to the officer.
 3. If the officer scheduled to be tested fails to arrive at the collection site at the assigned time, the collection site person shall contact the Bureau to obtain guidance on the action to be taken.
 4. The officer to be tested will be required to remove any unnecessary outer garments (e.g., a coat or jacket) that might conceal items or substances that could be used to tamper with or adulterate the urine specimen. The collection site person shall ensure that all personal belongings such as purses or briefcases remain with the outer garments. The officer may retain his or her wallet. If requested, the collection site person shall provide the officer with a receipt for any personal belongings.
 5. The officer shall be instructed to wash and dry his/her hands prior to urination.



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6. After washing his/her hands, the officer shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the specimen.
7. The officer may provide his/her specimen in the privacy of a stall or otherwise partitioned area that allows for individual privacy. The collection person shall provide the officer with a specimen bottle or collection container, as applicable.
8. The collection site person shall note any unusual behavior or appearance of the officer which may indicate the sample may have been tampered with on the urine custody and control form.
9. Upon receiving the specimen from the officer, the collection site person shall determine if it contains at least 60 milliliters of urine. If the officer is unable to provide 60 milliliters of urine, the collection site person shall direct the officer to drink fluids and, after a reasonable time, again attempt to provide a complete sample using a fresh specimen bottle or a fresh collection container. The original specimen shall be discarded. If the officer is still unable to provide a complete specimen, the following rules apply:
 - a. In the case of a reasonable cause test, the officer shall remain at the collection site and continue to consume reasonable quantities of fluids until the specimen has been provided or until the expiration of a period up to 8 hours from the beginning of the collection procedure.
 - b. In the case of a pre-employment test or other test not for cause, the Bureau may elect to proceed as specified in 9.(a) above (consistent with any restrictions on hours of service) or may elect to discontinue the collection and conduct a subsequent collection at a later time to be scheduled by the Bureau.
 - c. If the officer cannot provide a complete sample within the up to 8-hour period or at the subsequent collection, as applicable, then the MRO shall refer the officer for a medical evaluation to develop pertinent information concerning whether the officer's inability to provide a specimen is genuine or constitutes a refusal to provide a specimen. The medical evaluator shall report his or her findings to the MRO. Upon completion of the examination, the MRO shall report his or her conclusions to the Bureau in writing.
10. Immediately after the specimen is collected, the collection site person shall measure the temperature of the specimen. The

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temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measure is critical and in no case shall exceed 4 minutes.

11. A specimen temperature outside the range of 32.5° - 37.7°C/90.5° - 99.8°F constitutes a reason to believe that the officer has altered or substituted the specimen. This may be cause for the officer to be required to provide another specimen under direct observation. In such cases, the officer supplying the specimen may volunteer to have his or her oral temperature taken, to provide evidence to counter the reason to believe the officer may have altered or substituted the specimen.
12. Immediately after the specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted on the custody and control form.
13. All specimens suspected of being adulterated shall be forwarded to the laboratory for testing.
14. Whenever there is reason to believe that a particular officer has altered or substituted the specimen as provided above, a second specimen shall be obtained as soon as possible under the direct observation of a collection site person of the same gender.
15. After the urine specimen is provided, both the officer being tested and the collection site person shall keep the specimen in view at all times prior to its being sealed and labeled. The specimen shall be sealed (by placement of a tamperproof seal over the bottle cap and down the sides of the bottle) and labeled in the presence of the officer. If the specimen is transferred to a second bottle, the collection site person shall request the officer to observe the transfer of the specimen and the placement of the tamperproof seal over the bottle cap and down the sides of the bottle.
16. The collection site person, in the presence of the officer, shall place securely on the bottle an identification label which contains the date,

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the officer's specimen number and any other identifying information provided or required by the Bureau. If separate from the label, the tamperproof seal shall also be applied.

17. The officer shall, in the presence of the collection site person, initial the identification label on the specimen bottle for the purpose of certifying that it is the specimen collected from him or her.
18. The collection site person shall, in the presence of the officer, enter on the drug testing custody and control form all information identifying the specimen. The collection site person shall sign the form certifying that the collection was accomplished according to the procedures described herein.
19. The officer shall be asked to read and sign a statement on the drug testing custody and control form certifying that the specimen identified as having been collected from him or her is in fact the specimen he or she provided. He or she will also have the opportunity to set forth on the form information concerning medications taken or administered in the past 30 days.
20. The officer will also be required to read and sign a consent and release form authorizing the collection of the specimen, analysis of the specimen for designated controlled substances and release of the test results to the Bureau.
21. The collection site person shall complete the chain of custody portion of the drug testing custody and control form to indicate receipt of the specimen from the officer and shall certify proper completion of the collection process. If the specimen is not immediately prepared for shipment, the collection person shall ensure that it is appropriately safeguarded during temporary storage.
22. While any part of the above chain of custody procedures is being performed, the urine specimen and custody documents must remain under the control of the involved collection site person.
23. The collection site person shall not leave the collection site in the interval between presentation of the specimen by the officer and securing of the sample with an identifying label bearing the officer's specimen identification number and seal initialed by the officer. If it becomes necessary for the collection person to leave during this interval, the collection shall be nullified and (at the election of the Bureau) a new collection begun.

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24. To the maximum extent possible, the collection site personnel shall keep the officer's specimen bottle within sight both before and after the officer has urinated. After the specimen is collected it shall be properly sealed and labeled.
25. Collection site personnel shall arrange to ship the collected specimen to the drug testing laboratory. The specimens shall be placed in shipping containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes and/or padded mailers) and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date the specimens were sealed in the shipping containers for shipment. The collection site person shall ensure that the chain of custody documentation is attached or enclosed in each container sealed for shipment to the drug testing laboratory.
26. If the officer refuses to cooperate with the collection process, the collection site person shall inform the Bureau and shall document the non-cooperation on the drug testing custody and control form.
27. If the sample is being collected from an officer in need of medical attention (e.g., as part of a post-accident test given in an emergency medical facility), necessary medical attention shall not be delayed in order to collect the specimen.
28. A chain of custody form (and a laboratory internal chain of custody document, where applicable) shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the form each time a specimen is handled or transferred and every individual in the chain shall be identified. Every effort shall be made to minimize the number of persons handling specimens.
29. To insure that attempts to evade a positive test do not occur, the drug testing laboratory is authorized to test for the presence of uric acid. Additionally, if a dilute sample has been identified and the test result is negative, the Bureau will be notified and the member transported to a collection facility as soon as practicable for follow up testing under direct observation.

5. Laboratory Procedures:

- a. Drug testing laboratories shall be secure at all times and shall have in place sufficient security measures to control access to the premises and to

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ensure no unauthorized personnel handle the specimens or gain access to the laboratory process or areas where records are stored.

- b. Laboratories shall use chain of custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain of custody form each time a specimen is handled or transferred and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain of custody forms for those specimens or aliquots as they are received.
- c. When a shipment of specimens is received, laboratory personnel shall inspect each package for evidence of possible tampering and compare information on specimen bottles within each package to the information on the accompanying chain of custody forms. Any direct evidence of tampering or discrepancies in the information on specimen bottles and the Bureau's chain of custody forms attached to the shipment shall be immediately reported to the Bureau and shall be noted on the laboratory's chain of custody form which shall accompany the specimens while they are in the laboratory's possession. Specimen bottles generally shall be retained within the laboratory's accession area until all analyses have been completed. Aliquots and the laboratory's chain of custody forms shall be used by laboratory personnel for conducting initial and confirmatory tests.
- d. Specimens that do not receive an initial test within 7 days of arrival at the laboratory shall be placed in secure refrigeration units. Temperatures shall not exceed 6°C. Emergency power equipment shall be available in case of prolonged power failure.
- e. Laboratory facilities for urine drug testing will normally process specimens by grouping them into batches. When conducting either initial or confirmatory tests, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts.
- f. The initial test shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution.
- g. All specimens identified as positive on the initial test shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cutoff levels listed in this paragraph for each drug. All confirmations shall be by quantitative analysis.

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- h. If a confirmatory test is positive, the laboratory shall report test results to the MRO within an average of 5 working days after receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual. The report shall identify the drugs/metabolites tested for, whether positive or negative, the specimen number assigned by the Bureau, and the drug testing laboratory specimen identification number (accession number).
- i. The laboratory shall report as negative all specimens that are negative on the initial test or negative on the confirmatory test. Only specimens confirmed positive shall be reported positive for a specific drug. The laboratory may transmit results to the MRO by various electronic means (for example, teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone. The laboratory and the MRO must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.
- j. The laboratory shall send only to the MRO the original or a certified true copy of the drug testing custody and control form, which, in the case of a report positive for drug use, shall be signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports, and attached to which shall be a copy of the test report.
- k. The laboratory shall provide to the Bureau and the Portland Police Association a monthly statistical summary of urinalysis testing of PPCOA members personnel and shall not include in the summary any personal identifying information. Initial and confirmation data shall be included from test results reported within that month. Normally this summary shall be forwarded by registered or certified mail not more than 14 calendar days after the end of the month covered by the summary. Monthly reports shall not include data from which it is reasonably likely that information about sworn personnel's tests can be readily inferred. If necessary, in order to prevent the disclosure of such data, the laboratory shall not send a report until data are sufficiently aggregated to make such an inference unlikely. In any month in which a report is withheld for this reason, the laboratory will so inform the Bureau in writing. Unless otherwise instructed by the Bureau in writing, all records pertaining to a given urine specimen shall be retained by the drug testing laboratory for a minimum of 2 years.
- l. Long term frozen storage (-20°C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. The laboratory shall retain and place in properly secured long term frozen storage for a minimum of 1 year all specimens confirmed positive, in their original labeled specimen bottles. Within this 1 year period, the Bureau may request the laboratory to retain

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the specimen for an additional period of time, but if no such request is received the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens known to be under legal challenge for an indefinite period.

- m. The drug testing laboratory shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2 year period may be extended upon written notification by the Bureau. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain of custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The laboratory shall maintain documents for any specimen known to be under legal challenge for an indefinite period.

6. Reporting and Review of Results

- a. An essential part of the drug testing program is the final review of confirmed positive results from the laboratory. A positive test result does not automatically identify an officer as having used drugs in violation of Bureau policy. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer (MRO) prior to the transmission of the results to the Bureau. The MRO review shall include review of the chain of custody to ensure that it is complete and sufficient on its face. The duties of the MRO with respect to negative results are purely administrative.
- b. The MRO shall be a licensed physician with knowledge of substance abuse disorders who has been approved by the NIDA certified laboratory retained by the City.
- c. The MRO shall not be an employee of the laboratory conducting the drug test nor an employee of the City of Portland.
- d. The role of the MRO is to review and interpret confirmed positive test results obtained through the Bureau's testing program. In carrying out this responsibility, the MRO shall examine alternate medical explanations for any positive test result. This action may include conducting a medical interview and review of the officer's medical history, or review of any other relevant biomedical factors. The MRO shall review all medical records made available by the tested officer when a confirmed positive test could have resulted from legally prescribed medication. The MRO shall not, however, consider the results of urine samples that are not obtained or processed in accordance with the procedures set forth herein.

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- e. Prior to making a final decision to verify a positive test result for an officer, the MRO shall give the officer an opportunity to discuss the test result with him or her.
- f. The MRO shall contact the officer directly, on a confidential basis, to determine whether the officer wishes to discuss the test result. A staff person under the MRO's supervision may make the initial contact, and a medically licensed or certified staff person may gather information from the officer. The officer shall have the right to representation by the PPCOA during the discussion with the MRO. Except as provided in this policy, the MRO shall talk directly with the officer before verifying a test as positive. If, after making all reasonable efforts and documenting them, the MRO is unable to reach the officer directly, the MRO shall contact the Bureau who shall direct the individual to contact the MRO as soon as possible. If it becomes necessary to reach the officer through the Bureau, the Internal Affairs Division shall employ procedures that ensure, to the maximum extent practicable, that the requirement that the officer contact with the MRO is held in confidence. If, after making all reasonable efforts, the Bureau is unable to contact the officer, the Bureau may place the officer on administrative leave with pay.
- g. The MRO may verify a test as positive without having communicated directly with the officer about the test in two circumstances:
 - 1. The officer expressly declines the opportunity to discuss the test; or,
 - 2. The Bureau has successfully made and documented a contact with the officer and instructed the officer to contact the MRO and more than five days have passed since the date the officer was successfully contacted by the Bureau.
- h. Before the MRO verifies a confirmed positive result for opiates, he or she shall determine that there is clinical evidence -- in addition to the urine test -- of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). (This requirement does not apply if GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine).
- i. Should any question arise as to the accuracy or validity of a positive test result, only the MRO is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by HHS and which may be selected by the officer as long as such laboratory is certified by NIDA utilizing the same certification levels referred to in the "Laboratory Procedures", paragraph 5, subparagraph (g) of this policy. The MRO shall authorize a reanalysis of the original sample if requested to do so by the officer within 72 hours of the officer's having received actual

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notice of the positive test. If the retest is negative, the MRO shall declare the final result to be negative.

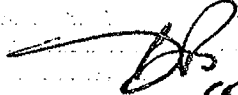
- j. If the MRO determines there is a legitimate medical explanation for the positive test result, the MRO shall report the test result to the Bureau as negative and shall include in the report a list of all prescription medications being used by the officer that may have caused the positive test result.
 - k. Additionally, the MRO, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the result is scientifically insufficient for further action and declare the test specimen negative. In this situation the MRO may request reanalysis of the original sample before making this decision. The laboratory shall assist in this review process as requested by the MRO by making available the individual responsible for day-to-day management of the urine drug testing laboratory or other employee who is a forensic toxicologist or who had equivalent forensic experience in urine drug testing, to provide specific consultation as required by the Bureau.
 - l. Except as provided in this paragraph, the MRO shall not disclose to any third party any medical information provided by the officer to the MRO as a part of the testing verification process.
 - m. The MRO may disclose such information to the Bureau only if in the MRO's reasonable medical judgment the information indicates that continued performance by the officer of his or her safety sensitive function could pose a significant safety risk. Before obtaining medical information from the officer as part of the verification process, the MRO shall inform the officer that information may be disclosed to third parties as provided in this paragraph and the identity of any parties to whom information may be disclosed.
7. If a test is verified positive, the officer may present to the MRO information documenting that serious illness, injury, or other circumstances unavoidably prevented the officer from timely contacting the MRO. The MRO, on the basis of such information, may reopen the verification, allowing the officer to present information concerning a legitimate explanation for the confirmed positive test. If the MRO concludes that there is a legitimate explanation, the MRO declares the test to be negative.
8. Protection of Personnel Records. Bureau contracts with laboratories require that the laboratory maintain sworn personnel test records in confidence. The contracts will provide that the laboratory shall disclose information related to a positive drug test only to the Bureau.
9. Individual Access to Test and Laboratory Certification Results. Any Officer who is the subject of a drug test conducted under this policy shall, upon written request to the Chief, have access to any records relating to his or her drug test and any

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records relating to the results of any relevant certification, review, or revocation-of-certification proceedings.

10. Positive test results for drug and/or alcohol shall be retained by the Bureau and processed as in the same manner as are any violations of Bureau Rules and Procedures. Documentation leading up to or supporting a decision to test where the test is positive shall be retained and/or processed in the same manner as any violation of Bureau Rules and Procedures. Documentation leading up to a decision to test where the test is negative shall be filed separately with the Bureau and shall remain confidential.
11. A procedural error hereunder shall not, of itself *per se*, constitute the basis for overturning any discipline related to the violation of the Substance Abuse Policy unless the error impacts the accuracy of the result.

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