

# **AGREEMENT**

**Between the**

**LOCAL 521 IAFF**

**AND**

**CITY OF BILLINGS**

***For the period of:***

**JULY 1, 2023 - JUNE 30, 2026**





## CONTRACT ROUTING FORM

(Contract must be signed by the non-City party before or within routing process)

International Association of Firefighters (IAFF) - Local 521

PARTY TO THE CONTRACT: \_\_\_\_\_

PURPOSE OF CONTRACT: Renewal of Collective Bargaining Agreement July 1, 2023 - June 30, 2026

PROCUREMENT COMPETED BY:

Written quotes

Competitive bid

Request for proposals

Cooperative contract \_\_\_\_\_

Contract #

Sole source justification

Other (please describe or N/A):

Requestor:

Karla Stanton

Name: \_\_\_\_\_

Human Resources

Dept: \_\_\_\_\_

406.657.8204

Phone #: \_\_\_\_\_

Competition documentation attached

(i.e. signed quote form, legal ad, sole source form, cooperative contract, etc.)

Insurance certificate(s) attached

x Council memo attached

11.27.2023

Date of award

Signed by vendor (also check if signing in DocuSign)



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## P R E A M B L E

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

## ARTICLE I - RECOGNITION

The EMPLOYER recognizes the ASSOCIATION as the exclusive bargaining agent for all employees of the Billings Fire Department, except the Fire Chief, Assistant Fire Chiefs, and administrative support employees.

## ARTICLE II – MANAGEMENT RIGHTS

- A. The ASSOCIATION recognizes the prerogative of the CITY to operate its affairs in all respects in accordance with its responsibilities, and the powers or authority which the CITY has not officially abridged, delegated or modified by this Agreement are retained by the CITY, and in such areas as, but not limited to the following, to- wit:
1. Directing employees;
  2. Hiring, promoting, transferring, assigning, and retaining employees;
  3. Relieving employees from duties because of lack of work or funds or under conditions where continuation of such work would be inefficient and non-productive;
  4. Maintaining the efficiency of government operations;
  5. Determining the methods, means, job classifications, organization, and personnel by which operations of the City of Billings Fire Department are to be conducted;
  6. Taking whatever actions that may be necessary to carry out the mission of the City of Billings Fire Department in situations of emergency;
  7. Establishing the methods and processes by which work is to be performed;
  8. Establishing reasonable work rules;
  9. Scheduling overtime work as required, in a manner most advantageous to the City Fire Department and consistent with requirements.
- B. The ASSOCIATION recognizes that the EMPLOYER has statutory and other rights and obligations in contracting for matters relating to municipal operations. The right of contracting or subcontracting is vested in the EMPLOYER. The right to contract or subcontract shall not be used for the purpose or intention of undermining the ASSOCIATION, nor to discriminate against any of its members.

## ARTICLE III – GRIEVANCE & ARBITRATION PROCEDURES

- A. This article does not apply to initial probationary firefighters.
- B. A grievance is defined as a dispute, or a difference in interpretation between an employee, or the ASSOCIATION and the EMPLOYER involving wages, hours, and all conditions of employment which are expressly provided by this contract.
- C. The ASSOCIATION shall certify in writing to the EMPLOYER the names of all employees or others authorized to represent the ASSOCIATION in this procedure. For the purpose of this Article, persons authorized to represent the ASSOCIATION shall be known as "Stewards." A Steward may process grievances during regular working hours without loss of regular pay subject to the approval of the Fire Chief. Union representatives from the Council or International level may be called in to assist at any step during the grievance.
- D. Departure from the established procedure, unless mutually waived by both parties:
  - 1. By the ASSOCIATION or any person represented by the ASSOCIATION shall automatically nullify any further recourse through this procedure for the grievance.
  - 2. By the EMPLOYER shall automatically place the grievance in the following step:
- E. Procedure:
  - 1. STEP 1:
    - a. In the event an employee covered by this Agreement shall have a grievance, he shall notify in writing the Fire Chief and the ASSOCIATION within ten (10) business days of the grievance's occurrence. The ASSOCIATION shall investigate the grievance and, within twenty (20) business days of the receipt of the grievance, may present a grievance to the Fire Chief for resolution. The grievance shall be presented in written form containing as a minimum, the following information:
      - (1) The name of the grievant(s)
      - (2) The date(s) of the grievance
      - (3) The nature of the grievance
      - (4) The terms of the Agreement in dispute
      - (5) The adjustment sought.
    - b. The Fire Chief may request a meeting with the ASSOCIATION and the grievant to discuss the grievance. The Fire Chief shall attempt to resolve the grievance and shall report this adjustment in writing to the ASSOCIATION within ten (10) business days of the receipt of the grievance from the ASSOCIATION.
    - c. If the grievance remains unresolved, the ASSOCIATION may proceed to the following step:
  - 2. STEP 2:
    - a. Within ten (10) business days of the date of the Department Head's reply, the Chief Steward or his designee shall present the written grievance, along with the ASSOCIATION'S reasons for non- acceptance of the Department Head's reply, to the City Administrator. The City Administrator shall meet with the ASSOCIATION and the Department Head or his/her designee to attempt to resolve the grievance and shall respond in writing to the Chief Steward within twenty (20) business days of the receipt of the grievance.
    - b. If the grievance remains unresolved, the ASSOCIATION may proceed to the following step:



3. STEP 3:

- a. Within ten (10) business days of the date of the City Administrator's reply, the ASSOCIATION may request arbitration. This request must be made in writing and be presented to the City Administrator.
- b. The arbitrator shall be selected by use of the following:
  - (1) The Board of Arbitration shall be composed of three (3) members: one person to be appointed by each party and a third, acting as a chairperson, to be selected in accordance with sub-paragraph 1 and 2 of Step 3. The ASSOCIATION and the CITY individually shall pay the expenses of the member it appoints, and the two parties shall jointly share the expenses of the third member. The decision of the Board of Arbitration shall be final and binding on both parties in all matters pertaining to this Article.
  - (2) Within ten (10) business days of the receipt of the request, the parties to this Agreement shall mutually select a person who is not employed by the City of Billings to act as chairperson. If no such person can be found who is acceptable to act as chairperson:
  - (3) Within ten (10) additional business days, the party requesting arbitration shall request the American Arbitration Association to provide a list of five (5) arbitrators. The parties shall select the chairperson by the method of alternatively striking names, with the parties flipping a coin to determine who strikes the first name. The final name left on the list shall be the chairperson.
  - (4) The chairperson chosen will be contacted immediately and asked to start proceedings at his/her earliest possible date. During the arbitration proceedings, all evidence shall be presented to the Board. It shall have no power to alter in any way the terms of this Agreement, State law, or Federal law. Its decision shall be within the scope and terms of this Agreement, and it shall be requested to issue its decision within twenty (20) business days after the conclusion of the proceedings, including filing of briefs, if any.
4. It is understood by both parties to this Agreement that an appointed authority may replace any titled position mentioned in the above grievance and arbitration procedures, so long as the ASSOCIATION is notified in writing of such change.
5. The use of the above procedure is exclusive and shall constitute a waiver of recourse through any other procedure, except for recognized civil procedures.
6. For purposes of this Article only, a business day means all calendar days except Saturdays, Sundays, and holidays.
7. The City and the ASSOCIATION shall follow 7-33-4124, MCA, unless the statute is repealed during the life of the contract.

#### **ARTICLE IV - NON-DISCRIMINATION**

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

## **ARTICLE V - DUES ASSIGNMENT**

- A. The EMPLOYER agrees to accept and honor an employee's voluntary written assignment designating a specified amount of wages or salaries due and owing as ASSOCIATION dues or equivalent contribution.
- B. The aggregate deduction will be remitted, together with an itemized statement, to the Treasurer of the ASSOCIATION within five (5) working days from the date of payroll distribution.
- C. The ASSOCIATION agrees to hold harmless the EMPLOYER for any loss or damage arising from the operations of the Article due to unintentional errors.

## **ARTICLE VI - HOURS OF WORK AND COMPENSATION**

### **A. Work Schedule**

#### **1. Fire Suppression Personnel**

- a. The work schedule shall be a 27-day total work cycle consisting of seven (7) consecutive work shifts of twenty-four (24) hours on duty and forty-eight (48) hours off duty, immediately followed by six (6) consecutive days off.
- b. One Battalion Chief (the fourth) shall be assigned a regular work schedule as follows:
  - (1) The work schedule shall be a 27-day total work cycle.
  - (2) The work schedule shall consist of:
    - (a) One 24-hour shift on-duty, followed by 48 hours off-duty.
    - (b) One 24-hour shift on-duty, followed by 96 hours off-duty.
    - (c) One 24-hour shift on-duty, followed by 48 hours off-duty.
    - (d) One 24-hour shift on-duty, followed by 96 hours off-duty.
    - (e) One 24-hour shift on-duty, followed by 48 hours off-duty.
    - (f) One 24-hour shift on-duty, followed by 168 hours off-duty.
  - (3) In addition to the regular scheduled shifts, the fourth Battalion Chief shall work twenty-four (24) hours during the first twenty- (20) days of the 27-day work cycle.
  - (4) These work assignment periods shall be no less than eight (8) hour periods. The fourth Battalion Chief shall not be assigned work more than four (4) days in a calendar week, a regularly scheduled work assignment.
  - (5) The fourth (4th) Battalion Chief's work schedule may be changed by mutual agreement between the fourth (4) Battalion Chief, the Fire Chief, and the ASSOCIATION.
- c. "Companies shall stay together at all times." – Defined
  - (1) Together is defined as a Captain, an Engineer, and a Firefighter assigned to the same station, except to respond on separate apparatus to the same call.

- (2) Exceptions will be made only for Mobile Response Teams (MRT) Staffing levels. Engines and Trucks shall remain a minimum of 3 firefighters.
- d. The duty day schedule:
  - (1) 0000 to 0800 - Alarm Time
  - (2) 0800 to 1200 - Work Assignment Period\*
  - (3) 1200 to 1300 - Alarm Time
  - (4) 1300 to 1700 - Work Assignment Period\*
  - (5) 1700 to 1800 - Alarm Time
  - (6) 1800 to 2200 - Work Assignment Period\*
  - (7) 2200 to 2400 - Alarm Time
  - (8) \*Each work assignment period shall be inclusive of a 15-minute coffee break after 2 hours. Meal periods are 0700 to 0800, 1200 to 1300, and 1700 to 1800 unless interrupted by an emergency. Meal periods interrupted by an emergency situation shall be made up at the earliest opportunity. Companies shall stay together at all times. All unassigned work period hours shall be considered alarm time.
- e. Alarm Time - suppression personnel must be at their assigned stations, on call, and available for all firefighting and emergency purposes during all alarm time unless otherwise approved by the Battalion Chief. No classes or drills, and only essential work can be included on Sundays, and holidays and such alarm time.
- f. Sunday Training - Only essential fire suppression training that cannot be scheduled during normal work assignment periods may be assigned on Sundays.
- 2. Uniformed Day Personnel
  - a. The workweek for day personnel shall be forty (40) hours. It shall consist of four (4) consecutive ten (10) hour days Monday through Friday. This schedule may be changed by mutual agreement.
  - b. Probationary Firefighters in recruit academy.
    - (1) The workweek for probationary firefighters in the recruit academy shall be a maximum of 40 hours, Monday through Friday.
  - c. Uniformed Day Personnel assigned to work in the fire prevention bureau shall work as follows:
    - (1) The workday shall be a maximum ten (10) hour duty period, 0700 to 1730 hours.
    - (2) Each Bureau personnel shall work a ten (10) hour, four (4) day workweek.
    - (3) Each Bureau personnel would be given a number, i.e., 1,2,3,4,5. This number will serve as a mechanism for determining when the Individual Bureau person would be on their day off. The day of the week when the Bureau person would be off will change each week.
  - d. The workday for all uniformed day personnel shall include a thirty (30) minute lunch break and a fifteen (15) minute morning and afternoon break.

B. Compensation

1. Pay status

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

2. Wages

- a. Hourly rates of pay for the contract term shall be as shown in Exhibit A of this Agreement, which reflects annual adjustments as described below. Regular payday shall be every other Friday and the amount of pay shall be based upon the number of hours worked within the pay period. Hourly wages shown in Exhibit A do not include Special Certification pay or Paramedic Pay.
- b. July 1, 2023 – June 30, 2024: All hourly base wages shall be outlined in Exhibit A.
- c. July 1, 2024 – June 30, 2025: All hourly base wages shall increase by an amount equal to 3%.
- d. July 1, 2025 – June 30, 2026: All hourly base wages shall increase by an amount equal to 3%.

C. Overtime Pay

1. Overtime Pay: Employees required to work in excess of their regular work schedule at the direction of proper City authority shall be compensated at a rate of 1-1/2 times the regular hourly rate for each hour of overtime worked. This overtime shall be computed to the nearest 1/4 hour starting one minute after the one-quarter (1/4) hour begins and extending to the full 1/4 hour. The **EMPLOYER** shall determine the employees to receive the overtime work and the amount of overtime necessary to be worked.
2. Compensatory Time: At the employee's request, non-exempt uniform day personnel only, may accumulate a maximum of 80 overtime hours as compensatory time in lieu of cash payment, for actual overtime worked. Employees can cash out an unlimited amount of accrued compensatory time during any pay period, except that in which it was earned. The employee must complete the Compensatory Time Cash Out form and submit it to Human Resources. In addition, a copy of the Compensatory Time Cash Out form shall be attached to the employee's timecard. The employee's supervisor shall approve the use of compensatory time off.

D. Call Back Pay

1. The employee shall be paid a minimum of three (3) hours at one and one-half (1 1/2) times the regular hourly rate of pay for each call-out. Call back pay will commence on page out, not an extension of the regular shift. In the event the call-out extends into the employee's regular scheduled work shift, the one and one-half (1 1/2) rate of pay shall be paid for only the actual time spent before the regular shift started.
2. In the event the employee asks to be excused before the work is completed, and the supervisor in charge excuses him/her, the employee will be paid only for time worked at one and one-half (1-1/2) times his/her regular rate of pay.

E. Standby Time

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

F. No Pyramiding

1. Compensation shall not be paid more than once for the same hour under any overtime provision of this

Agreement, including overtime, callback and standby pay.

G. Longevity Pay

1. Longevity Pay will no longer be paid as of July 1st, 2023.

H. Higher Classification Pay

1. Any person covered by this Agreement who is required to accept the responsibilities and carry out the duties of a position or rank above that which they normally hold for a period for two (2) hours or more shall be paid at the rate in Exhibit B while acting. All assignments for scheduled absences for engineer or captain made under this Section shall be on basis of the senior qualified employee first. In the event of an unscheduled absence, the Battalion Chief shall select a qualified employee whose service would promote the most efficient operation of the department. Selection for filling unscheduled absences shall be made in a fair, equitable and impartial manner. Suppression employees shall Hi-C only one classification over employee's current rank. Exempt from this provision shall be any employee exchanging shifts for an employee who is absent due to attendance of **ASSOCIATION** business, as authorized by the Local and approved by the Fire Chief. Also, the water tender/brush truck will be operated by a qualified firefighter at his/her regular rate of pay.
2. Hi-C Battalion Chief - The B.C. assigned to each shift, with the approval of the Fire Chief, shall select the Hi-C B.C. to act during his/her absence. In implementing this concept, the Fire Chief and B.C.'s will not act in an arbitrary or capricious manner. Any complaints may be brought to the Joint Labor Management Committee. If a complaint is not resolved through the Joint Labor Management Committee, then it shall be resolved in accordance with Article III of the contract.
3. Suppression personnel may be required to work in a lower classification in order to maintain staffing levels. In such an event, the employee working in a lower classification shall continue to maintain his/her original rate of compensation.
4. In the absence of the Fire Marshal and the Assistant Fire Marshal, the Fire Marshal, with approval of the Fire Chief, shall select a Deputy Fire Marshal that will Hi-C to Fire Marshal. In the implementing of this concept, the Fire Chief and Fire Marshal will not act in an arbitrary or capricious manner. Any complaints will be brought to the Joint Labor Management Committee. If a complaint is not resolved through the Joint Labor Management Committee, it shall be resolved in accordance with Article III of the contract. The Deputy Fire Marshal selected as the Hi-C Fire Marshal shall be compensated at the rate of pay according to Exhibit B for the Deputy Fire Marshal assuming the duties of Fire Marshal.
5. In the absence of the Fire Chief and Assistant Fire Chiefs, the Fire Chief or in his absence, an Assistant Fire Chief may select the Fire Marshal or the Training Chief to Hi-C to the Assistant Fire Chief position. The position selected to act as Hi-C Assistant Fire Chief shall be compensated an additional 10%. The employee assigned to Hi-C Assistant Fire Chief will be paid M-F during the Assistant Fire Chief's regularly scheduled 8 or 10-hour workdays only. Call Back Pay and Standby Time shall be compensated as outlined in ARTICLE VI – HOURS OF WORK AND COMPENSATION, Section D. Call Back Pay and Section E. Standby Pay.

I. Special Assignment Pay

1. Compensation

- a. Suppression personnel who are assigned Fire Department work outside of the Suppression Division by the

Fire Chief shall be paid their base salary plus fifteen percent (15%), excluding the Assistant Fire Marshal, Deputy Fire Marshals, Assistant Training Chief, and light duty assignments.

- b. Suppression personnel on a special assignment shall receive Hi-C pay for any shift they would have received, had they remained in the suppression division.
  - c. Suppression Personnel on Special Assignment for longer than 90 consecutive days shall not receive holiday pay premium (currently 4.61 hours) for the period of the special assignment. Instead, the person on special assignment shall receive the designated day off with straight pay as provided in Article VII, Sec A, Sub 2 (c) for the period of the special assignment. The Fire Chief has the discretion to extend the 90-day period.
2. Whenever the person immediately following the assigned person on the seniority list is promoted, the assigned person shall automatically receive the next pay grade plus 10 percent.
  3. If the assigned person wishes to return to shift to receive a promotion and can qualify for the promotion and a vacancy occurs, he shall be placed in accordance with the promotional priority list.
  4. Firefighters, except regular day personnel, that require remedial training and are assigned to days for a period not to exceed twenty-seven (27) days in a calendar year, shall be compensated at their current hourly rate. After the twenty-seventh (27) day, fire suppression personnel shall be compensated at Special Assignment Pay1.

J. Special Certification Pay

1. For July 1, 2023-June 30, 2024, any member of the Billings Fire Department holding a certification in any of the following areas shall receive an additional \$50.00 per month (except up to \$60.00 for the Advanced EMT as set out below.) per certification with a maximum of three (3) paid certifications:
  - a. Coordinator/Instructor, Haz Mat Technician, Rope Rescue Technician, SCBA Repair, ICC Fire Inspector I, ICC Fire Inspector II, and Advanced EMT.
  - b. The Advanced EMT certification will be paid at \$10.00 per endorsement through the 6<sup>th</sup> endorsement (as approved by the Montana Board of Medical Examiners, the City of Billings Medical Director, and Fire Chief.) up to a total of \$60.00.
  - c. Paramedics approved by the Fire Chief and the Fire Department Medical Control Physician, to provide Paramedic level care, or any member required to hold Paramedic certification as a condition of employment, will be paid an additional 6% of Grade 177, Step D, but will not receive Advanced EMT and/or 6<sup>th</sup> endorsement certification pay.
    - (1) Paramedic pay shall increase to 7% of Grade 177, Step D for July 1, 2024-June 30, 2025.
    - (2) Paramedic pay shall increase to 8% of Grade 177, Step D for July 1, 2025-June 30, 2026.
    - (3) Upon BFD functioning with Operational Control and/or implementation of a Safety Net Ambulance, Paramedic Pay shall increase to 10% of Grade 177, Step D.
  - d. In addition to the certifications listed above, Association members, while in the Fire Prevention Bureau, may hold certifications in the following three (3) areas and shall receive \$50.00 per month per certification with a maximum of *three (3)* paid certifications: ICC Fire Plans Examiner, ICC Certified Fire Marshal, IAAI Fire Investigation Technician or IAAI Certified Fire Investigator.

- e. The Fire Chief will determine the number of people holding the certifications for Haz-Mat Technician, Coordinator/ Instructor, Rope Rescue Technician, SCBA repair, and Advanced EMT. The number of employees holding certifications as ICC Fire Inspector I or ICC Fire Inspector II is unlimited. The \$50.00 per month (up to \$60.00 for Advanced EMT) will be paid for only *three (3)* certifications regardless of the number of certifications held. EMT certification pay of \$30.00 will be added to the employee's base and is exempt from the three (3) certification limitation as it is a requirement for hire.
- f. The Special Certification Pay (up to \$160 for *three (3)* certifications and 6% Paramedic pay if applicable) per month will be added to the base pay in terms of retirement calculations, however, will be separated from the base to calculate pay increases that are negotiated. Any change in the amount of Special Certification Pay will be negotiated separately.
- g. Beginning July 1, 2024 – Certifications will be limited to 2 per employee. Monthly pay per certification will increase to \$75 (up to \$150 for (2) certifications). AEMT shall count as 1 certification upon approval of Assistant Chief of EMS.
  - (1) New Fire Instructors shall hold an IFSAC/Proboard Fire Instructor 1 to receive Instructor Certification pay. Current instructors as of June 30, 2023, shall be allowed to continue receiving instructor certification pay until such a time the department offers certification class for IFSAC/Proboard Fire Instructor 1. The course availability will be discussed at JLMC.
  - (2) Team coordinators approved by the fire chief shall be recognized for a third certification while serving as team lead.
- h. Beginning July 1, 2025 – Certification pay shall increase to \$100 per certification (up to \$200 for (2) certifications). AEMT shall count as 1 certification upon approval of Assistant Chief of EMS

K. Deputy Fire Marshal Incentive Pay Plan

- 1. The position of Deputy Fire Marshal shall be considered as an assignment by the Chief. All Deputy Fire Marshals shall be Grade 213. Firefighters shall enter Grade 213 at step B. Engineers shall enter Grade 213 at step C. Captains shall move into the pay range of a Grade 213 at the level immediately above their current level of pay. All ranks shall advance to step G.
- 2. All Deputy Fire Marshals shall be ICC Fire Inspector I certified within one (1) year from the date of assignment. If the employee does not achieve the certification, then his or her base salary will be frozen at his/her current grade and step until certification is achieved. If the Deputy Fire Marshal's rate has been frozen, then the date certification is achieved will become the employee's promotional anniversary date for step increases. If a Deputy Fire Marshal decides to return to suppression, that Deputy Fire Marshal shall return to his/her seniority position and shall be paid accordingly to his/her rank. Deputy Fire Marshals who complete certification within one year will receive step increases from the date of assignment.

L. Assistant Training/EMS Chief

- 1. The position of Assistant Training Chief shall be considered a promotion. The Assistant Training Chief shall be Grade 216. Firefighters shall enter Grade 216 at step B and may advance to step G. Engineers shall enter Grade 216 at step D and may advance to step G. Captains shall enter Grade 216 at the same step and may advance to step G. In the event the assigned candidate is selected from outside of the existing Billings Fire Department

ranks, the assigned candidate will be classified at a starting salary of at Grade 216 step B and may advance to step G. Assistant Training Chief may return to suppression with the approval of Administration. In such event they shall return to his/her seniority position and shall be paid accordingly to his/her rank.

M. Compensation During Light Duty Assignments

1. Suppression personnel working in a light duty assignment, less than 90 days, will be compensated at their regular rate of pay inclusive of holiday compensation. During light duty assignment, when a holiday falls on a regular staff workday, the employee shall be given that day off with pay.
2. Suppression personnel working in a light duty assignment longer than 90 days will move to special assignment and be eligible for all special assignment compensation and time off per ART VI, Sec I, SUB 1.

N. Training

1. Department sponsored training prioritized and approved by fire administration that cannot be attended while on shift, will be on a voluntary basis. On duty suppression personnel participating in training that precludes availability to front line duty shall have their positions backfilled. Vacancies created by training will be filled by on-shift employees utilizing HI-C personnel when available and will be done utilizing the lowest rank possible. When front-line apparatus personnel are exhausted or staffing falls below three (3) personnel per frontline apparatus, then vacancies shall be filled rank for rank and are eligible for overtime. Only Mobile Response Teams are exempt from the three-person minimum.
2. Frontline apparatus shall be defined as one (1) Engine Company per fire station and one (1) Truck Company. Management reserves the right to cross-staff Engine and Truck Companies as needed to operate additional apparatus.
3. Compensation for such training and related travel time shall be at the employee's regular rate of pay and subject to the Fair Laborers Standard Act (FLSA) threshold for overtime provisions. Unscheduled time, not related to travel, will not be paid.
4. At no time will participation in such training negatively impact an employee's scheduled earnings.

O. Mobile Response Teams (MRT)-

1. MRTs will consist of a 2 or 3-person suppression-ready crew.
2. The MRT personnel shall include a Captain-Qualified suppression-ready firefighter and should include a BFD credentialed Paramedic when available. One person of the crew may serve as both captain and paramedic if all other combinations have been exhausted. Personnel assigned to the MRTs shall follow the schedule outlined in Article VI, section 1, subparagraph a.
3. The Paramedic shall be a suppression-ready BFD credentialed paramedic.

## **ARTICLE VII - FRINGE BENEFITS**

A. Leaves

1. Vacation leave



- a. Each employee shall earn vacation leave credits. Earned leave shall be credited for each pay period. Employees are not entitled to use any paid vacation leave until they are employed for at least six (6) months. Credits shall be earned according to the following schedule, but are taken/used at a rate equal to the actual number of hours that the employee is absent from work:
  - (1) Day personnel (Bureau and Training Chief)
    - (a) 0 through 10 years 120 hours/yr.
    - (b) 11 through 15 years 144 hours/yr.
    - (c) 16 through 20 years 168 hours/yr.
    - (d) 21+ years 192 hours/yr.
  - (2) Suppression personnel
    - (a) 0 through 10 years 131 hours/yr.
    - (b) 11 through 15 years 157 hours/yr.
    - (c) 16 through 20 years 184 hours/yr.
    - (d) 21+ years 210 hours/yr.
  - (3) This suppression schedule is calculated as follows and the calculation method shall be used for the number of scheduled hours per calendar year, regardless of the number of hours actually worked: number of vacation leave credit days earned according to Montana Code, 2-18-612 MCA (2005); multiplied by 8 hours per day; divided by 2080; multiplied by 2272 and rounded to the nearest whole hour.
- b. Any employee who terminates employment with the City, for a reason not reflecting discredit on her/himself, shall be entitled to cash compensation of unused earned vacation leave, if the employee has worked the qualifying period. Unused earned vacation leave shall be paid at the employee's regular rate of pay at the time of termination.
- c. Vacation leave may be accumulated. The total is not to exceed two (2) times the maximum number of days earned annually as of the end of the first pay period of the next calendar year. Excess vacation time is not forfeited if taken within 90 calendar days from the last day of the calendar year in which the excess was accrued.
- d. The date or dates when an employee may take accrued vacation shall be determined by agreement between the employee and the chief or his designee, in the best interest of the City.
- e. Vacation Selection Procedure
  - (1) Vacation schedule shall be offered in one (1) week time slots.
  - (2) Only two (2) Fire Suppression Personnel, from each shift, excluding the Battalion Chief, shall be on vacation at the same time. During the weeks from Memorial Day to Labor Day a third (3<sup>rd</sup>) slot will be offered. Shortages in the ability to take vacation will be addressed in JLMC after the 2024 Vacation Selection. No more than one (1) Officer and one (1) Engineer, from each shift, shall be on vacation at the same time.

- (3) Employees may choose in order of seniority, on a rotating basis, as many one (1) week time slots as available. The Battalion Chiefs shall pick their vacation slots separately from the rest of the shift.
- (4) If Kelly days become available as a result of an individual's vacation pick, those Kelly Days shall be made available for single day vacation picks. (Using the same criteria as in #2)
- (5) Open one (1) week vacation time slots shall be made available for single day vacation picks.
- (6) Single day vacation picks shall be in order of seniority on a rotating basis.
- (7) Shift or day-off (Kelly) number changes as a result of personnel re-alignment or promotion, after vacation pick(s) are finalized, shall not affect the employee's vacation pick(s).
- (8) Unused vacation leave time shall be paid at his or her regular rate of compensation to the employee or his or her heirs at the time of separation from service or death.

f. Day Personnel Vacation Selection Procedure:

- (1) The vacation schedule shall be offered in one (1) or two (2) week time slots. Vacation selection shall begin after the first of the year and shall be completed by the fifteenth of January each year.
- (2) No fire prevention bureau personnel shall be on vacation [one (1) or two (2) week time slots at the same time.
- (3) No Training division personnel shall be on vacation [one (1) or two (2) week time slots at the same time.
- (4) Employees may choose in order of seniority, on a rotating basis, as many one (1) or two (2) week time slots as available. Time slots will be offered based on the standard work week, Monday through Friday.
- (5) Open one (1) or two (2) week vacation time slots shall be made available for single day vacation picks.
- (6) One (1) single day vacation pick will be allowed per week during a filled one (1) or two (2) week vacation time slot provided minimum staffing in the Fire Prevention Bureau is maintained at two (2) employees for that day.
- (7) Single day vacation picks shall be in order of seniority on a rotating basis.
- (8) Vacations may be cancelled after the fifteenth of January.
- (9) After the fifteenth of January, vacation time will be granted on a first-come first- served basis as approved by the fire marshal.
- (10) The Fire Chief has the authority to approve additional vacation requests at his or her discretion.

2. Holidays

- a. Fire Department suppression personnel shall be paid at the rate of 4.61 hours per pay period as holiday compensation. This pay shall be considered as base pay.
  - (1) New Year's Day
  - (2) Martin Luther King Day
  - (3) President's Day

- (4) Memorial Day
- (5) Independence Day
- (6) Labor Day
- (7) Veteran's Day
- (8) Thanksgiving Day
- (9) Day after Thanksgiving Day
- (10) Christmas Day

b. In addition to the above holidays, Fire personnel shall be given an additional eight (8) hours of pay in lieu of leave for each of the following holidays in the month in which they occur.

- (1) Every day declared a legal holiday by the Mayor of Billings or the Governor of Montana.
- (2) Every day in which a general State biannual election is held throughout the State of Montana.

c. Fire Department Day personnel shall be granted:

- (1) If any of the aforementioned holidays fall on an employee's regularly scheduled day off, the employee will be granted a day off without loss of pay the adjoining day preceding or following the referenced holiday.
- (2) The Employer reserves the right to determine the number of employees that are required to work on holidays for which the employee will be paid time and one-half, in addition to their regular day's pay.
- (3) Employees will not be charged vacation time for holidays that occur while on vacation.

### 3. Sick Leave

- a. Sick leave is the necessary absence from duty caused when an employee has suffered illness, injury, pregnancy, or pregnancy-related illness, exposure to contagious disease that requires quarantine, or the necessary absence from duty to receive a medical or dental examination or treatment.
- b. Each employee shall earn sick leave credits from the first day of employment. Earned leave shall be credited for each pay period. There is no restriction on the number of sick leave credits that may be accumulated. Employees will not be paid for sick leave until they are continuously employed for ninety (90) days. Credits shall be earned according to the following schedule, but are taken/used at a rate equal to the actual number of hours that the employee is absent from work:
  - (1) Uniformed day personnel (Bureau and Training Chief) - Sick leave credits are earned at the rate of ninety-six (96) hours per year.
  - (2) Suppression personnel - Sick leave credits are earned at the rate of one hundred five (105) hours per year.
- c. An employee who terminates employment with the city is entitled to a lump-sum payment equal to one-fourth of the pay attributed to his/her accumulated sick leave. The pay shall be computed on the employee's rate of compensation at the time of termination. Accrual of credits for calculating the lump-sum payment begins July 1, 1971. No employee forfeits any sick leave rights or benefits accrued prior to July 1, 1971. An

employee who received a lump-sum payment, and who is again employed by the City, shall not be credited with any sick leave earned during the previous service. An employee who received a lump-sum payment as a result of a layoff, who is again employed by the city, may buy back all sick leave earned during the previous service at the rate of compensation at the time of the layoff.

- d. Sick leave credits will be used on a first earned, first charged basis.
- e. Abuse of sick leave is cause for dismissal and forfeiture of lump-sum payment.
- f. An employee, during illness, must notify the shift supervisor on duty at least one (1) hour before the beginning of the shift, each day that they are sick.
- g. A physician's certificate may be required by an employee's supervisor to substantiate a sick leave charge. Such required physician's certificate shall be furnished by the employer's physician at the employer's expense. The employer reserves the right to select the physician and schedule the appointment.
- h. Authorized medical appointments of the employee shall be charged to sick leave. Each absence shall be reported separately and authorized in advance by the employee's supervisor.
- i. Maternity leave may be charged against sick leave credits. Reasonable leave is a maximum of twelve (12) weeks, as defined under the Family and Medical Leave Act.
- j. Sick leave charged in excess of earned sick leave may be charged to earned and available vacation leave at the employee's request. Reasonable Leave is a maximum of 12 weeks as defined under the Family and Medical Leave Act.

#### 4. Family Leave

- a. Definition: Accrued leave credits are defined as sick leave or vacation leave at the employee's option.
- b. Maternity/Paternity Leave: For the birth or adoption of a child, the provisions of the Family and Medical Leave Act apply. Time off will first be charged against the employee's sick accruals until it is exhausted. Once sick accruals are exhausted, then the employee will have time off charged against vacation accruals. Leave Without Pay will not be authorized until all sick and vacation accruals are exhausted.
- c. Emergency Leave
  - (1) In the event an employee's presence is required because of an emergency caused by a major illness or injury to an employee's immediate family member, the employee may use accrued leave credits, at employee's option, to be in attendance.
  - (2) Emergency leave shall not exceed a total of seventy-two (72) hours per year for illness in the immediate family that is not an FMLA qualifying event. The Fire Chief or his designee may authorize additional vacation leave credits to be used.
  - (3) The immediate family shall include spouse, parents, grandparents, brothers, sisters, children, grandchildren, step-relatives, household dependents, and all the same relatives of the employee's spouse in like degree.
  - (4) The Chief or his designee may authorize the use of vacation leave for other circumstances as requested by the employee.

5. Funeral Leave

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

6. Unscheduled Leave

- a. The Fire Chief or their designee may authorize the use of vacation leave for other circumstances, beyond a person's control, as requested by the employee.

7. Jury Service and Subpoena

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

8. Military Leave

- a. Any employee who is a member of the organized National Guard or forces of the United States Army, Navy, Marine Corps, Air Force, Coast Guard, or Space Force shall be given leave of absence with pay, after six (6) months of employment, for attending regular encampments, training cruises, and similar training programs, not to exceed 120 hours per calendar year under military orders properly issued by military authorities. Such absence shall be charged against training cruises and similar training programs.
- b. Inactive duty training (IDT) weekend drills are documented by training schedules rather than orders, however, the right to time-off for training without loss of benefit applies for IDT as well as active-duty training and annual training. Reservists and Guardsman shall be given the opportunity to take vacation time to fulfill their IDT requirements. Personnel shall provide the Employer with their military training schedule.
- c. Military leave may not be charged against the employee's annual vacation time. In addition, unused military leave must be carried over to the next calendar year but may not exceed a total of 240 hours in any calendar year.

9. Leave Without Pay

- a. Employees may request to take leave of absence without pay for good and sufficient reasons in the best interest of the City with prior approval of the Fire Chief and the City Administrator.
- b. Requests for leave of absence without pay shall be submitted in writing by the employee to the Fire Chief or his designee.

10. General Provisions

- a. An employee may not accrue any leave credits during a continuous leave of absence without pay, which exceeds fifteen (15) calendar days.
- b. All leaves covered under this Article must have prior notification and approval of the employee's supervisor.
- c. For the purpose of calculating vacation and sick leave credits, 2080 hours shall equal one year for Uniformed Day Personnel and 2272 hours shall equal one (1) year for Suppression Personnel.
- d. All leaves covered under this work agreement shall be charged to the nearest one-quarter (1/4) hour.

11. Attendance Incentive

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

B. Insurance(s)

1. Health and Accident Insurance

- a. Contribution changes to the City's Health Insurance Plan shall be shared equally (50%/50%) between the employees and the City. Contribution changes can be either increased or decreased. Contribution adjustments can be either in dollars contributed or in modifications to the plan benefits. All modifications shall be with the approval of the Insurance Committee. It is the intent of the Committee to reach the consultant recommended reserve level over a period of time.
- b. Billings Health Insurance Committee: The City of Billings has an established Health Insurance Committee to maintain a group health insurance plan for employees of the City of Billings and their dependents. The committee shall consist of 15 members appointed as follows:
  - (1) Three members of each employee union appointed by each union.
  - (2) Six members appointed by the City Administrator. One member shall be a retired city employee currently covered by the city health insurance plan.
- c. The Committee will manage the City Health Insurance Plan and report directly to the City Administrator. The committee shall meet at least quarterly to:
  - (1) Review the existing city group health insurance plan;
  - (2) Review the claims experience, projections and plan problems;

- (3) Maintain the plan on a sound actuarial basis;
  - (4) Be solely responsible for all changes in plan design, administrators or carriers;
  - (5) Establish plan premium rates and cost sharing by both the City and the employees;
  - (6) Advise the City Administrator on all other group insurance matters;
  - (7) Decisions will be made by a simple majority vote where all members have one vote and can vote by absentee ballot.
- d. Coverage shall be extended to all insurable employees and their insurable dependents, following the period of exclusion provided by the terms of the master insurance policy. All employees and dependents' participation and coverage shall be solely governed by the terms and conditions of the master insurance contract as signed by the City and the insurance carrier. Coverage shall be extended to only those employees while in an active pay status. Employees on an approved absence without pay may elect to continue their group coverage by directly paying the city the total premium cost during their absence.
- e. The dollar amount of the City's portion of the monthly health insurance premium (not including dental, vision, disability or life insurance) shall be added to employee gross pay effective January 1, 2009, subject to the limits described here. The purpose of adding the City's portion of the health insurance premium amount to gross pay is solely to increase the employee's pay for calculating retirement contributions by the employer, employee and state. The higher gross pay and retirement contributions are expected, but are not guaranteed, to produce a retirement benefit that is greater than without this additional gross pay. The employee recognizes that the added gross pay and his/her required retirement contribution may reduce net pay and may have tax implications. Adding the City's portion of the health insurance premium to gross pay for retirement purposes only does not affect and shall not be included in the computation of any other pay or benefits or the calculation of any rate of pay, including but not limited to the regular hourly rate, any cost-of-living increase, overtime, longevity, special certification pay, holiday pay, standby, callback, higher classification and special assignment pay.
- f. Employees are required to purchase the City's health insurance. Employees shall contribute the employer's share of the health insurance premium, in the dollar amount identified below, and the employee's share of the health insurance premium to the City for deposit in the health insurance fund. If the employee elects, the contribution may be made before local, state or federal taxes are deducted from the employee's gross pay (pre-tax contribution). If the employee does not make this election, the contribution will be made after appropriate taxes are withheld from gross pay (post-tax contribution).
- g. Regardless of tax treatment under IRC Section 125, the employer's portion of the health insurance premium that is being added to gross pay may cause the employee to pay additional taxes, fees or assessments as required by federal or state laws or regulations. Those taxes, fees or assessments may include but are not limited to unemployment insurance, workers compensation insurance and Medicare tax.
- h. At the time of the annual Section 125 election, each employee shall acknowledge in writing that 1) the employer paid portion of the health insurance premium is being added to gross pay solely to increase the employee's pay for calculating retirement contributions by the employer, employee and state ("added gross pay"); 2) the employee recognizes that the added gross pay and his/her required retirement contribution may reduce net pay and may have tax implications; 3) adding the City's portion of the health insurance

premium to gross pay for this retirement purpose only does not affect and shall not be included in the computation of any other pay or benefits or the calculation of any rate of pay, including but not limited to the regular hourly rate, any cost-of-living increase, overtime, special certification pay, holiday pay, standby, callback, higher classification and special assignment pay; 4) the added gross pay may subject the employee to additional federal, state or local taxes, fees or assessments; and (5) the added gross pay and increased retirement contributions are expected, but are not guaranteed, to produce a retirement benefit that is greater than without this additional gross pay.

- i. The Association and City agree that the amount of the employer paid health insurance premium that is applied to an employee's gross pay for retirement purposes only shall be \$846.00 per month for calendar year 2018.
  - j. For the remainder of this agreement, the City shall continue to contribute their portion of the premium not to exceed fifteen percent (15%) over the previous year's premium. All conditions and restrictions set out in this section, Article VII, B.1.e apply regardless of the dollar amount of the City's portion of the premium.
  - k. If any change in local, state or federal laws, regulations, determinations or rulings change the employer's costs or invalidates the intent or application of this provision, it will immediately terminate and the Employer and Association shall meet and attempt to negotiate a new provision that complies with the changed laws or regulations. The Association and employees agree that any grievance involving this section, Article VII, B.1.e., the contribution as set forth herein or any effects of the contribution shall be subject to the grievance process set out in this agreement and shall be subject to final and binding arbitration. The Association specifically waives the right to address the substance and effect of this Article in any other forum in law or in equity except if an arbitration decision deems the grievance process to be inappropriate to resolve the dispute.
2. As per state law, entitled, "An Act to Provide Group Health Coverage for Retired Public Employees and Their Surviving Spouse and Children."
  3. Liability Insurance
    - a. The Employer shall provide a copy of the Employer's current liability insurance coverage to the ASSOCIATION.
- C. On Duty Injury Leave
- a. Health and Accident Insurance Coverage. An employee who is injured in the performance of duty and is receiving a combination of partial salary and worker's compensation payments shall be afforded the current level of health insurance coverage for city employees provided in the City of Billings Employees Insurance Plan until the disability has ceased, as determined by worker's compensation or for a period not to exceed one year, whichever occurs first. To qualify for full health insurance benefits the employee must require medical or other remedial treatment and must be incapable of performing his/her duties as a result of the injury.
- D. Education Benefits
1. Tuition Reimbursement.



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

2. Degree Incentive

- a. An employee shall receive \$25 per pay period for holding an Associate's Degree or \$50 per pay period for holding a Bachelor's Degree. The degree must be from an institution of higher learning recognized as accredited in the United States. If an employee holds both an Associate's and Bachelor's Degree, they shall receive pay for the higher degree only.

E. Deferred Compensation

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

## **ARTICLE VIII - WORKING CONDITIONS**

A. Layoffs

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

B. Association Bulletin Boards

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

C. Shift Trading

1. Upon approval of the Battalion Chief, and Captain, subject to review by the Fire Chief or his designee, any employee will have the right to exchange shifts or trade time with any other qualified employee. The practice of exchanging shifts or trading time will be a voluntary program by the employees in order to permit an employee to absent himself, or herself, from work to attend purely personal pursuits. When an employee is absent from work under the exchange of shift policy, no other employee will be paid working out of classification or overtime pay as a result of the exchange.
2. Shift trades between personnel from different divisions, such as Suppression and the Fire Prevention Bureau require approval, in advance, by the Fire Chief.

D. Uniform Allowance

1. The clothing allowance for Fire Suppression and Day personnel shall be four hundred fifty dollars (\$450.00) per year. New recruits shall be given five hundred seventy-five dollars (\$575.00) for their first clothing allowance.
2. Changes in uniform style or requirement shall not be made during the terms of this agreement, unless mutually agreed upon by the **ASSOCIATION** and the Chief.
3. All working uniforms shall be of wash and wear variety with the approval of the Fire Chief.
4. Clothing allowance as set by this section shall be paid to the **ASSOCIATION** by August 1<sup>st</sup> of each year.
5. All newly confirmed firefighters will be provided, on a one-time basis, one Dress Uniform, one matching pair of pants and one "Class A" hat.
6. Every new association member will be provided wild land firefighting boots as part of their initial protective gear ensemble.
7. The employee is responsible for any applicable taxes associated with the provision of the items above.

E. Physical Examinations

1. Fire Department personnel may elect to undergo an annual physical by the city physician at no cost to the employee. This physical examination will be conducted by the designated Fire Department physician and scheduled by the employee. Physical examinations will be scheduled on the employee's day off.
2. The first physical after entrance exam shall include an electrocardiogram.
3. All personnel will receive a chest x-ray if determined to be needed by the physician contracted for service by the **EMPLOYER**.
4. An audiology test will be provided annually to uniform Fire Department personnel.
5. Employees must be able to physically and mentally perform the duties of the position. Any action taken by the **EMPLOYER** in connection with this provision, including termination shall be upon the recommendation of the City physician and the Fire Chief.
6. The employee shall be afforded a copy of his/her medical records upon request of the City's physician.
7. The employee may obtain a second medical opinion at his/her own expense if the City's physician's report may affect his/her employment status. The employee reserves the right to select the physician furnishing the second opinion and shall be afforded a pre-termination hearing.

8. The Employer shall provide all **ASSOCIATION** members with vaccinations for Hepatitis B, and subsequent booster inoculations.
9. A prostate specific antigen exam will be provided annually to all uniformed Fire Department personnel over the age of 50, and at age 45 for all personnel with a family history of prostate cancer.

F. General Provisions

1. The Employer shall provide to employees on duty:
  - a. Initial badge and name plates as required by the Fire Chief.
  - b. Items to maintain stations, including necessary soap and towels for dormitories as required.
  - c. Furnish meals as necessary on a call-out of four (4) hours or more.
  - d. Kitchen facilities for preparing meals.
  - e. From the date of this contract forward, any new or replacement firefighting equipment and protective clothing as required by the National Fire Protective Association: 1500 will be supplied to firefighters on duty by the Employer.
  - f. The Employer agrees that present parking facilities shall remain for the term of this Agreement; and those employees, with the approval of the supervisor, may work on their personal autos and other personal equipment during alarm time.

G. Just Cause

1. This section does not apply to initial probationary firefighters.
2. No employee shall be disciplined, suspended, or dismissed, except for justifiable cause.
3. Disciplinary Procedures. The following disciplinary procedures shall be followed in all cases where the seriousness of the infraction may warrant discharge, demotion, or suspension. These procedures may be followed, at the discretion of the **EMPLOYER**, in other cases.
  - a. Employees may be disciplined or discharged for just cause. For other than serious infractions, discipline should be applied at progressive and escalating levels. The level or degree of discipline imposed shall be appropriately based on the employee's prior record of service, the severity of the offense, and the employee's prior record of discipline.
  - b. Disciplinary actions or measures may include the following:
    - (1) Oral reprimand.
    - (2) Written reprimand.
    - (3) Suspension without pay.
    - (4) Demotion.
    - (5) Discharge.
  - c. The provisions of this section shall not prevent the Employer from ordering any other remedial action.
  - d. Prior to the imposition of suspension without pay, demotion, or discharge, the employee shall be informed in

writing of the charges against him/her, of the possible disciplinary actions that may be taken, and of the time, date and place at which the employee will be given the opportunity to respond to the charges. The hearing will be held no sooner than seven (7) business days after the Notice of Intent to Take Disciplinary Action. The employee shall be required to sign the written record of discipline as an acknowledgment that they have read the contents of the document.

- e. The **EMPLOYER** may use administrative leave with pay pending the final decision as to imposition of discipline.
- f. The employee and the employee's representative with the employee's written authorizations shall have the right to inspect the full contents of his/her personnel file. No written reprimand or other written record of imposition of any disciplinary action may be placed in an employee's personnel file unless both the employee and the **ASSOCIATION** have received written notice of discipline. The employee shall be required to sign the written record of discipline as an acknowledgment that they have read the contents of the document.
- g. An employee may request that written records of disciplinary action be removed from their personnel file after a period of four (4) years.
- h. No employee shall be demoted except for just cause. Any employee who has been demoted will be eligible for promotion six (6) months from the date of demotion. Any demotion shall not cause any loss in departmental seniority.

#### H. Business by Union Representatives

- 1. The **EMPLOYER** agrees that accredited representatives of the International Association of Fire Fighters or the Montana State Council of Professional Firefighters shall have full and free access to the premises of the **EMPLOYER** at all times with the approval of the Chief. The Employer shall provide shift coverage for the Negotiating Team (the team shall consist of no more than 6 members) to attend negotiation sessions, mediation, fact-finding meetings, arbitration hearings, Joint Labor Management Committee (JLMC) meetings, and appointed Insurance Committee members.
- 2. The Employer shall provide two (2) hours during recruit training for a Union Representative to present a new member orientation with any new firefighter.
- 3. Coverage is for on-duty members only.

#### I. Job Posting Notification

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

#### J. Promotional Priority Procedure –

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

- 1. Promotion Requirements - For promotion to the grades listed below, candidates must meet the listed requirements for each grade.
  - a. **FIREFIGHTER:** All new uniformed members of the Billings Fire Department who have satisfactorily

completed their probationary period shall be classified as Firefighter.

- b. **FIREFIGHTER 1:** All Firefighters who have completed a minimum of 18 months of satisfactory service with the Billings Fire Department and have been departmentally certified as having completed the NFPA standards for Firefighter 1.
  - c. **FIREFIGHTER 2:** All Firefighter 1's who have completed 30 months of satisfactory service with the Billings Fire Department and have been departmentally certified as having completed the NFPA standards for Firefighter 2.
  - d. **ENGINEER:** Firefighter 2's who have satisfactory service with the Billings Fire Department and successfully (70% minimum score) completed the written tests on the following IFSTA Manuals, plus qualification evaluation tests consisting of an operating, pumping and driving practical testing administered and evaluated by the Training Chief or his/her designee and two other randomly selected members of the department. An Engineer Development Program (EDP) will become a policy establishing the Engineer qualification and will become a requirement for promotion.
    - (1) Pumping Apparatus Driver/Operator
    - (2) Aerial Apparatus Driver/Operator
  - e. **CAPTAIN:** Firefighter 2's or above rank who have satisfactory service with the Billings Fire Department and have passed the required IFSTA Manuals, the Officer's Qualification Test and completed the Officer Development Program (ODP). The ODP course shall be offered to members on a seniority basis, starting with the most senior member each time the course is offered.
    - (1) Building Construction
    - (2) Company Officer
2. Promotion requirements for Battalion Chief, Training Chief, and Fire Marshal.
- a. **BATTALION CHIEF:** The position of Battalion Chief shall be selected from personnel who have completed fifteen (15) years satisfactory service with the Billings Fire Department and who have been promoted to the rank of Captain and have completed the Battalion Chief Development program.
  - b. **TRAINING CHIEF:** The position of Training Chief shall be selected from personnel who have completed five (5) years' satisfactory service with the Billings Fire Department and who are qualified to be Captain.
  - c. **FIRE MARSHAL:** Shall have had at least five (5) years of service in the Billings Fire Prevention Bureau and be ICC Fire Inspector II Certified. The Fire Marshal shall obtain ICC Certified Fire Marshal certification within one (1) year from the date of promotion. If the employee does not achieve the certification, then his or her base salary will be frozen at his/her current grade and step until certification is achieved. If the Fire Marshal's rate has been frozen, then the date certification is achieved will become the employee's promotional anniversary date for step increases.
  - d. **ASSISTANT CHIEF:** The position of Assistant Chief is not represented by the Association; however, Management and the Association agree that the Association shall have two (2) appointees chosen by the Association on the selection committee for Assistant Chief.
3. Special Assignment

- a. The positions of Assistant Fire Marshall and Deputy Fire Marshall shall be considered as an assignment by the Chief.

(1) As vacancy occurs

- (a) A Deputy Fire Marshal is expected to serve in that position for a minimum term of two (2) years and until a vacancy occurs in Suppression Division which allows Suppression personnel of every rank, specifically Firefighter, Engineer, and Captain, to apply for the Deputy Fire Marshal position. At that time, a DFM may submit a letter to the Fire Chief and Fire Marshal requesting reassignment. Upon submission, the Fire Chief, or his/her designee, shall have 10 business days to post a job position opening for the vacancy of Deputy Fire Marshal. The position opening shall be posted for a minimum of two (2) weeks. In the event the position remains unfilled, the position shall be posted for an additional two (2) weeks. In the event the position is still unfilled, the City shall have the right to open this position to qualified candidates outside of the Billings Fire Department who meet the equivalent position requirements including, but not limited to, fire service experience, ICC Fire Inspector 1, and education/training benchmarks as described in the job description. In the event a candidate from outside of the Billings Fire Department is assigned to this position, their seniority shall be equal to their actual service time on the Billings Fire Department.
- (b) Assistant Fire Marshal Eligibility Requirements: Shall have had at least three (3) years of service in the Billings Fire Prevention Bureau and be ICC Fire Inspector II certified. The Assistant Fire Marshal shall obtain ICC Fire Plans Examiner certification within one (1) year from the date of assignment. If the employee does not achieve the certification, then his or her base salary will be frozen at his/her current grade and step until certification is achieved. If the Assistant Fire Marshal's rate has been frozen, then the date certification is achieved will become the employee's promotional anniversary date for step increases.
- (c) The position of Assistant Training/EMS Chief shall be selected from personnel who have completed three (3) years' satisfactory service with the Billings Fire Department, and who are qualified for Firefighter II at Step F. The position vacancy shall be posted for a minimum of two (2) weeks. In the event the position remains unfilled, the position shall be reposted for an additional two (2) weeks. In the event the position is still unfilled, the City shall have the right to open this position to qualified candidates outside of the Billings Fire Department that meet the equivalent position requirements including but not limited to fire service experience, and education/training benchmarks as described in the job description. In the event a candidate from outside of the Billings Fire Department is assigned to this position, their seniority shall be equal to their actual service time on the Billings Fire Department. The Assistant Training Chief may return to suppression as per ARTICLE VI – HOURS OF WORK AND COMPENSATION, L.

4. General Conditions

- a. All promotions shall be made permanent upon satisfactory completion of a six (6) month probationary period. The Fire Chief has the right to extend the probationary period for up to an additional six (6) months. During the original probationary period, and any extension of that period, the Fire Chief has the right to demote an individual to their previous position under Article VIII, G. Just Cause, Disciplinary Procedure.

- b. CAPTAINS: All candidates for Captain shall be evaluated by Battalion Chiefs. This information shall be used as part of the six (6) month probationary evaluation.
  - c. All promotions through Firefighter 2 shall be made as soon as the individual fulfills all qualifications. All other promotions shall be made expeditiously and as soon as possible after a vacancy occurs. Satisfactory service shall be based upon last year's performance evaluations and the individual's personnel file.
  - d. Failure to attain Firefighter 2 prior thirty-six (36) months of employment shall be grounds for disciplinary action.
  - e. In the event that more promotions are needed than can be made under the provisions of this procedure, selected requirements may be waived subject to the agreement between the representative of Local 521 and the representative of the City.
  - f. Courses of instruction and materials containing the necessary information shall be provided to all personnel during work assignment periods, prior to giving tests used to determine eligibility for placement on the promotional priority schedule.
  - g. Engineers shall drive and operate engines. Only qualified personnel shall drive and operate water tenders and brush rigs. Qualified Captains shall be in charge of and may operate the aerial equipment in the absence of a qualified engineer. The Captain is in charge of company operations.
5. Qualification Evaluation - Selection for inclusion on the promotional list for Engineer and Captain shall be determined from those qualifications as follows:
- a. Candidates will be tested for placement on the promotional priority schedule three (3) times a year. The promotional test will be designed by a mutually agreed upon independent agency.
  - b. Attaining a passing score on given tests shall be considered as qualifying the individual for placement on the promotional priority schedule. This score shall be determined by the developing agency and subject to adjustment through joint negotiation between the City of Billings, Montana, and Local 521 of the International Association of Firefighters. All Captain promotional tests shall be based on questions from the following material:
    - (1) Fire Marshal's Office Handbook for Captain
    - (2) Rules and Regulations
    - (3) City and Fire Department Policies
    - (4) Protocols developed by the Billings Fire Department:
      - (a) Incident Command
      - (b) Hazardous Materials
      - (c) EMS
      - (d) Airport
      - (e) Exposure Control
      - (f) Confined Space

- (g) Rope Rescue
- (h) Fire Investigation
- (i) High Rise
- (j) Structure Firefighting
- (k) Wild Land

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

- c. Personnel receiving a passing score of 70% or better on all promotional examinations for engineer and company officer will be retained on the promotional list.
  - d. The promotional priority schedule shall list passing personnel in order of seniority. (The man with the most seniority first, the man with next most seniority second, etc.), except in cases of demotion. Any employee who was promoted and subsequently demoted during their probationary period must wait six (6) months from the date of demotion before they may again be promoted. All promotions for Engineer and Captain shall be made in accordance with this list.
  - e. **BATTALION CHIEFS, TRAINING CHIEF AND FIRE MARSHAL:** All candidates shall be evaluated by a promotional board consisting of three (3) members appointed by the Fire Chief and three (3) members appointed by the **ASSOCIATION**. This board will develop a list of no more than three (3) candidates. The Fire Chief must select the Battalion Chiefs, Training Chief, and Fire Marshal from the list of three (3) candidates presented by the Promotional Board. If the promotional board is unable to develop a list of no less than three (3) candidates, then the position will be advertised again for a minimum of two (2) weeks. If after two (2) weeks the promotional board is still unable to develop a list of no less than three (3) candidates, the Chief shall have the right to promote a qualified member of the Billings Fire Department that meets all the requirements for that position.
6. Grandfather Provision - Changes in the promotional priority procedure shall not affect the qualification requirement for those who have been promoted or who have completed the requirements for the next promotion or grade prior to the approval of this contract.
- K. Forfeiture of Vehicle and Maintenance Work
- 1. Members of IAFF Local 521 shall no longer perform maintenance or repair of any Fire Department vehicles or equipment while on duty. This shall include but is not limited to; Fire Department apparatus, fleet vehicles, small engines, mobile radios, emergency lighting and electrical systems, apparatus buildup, retrofit or fabrication of new or existing apparatus and equipment, lubrication and maintenance of aerial devices, annual pump testing, station generators and compressors.
  - 2. Local 521 agrees to perform daily, weekly and monthly apparatus checks consistent with current check sheets as of this date excluding the lubrication of aerial apparatus waterway and ladder.
- L. Random Drug/Alcohol and Reasonable Suspicion Policy
- 1. The Employer and the Union agree to promote the health, safety, and welfare of its employees and the community by maintaining an alcohol and drug-free workplace. The Employer will conduct random drug and



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

M. Tobacco

1. Compliance with MCA 7-33-1901 et seq. is mandatory; reporting and testing to meet that requirement are beneficial for firefighter health and safety as well as city compliance with Montana Code. Employee violation of MCA 7-33-1901 et seq. shall fall under the provisions of progressive discipline procedures as outlined in Article VIII Section G Sub 2.

N. Voluntary Physical Fitness Program – Pack Test:

1. The purpose of this program is to promote physical fitness. Fire Department employees covered by this Collective Bargaining Agreement (CBA) may voluntarily participate in the physical fitness testing process. The test shall consist of the nationally recognized standard associated with the wildland firefighting physical test known as “The Pack Test”.
2. The Pack Test will be administered in the spring and fall as scheduling and equipment permit. A one (1) time payment associated with successful completion of the Pack Test will be awarded annually during the first pay period in December of each year in the amount of \$300.00.
3. Fire Department employees who volunteer for the Physical Fitness Pack Test must complete the test each calendar year to be eligible for the physical fitness compensation benefit.
4. The Pack Test “Arduous” level shall be the recognized test parameters associated with the physical fitness program. The following protocol applies to the physical fitness Pack Test:
  - a. The “Arduous” level test is a 3-mile hike/walk with a 45 –pound pack and must be completed in 45 minutes or less to pass the test.
  - b. Testing shall be continuously monitored by the Training Chief.
  - c. No Jogging or running is permitted.
  - d. The test is Pass/Fail only.
  - e. All packs will be weighed before and after the test.
  - f. Testing will be monitored by the Training Chief, and any problems shall be brought to the Training Chief’s attention.
  - g. The Fire Chief may, upon request, accept a Pack Test taken by an employee if it is administered by another governmental agency. The employee must provide the Billings Fire Chief with a written request in advance of the test, which includes written verification from the administering agency that its Pack Test complies with all the requirements set forth in this section. The Billings Fire Chief will then either approve or deny the request. If approved, it is the employee’s responsibility to promptly provide the Billings Fire Chief with written verification of the details of the test and whether they passed.

## ARTICLE IX - ASSOCIATION MANAGEMENT

### COMMITTEES

#### A. Joint Labor Management Committee

1. There shall be a Joint Labor Management Committee that will use the Interest-Based problem-solving process trained by a Montana Board of Personnel agent. These meetings will be scheduled quarterly, with an option to cancel such meetings by mutual agreement. If facilitation is needed, then the request will be made to the Montana Board of Personnel Appeals. Recommendations will be made by consensus. If the parties are unable to reach consensus, then the issue shall exit the Committee and each party will have the same rights and or obligations related to the issue that each had prior to the issue being submitted to the Committee.

#### B. Promotion Committee

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

#### C. Officer Development Program Committee

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

#### D. Engineer Development Program (EDP) Committee

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

## ARTICLE X – Crisis Response Unit (CRU)

For the terms of this agreement, the CRU employees shall be covered under Article XII. Unless specified otherwise in this Article, all other rights granted in the CBA shall apply. The ASSOCIATION and EMPLOYER agree that this

position is new and problems that arise should be addressed in the agreed upon JLMC process.

A. Work Schedule

1. CRU employees shall work a 12-hour workday on the following schedule consisting of a 14-day work cycle that repeats at the end of each pay period: resulting in an 84 hour per pay period, or 2184 hr./year.
  - a. Two (2) 12-hour workdays.
  - b. Two (2) consecutive days off.
  - c. One (1) 12-hour workday.
  - d. One (1) day off.
  - e. One (1) 12-hour workday.
  - f. Two (2) consecutive days off.
  - g. Two (2) 12-hour workdays.
  - h. One (1) day off.
  - i. One (1) 12-hour workday.
  - j. One (1) day off.
2. The workday for CRU employees shall include a sixty (60) minute lunch break and a fifteen (15-minute morning and afternoon break. It shall also include a sixty (60) minute end-of-shift period to be out of service to complete paperwork and reporting.

B. Compensation

3. Pay Status- All employees covered by this agreement are non-exempt hourly employees as defined by the FLSA. As such, all employees shall be paid for all hours worked and for approved, paid leave hours.
4. Wages
  - a. CRU-EMT Probationary shall be \$23.0225 per hour.
  - b. CRU-EMT Confirmed Step 1 (6 months) shall be \$24.1737 per hour.
  - c. CRU-EMT Confirmed Step 2 (18 months) shall be \$25.3824per hour.
  - d. All CRU employees shall also receive any negotiated COLA.

C. Overtime Pay

5. CRU employees are not qualified for the FLSA 7K exemption and are entitled to overtime pay at the normal 40hr per week time frame at time and one half.

D. Vacation Leave

- a. Each employee shall earn vacation leave credits. Earned leave shall be credited for each pay period. Employees are not entitled to use any paid vacation leave until employed for at least six (6) months. Credits shall be earned according to the following schedule but are taken/used at a rate equal to the actual number of hours that the employee is absent from work.
- b. CRU Vacation accrual
  1. 0 through 10 years 126 hours/yr.
  2. 11 through 15 years 151 hours/yr.
  3. 16 through 20 years 176 hours/yr.

4. 21+ years 202 hours/yr.

c. This CRU schedule is calculated as follows and the calculation method shall be used for the number of scheduled hours per calendar year, regardless of the number of hours actually worked: number of vacation leave credit days earned according to Montana Code, 2-18-612 MCA (2005); multiplied by 8 hours per day; divided by 2080; multiplied by 2184 and rounded to the nearest whole hour.

d. Vacation selection shall be by mutual agreement between the ASSOCIATION and the EMPLOYER

E. Holidays

6. CRU Employees are entitled to all holidays listed in ART VII Sec A 2 (a)  
7. CRU Employees working on holidays shall be paid at time and one half for all hours worked for that shift.

F. Shift Trading

8. CRU Employees shall be allowed to shift trade within the CRU workforce.

G. Pre-Employment Physical

9. CRU Employees will be given the same pre-employment physical that suppression personnel receive.

H. Pension

10. CRU Employees shall be sworn members of the Billings Fire Department and as such shall be enrolled in FURS.

I. Probationary Period

11. CRU Employees' probationary period shall be 6 Months.

J. CRU Required Certifications

12. Probationary job requirements must be completed within 6 months from date of hire.  
a. Mental Health First Aid  
b. Crisis Intervention Training  
13. Continuing job requirements below must be completed within 18 months from date of hire.  
a. Community Integrated Healthcare Worker  
14. Job requirements enacted by state or federal law shall be added as necessary, to comply with billing and reimbursement requirements and addressed through JLMC.

## ARTICLE XI - CITY SECURITY

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

## **ARTICLE XII - TERMS OF AGREEMENT**

### **AND NEGOTIATIONS**

This Agreement shall become effective on the 1st day of July 2023 and continue in full force and effect through the 30th day of June 2026. Either party may open any portion or all of the contract for negotiation of the next contract by giving the other party notices of its desire to modify the Agreement on or prior to April 1, 2026. Such notification shall include the desired modification(s) for the party to review such proposed changes prior to the first negotiation session. Existing wages, hours, and other conditions of employment rising out of this Agreement shall not be changed by the action of either party without the consent of the other during the negotiation, mediation, fact-finding, or arbitration of the next contract. Any additional cost of maintaining the items listed in this paragraph, after the expiration of this Agreement, shall be figured in the financial settlement of the next Agreement.

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

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

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

IN WITNESS WHEREOF, the parties hereto, acting by and through their respective and duly authorized officers and representatives, have hereto set their hands and seals on this 27th day of November, 2023.

**CITY OF BILLINGS**

DS



**WILLIAM A. COLE, MAYOR**

DocuSigned by:

*William A. Cole*

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**DENISE R. BOHLMAN – CITY CLERK**

DocuSigned by:

*Denise R. Bohلمان*

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**INTERNATIONAL ASSOCIATION OF FIREFIGHTERS IAFF**

**LOCAL 521**

**CAMERON ABELL – PRESIDENT**

*Cameron Abell*

**CHRIS MOON – VICE PRESIDENT**

*Chris Moon*



**JAKE WILKINS – SECRETARY / TREASURER**

*Jake Wilkins*

**CHRIS PETERSON – FINANCE OFFICER**

*Chris Peterson*

**ZACH WELTON – OFFICER AT LARGE**

*Zach Welton*

**SHAWN O'BRIEN – MEMBER OF THE NEGOTIATION TEAM**

*Shawn O'Brien*

**EXHIBIT A****Pay Matrix – Billings Fire Department – July 1, 2023 – June 30, 2026**

Grade	Rank	Step	23-24	24-25 3%	25-26 3%
F72	CRISIS RESPONSE UNIT	Prob (1)	23.0225	23.7132	24.4246
		Step 2	24.1737	24.8989	25.6459
		Step 3	25.3824	26.1439	26.9282
F77	FIREFIGHTER	Prob (A/1)	23.4490	24.1525	24.8770
		FF (D/4)	27.7206	28.5522	29.4088
		FF1 (E/5)	28.8123	29.6767	30.5670
		FF2 (F/6)	30.2075	31.1137	32.0471
		FF3 (G/7)	32.5752	33.5525	34.5590
F87	ENGINEER	F (6)	35.9034	36.9805	38.0899
		G (7)	36.9965	38.1064	39.2496
G03	CAPTAIN	F (6)	40.9504	42.1789	43.4443
		G (7)	44.0970	45.4199	46.7825
218	BATTALION CHIEF	F (6)	48.5341	49.9901	51.4898
		G (7)	50.8940	52.4208	53.9934
G13	DEPUTY FIRE MARSHAL	B (2)	37.5929	38.7207	39.8823
		C (3)	42.5668	43.8438	45.1591
		D (4)	44.2498	45.5773	46.9446
		E (5)	46.4846	47.8791	49.3155
		F (6)	48.8039	50.2680	51.7761
		G (7)	50.7423	52.2646	53.8325
G16	ASST. TRAINING CHIEF	B (2)	39.7603	40.9531	42.1817
		C (3)	41.7483	43.0007	44.2908
		D (4)	43.8357	45.1508	46.5053
		E (5)	46.5823	47.9798	49.4192
		F (6)	50.7577	52.2804	53.8488
		G (7)	51.8211	53.3757	54.9770
G17	ASST. FIRE MARSHAL	F (6)	49.3734	50.8546	52.3802
		G (7)	52.3054	53.8746	55.4908
G28	FIRE MARSHAL TRAINING CHIEF	F (6)	55.0617	56.7136	58.4150
		G (7)	57.7962	59.5301	61.3160

6 mos  
18 mos  
30 mos  
42 mos

Paramedic Pay: 6% of F77/D in 2023-24; 7% in 2024-25; 8% in 2025-26

Longevity Pay was eliminated July 1, 2023

## EXHIBIT B

### HIGHER CLASSIFICATION PAY

Code	Description		7/1/2023	7/1/2024	7/1/2025
HFE	Firefighter to Engineer		3.3282	3.4280	3.5309
HFC	Engineer to Captain		3.9539	4.0725	4.1947
HFB	Captain to BC		4.4371	4.5702	4.7073
HFD	Deputy Fire Marshal to FM		4.3194	4.4490	4.5825
HOE	HC Overtime Firefighter to Engineer		4.9923	5.1421	5.2963
HOC	HC Overtime Engineer to Captain		5.9309	6.1088	6.2921
HOB	HC Overtime Captain to BC		6.6556	6.8553	7.0609

#### Certification Pay:

July 1, 2023-June 30, 2024 – Employees may be paid for a maximum of 3 certifications.

- 1 Cert - \$25 x 24 pay periods = \$600
- 2 Certs - \$50 x 24 pay periods = \$1200
- 3 Certs - \$75 x 24 pay periods = \$1800

July 1, 2024-June 30, 2025 – Employees may be paid for a maximum of 2 certifications (Team leads eligible for 3 certifications)

- 1 Cert - \$37.50 x 24 pay periods = \$900
- 2 Certs - \$75 x 24 pay periods = 1800

July 1, 2025-June 30, 2026 – Employees may be paid for a maximum of 2 certifications (Team leads eligible for 3 certifications)

- 1 Cert - \$50 x 24 pay periods = \$1200
- 2 Certs – \$100 x 24 pay periods = \$2400



## Appendix

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

#### **PURPOSE:**

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

#### **POLICY:**

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

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

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

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

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

#### **DEFINITIONS:**

For the purposes of this policy,

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

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

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

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

#### **EMPLOYEES SUBJECT TO THIS POLICY**

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

#### **ROLES AND RESPONSIBILITIES:**

- A. Employees are prohibited from:
  1. Using, consuming, distributing, or possessing alcoholic beverages or illegal drugs while on duty or reporting for duty while under the influence of alcoholic beverages or illegal drugs.
  2. Use of, consumption of, distribution of, or possession of alcoholic beverages and illegal drugs by employees are always prohibited in City worksites whether on duty or off duty. The term "worksite" includes City vehicles and private vehicles while being used by employees in the performance of their duties.
  3. Use, distribution, dispensation, possession, manufacture, or sale of (illegal drugs) while off duty which adversely affects the employee's work performance, the safety of the employee or others at work, or a criminal drug related arrest that results in a conviction. This includes reporting to duty while under the influence of illegal drugs.
  4. Use of alcohol off duty that adversely affects the employee's work performance, the safety of the employee or others at work, or a criminal arrest that results in an alcohol related conviction. This includes reporting to duty while under the influence of alcohol.
- B. Employees are expected to notify Human Resources of any drug or alcohol criminal conviction no later than five (5) calendar days after conviction.
- C. Station Captains are required to:
  1. attend training sessions on alcohol misuse, controlled substance misuse, and the illegal use of drugs in the workplace when offered;

2. report anything that could create Reasonable Suspicion to the Division Heads and Fire Administration;
  3. ensure confidentiality of all information regarding employee testing, disciplinary action and rehabilitation.
- D. Division Heads in addition to Part C are required to initiate an alcohol/drug test as described in this policy when Reasonable Suspicion is confirmed.
- E. Fire Administration in addition to Part C and D are required to:
1. refer employees to the City's designated Substance Abuse Professional (SAP) under appropriate conditions for assistance in obtaining counseling and rehabilitation upon a finding of alcohol abuse, use of controlled substances or illegal use of legal drugs;
  2. initiate appropriate disciplinary action upon a finding of alcohol use, controlled substance use, and/or the illegal use of legal drugs;
  3. in conjunction with Human Resources, assist the SAP Administrator in evaluating employee performance and/or personnel problems that may be related to alcohol misuse, use of controlled substances or the illegal use of legal drugs.
- F. Human Resources is required to:
1. direct and implement this program to ensure it is administered consistently;
  2. consult with Department Head or designee in determining appropriate action for situations related to this program; and
  3. ensure that all records and information of personnel actions taken against employees with verified positive test results remain confidential and only shared with individuals having a legal right to access.

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

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

#### **PERIODIC REVIEW**

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

## **PROCEDURES**

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

### **I. EMPLOYEE ASSISTANCE PROGRAM**

- A. Any employee needing help in dealing with drug or alcohol problems is encouraged to use the City's Employee Assistance Program (EAP) and the benefits available through the City's medical plan. Additional information regarding the City's EAP available in Human Resource's Policy Manual- Employee Assistance Program Policy. Employees who have questions or need more detailed information should contact Human Resources. The City EAP plays an important role in preventing and resolving problem alcohol and drug use by:
1. Providing confidential counseling and assistance to employees and their qualifying family members who self-refer for treatment or whose tests have been verified positive and monitoring the employee's progress through treatment and rehabilitation;
  2. Providing educational materials and training to employees on alcohol & drug use issues;
  3. Ensuring the confidentiality of test results and related medical treatment and rehabilitation records, which they maintain.
- B. The EAP will not be involved in the collection of test samples or the initial reporting of test results. The City's designated testing professional will be responsible for such testing.

### **II. SAFE HARBOR REFERRAL**

- A. A fundamental purpose of the City's Alcohol and Drug-Free Workplace Policy and Procedures is to assist employees who themselves are seeking treatment for alcohol or controlled substance use or misuse of prescription drugs. For this reason, the City will not initiate disciplinary action against any employee regarding the disclosure of his or her drug or alcohol related problem when the employee meets all three of the following conditions:
1. Voluntarily identifies him/herself to Human Resources as an abuser of alcohol and/or illegal drugs and/or as someone who misuses prescription drugs, as they apply to this policy, prior to being identified through other means, such as reasonable suspicion, or prior to being asked to provide a urine and/or breath sample for testing;
  2. Obtains evaluation, counseling or rehabilitation from an approved facility; and
  3. Thereafter refrains from using controlled substances or misusing prescription drugs and/or alcohol. The employee may be subject to a return-to-duty agreement as determined by the SAP.
- B. This provision is not intended to allow an employee to evade disciplinary action. The key to this provision's rehabilitative effectiveness is an employee's willingness to admit his/her problem. Since the key to this provision's rehabilitative effectiveness is an employee's willingness to admit the problem, this provision is not available to an employee who requests protection under this provision after:
1. Being identified through other means; or
  2. Being asked to provide a urine sample for testing; or
  3. Having a verified positive test result for alcohol and/or controlled substances pursuant to this policy.
- C. Drug or alcohol related incidents that are subject to discipline and occurred prior to seeking Safe Harbor are not covered by Safe Harbor protections.

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

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

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

### IV. TYPES OF TESTING

#### A. Reasonable Suspicion Testing

1. All employees will be tested for alcohol and/or controlled substances when there is reasonable suspicion of on-duty use or impairment. Reasonable suspicion testing may be based on, but not limited to:
  - a. observable phenomena, including but not limited to direct observation of drug or alcohol use or possession and/or the physical symptoms of being under the influence of a drug or alcohol such as the odor of an alcoholic beverage on the breath;
  - b. a pattern of abnormal conduct or erratic behavior;

- c. conviction for a drug or alcohol-related offense. An employee will be tested only once for this conviction upon return to work.
    - d. evidence that the employee has tampered with a previous alcohol or drug test.
  - 2. Although reasonable suspicion testing does not require certainty, mere hunches alone are not sufficient to meet the standard for a test.
  - 3. If an employee is suspected of using or being impaired by alcohol, controlled substances or illegal drugs in violation of this policy, the appropriate Division Head will gather all information, facts, and circumstances leading to and supporting this suspicion. The division head will contact Fire Administration, Human Resources or other City Administration to come to the workplace for concurrence and a decision to test the individual.
  - 4. The employee shall remain on duty but shall not be allowed to operate a vehicle or perform job functions until the circumstances are evaluated.
  - 5. Employees who are subject to reasonable suspicion testing shall be transported to and from the collection facility identified by the City as an appropriate collection site depending on day and time testing is needed.
  - 6. Testing will be conducted in compliance with the selected collection site's protocols.
  - 7. The employee's Division Head will, within 48 hours, prepare and forward to Human Resources a written report on a Reasonable Suspicion Incident Record (attached), detailing the circumstances that formed the basis to warrant the testing. This report should include the appropriate date(s) and time(s) of reported alcohol or drug-related incident(s) during the shift, reliable/credible sources of information, rationale leading to the test and the action taken. All documentation related to the determination also shall be forwarded to Human Resources.
- B. Post-Incident Testing
- 1. Employees involved in critical incidents, on-the-job accidents, or who engage in unsafe on-duty job-related activities that pose a danger to themselves or others or the overall operation of the City shall be subject to testing. If the employee's act, or failure to act, results in:
    - a. Death; or
    - b. Personal injury requiring immediate emergency room or urgent care center treatment; or
    - c. Damage to government or private property estimated more than \$1,500; or
    - d. At the request of the employee.
  - 2. An employee subject to post-incident testing shall remain immediately available for up to two (2) hours for transportation to and from such testing, or the City may consider the employee to have refused to submit to testing.
    - a. If there were extenuating circumstances that kept the employee from submitting to a test within 2 hours after the incident, Human Resources shall evaluate those circumstances and make the final determination as to whether or not it will be deemed a refusal.
    - b. An employee subject to post-incident testing shall not consume alcohol or drugs, either legal or illegal, prior to the testing. Exceptions may be made for previously prescribed maintenance medications and/or medications administered to treat any personal injury.
  - 3. If a test under this provision is not administered within two (2) hours of the occurrence, the supervisor shall document the reason(s) why it was not promptly administered. If more than eight (8) hours pass, then no alcohol test will be administered. If more than thirty-two (32) hours pass, no drug test shall be administered. If either test is not completed, Human Resources shall document the reason(s) why.

C. Random Testing

1. Random testing for alcohol and/or controlled substances will be conducted on all employees before, during or after their scheduled shift.
2. Random tests will be unannounced and will occur throughout the calendar year.
3. The random selectees will be notified by their supervisor using a lottery system conducted by an outside agency. The Random, Reasonable Suspicion and Post-Incident testing will be conducted by the same agency if possible. To ensure that all employees who have been designated for testing have an equal chance of being randomly tested, a scientifically valid random process is used.
  - a. The annual number of random alcohol tests will be no more than ten percent (10%) of the average number of employees subject to random testing.
  - b. The annual number of random drug tests will be no more than twenty-five percent (25%) of the average number of employees subject to random testing.
4. Human Resources will notify the employee's supervisor or designee and provide the name of the individual selected for random testing. The Supervisor shall deliver the notification in person. The employee shall not be given advance notice of the scheduled testing. Upon notification by the supervisor, employees shall proceed immediately to the testing site. Employees being tested will not drive themselves to the testing site.
5. The testing facility will release preliminary results positive or negative to BC and HR for expediency. The unit will be out of service until the preliminary result is communicated. Employees returning to duty will have a negative test or be put on paid administrative leave until verified result is received
6. If (e-cup) is positive or being sent for further evaluation, then the employee will be put on paid administrative leave until the test is verified. If the test is verified as positive, then leave time will be coded as sick leave retroactively.

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

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

## 3. Table of cutoff concentration levels.

Type of drug or metabolite	Initial test	Confirmation test
(1) Marijuana metabolites (i) Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC)	50	15
(2) Cocaine metabolites (Benzoylcegonine)	150	100
(3) Phencyclidine (PCP)	25	25
(4) Amphetamines	500	250
(i) Amphetamine	500	250
(ii) Methamphetamine <sup>1</sup>		250
(5) Opiate metabolites	2000	
(i) Codeine		2000
(ii) Morphine		2000
(iii) 6-acetylmorphine (6-AM) <sup>2</sup>		10
(iv) MDMA <sup>3</sup>	500	250
<sup>1</sup> Specimen must also contain amphetamine at a concentration of greater than or equal to 200 ng/mL.		
<sup>2</sup> Test for 6-AM in the specimen. This test conducted only when specimen contains morphine at a concentration greater than or equal to 2000 ng/mL.		
<sup>3</sup> Methylenedioxymethamphetamine (MDMA).		

4. Employees should be aware that use of hemp oil products will not be an acceptable defense for a positive Delta-9-tetrahydrocanna-binol-9-carboxylic acid (THC) test.
5. Alcohol shall be confirmed positive if both the initial and confirmation tests reveal a breath alcohol content of greater than .04 grams of alcohol per 210 liters of breath or higher. If the initial and confirmation test is above .02 but .04 or below, the employee will not be allowed to perform safety-sensitive functions until the start of his or her next regularly scheduled duty period, but not less than eight (8) hours following administration of the test.

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

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



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

## V. TEST PROCEDURES

- A. Drug testing will be done by the split sample method. Testing services shall be provided by a designated contractor at a designated collection site with collection personnel trained in accordance with U.S. Department of Health and Human Services (DHHS) standards and analyzed by an independent DHHS certified lab. The personnel involved in testing and processing results are not employees of the city.
- B. Employees subject to testing shall comply with all requirements of the testing process and personnel. Employees will complete all requirements of initial and follow-up tests. Failure to do so will result in termination of employment.
- C. Procedures for Alcohol Testing
  1. All alcohol tests will be by breath testing only.
  2. Upon arrival at the collection site, the employee will show photo identification. Acceptable identification includes an actual Montana driver's license or department ID.
  3. Initial breath alcohol testing.
    - a. Initial breath alcohol testing is performed by a Breath Alcohol Technician (BAT) who is employed by the collection facility and who is trained in the operation of an evidential breath testing device (EBT) as approved by the National Highway Traffic Safety Administration (NHTSA).
    - b. The employee will receive instructions such as 'blow with a strong continuous breath until advised to stop.'
    - c. If the result of the initial breath test is an alcohol concentration of .02 or greater, a confirmatory test shall be conducted.
  4. Confirmation or verification alcohol breath testing
    - a. Confirmation/verification tests shall only be conducted by a Breath Alcohol Technician who is employed by the collection facility.
    - b. The confirmatory test may be conducted on the same EBT as the initial test.
    - c. Before the confirmatory test is given, the employee shall be observed for 20 minutes prior to testing and shall be instructed not to eat, drink, or place anything in his/her mouth until the conclusion of the breath test.
    - d. The employee will receive instructions such as 'blow with a strong continuous breath until advised to stop.'
    - e. Collection site personnel may require the employee to sign forms.
    - f. If the employee has any concerns following the testing process, the employee should advise a supervisor at the collection site, the employee's supervisor, or Human Resources.
- D. Procedures for Drug Testing
  1. An employee will be notified in-person by a supervisor that they have been chosen for a random drug test.
  2. The employee will report immediately to the collection site.

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

## **VI. SPECIAL DRUG TESTING PROCEDURES**

### **A. Direct Observation Testing**

1. Collection site personnel of the same gender as the employee tested may observe the employee provide the urine specimen when:
  - a. Collection site personnel may have reason to believe that a particular individual has altered or substituted the specimen, or
  - b. the employee has previously tampered with a sample, or
  - c. the employee has equipment or implements capable of tampering with or altering urine samples.
2. Direct observation shall not be the norm.
3. In addition to the procedures listed under Random Testing, the procedure will include direct inspection of the employee with shirt lifted and trousers lowered.
4. Collection site personnel will directly observe the urine leaving the body and entering the collection container.

### **B. Specimen Temperature Outside of Range**

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

### **C. Dilute Sample**

1. If the Medical Review Officer (MRO) notifies the city that an employee's test was positive and dilute, the test will be treated as verified positive. The employee shall not be required to submit another test.
2. If the MRO notifies the city that an employee's test was negative and dilute, and there is no acceptable medical explanation, the following procedures will be followed. If the employee declines to complete or does not complete these procedures, it will be treated as a refusal.

- a. If the creatinine concentration of the dilute specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL, another sample will be collected under direct observation.
  - (1) This test will be conducted unannounced (with the minimum possible advance notice) as soon as possible after the initial test.
  - (2) The employee will be escorted by a supervisor immediately to the collection site.
  - (3) The employee will be directed not to ingest anything until after the test is completed.
  - (4) If the result of the direct observation test is also negative and dilute, the employee will not be required to take an additional test. The result shall be considered confirmed positive.
- b. If the creatinine concentration of the dilute specimen is greater than 5 mg/dL, another test will be collected, but shall not be conducted under direct observation, unless there is another basis for utilization of direct observation.
  - (1) This test will be conducted unannounced (with the minimum possible advance notice) as soon as possible after the initial test.
  - (2) The employee will be directed not to ingest anything until after the test is completed.
- c. If the 2nd specimen is positive and dilute, the test will be treated as positive.
- d. If the specimen is again negative and dilute, the following procedure will apply:
  - (1) If the creatinine concentration of the second dilute specimen was equal to or greater than 2mg/dL, but less than or equal to 5 mg/dL, another test will be collected under direct observation in the same manner as listed under C2a above.
  - (2) If the result of this direct observation test is also negative and dilute, the employee will not be required to take an additional test because the result was dilute. The result shall be considered confirmed positive.
  - (3) If the creatinine concentration of the second dilute specimen is greater than 5 mg/dL, the employee will not be required to take an additional test because the result was dilute. The test will be considered negative.

D. Insufficient Urine Specimen Volume

- 1. 45mL of urine is required to constitute sufficient testing volume. If the employee does not provide sufficient volume, the following "shy bladder" procedures will apply. If the employee declines to complete or does not complete these procedures, it will be treated as a refusal.
- 2. For purposes of this section, permanent or long-term medical conditions are those physiological, anatomic, or psychological abnormalities documented as being present prior to the attempted collection and considered not amenable to correction or cure for an extended period, if ever. Examples would include destruction (any cause) of the glomerular filtration system leading to renal failure; unrepaired traumatic disruption of the urinary tract; or a severe psychiatric disorder focused on genito-urinary matters. Acute or temporary medical conditions, such as cystitis, urethritis or prostatitis, though they might interfere with collection for a limited period, cannot receive the same exceptional consideration as permanent or long-term conditions.

E. Shy Bladder Procedure:

- 1. The insufficient specimen will be discarded. Specimens may not be combined.
- 2. Employees will be advised to drink up to 40 ounces of fluid, distributed reasonably through a period of up to three hours, or until the individual has provided a sufficient urine specimen, whichever occurs first. The employee may decline to drink but will still be required to provide a sufficient urine specimen.

3. The employee shall remain in the testing area under observation during the three-hour period.
4. If the employee has not provided a sufficient specimen within three hours of the first unsuccessful attempt to provide the specimen, the collection attempt will be discontinued, and the employer will be notified.
5. The employee will be directed to obtain, within seven calendar days, an evaluation from a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised by the employee's failure to provide a sufficient specimen. (The MRO may perform this evaluation if the MRO has appropriate expertise.)
6. After completing the evaluation, the referral physician must provide a written statement of his/her recommendations and the basis for those to the MRO. Detailed information on the employee's medical condition beyond what is necessary to explain the conclusion must not be in this statement. The MRO will seriously consider and assess the referral physician's recommendations in making a determination about whether the employee has a medical condition that has, or with a high degree of probability could have, precluded the employee from providing enough urine. The MRO will notify Human Resources as soon as a determination is made.
  - a. If the employee refuses to obtain the evaluation, the test will be deemed a refusal.
  - b. If the evaluation determines the employee has a medical condition, and the medical condition has, or with a high degree of probability could have, precluded the employee from providing enough urine, the test will be cancelled.
  - c. If the evaluation determines that the employee's medical condition is a serious and permanent or long-term disability that is highly likely to prevent the employee from providing a sufficient amount of urine for a very long or indefinite period of time, the MRO will conduct a further medical evaluation to determine if there is clinical evidence that the employee is using a controlled substance or illegally using drugs.
    - (1) If the medical evaluation reveals no clinical evidence of controlled substance use or illegal use of drugs, the test result shall be negative.
    - (2) If the medical evaluation reveals clinical evidence of controlled substance use or illegal use of legal drugs, the test result shall be cancelled. (Because this is a cancelled test, it does not serve the purposes of a negative test, i.e., the employer is not authorized to allow the employee to begin or resume duty, because a negative test is needed for that purpose).
  - d. If the evaluation determines that there is not an adequate basis for determining that a medical condition has, or with a high degree of probability could have, precluded the employee from providing enough urine, the test will be considered a refusal.

## **VII. TEST REFUSAL**

- A. Refusals will result in administrative action the same as if the test was verified positive. In the case of a breath test refusal, administrative action will be the same as if the test was verified more than .04.
- B. Employees will be considered to have refused testing if they:
  1. Refuse to provide a specimen; or
  2. Refuse to complete all required tests as directed; or
  3. Fail to report for a required test at the scheduled time; or
  4. Engage in conduct that clearly obstructs the testing process; or
  5. Tamper with the test; or
  6. Alter or substitute the specimen; or

7. Fail to provide adequate breath or specimen volume without a verified medical explanation.

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

- A. An employee selected for random drug and alcohol testing may obtain a deferral of testing if Human Resources concurs that a compelling need necessitates a deferral on the grounds that the employee is:
  1. In a leave status (sick, annual, administrative or leave without pay); or
  2. In official travel status away from the test site or imminently embarking on official travel scheduled prior to testing notification.
- B. An employee whose random drug and/or alcohol test is deferred will be subject to testing on his/her next regularly scheduled work shift.

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

- A. Samples testing positive for controlled substances or illegally used drugs will undergo further testing to identify the specific type of drug(s) or substance(s) in the specimen.
- B. The applicant or employee will be contacted by the MRO and can provide an explanation of a positive result, which may include providing medical documentation of lawful use of a prescription or over-the-counter medication.
- C. If the MRO determines there is no justification for the positive result, such result will then be considered a verified positive test result.
- D. The MRO shall notify Human Resources of a verified positive test result.
- E. The MRO will notify the employee of the verified positive test result. Once notified, the employee may within 72 hours of notification request the split specimen be tested by another DHHS certified lab.
- F. If the employee is unable, for a legitimate reason, to make this request within the 72-hour period, the split specimen test will automatically be conducted.
- G. The employer shall pay for the additional test if the additional test results are negative, and the employee shall pay for the additional tests if the additional tests are positive.

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

- A. An employee may be found in violation of this policy based on any appropriate evidence including, but not limited to:
  1. Direct observation of prohibited alcohol use or drug use including misuse of prescription medication; or
  2. Evidence obtained from an arrest or criminal conviction for a drug or alcohol related offense; or
  3. A verified positive test result; or
  4. An employee's voluntary admission, unless the employee is meeting the requirements as outlined under the Safe Harbor Referral; or
  5. Test refusal.
- B. An employee who is found to be in actual and illegal possession of a controlled substance, illegally used drug, and/or related paraphernalia while on duty, in or at any City-owned facility, City-owned property, City-approved activity, or City-owned vehicle, will be investigated and may be subject to discipline up to and including termination. they may be prosecuted under the applicable state or federal law (refer to Federal Controlled Substances Act Title 21 United States Code, Offenses Involving Dangerous Drugs Title 45 Chapter 9 Montana Code Annotated, and Model Drug Paraphernalia Act Title 45 Chapter 10 Montana Code Annotated.)
- C. Effects of Positive Drug Testing Results

1. Any employee receiving his or her first verified positive test for a controlled substance will be referred to Human Resources, and will be subject to mandatory administrative action including referral to the SAP, and ten (10) hours leave without pay. A second positive test indicating drugs and/or alcohol will result in termination of employment.
2. Any employee receiving his or her first verified positive test for illegally used drugs, i.e., prescription medication or over-the-counter medication, shall be referred to Human Resources and will be subject to mandatory administrative action including referral to the SAP, and to one day leave without pay. A second positive test indicating drugs and/or alcohol will result in termination of employment.
3. Successful completion of any rehabilitation recommended will be a condition of continued employment.
  - a. The cost of rehabilitation will be the responsibility of the employee.
  - b. Employees may be allowed to use accrued leave (Sick leave followed by vacation and/or compensatory leave) to complete rehabilitation until such leave is exhausted, at which time the employee may be allowed to go on unpaid leave.
  - c. The employee remains responsible for successful completion of the SAP designated treatment program, and assertions regarding the effectiveness of a program shall not constitute either an acceptable explanation or excuse for continuing to misuse alcohol and/or drugs or a defense to disciplinary action if the employee does not complete treatment.
4. The city may initiate action to terminate an employee for refusing to obtain and complete counseling or rehabilitation through an SAP or a state licensed facility as recommended by SAP.
5. The employee must have a negative test result before returning to work.
6. The employee shall be subject to a return-to-duty agreement.
7. Following a verified positive test and after returning to duty, the employee will be subject to unannounced testing for a period determined by the SAP.

D. Effects of Positive Alcohol Testing Results

1. When an employee is found to be in violation of the alcohol provisions of this policy, he or she shall be referred to Human Resources and will be subject to mandatory administrative action, including referral to the SAP and one (1) day leave without pay. A second positive test indicating drugs and/or alcohol will result in termination of employment.
2. If the employee is retained, the SAP's recommended rehabilitation will be a condition of continued employment.
  - a. The cost of rehabilitation will be the responsibility of the employee.
  - b. Employees may be allowed to use accrued leave to complete rehabilitation until such leave is exhausted, at which time the employee may be allowed to go on unpaid leave.
  - c. The employee remains responsible for successful completion of a treatment program, and assertions regarding the effectiveness of a program shall not constitute either an acceptable explanation or excuse for continuing to misuse alcohol and/or drugs or a defense to disciplinary action if the employee does not complete treatment.
3. The city may initiate action to terminate an employee for refusing to obtain counseling or rehabilitation through an SAP or a state licensed facility.
4. The employee must have a negative test result before returning to work.
5. The employee shall be subject to a return-to-duty agreement.

6. Following a verified positive test and after returning to duty, the employee will be subject to unannounced testing for a period determined by the SAP.
7. Any subsequent positive test for alcohol use will subject the employee to termination of employment.
8. An employee with a first breath alcohol test which shows a breath alcohol content of .02 or greater but .04 or less may not return to duty for the remainder of the scheduled workday and must take sick leave for the remainder of his/her shift. The employee shall have a negative test result before returning to work.

#### **XI. RECORDS AND REPORTS**

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

#### **XII. ADDITIONAL PROVISIONS**

- A. Department Educational Program: Annually, employees will be provided with information regarding controlled substances, alcohol, and illegal use of drugs. All supervisors shall receive training in compliance with 49 CFR 382.603.
- B. Notification of Conviction: Any employee who is convicted of a criminal drug or alcohol related violation must notify the City within five (5) calendar days of the conviction. A conviction, a plea of guilty, a plea of no contest, receiving a suspended imposition of a sentence, and a withheld judgment will all be considered the

same as a conviction. This obligation to report applies even to deferred prosecutions and deferred impositions of sentence.

- C. **Limitation of Adverse Action:** No adverse action, including follow-up testing, may be taken by the employer if the employee presents a reasonable explanation confirmed by the MRO indicating that the original test results were not caused by the use of controlled substances, by alcohol consumption, or by the illegal use of drugs. Reasonableness shall be determined by Human Resources. If the employee presents a reasonable explanation confirmed by the MRO, the test results must be removed from the employee's record and destroyed.
- D. **Employee's Right of Rebuttal:** The employer shall provide an employee or prospective employee who has been tested under any qualified testing program with a copy of the test report. The employee or prospective employee will be given the opportunity to provide notification to the Medical Review Officer of any medical information that is relevant to interpreting test results, including information concerning currently or recently used prescription or nonprescription drugs. The employer is also required to obtain an additional test of the split sample by an independent laboratory selected by the person tested at the request of the employee. (See Section XI.) The employee must be provided with the opportunity to rebut or explain the results of any test.
- E. **New Employee Notification:** Applicants for City positions will be informed about the drug-free workplace policy on the vacancy announcement. During the screening process applicants will be notified of the testing requirements and that appointment to the position is contingent upon a negative pre-employment drug test. Upon hiring, new employees will receive a copy of the policy in the Employee Policy Handbook.
- F. **Employee Policy Confirmation Receipt:** Employees will be required to sign a statement that confirms that they have received a copy of the alcohol and drug-free workplace policy. The statement will be maintained in the employee's personnel file.
- G. **Cost:** Testing will be at the employer's expense: If an employee contests the verification test results, another test will be conducted. If that test is positive, the employee will be responsible for payment. If it is negative, the employer will be responsible for payment. Employees will be compensated at the employee's regular rate, including benefits, for time attributable to the testing program.
- H. **Unintentional Ingestion:** Any employee who unintentionally ingests a controlled substance shall immediately report the incident to his/her supervisor so that appropriate medical steps may be taken to ensure the employee's health and safety.
- I. **Voluntary Testing:** Employees may volunteer for testing as part of a city investigation. The employee must cooperate with all parts of the test and complete all requirements of collection site personnel.
- J. **Union Representation:** Employees subject to investigations may have a Union representative present, at his/her option during interviews. If the Union representative is not available for the interview, the Employee shall select another Union official to fill in for the absent Union representative.

### **XIII. RESERVATIONS**

- A. Employees who are enrolled in and are participating in or have completed a supervised rehabilitation program and are no longer engaging in the misuse of alcohol, use of controlled substances, or illegal use of drugs, shall be protected from discrimination and harassment in accordance with the Americans with Disabilities Act of 1990. This prohibition does not preclude follow-up testing.
- B. This program is intended to carry out the City's Alcohol and Drug-Free Workplace Policy. All situations will be handled in accordance with this policy and in consultation with representatives of Human Resources.

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

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



- B. **Adulterated specimen** – A urine specimen containing a substance that is not a normal constituent or containing an endogenous substance at a concentration that is not a normal physiological concentration.
- C. **Alcohol** – means an intoxicating agent in alcoholic beverages, food, or medication; ethyl alcohol, also called ethanol; or the hydrated oxide of ethyl.
- D. **Alcohol concentration** – means the alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath as indicated by an evidential breath test.
- E. **Breath Alcohol Technician (BAT)** – A person who instructs and assists individuals in the alcohol testing process and operates an EBT.
- F. **Cancelled test** – A drug or alcohol test that has a problem identified that cannot be or has not been corrected, or which this part otherwise requires to be cancelled. A cancelled test is neither a positive nor a negative test. Having a cancelled test does not relieve the employee of the responsibility to provide a test that produces a measured outcome.
- G. **Collection site** – A place designated by the employer where employees present themselves for the purpose of providing a specimen of their urine to be analyzed for the presence of drugs or providing a breath sample to be analyzed for the presence of alcohol.
- H. **Confirmation test** - For alcohol, a second test following a screening test with a result of 0.02 or greater that provides a measure of alcohol concentration. For controlled substances and illegally used drugs testing, an analytical procedure to identify the presence of a specific drug or metabolite which is independent of the screening test, and which uses a different technique and chemical principle from that of the initial screening test to ensure reliability and accuracy.
- I. **Controlled Substance** – means any drug, substance, or precursor included in Schedules I through V as defined by Section 812 of Title 21 of the United States Code (21 USC 812) or any drug, substance, or precursor included within the definition of "Dangerous Drug" in Title 50 Chapter 32 Part 2, Montana Code Annotated (for example, but not limited to: cocaine, marijuana, methamphetamine.) For this policy, the term 'controlled substance' does not include the use of prescribed drugs, which have been legally obtained and are being used in the manner and for the purpose for which they were prescribed. The term does not include distilled spirits, wine, malt beverages, or tobacco. It does include medical marijuana.
- J. **Conviction** – means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of federal or state criminal drug or alcohol statutes.
- K. **Critical Incident** – means any incident in which someone is killed or is seriously injured.
- L. **Dilute specimen** – means a urine specimen with creatinine and specific gravity values that are lower than expected for human urine.
- M. **Direct observation** – means an employee being directly observed while providing a urine sample. The procedure will include direct inspection of the employee with shirt lifted and trousers lowered and will include direct observation of urine leaving the body and entering the collection container.
- N. **Employee** – All part-time, full-time, and seasonal employees of the City of Billings engaged in the performance, supervision, or management of work in a hazardous work environment, security position, position affecting public safety, or fiduciary position. It does not include an independent contractor. The term includes an elected official.

- O. **Employee Assistance Program (EAP)** – means a contract-based counseling program that offers assessment, short-term counseling, and referral services to employees for a wide range of drug, alcohol, and mental health problems, and monitors the progress of employees while in treatment.
- P. **Employer** – means the City of Billings.
- Q. **Evidential Breath Testing Device (EBT)** – means an instrument reliable in measuring alcohol concentration in breath, which meets the National Highway Traffic Safety Administration specifications and is listed in the conforming products list of evidential breath testing devices.
- R. **Hazardous work environment** includes but is not limited to positions:
  - 1. For which controlled substance and alcohol testing is mandated by federal law, such as aviation, commercial motor carrier, railroad, pipeline, and commercial marine employees;
  - 2. That involve the operation of or work in proximity to construction equipment, industrial machinery, or mining activities; or
  - 3. That involves handling or proximity to flammable materials, explosives, toxic chemicals, or similar substances.
- S. **Illegally Used Drugs / Illegal Use of Drugs** – means:
  - 1. any prescribed drug which is legally obtainable but has not been legally obtained or is not being used for prescribed purposes or in the prescribed manner;
  - 2. 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.
- T. **Initial test or Screening test** – means a test for controlled substances or illegally used drugs to eliminate “negative” urine specimens from further consideration and to identify the presumptively positive specimens that require confirmation or further testing. In alcohol testing, an analytical procedure to determine whether an employee has a prohibited concentration of alcohol in his or her system.
- U. **Insufficient urine specimen** – means less than the 45mL of urine required to constitute a sufficient testing volume. An insufficient specimen will prompt “shy bladder” procedures.
- V. **Medical Review Officer (MRO)** – Means a licensed physician trained in the field of substance abuse.
- W. **Precursors** – means a biochemical substance which can be processed or synthesized into one of the categories of drugs to be tested under this policy.
- X. **Prospective employee** means an individual who has made a written or oral application to the City of Billings to become an employee.
- Y. **Qualified testing program** – means a program to test for the presence of controlled substances and alcohol that meets the criteria set forth in sections 39-2-207 and 39-2-208 Montana Code Annotated.
- Z. **Random testing** – means a system of drug and alcohol testing imposed without individualized suspicion that a particular employee is using controlled substances, alcohol, or illegally using drugs. The system is a statistically random sampling of such employees based on a neutral criterion, such as social security numbers.
- AA. **Referral Physician** – means a licensed physician, acceptable to the MRO, who has expertise in the medical issues raised when an employee provides an insufficient urine specimen. The MRO may act in this capacity if they have appropriate expertise.
- BB. **Return-to-Duty Agreement** – means an agreement between the city and an employee that allows an employee continued employment under stringent guidelines prohibiting use of drugs and alcohol. An employee’s failure to meet the terms of the agreement, which may include successfully passing tests for alcohol and/or controlled substances and/or illegally used drugs, shall result in termination.

- CC. **Sample** – means a urine specimen, a breath test, or oral fluid obtained in a minimally invasive manner and determined to meet the reliability and accuracy criteria accepted by laboratories for the performance of drug testing that is used to determine the presence of a controlled substance or alcohol.
- DD. **Shy bladder procedure** – means the procedure that is followed when an employee does not provide a sufficient urine volume (45mL) for testing.
- EE. **Split specimen** – means, in drug testing, a part of the urine specimen that is sent to a first laboratory and retained unopened, and which is transported to a second laboratory if the employee requests that it be tested following a verified positive test of the primary specimen or a verified adulterated or substituted test result.
- FF. **Substance Abuse Professional (SAP)** – the City’s substance abuse professional who evaluates employees who have violated drug and alcohol policies and makes recommendations concerning education, treatment, follow-up testing, and after care.
- GG. **Supervisor** – means an employee who exercises supervision of one or more employees.
- HH. **Unannounced test** – means a test for alcohol, control substances, and/or illegally used drugs previously scheduled and announced only to the employee just prior to the scheduled time, allowing only appropriate time for the employee to immediately proceed directly to the scheduled testing site.
- II. **Under the Influence/Impaired** – When an employee is affected by a drug or alcohol or a combination of a drug and alcohol. The symptoms of influence and/or impairment are not confirmed to those consistent with misbehavior, or to obvious impairment of a physical or mental ability such as slurred speech or difficulty in maintaining balance. A determination of use, influence, and/or impairment can be established by a professional opinion, urine, blood or any other commonly used scientific valid tests and in some cases by a lay person’s opinion. An employee will be presumed to be impaired and in violation of this policy whenever the presence of drugs is detected at levels determined by the testing laboratory as constituting a positive indication for drugs. An employee will be presumed to be impaired by positive indication for drugs. An employee will be presumed to be impaired by alcohol whenever the presence of alcohol is detected at a level of .04% or greater.
- JJ. **Verified Positive Test Result for Alcohol** – means the presence of alcohol in the breath at a level of greater than .04 as confirmed by two tests with evidential breath testing devices and administered by a trained and certified Breath Alcohol Technician.
- KK. **Verified Positive Test Result for Drugs** – means a test result that was positive for a controlled substance or illegally used drug on an initial FDA-approved immunoassay test, confirmed by a Gas Chromatography/Mass Spectrometry assay, (or other confirmation tests approved by the U.S. Department of Health and Human Services), and reviewed and verified by the Medical Review Officer in accordance with this policy and the Mandatory Guidelines for Federal Workplace Drug Testing Programs.

#### REFERENCES:

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

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

Federal Controlled Substances Act  
21 United States Code (USC)

Offenses Involving Dangerous Drugs and Procedural Provisions

Title 45 Chapter 9 Montana Code Annotated (MCA)

Model Drug Paraphernalia Act

Title 45 Chapter 10 Montana Code Annotated (MCA)

Controlled Substances Codes

Title 50 Chapter 32 Montana Code Annotated (MCA)