

**MEMORANDUM OF UNDERSTANDING**

**BETWEEN**

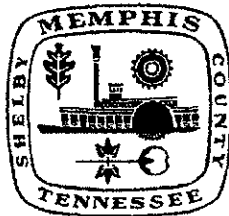
**CITY OF MEMPHIS, TENNESSEE**

**AND**

**THE INTERNATIONAL UNION OF OPERATING ENGINEERS**

**LOCAL 369**

**(HEAVY EQUIPMENT OPERATORS)**



**EFFECTIVE**

**JULY 1, 2013 through JUNE 30, 2015**

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## PREAMBLE

This Memorandum is entered into by the City of Memphis, Tennessee hereinafter referred to as the City and the International Union of Operating Engineers, Local 369, hereinafter referred to as the Union. The City is engaged in the operation of heavy construction and maintenance in Memphis, Tennessee, and the parties are desirous of entering into this Memorandum of Understanding to formalize the relationship between the parties.

The parties accept the particular qualifications, experience and responsibility of Operating Engineer employees and as such make a public statement that the intent of the Union and the City is to strive toward professional goals.

## ARTICLE 1

### STATEMENT OF POLICY AND RECOGNITION

**Section 1.** Workmen shall be at their regular place of work at the starting time and shall remain at their place of work until the regular quitting time.

**Section 2.** Slowdowns, forcing of overtime, spread work tactics, standby crews and featherbedding practices have been and are condemned.

**Section 3.** There shall be no limit on production of workmen or restriction on the full use of proper tools or equipment and there shall not be any task or piece work.

**Section 4.** Stewards shall be qualified workmen performing work of their craft. There shall be no non-working Stewards.

NOW, THEREFORE, THIS MEMORANDUM is made and entered into by the City and the Union as the collective bargaining agency of its present members and those becoming such in the future individually and collectively. The bargaining unit covered by this Memorandum shall include the following classifications regardless of Division or Department. Lead Operator/Lead Mechanic Heavy Equipment defined as operating heavy equipment and supervising and directing assigned crew activities in various daily operations. Heavy Equipment Operator defined as operating a dozier, scraper, crane (10 tons and over), front end loader (not utility tractor mounted), Asphalt Spreader, compactor, steel wheel roller, dragline, heater planner, motor patrol, backhoe (over 85

I.E.M.C. net horsepower), huber maintainer, Truck Crane Operator (less than 10 tons), industrial tractor mounted backhoe (85 I.E.M.C. net horsepower and under). Heavy Equipment Mechanic defined as an employee who full-time repairs such listed heavy equipment; Heavy Equipment Mechanic Helper defined as employee who assists Heavy Equipment Mechanic; Greaser, defined as an employee who regularly greases such listed equipment in the field; Sweeper Operator defined as operating a sweeper. Fuel Truck Driver defined as operating a fuel truck.

## ARTICLE 2

### NON-DISCRIMINATION

The Union and the City agree that no employee shall be illegally discriminated against because of race, sex, marital status, religion, creed, national origin, age, disability, political affiliation, union membership, or union activity, use of the grievance procedure

The term "employee" in this Agreement, or use of the male gender, shall be construed as including female.

The Union and Management shall not coerce, intimidate, or in any other manner, discriminate against any employee for any reason.

No employee shall be denied promotion or any other benefit, because of his/her membership or lack of membership in the Union or lack of membership in the Union.

## ARTICLE 3

### MANAGEMENT RIGHTS

Section 1. The City of Memphis has the exclusive right to determine the purpose of each of its agencies and to set the standards of service to be offered to its citizens. It is also the right of the City to direct its employees to hire, promote, demote, transfer, assign or retain employees in positions within an agency or department, and to establish reasonable work rules which do not conflict with this agreement. However, any work rule change that affects an established system shall be discussed with the Union in advance of any change.

The City also has the right to suspend, discharge or take other disciplinary action

against its employees for just cause and in accordance with the provisions of the Memorandum of Understanding; and to relieve its employees from duty in the event of lack of work, funds, or for other legitimate reasons provided however, that nothing contained in this article shall be deemed to deny the rights of any employee to submit a grievance concerning the application or interpretation of terms of this Memorandum of Understanding or of a claimed violation, misinterpretation, or misapplication of the rules or regulations of the City affecting the terms and conditions of employment.

All rights and duties of both parties are specifically expressed in the Memorandum of Understanding and each of the parties reserves to itself the rights and privileges otherwise accorded it whether by Personnel Manual, Division Work Rules, Charter, statute, or common law with respect to any matter not expressly covered by this Memorandum of Understanding.

The City's failure to exercise any function or right reserved to it, or its exercising any function or right in a particular way shall not be deemed a waiver of its right to exercise such function or right in the future. The failure of management to use any rights identified in this article shall not remove such rights from management.

**Section 2.** If it is determined by the Mayor or Division Director that civil emergency conditions exist, such as disasters or other catastrophes, the non-economic provisions of this Agreement may be suspended by the Mayor or the Division Director, during the time of the declared emergency. The provisions of this Agreement will not be suspended unless the Business Agent or his office is advised in advance, or no later than the next business day after the declared emergency.

#### ARTICLE 4

#### WORKING RULES

**Section 1.** There shall be a Steward on all jobs appointed by the Business Representative. The Steward shall be the last employee laid off provided he is qualified and capable of performing the remaining work.

**Section 2.** The business representative shall be permitted to visit any work location as part of administering this Memorandum but shall not interfere with the work progress.

**Section 3.** When the City requests employees to be furnished by the Union it will call the Union office at least 48 hours in advance of its needs and request referrals. The Union agrees to make every effort to furnish competent operating engineers when requested and without discrimination as to race, religion, color, sex or national origin. The City shall at all times be the sole judge as to the work performed by its employees and whether the work is satisfactory.

**Section 4.** Heavy Equipment Mechanics shall operate equipment when assigned. Heavy Equipment Operators shall serve as Heavy Equipment Mechanics when qualified and assigned.

## **ARTICLE 5 GENERAL POLICY**

Employees are expected to comply with all established policies and procedures of the City of Memphis and any Work Rules applicable to specific Divisions. Changes in work rules shall be discussed with the Union in advance of implementation. Should there exist a conflict between the aforementioned and the Memorandum of Understanding, the Memorandum of Understanding shall apply.

## **ARTICLE 6 CONTRACTING AND SUBCONTRACTING**

It is the general policy of the City to continue to utilize its employees to perform work they normally perform. However, the City reserves the right to contract out any work it deems necessary in the interest of the general public. In the event that positions are eliminated due to contracting or sub-contracting out, the City will attempt to transfer or place employees so affected in other positions in accordance with City Policy.

## **ARTICLE 7 HOURS OF WORK**

Eight (8) consecutive hours of work within a twenty-four (24) hour day shall constitute a normal work shift and a normal schedule of work for full time employees

shall be forty (40) hours per week. "Yearly payroll schedule shall be posted on employees bulletin boards."

All employees shall be granted a thirty (30) minute paid meal period during each work shift and two (2) fifteen (15) minute paid rest periods during each shift. The meal period shall be scheduled during the middle of each work shift; one (1) rest period shall be during each one-half (1/2) shift. Breaks may be scheduled when equipment is being serviced by others.

Employees will be given two (2) weeks notice of any change to a normal work shift or normal schedule of work.

## **ARTICLE 8**

### **OVERTIME**

Overtime shall be paid at time and one-half. Overtime shall be paid for all hours actually worked in excess of forty (40) hours within the employee's normal work week. Holidays, as defined in Article 13 of this Agreement, which fall within the employee's normal work week, shall be considered as time worked for purposes of overtime computation. Compensation shall not be paid more than once for the same hours under any provision of this article or agreement.

Overtime shall not be compulsory or mandatory, but no job shall be blanked or left vacant at any time during the affected shift.

It is the intent of the City to distribute overtime as fairly and equally as possible; therefore, scheduled overtime will be offered to the senior employee, provided said employee is capable of performing the required work. If the senior employee declines or refuses, the scheduled overtime shall then be offered to the next most senior employee, and so forth until an employee accepts. On the next offering of scheduled overtime, the employee offered the overtime will be the next most senior employee, (provided said employee is capable of performing the work required) after the employee who either accepted or refused the previous assignment, until the overtime list is worked through. Overtime shall be offered according to classification and work location. The City agrees that overtime will be paid in hourly increments.

## ARTICLE 9

### REPORTING AND CALL BACK PAY

**Section 1. REPORTING PAY** - Any employee who is scheduled to report for work and who presents himself for work as scheduled, shall be assigned a minimum of four (4) hours work.

Employees shall not be required to work in case of snow, ice conditions, rainstorms, or tornadoes except in cases of emergency or when needed to maintain or restore service to citizens.

An employee who reports for work as scheduled, in inclement weather may elect to work the full day, provided a productive work assignment is available.

**Section 2. CALL BACK PAY** - Employees who are called to report to work prior to their regularly scheduled time, or employees who complete their regular shift and are then called back to perform a task will be guaranteed a minimum of four (4) hours of pay.

## ARTICLE 10

### SENIORITY

**Section 1.** Seniority shall be granted to all employees. Seniority shall be determined on the basis of actual length of continuous service from the latest date of regular permanent employment with the City.

All new employees shall be considered probationary for three (3) months from their last date of hire. The probationary period may be extended up to six (6) months when recommended by the department head and approved by the Division Director and Director of Human Resources prior to the end of the original three (3) month period. During such probationary period, employees may be discharged without constituting a breach of this Memorandum. At the end of the probationary period, employees shall be placed on the seniority list as of the first day of last employment.

**Section 2.** An employee shall lose seniority for the following reasons:

- A. Quits job;
- B. Discharge for just cause;
- C. Is absent for three consecutive working days without notifying his



Supervisor;

D. Is laid off for one (1) year;

E. Fails to report for work on the first working day after the expiration of vacation, or authorized leave of absence, unless notification is given according to Sub-Section C above;

F. Fails to notify the City within ten (10) working days of the date the recall letter is mailed, stating whether or not the employee intends to report for work after the layoff.

**Section 3.** In case of reduction of the force or elimination of a position, layoff will be made by first laying off probationary employees in a classification in the appropriate department. Further reductions will be made by laying off the least senior qualified employees in the affected classification in the appropriate department.

The permanent filling of any vacancy shall be on the basis of the most qualified applicant. In the event that all applicants' qualifications are relatively equal, seniority shall be the determining factor. After the selection has been made by the Supervisor, it will be reviewed by the appropriate Director to insure that the proper selection was made. However, when a senior employee is passed over and not chosen for promotion, the interviewing supervisor will inform the employee of the reason.

Seniority shall be determined on the basis of actual length of continuous service from the latest date of permanent employment with the City for the purpose of vacation preference and layoff. In no instance shall this article be applied in a manner inconsistent with City Policy. Seniority for the purpose of shift preference shall be determined on the basis of the length of service within the employee's current job classification.

**Section 4.** The officers and stewards, designated in writing by the Union, shall have the highest seniority among bargaining unit personnel in their respective classifications for lay-off, recall and permanent transfer purposes only during their tenure of office, with the exception of the closure of an operation. Temporary transfers shall be for no longer than thirty (30) working days.

## ARTICLE 11

### GRIEVANCE AND ARBITRATION PROCEDURE

**Section 1.** Any grievance, defined as an alleged violation of an express provision of the Memorandum of Understanding, shall be handled in a simple and direct manner as follows:

(It is agreed by the Union that employees covered by this Agreement shall make an exclusive election of remedy prior to filing a second step grievance or initiating ACTION for redress in any other forum. Such choice of remedy shall be made in writing on the form to be supplied by the City).

**Step 1.** The aggrieved employee and the Union Steward shall discuss the grievance with the immediate supervisor within fifteen (15) working days of the date of the alleged grievance or the employee's knowledge of its occurrence. The immediate supervisor shall attempt to adjust the dispute and shall respond to the aggrieved employee within fifteen (15) working days.

**Step 2.** If not resolved at Step 1, the grievance shall be reduced to writing, indicating the specific article allegedly violated and a brief description of the grievance, within fifteen (15) working days of the grievance or the employee's knowledge of its occurrence, or within fifteen (15) working days of the immediate supervisor's response, whichever is longer. The Unit Manager shall, upon receipt of the written grievance from the Union, discuss the matter with the aggrieved employee and the Union Steward. The Unit Manager will respond within fifteen (15) working days.

**Step 3.** The Union shall notify, in writing, the Division Director within fifteen (15) working days, its acceptance or rejection on the grievance form of the answer at Step 2. If appealed, the Division Director, or his designee, will conduct a thorough discussion with the appropriate management personnel, the aggrieved employee, the Steward and the business agent or designee within fifteen (15) working days. This time may be extended by mutual agreement. The Division Director or his designee shall then give his answer within fifteen (15) working days following the date of the hearing.

The failure of the appropriate Union Representative to respond as required in any of the steps within the time provided shall be considered as acceptance to the answer. The failure of the appropriate City Representative to respond as required in any of the

steps of the grievance, shall be considered as upholding the grievance.

**Step 4.** The Union shall review the answer of the Division Director and indicate in writing its acceptance or rejection, or request for arbitration if desired, within twenty (20) working days after the rendering of the Division Director's written decision, unless extended by mutual agreement. The decision of the Division Director shall be mailed by certified mail to the Union office, return receipt requested. The Union, in submitting its request for arbitration, shall send said request by certified mail to the Mayor, with a copy to the Labor Relations Manager by regular mail. It is understood that the proper Union Representatives may be involved at both Steps three (3) and four (4). The Union shall have the right to take up suspensions and/or discharge within fifteen (15) working days at Step 3 of the grievance procedure and the matter will be handled in accordance with the procedure through the Arbitration Step, if deemed necessary.

#### **ARBITRATION PROCEDURE**

The arbitrator shall have access to all written statements and documents pertaining to the appeals in the grievance, but the arbitrator shall have no power to amend, revise, add to, subtract from, or modify any terms of this Memorandum of Understanding, or any other Memorandum made supplementary thereto. The arbitrator shall be jointly selected by the Union and the City.

If, within five (5) days after the request for arbitration is made, the Union and City fail to agree upon the appointment of an arbitrator, a request will be made to the American Arbitration Association for a list of five (5) arbitrators. The Union and the City may select one from the list of arbitrators or if they still cannot agree, the following procedures shall be followed as stated below:

The party presenting the grievance shall be given the first opportunity to strike the name of one of the arbitrators contained on said list. The other party may then proceed to strike a name and this procedure shall continue until one arbitrator's name remains. The arbitrator whose name remains shall be designated as the arbitrator. In the event the arbitrator designated declines to act, the procedure of striking names will be reinstated until an arbitrator willing to act has been selected.

The arbitrator will hold a hearing as expeditiously as possible after receipt of the request to arbitrate and full opportunity shall be given both parties to be heard and to examine and cross examine witnesses and offer other evidence. The arbitrator's decision shall be in writing and shall set forth the arbitrator's finding of facts, opinion, and conclusion on the issues submitted. The arbitrator shall render his decision not later than thirty (30) calendar days after the conclusion of the final hearings.

The arbitrator shall be without power to make decisions contrary to or inconsistent with or modifying or varying in any way the applicable laws or rules and regulations having the force and effect of law. The fee and expenses of the arbitrator and the cost of a written transcript for the arbitrator shall be divided equally between the parties, provided, however, that each party shall be responsible for compensating its own representatives and witnesses, and purchasing its own copy of the written transcript. The decision of the arbitrator shall be final and binding on the parties.

It is agreed that the City shall make available any employee to testify at the request of the Union when such persons have information involving the action being arbitrated. This request shall be made in writing to the Director of Human Resources or his designated appointee as early as feasible but at least seventy-two (72) hours prior to the hearing.

If an employee has a matter appealed to the Civil Service Commission, that appeal must be withdrawn prior to the matter being submitted to arbitration. Such withdrawal must be in writing and directed to the Commission by the employee or the employee's attorney.

## **ARTICLE 12**

### **VACATIONS**

Employees shall be granted an annual paid vacation in accordance with the following schedule on length of continuous service:

SERVICE CREDIT	ACCRUAL	EXPLANATION
Up to 6 months	None	N/A
6-month anniversary	5 days (40 hours)	N/A
1-year anniversary	5 days (40 hours)	if hired on/after July 1
	10 days (80 hours)	if hired before July 1
2 <sup>nd</sup> , 3 <sup>rd</sup> , 4 <sup>th</sup> , and 5 <sup>th</sup> calendar year	10 days (80 hours)	10 days accrue at beginning of year
6 <sup>th</sup> calendar year	11 days (88 hours)	10 days accrue at beginning of year; 11 <sup>th</sup> day accrues on 6-year anniversary
7 <sup>th</sup> calendar year	12 days (96 hours)	11 days accrue at beginning of year; 12 <sup>th</sup> day accrues on 7-year anniversary
8 <sup>th</sup> calendar year	13 days (104 hours)	12 days accrue at beginning of year; 13 <sup>th</sup> day accrues on 8-year anniversary
9 <sup>th</sup> calendar year	14 days (112 hours)	13 days accrue at beginning of year; 14 <sup>th</sup> day accrues on 9-year anniversary
10 <sup>th</sup> calendar year	15 days (120 hours)	14 days accrue at beginning of year; 15 <sup>th</sup> day accrues on 10-year anniversary
11 <sup>th</sup> calendar year	16 days (128 hours)	15 days accrue at beginning of year; 16 <sup>th</sup> day accrues on 11-year anniversary
12 <sup>th</sup> calendar year	17 days (136 hours)	16 days accrue at beginning of year; 17 <sup>th</sup> day accrues on 12-year anniversary
13 <sup>th</sup> calendar year	18 days (144 hours)	17 days accrue at beginning of year; 18 <sup>th</sup> day accrues on 13-year anniversary
14 <sup>th</sup> calendar year	19 days (152 hours)	18 days accrue at beginning of year; 19 <sup>th</sup> day accrues on 14-year anniversary
15 <sup>th</sup> calendar year	20 days (160 hours)	19 days accrue at beginning of year; 20 <sup>th</sup> day accrues on 15-year anniversary
16 <sup>th</sup> calendar year	20 days (160 hours)	20 days accrue at beginning of year
17 <sup>th</sup> calendar year	21 days (168 hours)	20 days accrue at beginning of year; 21 <sup>st</sup> day accrues on 17-year anniversary
18 <sup>th</sup> calendar year	21 days (168 hours)	21 days accrue at beginning of year
19 <sup>th</sup> calendar year	22 days (176 hours)	21 days accrue at beginning of year; 22 <sup>nd</sup> day accrues on 19-year anniversary
20 <sup>th</sup> calendar year	22 days (176 hours)	22 days accrue at beginning of year
21 <sup>st</sup> calendar year	23 days (184 hours)	22 days accrue at beginning of year; 23 <sup>rd</sup> day accrues on 21-year anniversary
22 <sup>nd</sup> calendar year	23 days (184 hours)	23 days accrue at beginning of year
23 <sup>rd</sup> calendar year	24 days (192 hours)	23 days accrue at beginning of year; 24 <sup>th</sup> day accrues on 23-year anniversary
24 <sup>th</sup> calendar year	24 days (192 hours)	24 days accrue at beginning of year
25 <sup>th</sup> calendar year	25 days (200 hours)	24 days accrue at beginning of year; 25 <sup>th</sup> day accrues on 25-year anniversary
26 <sup>th</sup> calendar year and thereafter	25 days (200 hours)	25 days accrue at beginning of year

**EXAMPLE 1 (hired on/after July 1):**

Date of Employment: 12/15/2001  
6-month anniversary: 06/15/2002 (Accrues 5 days to be used by 12/31/2002\*)  
1-year anniversary: 12/15/2002 (Accrues 5 days to be used by 12/31/2002\*)  
Beginning of 3<sup>rd</sup> calendar year: 01/01/2003 (Accrues 10 days to be used by 12/31/2003\*)

**EXAMPLE 2 (hired before July 1):**

Date of Employment: 06/15/2001  
6-month anniversary: 12/15/2001 (Accrues 5 days to be used by 12/31/2001\*)  
1-year anniversary: 06/15/2002 (Accrues 10 days to be used by 12/31/2002\*)  
Beginning of 3<sup>rd</sup> calendar year: 01/01/2003 (Accrues 10 days to be used by 12/31/2003\*)

**\*UNLESS CARRYOVER APPROVED**

The rate of vacation pay shall be the employee's regular straight time rate of pay in effect for the employees' regular job on the pay day immediately preceding the employee's vacation period.

Upon request submitted no less than four (4) days in advance of the start of his vacation, an employee shall receive his vacation pay no later than one (1) day prior to the start of this vacation.

Employees requesting use of vacations time will be granted upon approval by his Supervisor, and in not less than four (4) hour increments.

Vacations will be granted, between January 1 and December 31, so far as possible, in accordance with employee preference and in line with seniority as defined by the Seniority Article 10, Section 1, but measured at the reporting location, but the number of employees off on vacation in a given week shall be determined by the City to assure orderly operation of the respective divisions and departments, Granting of vacation shall not be unreasonably withheld. When a dispute arises between employees in the same classification, the City shall allow the senior employee to have the first choice. There shall be a posted vacation schedule no later than December 1 each year in order to permit employees to express their choice of vacation by December 31, and the list shall contain the number of employees who can go on vacation and the employee's anniversary date. Employees who wish to split their vacation, should indicate their choice on the vacation schedule. Vacation approval shall be posted no later than January 31. Approved vacations may be rescheduled with the unit manager's approval, but not so as to require other employees to reschedule their approved vacations.

**ARTICLE 13**  
**HOLIDAYS**

Holidays, as governed by Article I, Section 2-2, of the Memphis City Code, shall apply to members of this bargaining unit.

The following days shall be recognized and observed as paid holidays during the term of this Memorandum of Understanding.

New Year's Day	January 1
Martin Luther King Memorial	3rd Monday in January
President's Day	3 <sup>rd</sup> Monday in February
Martin Luther King Memorial	April 4
Good Friday	Friday before Easter
Memorial Day	Last Monday in May
Independence Day	July 4
Labor Day	1st Monday in September
Veteran's Day	November 11
Thanksgiving Day	4th Thursday in November
Friday after Thanksgiving	
Christmas Eve	December 24
Christmas Day	December 25

Whenever one of the above holidays fall on either Saturday or Sunday, either the preceding Friday or the following Monday shall be observed as the holiday. Employees will be notified as far in advance as possible concerning the day to be observed as the holiday.

If the holiday falls on the employee's regular day off, the employee will receive an additional eight (8) hours pay for that holiday. If the holiday falls on the employee's scheduled vacation, additional time (or an additional day's pay) will be granted.

**ARTICLE 14  
LEAVES OF ABSENCE**

Leaves of Absence without pay may be granted to regular employees for the following reasons:

**Section 1. Military Leave** - Military Leave shall be granted in accordance with applicable law.

**Section 2. Educational** - Regular, full-time employees who have completed one (1) full continuous year of service shall be eligible to receive a Leave of Absence which does not exceed one full year for the purpose of furthering education. Such educational leaves should be determined upon recommendation of the Departmental Head and with the approval of the Division Director.

**Section 3. Personal** - Regular City employees who have completed three (3) consecutive months of employment will be eligible to receive Leaves of Absence for such personal reasons as marriage, illness of a member of the family, or other emergencies for a period not to exceed thirty (30) days upon recommendation of the Department Head and with the approval of the Division Director. Such approval shall not be unreasonably withheld.

**Section 4. Illness** - Regular City employees will be eligible for a Leave of Absence not to exceed six (6) months with an extension up to six (6) months after the exhaustion of the employee's paid Sick leave because of the prolonged illness of the employee. The request for such Leave of Absence or extension shall contain the recommendation of the physician and the leave shall be granted by the Division Director.

**Section 5. Union Business** - Union Steward appointed by the Union to do work which takes them from their employment with the employer shall at the written request of the Union, be granted a Leave of Absence (not to exceed five (5) employees). The Leave of Absence shall not exceed one (1) year, but it may be renewed or extended for a similar period at any time upon the request of the Union. By mutual agreement, short term Leave of Absence, not to exceed five (5) days, may be granted for more than five (5) employees.



**Section 6. Jury and Witness Duty** – Regular employees shall be granted a Leave of Absence with pay any time they are required to report for Jury Duty or witness service. Proof of jury service shall be established by submitting a statement from the jury Commissioner or Clerk of the Court showing the time served. An employee shall be paid for the time lost from scheduled work when legally subpoenaed as a witness to testify in court cases when the employee is neither the plaintiff nor defendant. Employees shall be paid for the time lost from scheduled work as a witness for the City or when sued as an agent of the City. The employee must report for work when the Jury is not in session.

**Section 7. Family Medical Leave Act of 1993** - The parties agree to comply with the requirements established by the Family Medical Leave Act of 1993 and the provision of the City of Memphis Personnel Manual Policy, Family and Medical Leave Act Policy, PM-66-06, are incorporated herein by reference.

**Section 8.** It is understood and agreed no employee may remain off work in excess of one (1) year, the one year to include any combination of paid or unpaid time off.

**ARTICLE 15  
SICK LEAVE**

Upon completion of three (3) months of consecutive service after initial employment, all permanent, full time employees shall be eligible to receive pay while absent from work due to sickness to be charged against accumulated sick leave time. Unlimited accumulation of sick leave begins from the first day of employment at the following rates;

<b>Service Credit</b>	<b>Accrual Rate Effective Date</b>	<b>Accrual Rate Per Month</b>
Up to 5 years (5 year period)	First month of employment	1 day (8 hours)
5 years up to 9 years (4 year period)	First month after 5-year anniversary	1½ days (12 hours)

9 years up to 14 years (5 year period)	First month after 9-year anniversary	2 days (16 hours)
14 years or more	First month after 14-year anniversary	2½ days (20 hours)

**EXAMPLE:**

Date of Employment: 12/15/2001 (Accrues 1 day per month)\*  
5-year anniversary: 12/15/2006 (Accrues 1½ days per month beginning 01/15/2007)  
9-year anniversary: 12/15/2010 (Accrues 2 days per month beginning 01/15/2011)  
14-year anniversary: 12/15/2015 (Accrues 2½ days per month beginning 01/15/2016)

Sick leave will not accumulate while an employee is absent on sick leave, fifteen (15) days or longer, unauthorized absence, or during other leaves of absence. Pay for holidays that occur while an employee is on sick leave shall not be charged as Sick Leave.

Employees shall be compensated in cash for accumulated unused sick leave when they retire, but not to exceed seventy-five (75) days. The amount of payment for unused sick leave is to be calculated at the employee's rate of pay in effect on the pay day immediately preceding the employee's retirement. Such payment shall not be counted as compensation for the purpose of computing retirement benefits.

After completion of two (2) months of service, an employee who then works three (3) consecutive months without Sick Leave, or any unauthorized absence, will be eligible for one (1) bonus day leave with pay, to be taken off within twelve (12) months from the day it is earned or be forfeited. Bonus days will be earned in a like manner for subsequent three (3) month periods so that an employee may earn up to four (4) bonus days a year. Bonus day accrual will only be forfeited when interrupted by six (6) cumulative hours of absence from work due to the use of sick leave benefits or unauthorized leave.

**ARTICLE 16**

**ON-THE-JOB-INJURY**

(A) In the event any employee sustains an injury on the job, he shall be taken directly to the nearest facility where proper medical treatment can be obtained. The cost of the necessary hospital, doctor's care, prescriptions, and related medical

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expenses shall be paid by the City for all on-the-job injuries provided that the employee shall assign to the City those recoveries from any third party only to the extent necessary to reimburse the City for the expense paid. This assignment shall exclude the proceeds from any insurance policy solely paid for by the employee. Nothing shall deny an employee injured on the job who has been taken to the nearest doctor or facility for proper treatment from requesting the doctor of his or her choice.

(B) All on-the-job injuries are subject to the OJI policies, rules and procedures applicable to all City of Memphis employees. Employees shall submit to any reasonable examination by any physician employed by the City. If, because of an on-the-job injury, an employee leaves work prior to the end of his scheduled work period, he shall be paid for the remainder of the day.

(C) An employee unable to work because of an on-the-job injury may be paid full salary for time lost for a period not to exceed six months (180 calendar days). Thereafter, if the employee is unable to work, the employee may use available paid leave time (including paid sick leave) to permit the employee to remain on the payroll for a period of time not to exceed one year from the date of disablement, and at the end of one year from the date of injury the employee shall be removed from the payroll.

(D) All employees injured in the Line of Duty who are covered under the City of Memphis Retirement Plan may apply for disability retirement benefits, subject to the City of Memphis Retirement Ordinance. They may also apply for benefits under the Long Term Disability plan which covers all City employees.

(E) Employees injured on the job may be assigned to light duty, if available, based upon the employee's physician's written advice, and approved by the Division Director.

## **ARTICLE 17**

### **DEATH IN FAMILY**

In the event of a death in the employee's immediate family, the employee will be authorized three (3) days off at his regular straight time rate of pay. The three (3) days must be taken within five (5) days of the funeral. Immediate family shall include only the following:

a) husband, wife, father, mother, brother, sister, son, daughter, mother-in-law, father-in-law, grandmother, grandfather, great grand-parents, grandchildren, properly established foster parents or step-parents, or children of legal spouse.

As related to "mother", "father", "foster" or "step-parents", the provisions of this article shall apply to only one set of parents.

The employee will be granted two (2) regularly scheduled work days off with pay to attend funeral services for grandparents-in-law, brother or sister-in-law, son or daughter-in-law.

The employee must provide proof of relationship to the deceased and proof of attendance of said funeral.

Additional time may be granted as leave without pay, or as paid vacation, when justified by circumstances.

#### **ARTICLE 18**

##### **DEATH OF AN EMPLOYEE**

In the event of the death of a permanent employee, while employed by the City, accumulated sick days up to seventy-five (75) days all accrued wages due, including allowances for unpaid holidays and vacation time, in addition to \$10,000.00 free life insurance are to be paid to the person entitled thereto as designated by the employee or by law.

In addition, the person entitled as designated by law will receive an amount equivalent to the employee's regular wages for one (1) month after the legally required deductions.

#### **ARTICLE 19**

##### **LIFE INSURANCE**

Life insurance is offered to permanent, full-time employees covered under this agreement as an optional benefit. The amount of life insurance offered to eligible employees is equal to one and one-half times the employee's annual base salary.

Employees who remain in the employment of the City on or after the age of 65 will have their life insurance coverage reduced in accordance with the Age Discrimination Employment Act Schedule as listed below to a minimum amount of \$3,000.00:

<b>Age</b>	<b>Reduced to the following Percentages</b>
65	92%
66	84%
67	77%
68	71%
69	65%
70 but less than 75	50%
75 but less than 80	34%
80 but less than 85	23%
85 but less than 90	16%
90 but less than 95	11%
95 or older	6%

Upon retirement at any age, employees are eligible to retain \$3,000.00 coverage.

In addition to this optional insurance, the City agrees to provide \$4,000.00 free life insurance to eligible employees with the exception of retired employees.

Retirees, in addition to having the option to purchase the maximum allowable of \$3,000.00 under the City policy, will retain one-half (1/2 ) the \$4,000.00 free life insurance.

## **ARTICLE 20**

### **HEALTH CARE INSURANCE**

For employees who are covered under the City's Health Insurance Plan (Medical), the City will contribute no less than 70 percent of total premium and the employee will contribute no more than 30 percent of the total premium. The City reserves the right to recommend modifications to the Medical Plan to ensure it comports to the Affordable Health Care Act and does not subject the City or its employees to any penalties or taxes. In such case, the City will provide advance notice to the IUOE Local 369 and give the IUOE Local 369 the opportunity to provide input and/or alternative suggested modifications.

## **ARTICLE 21**

### **PENSION**

The City Pension Ordinance applies to Members of this bargaining unit. The rate of contribution by the employee and benefits received shall be that which is specified in the Pension Ordinance, Article 2 and 6.

**ARTICLE 22**  
**GENERAL PROVISIONS**

**Section 1.** Any employee may be shifted from one machine to another provided such change does not replace another operator who had reported for work or had started to work during the specific day.

**Section 2.** If a machine is started before being manned by an operating engineer, the operator manning the machine shall receive pay from the time the machine was started.

**Section 3.** When an employee is dismissed or laid off, he shall be paid within twenty-four (24) hours. If he quits, he shall, if the City desires, receive his pay at the next regular pay day.

**Section 4.** The City shall furnish suitable shelter from falling materials and from the weather. When an employee is required to work in inclement weather, each such employee shall be furnished at the City's expense, rain gear consisting of pants and jacket with hood or hard hat. Employees shall be responsible for the return of such items at the end of the work period and shall return them in as good condition as they were received from the City, normal wear and tear excepted.

All safety measures must be observed by both the City and employees and adequate lighting will be provided by the City for night work and the lights on all equipment will be maintained, if so equipped. The City will furnish hard hats where necessary and such employees are required to wear them on duty.

**Section 5.** The City will furnish iced drinking water from April 1 to November 1

**Section 6.** There shall be designated by each department a common meeting place for their employees to report and commence work.

**Section 7.** Whenever a lead operator vacancy exists in a department which employs a significant number of operating engineers the City will give first consideration to promoting engineers who are capable of fulfilling the responsibilities. The City shall always attempt to fill a lead operator position from among the operating engineers in such a department. Heavy equipment/backhoe operators may decline the opportunity to perform in the capacity of lead operator.

**Section 8.** Heavy Equipment Mechanics shall supply all hand tools to facilitate their craft while employed by the City.

**Section 9.** The City shall supply all tools other than the hand tools supplied by the Mechanic. Tools supplies by the City shall include electric shop power tools, pneumatic tools, chippers, grinders, welding equipment and welding supplies, floor hacks, hoisting equipment, drop lights, power cords, all sockets and all ratchets ¾" drive and larger, threading tools, and wrenches above 1 ¼". The City will supply perishable items that routinely wear out under normal use and disposal shop supplies such as files, sandpaper cleaners, lubricants, drills bits, hacksaw blades.

## **ARTICLE 23 SAFETY AND HEALTH**

**Section 1.** The employer agrees to maintain adequate safety and sanitary conditions in all work areas pursuant to Federal, State and Local laws and regulations.

In order to improve, correct and maintain effective safety and sanitary conditions, a joint committee titled "Safety and Health Committee" shall be established and shall consist of two (2) employees appointed by the City and two (2) employees appointed by the Union.

The City's appointees shall be chosen from among the management and/or supervisory personnel. The committee shall review and make recommendations on health, safety and sanitary conditions which effect the well-being of employees covered by this Memorandum.

The chairman of the committee shall be elected by the committee members and rotated at six (6) month intervals. The first chairman is to be selected by the Union Members on the committee, with the City members selecting the chairman for the second six (6) month period.

The committee shall meet when deemed necessary during the first month immediately following implementation of this Memorandum of Understanding. Accurate minutes shall be maintained of the committee's recommendations, a copy of which shall be forwarded after each meeting to the Union Business Manager and to the appropriate

Division Directors. If the committee is unable to reach a majority recommendation, then the recommendation of both parties represented shall be included in the minutes and submitted to the appropriate Director and the City Safety Officer. The Director shall then communicate in writing, with the committee chairman regarding his action on the committee's recommendations.

Other Union or City representatives and/or guests may be included in the committee meetings as advisors when agreed to by the membership of the committee or when invited by the committee.

**Section 2.** It is agreed between the City of Memphis and the Union to participate in the Alcohol, Mental Illness, and Drug Abuse Rehabilitation Program, as created and governed by the City's Employee Assistance Program or any other Employee Assistance Program created and implemented by the City. Employees participating will be entitled to use their accumulated vacation time and sick days in accordance with City Policy.

It shall be the responsibility of the employee to strictly adhere to any medical, psychiatric, or other professional care as well as maintenance programs recommended as a result of the employee's participation in this program. This program does not exempt the employee from appropriate disciplinary action for work related offenses.

## **ARTICLE 24 WAGES**

Effective July 1, 2013 the 4.6% wage reduction will be restored to all employees covered by this Memorandum of Understanding. The wage rates listed in Appendix A reflect the actual rates of pay as restored to the 2011 – 2013 Memorandum.

**Section 1.** Wages shall be paid by check every two (2) weeks on the established pay day of the City during work hours and before the end of the shift.

**Section 2.** Effective July 1, 2013 through June 30, 2015, the current wage rates of employees covered by this Agreement will be increased by zero (0%) percent.

Effective July 1, 2014 through June 30, 2015, by February 1<sup>st</sup>, 2014 either party may request to reopen the wage article only for negotiations. The negotiations will be conducted in accordance with the Impasse Ordinance.



**Section 3.** The wage rates and equivalent monthly salaries for each classification effective during the term of this Memorandum shall be consistent with the City pay plan as shown in Appendix A and made a part thereof.

**Section 4.** In addition to the wage ranges shown in Appendix A the following premium rates shall apply: Heavy Equipment Mechanics shall receive an additional \$.50 per hour for hand tools furnished by the employee. In addition to the established wage rate, the City shall pay all employees working a fixed shift between 3:00 p.m. and 10:59 p.m., an hourly premium of \$.25 cents per hour during the full term of this agreement. These rates shall be based on normal working hours during the shift. Those employees working a fixed shift between 11:00 p.m. and 6:59 a.m., an hourly premium of \$.45 cents shall be paid during the full term of the agreement.

**ARTICLE 25  
TERM OF AGREEMENT**

1. This Memorandum of Understanding expressed herein in writing constitutes the entire agreement between the parties and shall become effective July 1, 2013, and shall remain in effect through June 30, 2015.
2. Article 24 (Wages) only may be reopened in one year for negotiations by either party.
3. The provisions of this Memorandum of Understanding may be re-opened for negotiations upon written request by the Union no earlier than 120 days and no later than 60 days prior to the stated date of impasse immediately preceding June 30, 2015.
4. During subsequent negotiations, if any, all Articles pertaining to non-economic items in this agreement shall remain in effect until the expiration of this Memorandum.
5. The parties acknowledge that during the bargaining which preceded this agreement, each had the unlimited right and opportunity to make demands and proposals with respect to any subject matter not removed by law from the area of collective bargaining and that the understandings and agreements arrived at by the parties, after the exercise of that right and opportunity, are set forth in this

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agreement. Therefore, the City and the I.U.O.E., Local 369D, for the life of this agreement, each voluntarily and unqualifiedly waive the right, and each agrees that the other shall not be obligated 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 that may not have been within the knowledge or contemplation of either or both of the parties at the time they negotiated or signed this Agreement.

**ARTICLE 26  
NO STRIKE**

During the term of this Memorandum, the Union agrees that it will not engage in, encourage, or approve any strike, slowdown, or other work stoppage growing out of any dispute relating to the terms of this Memorandum of Understanding. The City agrees that it will not lock out employees during the term of this Memorandum of Understanding. The Union will take whatever lawful steps as are necessary to prevent any interruption of work in violation of this Memorandum of Understanding, recognizing with the City that all matters of controversy coming within the scope of this Memorandum of Understanding shall be settled by established grievance and arbitration procedure.

**ARTICLE 27  
SAVINGS CLAUSE**

Should any Article, Section or portion of this Memorandum of Understanding be held unlawful and unenforceable by any Court of competent and final jurisdiction, such decision of the court shall apply only to the specific Articles, Section or portion involved and shall not invalidate the remaining portions of this Memorandum of Understanding.

**ARTICLE 28  
UNION DUES**

Regular permanent (non-probationary) employees of the City of Memphis may authorize payroll deductions for the purpose of paying Union dues. No authorization

shall be allowed for payment of initiation fees, assessments, or fines. The procedure which shall be followed by all employees in authorizing deductions of union dues shall be for each employee to execute a written assignment on the form jointly approved by the Union and the City.

In the event the Union members vote to increase Union dues, the Union shall notify the City at least thirty (30) days prior to the effective date of the dues increase. The monthly dues shall be deducted in equal amount each pay period in which deductions are taken in an amount certified by the Union and aggregated deduction of all employees shall be remitted together with an itemized statement to the Treasurer of the Union by the tenth (10th) day of the succeeding month after such deductions are made. The Union will indemnify, and hold the City harmless against any claims made or against any suits instituted against the City on account of payroll deduction of Union dues. The Union agrees to refund to the City, any amounts paid to it in error in account of the payroll deduction provision upon presentation of proper evidence thereof. The employee's earnings must be regularly sufficient after all other legal and required deductions are made to cover the amount of the appropriate Union dues. When a member in good standing of the Union is in non-pay status for an entire pay period, no withholding will be made to cover the pay period from future earnings.

Employees may discontinue payroll deduction of Union dues by giving written notice to the Union and to the City's payroll office.

## **ARTICLE 29**

### **UNIFORMS**

The City agrees to provide an allowance for the purchase of uniforms to employees covered by this agreement in the amount of \$350.00 per year of this agreement. Employees receiving said uniform allowance will be in the uniform specified by the City at all times during work hours. Employees who report for duty without proper uniform shall not be considered as reporting ready to work. Employees shall receive clothing allowance within 60 days of the beginning of the fiscal year.

T-shirts approved by City and denim jeans will also be considered proper uniform

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attire.

Knee length khaki or denim shorts are optional uniforms. Employees are required to wear and maintain their uniforms in a condition that represents the City in a professional manner.

**ARTICLE 30  
TUITION REIMBURSEMENT**

The City will provide Tuition Reimbursement under the provision of the Tuition Reimbursement Policy.

**APPENDIX A - WAGES  
OPERATION ENGINEERS  
LOCAL 369**

The Wage Schedule will be as follow for the duration of this agreement:

<u>TITLE</u>	<u>HOURLY RATES</u>
Asphalt Plant Operator	\$ 26.4586
Greaser	\$ 24.9256
Mech-Heavy Equipment*	\$ 28.4915
(Base Salary)	\$ 27.9915
Mech-Heavy Equipment /Ld**	\$ 29.9161
Mech-Helper Heavy Equipment	\$ 24.0854
Operator –Backhoe	\$ 27.9915
Operator- Heavy Equipment	\$ 27.9915
Operator – Heavy Equipment /Ld***	\$ 29.3911
Operator – Sweeper	\$ 23.0991
Fuel Truck Driver	\$ 20.7919

\* Includes tool allowance of \$.55 cents per hr., \$86.72 per month

\*\* Includes \$86.72 tool allowance and 5% lead differential.

\*\*\* Includes 5% lead differential.

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