

**MEMORANDUM OF UNDERSTANDING**

**between**

**CITY OF MEMPHIS**

**and the**

**BRICKLAYERS UNION**

**Local # 5**



**Effective**

**July 1, 2011**

**Through**

**June 30, 2013**

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## **PREAMBLE**

This Memorandum of Understanding is entered into by and between the City of Memphis, Tennessee, hereinafter referred to as the "City", and the Bricklayers' Union, Local # 5, hereinafter referred to as the "Union." It is the purpose of this Memorandum of Understanding to assure harmonious relations between the City and the Union and to provide for equitable and peaceful adjustment of differences which may arise related to wages, hours and other working conditions of employment as stated in the City of Memphis Labor Policy.

## **ARTICLE 1 RECOGNITION**

### **SECTION 1**

- (A) The City of Memphis recognizes the Union as the designated representative for certain employees who are assigned to the classifications specified in Appendix "A" of this Memorandum. Recognition is extended for the purpose of conferences and meetings on wages, hours and conditions of employment to the full extent and authority provided by the Charter of the City of Memphis and the laws of the State of Tennessee.
  
- (B) The term "certain employees" as used herein places no limitations, requirements or restrictions on the right of any employee to belong to and to be represented by the Union. All supervisory personnel above Layoutman shall be excluded from the provisions of this Memorandum: however, the City agrees that when a supervisor's vacancy exists in a department or division employing a significant number of Journeymen, or layoutmen, the City will give first consideration to those journeymen, or layoutmen who are capable of fulfilling supervisory responsibilities and who qualify in accordance with Civil Service Rules. The City shall give first consideration to filling a layoutman position from among the journeymen employed.
  
- (C) Both parties to this Memorandum agree that slowdowns, forcing of overtime through non-production during regular working hours, spread work tactics, stand-by crews and featherbedding practices are condemned and shall not be allowed to exist.

### **SECTION 2**

No benefit or benefits presently guaranteed by the City Charter shall be lost or reduced as a result of this Agreement.

### **SECTION 3**

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 article, section or portion involved and shall not invalidate the remaining portions of this Memorandum of Understanding. The parties shall there upon meet in order to negotiate substitute provisions which are in conformity with the applicable law and directly related to the provisions that have been held unlawful.

## **ARTICLE 2 CITY RESPONSIBILITY**

### **SECTION 1**

- (A) Nothing in this Memorandum of Understanding shall be interpreted as abrogating the authority vested in the City for the exclusive management, control and operation of all City divisions.
- (B) The City has the exclusive right, among others, to determine the purpose and duties of its divisions: to set the standard of services to be offered to its citizens; to enter into any contracts for City business: and to exercise control and discretion over its organization and employees so long as the determination does not violate this Memorandum of Understanding.
- (C) Included in the City's rights: To direct its employees; to hire, promote, assign or retain employees in positions and locations of all City divisions; to select its managerial and supervisory employees; to establish reasonable work rules; to suspend, demote, discharge or take other appropriate disciplinary action against its employees for just cause; to determine job qualifications in classifications to determine the number of employees required at any time; to maintain the efficiency of operation; to assure maintenance of service during emergency conditions; to determine the methods, means,

tools and personnel by which operations are to be carried out; to relieve its employees from duty in the event of lack of work, funds, or for other legitimate reasons; and to determine work schedules, hours and the number of shifts.

- (D) The Union recognizes the City's authority in making new work rules and changing work rules. The City recognizes the importance of informing employees about these matters as early as feasible, and shall discuss any changes in work rules with the proper Union in advance of said change, except when prevented by unforeseen circumstances, such as civil disorder, or other emergencies, provided however, that nothing contained in this Article shall be deemed to deny the right to submit a grievance concerning the application of this Memorandum of Understanding or a claimed violation, misinterpretation or misapplication of the rules and regulations affecting the terms and conditions of employment.

**ARTICLE 3  
NO STRIKE, NO LOCKOUT**

**SECTION 1**

- (A) In order to assure continuation of services to the public, there shall be no strikes, slowdowns, sick outs, work stoppages of any kind, nor shall there be any lockouts because of grievances or disputes arising from the administration of this Agreement.
- (B) The members of the Union recognize, therefore, that participating in a strike as defined herein shall subject the member or members to immediate and permanent dismissal.
- (C) During the term of this Memorandum of Understanding, the Union agrees that it will not engage in, encourage or approve any strike, slowdown, or other work stoppage growing out of any dispute related 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. Labor disputes which do not involve the parties involved in this Memorandum of Understanding shall have no effect on the employees covered by this Memorandum of Understanding and failure to report to work or to accept work assignments as provided shall be considered a violation of this Article. The Union may grieve as to whether an employee actually violated the Article and to his degree of participation in such action.

- (D) The above provisions are not intended, nor will the City use these provisions to abrogate an individual employee's rights which are guaranteed by the Constitution and Laws of the United States.

## **ARTICLE 4 UNION REPRESENTATION**

### **SECTION 1**

- (A) The Union Business Representative shall appoint a Steward in accordance with the Union's need for representation within each City Division. The Steward shall be a qualified worker performing the work of his or her craft. The Steward shall not be discriminated against in the performance of the duties as Steward.
- (B) The Steward shall be allowed sufficient time during normal working hours to perform the duties as Steward, such as checking dues receipts and discussing grievances with the grievant and the Supervisor. Providing the City and the Steward have exhausted all options to resolve disputes during the Steward's normal shift, and if the City requires the Steward, after the completion of a normal shift, to return to the job to discuss or resolve any dispute, the Steward shall receive call-back pay at the applicable rate as outlined in Article 6, Section 1 of this Agreement.
- (C) An alternate Steward shall be designated by the Steward. The alternate Steward shall perform all duties as provided above, only in the absence of the Steward or if the Steward is the aggrieved employee.

### **SECTION 2**

The Union Business Representative only shall be permitted to visit any work location carrying out responsibility as a party to this Memorandum of Understanding, but shall not interfere with the work in progress. As a courtesy, reasonable efforts will be made to notify the working supervisor in that area.

### **SECTION 3**

Employees will be at their assigned common meeting place at the regular starting time and shall report back to this point at the regular quitting time. The Division Director in whose division the employee is assigned shall make these determinations. Employees

who are assigned a City vehicle for transportation to and from home, however, may at the direction of their supervisor, report directly to the job site.

#### **SECTION 4**

- (A) When the City requests prospective employees to be furnished by the Union, it will notify the Union Hall at least forty-eight (48) hours in advance of its needs and request referrals. Referrals will be made to the City Employment Manager for the initial screening and selected referrals will be required to pass a pre-employment physical examination prior to being placed on the City payroll. The final selection, however, of any qualified referral rests with the designated Department Manager.
- (B) The Union agrees to make every effort to furnish competent journeyman craftsmen when requested without discrimination to race, religion, color, sex or national origin and shall provide a copy of its affirmative action program to the City. 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 5**

The City agrees to assign work in accordance with established practices. When jurisdictional disputes arise, the Division Director, Human Resources Director, and Business Representatives of the respective Unions shall meet to resolve the issue. Previous trade rulings shall be used as a guide in reaching a decision based upon the national board for jurisdictional awards as approved by the national building and construction trades.

### **ARTICLE 5 HOURS OF WORK**

#### **SECTION 1**

- (A) Eight (8) consecutive hours of work within a twenty-four (24) hour day shall constitute a normal work shift. A normal work week is Monday through Friday and shall consist of five (5) consecutive such work shifts, or forty (40) hours per week.
- (B) All employees shall be granted a thirty (30) minute paid meal period during each work shift and one (1) fifteen (15) minute paid rest period during each one-half ( $\frac{1}{2}$ ) shift.

- (C) Employees on the third shift shall be allowed to select the time for their thirty (30) minute lunch period, the meal shall be scheduled as near as possible to the middle of the shift.
- (D) Rest periods are intended to be a recess preceded and followed by a work period. Consequently, it may not be used to allow late arrival or early departure or to extend the lunch period.
- (E) The City may, at its discretion, schedule shifts of ten (10) consecutive work hours in a twenty-four (24) hour period, the normal work week consisting of four (4) consecutive work days, Monday through Friday.
- (F) If the employee's regular shift is permanently changed, the City will give the employee fourteen (14) calendar days notice.

**ARTICLE 6  
STANDBY AND CALL BACK PAY**

**SECTION 1 - CALL BACK PAY**

Employees who leave the premises after completing their regular shift and are called back to work before their next regular shift shall be guaranteed a minimum of four (4) hours pay or four (4) hours work. All call back time shall be at the applicable rate of pay.

**SECTION 2 - STANDBY PAY**

Any employee required by the supervisor to remain at home or any designated place shall be compensated two (2) hours straight time pay for each eight (8) hours he/she is required to stand by. Employees required to stand by shall have written authorization from his Supervisor. Pay for such hours shall not be counted as hours worked for purposes of overtime.

**SECTION 3 - REPORTING EARLY**

When employees are called by their supervisor to report before the regular starting time of their assigned shift and such work assignment extends into the regularly scheduled shift, all hours worked prior to the normal starting time shall be treated as overtime, in accordance with Article 7, Overtime.

## **ARTICLE 7 OVERTIME**

### **SECTION 1**

- (A) The overtime rate shall be one and one-half (1 ½) times the base rate for all hours actually worked in excess of forty (40) hours per week. City-scheduled holidays shall be considered as time worked. If the City requires the services of an employee who is taking a scheduled vacation or bonus day, such time will be considered as time worked. Employee must be called in within the twenty-four (24) hour period of the vacation or bonus day to qualify for such time accumulation. Management will attempt to avoid such action. If required, however, the rules of seniority will not apply.
  
- (B) Overtime shall not be scheduled nor required except when deemed necessary by the Division Director or his/her designee to assure a continuation of support services in meeting the City's responsibilities to its citizens. An attempt shall be made by the Employer to schedule overtime equally among the employees when practical and reasonable. Scheduled overtime shall be offered beginning with the "low man" on the current overtime list, and proceeding upward until someone accepts the work. All those refusing overtime will be charged with all overtime hours earned by the person that worked. A current overtime list shall be posted on all bulletin boards.
  
- (C) Employees working overtime may, by mutual agreement, be given time off in lieu of pay. Time off will be at the applicable rate as shown in Section 1, paragraph (1) above or as required by the Fair Labor Standards Act.

**ARTICLE 8  
HOLIDAYS**

**SECTION 1**

(A) The following days shall be recognized and observed as paid holidays during the term of this Memorandum:

NEW YEAR'S DAY	JANUARY 1 <sup>st</sup>
MLK BIRTHDAY DAY	3 <sup>rd</sup> MONDAY IN JANUARY
PRESIDENT'S DAY*	3 <sup>RD</sup> MONDAY IN FEBRUARY
MLK MEMORIAL	APRIL 4 <sup>th</sup>
GOOD FRIDAY	FRIDAY BEFORE EASTER
MEMORIAL DAY	LAST MONDAY IN MAY
INDEPENDENCE DAY	JULY 4 <sup>th</sup>
LABOR DAY	1 <sup>st</sup> MONDAY IN SEPTEMBER
VETERAN'S DAY*	NOVEMBER 11 <sup>TH</sup>
THANKSGIVING DAY	4 <sup>th</sup> THURSDAY IN NOVEMBER
FRIDAY AFTER THANKSGIVING	FRIDAY AFTER 4 <sup>th</sup> THURSDAY IN NOVEMBER
CHRISTMAS EVE	DECEMBER 24 <sup>th</sup>
CHRISTMAS DAY	DECEMBER 25 <sup>th</sup>

(B) Holidays shall count as hours worked. 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.

- (C) Holiday pay will not be allowed if the employee did not work and was not excused the last scheduled work day before and the next scheduled work day after the holiday. Employees will be paid at straight time rate of pay for holidays not worked during a time of illness or accident, but such a day will not be charged against sick leave except as described in Article 10.

\* Holiday becomes effective January 1, 2007.

## ARTICLE 9 VACATION

### SECTION 1

- (A) Employees shall be granted an annual paid vacation in accordance with the City of Memphis Code of Ordinances, Article 1, Section 2-1 "Paid Vacation for Full-time City Employees." Vacation time should be used within the same calendar year it is accrued. In the event of extenuating circumstances, when an employee cannot use vacation leave within the same calendar year, vacation leave may be carried over in the next calendar year according to the guidelines in the Vacation Leave Policy (PM 46-02) in the City's Personnel Policy Manual.

### VACATION LEAVE ACCRUAL

SERVICE CREDIT	ACCRUAL	EXPLANATION
Up to 6 months	None	N/A
6-month anniversary	5 days (40 hours)	N/A
1-year anniversary (during 2 <sup>nd</sup> calendar year)	5 days (40 hours)	if hired on/after July 1
	10 days (80 hours)	if hired before July 1
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**

- (B) The rate of vacation pay shall be the employee's regular straight time rate of pay in effect for the employee's classification on the payday immediately preceding the employee's vacation period, except when a wage increase occurs pursuant to this agreement on July 1 of any year in which this memorandum is in effect, then the employee will receive the regular straight time rate of pay in effect for the employee's classification on the day(s) the employee actually takes vacation. Any adjustment to the employee's wage rate during an employee's vacation will be paid on the employee's next pay period.
- (C) Upon request submitted no less than four (4) days in advance of the date of vacation, an employee shall receive vacation pay no later than one ( 1 ) day prior to the start of his/her vacation.
- (D) Vacations will be granted as far as possible in accordance with employee preference and in line of departmental seniority 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 departments. However, when a dispute arises between employees in the same classification, (the City shall allow the senior employee to have first choice). There shall be a posted vacation schedule no later than January 15th of each year in order to permit employees to express their choice of vacation by April 1st and the list shall contain the number of employees who can go on vacation and the employee's anniversary date. Employees may split their vacation and take up to one half of their annual paid vacation days, one (1) day at a time if they desire. However, such selection shall be mutually agreed to. Vacation shall be posted no later than April 30th, with the exception of the five (5) days that may be taken one half (.5) day at a time.

## SECTION 2

An employee who becomes ill while on vacation and whose illness is substantiated by a physician's statement may upon release by the employee's attending physician, have that portion of vacation which was interrupted by illness rescheduled. It shall be the employee's responsibility to report said illness to the supervisor at the earliest possible date and present a physician's statement upon return to work.

## ARTICLE 10 SICK LEAVE

### SECTION 1

- (A) Upon completion of three (3) months of consecutive service after initial employment, all regular, full-time employees shall be eligible to receive pay while absent from work due to sickness to be charged against accumulated sick leave time per Personnel Policy Manual, PM 46-03, "Sick Leave."

Unlimited accumulation of sick leave begins from the first day of employment:

Service Credit	Accrual Rate Effective Date	Accrual Rate Per Month
Up to 5 years	First month of employment	1 day (8 hours)
5 years up to 9 years	First month after 5-year anniversary	1½ days (12 hours)
9 years up to 14 years	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)

\*New employees are only eligible to use accrued sick leave time after two consecutive calendar months of employment.

- (B) 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 absences.

- (C) Pay for holidays that occur while an employee is on sick leave shall not be charged as sick leave.

## **SECTION 2**

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 payday immediately preceding the employee's retirement. Such payment shall not be counted as compensation for the purpose of computing retirement benefits.

## **SECTION 3**

After completion of three (3) months of service after initial employment, an employee who works an additional three (3) consecutive months without using 6 or more hours of sick leave, or any unauthorized absence, will be eligible for one (1) bonus day leave with pay, to be taken within twelve (12) months from the day it is earned. Bonus days will be earned in a like manner for the subsequent three (3) month periods so that an employee may earn up to four (4) bonus days within twelve (12) months. Each bonus day which is credited must be used within twelve (12) months from the date it is credited or be forfeited.

## **SECTION 4**

It is agreed that for purposes of determining posted accumulated days of sick leave that the employee's seniority on July 1, 1969, shall be used in the initial calculation with accumulation rates since July 1, 1969, to be in accordance with City Policy. An employee with more than ten (10) years of seniority as of July 1, 1969, shall be credited with 120 days sick leave on that date and employees with less than ten (10) years shall be credited with an accumulated rate equal to the actual number of months of City service. All sick leave accumulated after July 1, 1969, will be according to accumulation rates based on City Policy from July 1, 1969 to July 1, 1975.

## **ARTICLE 11 PAID LEAVES OF ABSENCE**

Leave of absence with pay may be granted to regular employees for the following reasons:

#### **SECTION 1 - SUMMER TRAINING**

Reservists and National Guard members being called for the customary two-week tour of duty shall be excused on presentation of their orders and shall receive eight (8) hours pay at the regular rate of pay for each working day served, up to a maximum of fifteen (15) days per year.

#### **SECTION 2 - JURY AND WITNESS DUTY**

Regular employees shall be granted a leave of absence with pay any time they are required 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 time lost from scheduled work when legally subpoenaed as a witness to testify in court cases when the employee is neither the plaintiff nor the defendant. Employees shall also be paid for 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 or within a reasonable time if the jury service lasts less than four (4) hours a day.

### **SECTION 3 - DEATH IN FAMILY**

- (A) In the event of a death in the employee's immediate family, full wages will be paid for scheduled days of work from which the employee is necessarily absent because of the death, but not beyond a maximum of three (3) days.

Immediate family includes husband, wife, mother, father, brother, sister, son, daughter, mother-in-law, father-in-law, grandfather, grandmother, grandchildren, great-grandfather, great-grandmother and also properly established foster parents if employee lived in household. Additional time may be granted as leave without pay or as paid vacation when justified by circumstances.

- (B) Employees will be given two (2) days off with pay if funeral is on a work day for grandparents-in-law, brother or sister-in-law, son or daughter-in-law, grandchildren of your legal spouse, or any relationships listed in this Section which are created by legal adoption.

- Deleted Section 4-Personal Leave becomes effective January 1, 2007.

### **ARTICLE 12 DEATH OF AN EMPLOYEE**

#### **SECTION 1**

- (A) In the event of the death of a regular 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 insurance will be paid to the person entitled thereto as designated by the employee, or by law.
- (B) In addition, the person entitled as designated, or by law, will receive an amount equivalent to the employee's regular wages for one (1) month after the legally required deductions.

### **ARTICLE 13 ON-THE-JOB INJURY**

#### **SECTION 1**

- (A) In the event any employee sustains an injury on the job, the employee 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 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 per Personnel Manual, PM 46-08, "On-the-Job Injury."
- (C) 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 14  
LIFE INSURANCE**

Life insurance is offered to regular, full-time employees covered under this agreement as an optional benefit per City of Memphis Personnel Manual, PM 42-02, "Life Insurance."

**ARTICLE 15  
HEALTHCARE INSURANCE**

For employees who are covered under the health care insurance plan offered by the City of Memphis to its employees, the City will contribute 70% of the total premium and the employees will contribute 30% of the total premium. The terms and conditions of the plan shall be standard for covered employees on a city-wide basis.

On an annual basis, the City of Memphis may offer to its eligible employees an option to join a qualified Health Maintenance Organization as provided by the Health Maintenance Organization Act of 1973, Public Law 93-222, as amended.

**ARTICLE 16  
PENSION**

The City Pension Ordinance applies to members of this bargaining unit. The rate of contribution by the employee and benefit received by employees shall be that which is specified in the pension ordinances adopted by the Memphis City Council.

**ARTICLE 17  
SENIORITY**

**SECTION 1**

- (A) Seniority shall be granted to all regular, full-time employees. A regular, full-time employee is defined as an employee who has been continuously employed with the City of Memphis on a full-time basis and who is receiving all benefits guaranteed by the Memorandum of Understanding and benefits presently guaranteed by the City of Memphis Charter and laws of the State of Tennessee. Seniority shall be determined on the basis of actual length of continuous service from the latest date of regular employment with the City.
  
- (B) All new employees shall be considered probationary for six (6) months from their last date of hire. However, the Director of Human Resources will consider a request for extension of an employee's initial and/or administrative probationary period based only upon extenuating circumstances, such as illness of the employee, OJI, maternity, or military leave. During such probationary period, employees may be discharged without constituting a breach of this Memorandum. At the end of their probationary period, employees shall be placed on the seniority list, as of their first date of last employment. For the purpose of layoff, the exercise of shift preference, and permanent transfers, seniority shall be determined by the length of service by classification.

**SECTION 2**

An employee shall lose seniority for the following reasons:

- (A) Quits job.
- (B) Discharge for a just cause.

- (C) Is absent for three (3) consecutive working days without notifying the supervisor.
- (D) Is laid off for one (1) year.
- (E) Fails to report to 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 to work after the layoff.

### **SECTION 3**

Layoffs shall begin with those employees having the least seniority. Employees shall be recalled according to seniority in the inverse order of layoff. In the case of reduction of force or elimination of a position, seniority shall govern on a classification basis as provided in Section 1, provided the employee is qualified to perform the work involved.

### **SECTION 4**

- (A) The employer may make temporary transfers of employees to positions other than those they normally performed in order to meet the requirements of the operation of the Department.
- (B) Employees temporarily transferred shall be paid either the rate of the position from which they are transferred or the rate of the position to which they are transferred, whichever is higher, for all hours actually worked at the transferred position.
- (C) Temporary transfers shall be for a period of not longer than thirty (30) working days.
- (D) Temporary transfers between two divisions shall be mutually agreed upon by the current Division Director and the employee affected by such transfer. In the event that all employees in the classification decline such transfer, the transfer will be based upon seniority.
- (E) A Temporary employee is defined as one who is employed by the City of Memphis in any position that is not regular, full-time and whose employment does not exceed 1040

hours in a twelve (12) month period. Such employment may, however, at the discretion of the City be extended an additional 320 hours, if required.

## **SECTION 5**

Notice of all vacancies and/or new jobs shall be posted for all personnel on all employees' bulletin boards within three (3) days following the occurrence of the vacancies of all jobs or the establishment of new jobs, during which time employees may make application within three (3) business days to the Employment Manager in the City Human Resources Division.

## **SECTION 6**

The regular filling of any vacancy shall be on a basis of seniority and qualifications and subject to Civil Service regulations and shall be subject to reopening for consideration to those employees who were at the time of posting on sick leave, military training leave, or on vacation not to exceed fifteen (15) days. Said employees shall make application for the position within three (3) working days after returning to work.

## **SECTION 7**

The agreed-to seniority lists shall be provided by the employer. Relevant personnel records shall be available at all reasonable times.

## **SECTION 8**

When advancement opportunities occur, they shall be filled with the senior most qualified City employee. In the event that vacancies cannot be filled in accordance with the above provisions, the position may be filled by other means.

## **SECTION 9**

The stewards, designated in writing by the Union, shall have the highest seniority among Union members in their respective classifications for lay-offs, recall, and transfer purposes only during their tenures of office.

## **ARTICLE 18 GRIEVANCES**

### **SECTION 1**

A grievance is defined as an alleged violation of an express provision of the Memorandum of Understanding. Any grievance defined as a dispute between the City or any representative of the City and any employee or group of employees covered by this Agreement over the application, meaning or interpretation of a specific article of this Agreement .

**Step 1.** The aggrieved employee and the Union Steward shall discuss the grievance with his/her immediate supervisor, within fifteen (15) business days of the latter of (a) the date of the alleged violation or (b) the date an employee acquires knowledge of the alleged violation. The Steward and Immediate Supervisor shall discuss the grievance providing a full investigation into the circumstances and shall attempt to adjust the grievance at this step and shall respond to the aggrieved employee within five (5) business days. The Union Steward shall be a vocal representative of said employee and file grievances as provided.

**Step 2.** The Business Representative of the Local Union shall commit the grievance to writing stating the nature of the alleged violation and the applicable Article of the Agreement which shall be submitted and discussed, within ten (10) business days, with the appropriate Division Director. Both the Union Steward and the Division Director or his/her designee may request the presence of the Supervisor and the aggrieved employee in an effort to resolve the grievance at this step or any other parties when by mutual agreement only. If the Director's decision is not made in writing within seven (7) business days, it shall be considered resolved in the Union's favor, unless an extension of time is mutually agreed to.

**Step 3.** The Union shall then review the answer of the Division Director and indicate in writing its acceptance or its rejection and request for arbitration if desired within fifteen (15) business 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 certified mail to the Union Office, return receipt requested. The Union in submitting its request for arbitration as provided hereafter shall send said request certified mail to the Mayor with a copy by regular mail to the City Attorney. Failure of the

Union to request arbitration within fifteen (15) business days shall be considered acceptance of the decision; and the answer of the Division Director shall be considered satisfactory. The Union shall have the right to take up suspensions and/or discharges within ten (10) business days at Step 2 of the grievance procedure, and the matter shall be handled in accordance with this procedure through the arbitration step if deemed necessary by the Union.

## **SECTION 2 - ARBITRATION PROCEDURES**

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, nor subtract from, nor modify any terms of this Memorandum of Understanding and shall be strictly limited to the interpretation or application of the express provisions of this Memorandum of Understanding and any other Memorandum made supplementary thereto.

**SELECTION OF THE ARBITRATOR:** The arbitrator shall be jointly selected by the Union and the City. If within five (5) business days after the request for arbitration is made, the Union and the City fail to agree upon the appointment of an arbitrator, a request will be made to the American Arbitration Association or the Federal Mediation and Conciliation Service for a list of five (5) arbitrators.

The Union and the City may select one of the lists, or if they still cannot agree, the following procedures shall be followed: The party presenting the grievance shall be given the first opportunity to strike the name of one of the arbitrators contained in 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 shall be reinstated until an arbitrator willing to act has been selected.

**ARBITRATION PROCEDURES:** The arbitrator shall hold a hearing within ten (10) business days after receipt of the request to arbitrate. 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 cost of the services of the arbitrator shall be shared equally by the Union and the City Division. The arbitrator shall render his/her decision not later than thirty (30) calendar days after the conclusion of the final hearings.

There shall be final and binding arbitration on suspension and discharge with the arbitrator chosen as above. The arbitrator shall have the power to rule on such disputes involving suspension or discharge under this Agreement provided that he/she shall have no power to add to, subtract from or modify any terms of this Agreement or any other Agreements made supplementary hereto. All decisions shall be reported to the Chief Administrative Officer of the City of Memphis and to the Union. The decision shall be a matter of public record and shall be advisory to the Chief Administrative Officer, who is hereby designated by the Mayor to render a final binding decision.

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 of the answer. The failure of the appropriate city representative to respond as required in any steps of the grievance procedure shall be considered as upholding the grievance. It is agreed that the City shall make available management representatives 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 Chief Administrative Officer at least twenty-four (24) hours prior to the hearing, or orally no later than the beginning of the hearing.

### **SECTION 3 – CONTROLLING LANGUAGE**

If there exists a conflict between this Memorandum of Understanding and City of Memphis departmental policies or work rules, the language of the Memorandum of Understanding shall control.

**ARTICLE 19  
GENERAL PROVISIONS  
SECTION 1**

When a Layoutman is required, as determined by the City, provisions for such classification designations shall be established in accordance with Appendix "A" of each craft.

**SECTION 2**

- (A) Where a Layoutman is assigned, supervisors will make an effort to relay instructions to the Layoutman rather than to the individual employee.
- (B) The Layoutman has the right to instruct, counsel, correct, or admonish an employee concerning the employee's conduct or work performance. However, when the conduct or work performance of an employee is questioned to a degree that it may become a disciplinary matter of permanent record in his/her Official Personnel File, then it is agreed that the employee concerned has a right to meet with his/her Union Steward, designated Supervisor and Layoutman. All employees under this Memorandum of Understanding, shall be allowed to check their personnel records at a mutually agreed time.
- (C) The senior most qualified journeyman within the craft shall be considered.
- (D) The City, at its sole discretion, may designate a "Crew Leader" when five or more employees are working together without direct supervision.
- (E) Crew Leaders will receive their assignments from the City. The City will first consider the senior most qualified journeyman to be Crew Leader, but may appoint a Crew Leader who is not the senior most qualified journeyman.

**SECTION 3**

The City shall pay for traveling time and furnish transportation, from the assigned reporting place other than the employee's home to the place where the work is to be performed. The City shall also provide return transportation and pay for traveling time to the assigned reporting place, other than the employee's home.

**SECTION 4**

- (A) When an employee reports for work as scheduled and is excused from duty before completing four (4) hours work, the employee shall be paid at his/her regular rate of pay for four (4) hours work. When an employee is excused from duty after having completed more than four (4) hours work, the employee shall be paid at his/her regular rate of pay for the actual hours worked.
- (B) Employees shall not be required to work outside in case of snow, ice conditions, rain, storms or tornadoes, except in cases of emergency or when needed to maintain or restore service to citizens.
- (C) An employee who reports to work as scheduled may elect to work the full day as long as the employee can be productive in an assigned task, and shall be paid at his/her regular rate of pay. When craft employees are assigned to work with another craft, such assignment shall be of temporary nature and contingent upon adverse conditions.
- (D) The City shall furnish suitable shelter from the weather, when possible. When an employee is required to work in inclement weather, each such employee shall be furnished, at the City's expense, suitable rain gear consisting of pants and jacket with hood. Employees shall be responsible for the return of such items at the end of the work day and shall return them in as good condition as they were received from the City, with the exception of normal wear and tear.

## **SECTION 5**

All safety measures must be observed by both the City and its employees and adequate lighting will be provided by the City for night work. The City will furnish hard hats when necessary and employees shall be required to wear them while on duty. All other safety and protective devices which may be required by the City shall be supplied by the City on all hazardous work in accordance with the Occupational Safety and Health Act Standards as applicable to the City of Memphis on July 1, 1973.

To address any safety questions which may arise during the term of this Agreement, the union may request that the affected bureau manager, the OSHA Coordinator for the Division in question, the Union's business manager, and the affected Union steward meet to resolve any conflicts. If the committee, as described above, fails to come to

agreement on resolution of the safety issue in question, the committee members may seek resolution from the Director of Human Resources or his/her designee.

## **SECTION 6**

The City may, at its discretion, recognize the existing Joint Apprenticeship and Training Trust Funds as established in conformity with the National Apprenticeship and Training Standards for the applicable crafts which have been approved by the U.S. Department of Labor and the Bureau of Apprenticeship and Training. The recognition shall be in accordance with the respective trade agreements of each craft. Such conditions and terms shall be set forth in Appendix "A" of this Memorandum.

## **SECTION 7**

The City shall pay to all employees whose regular scheduled shift is a second or third shift, a premium for all time worked during these shifts as provided in Appendix "A" of this Agreement.

## **SECTION 8**

High Time pay shall be any work performed on television or radio towers, or light standards not accessible by aerial equipment (e.g., McCarver Stadium, Collierville High School). This rate is applicable when work is performed fifty (50) feet or more above ground, floor or water level and is compensable at fifty percent (50%) above the regular rate.

## **ARTICLE 20 DISCIPLINE AND DISCHARGE**

### **SECTION 1**

Disciplinary action or measures shall involve only the following progressive measures for each type of offense, except violations or major infractions where progressive steps may or may not be followed:

- (A) Oral reprimand
- (B) Written reprimand
- (C) Suspension not to exceed five (5) days

#### (D) Discharge

A formal oral reprimand may be given to an employee, but must be given in the presence of a steward. The oral reprimand will not become a part of the employee's permanent record, but the date of the oral reprimand shall be noted for the purpose of establishing the fact that an oral reprimand did occur.

The employer shall not suspend or discharge any regular employee without just cause. In any case involving suspension or discharge, the employee may contest the suspension or discharge by use of the grievance procedure. The employee that elects to use the grievance procedure may not elect to appeal a suspension or discharge to the Civil Service Commission. Conversely, the employee who elects to appeal a suspension or discharge to the Civil Service Commission may not use the grievance procedure. The employee, his/her steward and the Union will be notified in writing that the employee has been suspended and is subject to discharge. The notice to the Union shall be by certified mail. Notice to the employee and the Union will satisfy technical complaints. Any employee found to be unjustly suspended or discharged shall be reinstated with full restoration of his/her rights and conditions of employment including seniority. Any grievance decision which directs compensation for time lost shall be made less temporary earnings during said period.

No material placed in the employee's personnel folder including any evaluation of the employee shall be used to discipline the employee unless a true copy is first given to the employee.

In no event will the progressive steps be applied to different types of offenses, for example, an employee receiving an oral reprimand for tardiness shall not be given a written reprimand for a first offense, not related to tardiness.

It is understood that any employee who does not receive any disciplinary action for a period of six (6) months shall have his or her records cleared for the purpose of progressive discipline.

## **SECTION 2 - MAJOR INFRACTIONS**

It is agreed that the following offenses are defined as major infractions:

1. Intoxication on the job as a result of alcohol and/or controlled substance consumption \*
2. Fighting on the job
3. Theft
4. Deliberately damaging City property
5. Gross insubordination
6. Accepting bribes
7. Unauthorized use of City property
8. Deliberately falsifying City records
9. The use of abusive language or unacceptable treatment of a citizen or City employee

It is further agreed that the above infractions cannot be changed, altered, added to, or subtracted from, unless by mutual agreement between the Union and the City. All offenses other than those defined as major herein, shall be classified as minor.

\* Negative reactions to prescribed drug use will not be considered a major infraction provided the employee submits a statement from the prescribing physician documenting such reaction. Two or more such incidences within a twelve-month period shall be cause for a management referral to the Employee Assistance Program (EAP).

## **ARTICLE 21 TUITION REIMBURSEMENT**

The City will provide a tuition reimbursement program for all regular employees covered by this memorandum. To be eligible for benefits in this Article, an employee must have completed his/her required initial probationary period. Courses must be approved by both the Division Director and the Director of Human Resources at least five (5) days prior to the beginning of classes. Employees should refer to the Tuition Reimbursement Policy (PM 58-03) or contact the Division of Human Resources for further information on program criteria, eligible expenses and procedures for reimbursement.

**ARTICLE 22  
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, 2011, and shall remain in effect through June 30, 2013.
2. 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 proceeding June 30, 2013.
3. 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.
4. 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 agreement. Therefore, the City and CRAFTS, 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 not specifically referred to, or not settled, during bargaining, even though such subject or matter 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.

**APPENDIX "A"**

**SECTION 1 - RECOGNITION**

Following are the classifications recognized by the City which are within the jurisdiction of the Bargaining Unit:

Maintenance Bricklayer/Tilesetter

**SECTION 2 - WAGES**

Effective July 1, 2011 through June 30, 2012, the current wage rates of employees covered by this Agreement will be increased by zero (0%) percent.

Effective July 1, 2012 through June 30, 2013, by February 1<sup>st</sup>, 2012 either party may request to reopen Appendix A-Section (2) Wages for negotiations. Negotiations will be conducted in accordance with the impasse ordinance.

**LONGEVITY:**

All employees covered under this Memorandum shall receive the following yearly premium in addition to their regular wages:

<u>10 Years</u>	<u>15 Years</u>	<u>20 Years</u>	<u>25 years/above</u>
\$125.00	\$175.00	\$200.00	\$400.00

<b>Hourly Rates</b>	<b>Effective</b>	<b>07/01/11</b>
Maintenance Bricklayer/Tilesetter		28.8306

**SECTION 2.A**

Layoutmen, when designated, shall receive \$1.00 per hour above the Journeyman wage rate and shall be selected by the City on the basis of seniority-if-qualified.

A Crew Leader designated by the City shall receive \$.50 per hour above their pay rate.

The City agrees to provide an allowance of \$.25 per hour for those craft employees with Master’s licenses who are required to obtain permits for the City.

**SECTION 3 - SHIFT PREMIUM**

The City agrees to pay all employees who work a swing shift an additional \$.40 per hour. The City also agrees to pay all employees who work a graveyard shift an additional \$.40 per hour.

Individual City departments will determine and post shift times (day, swing, and graveyard) available for shift pick selection. Final shift pick will be completed by all employees and posted a minimum of two weeks prior to actual commencement of the work for new shift times.

Individual City departments will determine and post shift times (day, swing, and graveyard) for rotating personnel. Schedules will be posted a minimum of three (3) months in advance of rotation.

#### **SECTION 4 - UNIFORM PROVISIONS**

The City agrees to provide an annual payment for the purchase of uniforms to employees covered by this agreement. This annual payment will be Three Hundred and Seventy-Five dollars (\$375).

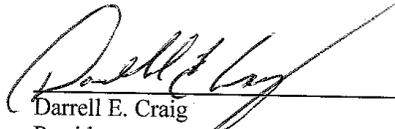
Employees will be in the uniform specified by the City at all times during working hours. Employees who report for duty without the proper uniform shall not be considered as reporting ready to work.

This annual payment will be paid directly to the employee on his/her regular paycheck, on the second pay period in July (which is at the beginning of each new fiscal year).

IN WITNESS WHEREOF, the parties have set their hand this, the 25 day of March, 2011 to place into effect the provisions of this Agreement.

FOR THE:

CRAFTS –  
BRICKLAYERS UNION, LOCAL #5

  
\_\_\_\_\_  
Darrell E. Craig  
President

  
\_\_\_\_\_

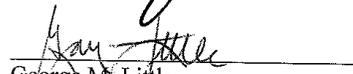
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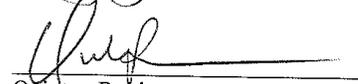
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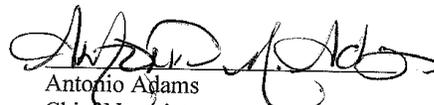
FOR THE:

CITY OF MEMPHIS

  
\_\_\_\_\_  
Honorable AC Wharton Jr  
Mayor

  
\_\_\_\_\_  
George M. Little  
Chief Administrative Officer

  
\_\_\_\_\_  
Quinton Robinson  
Director, Human Resources

  
\_\_\_\_\_  
Antonio Adams  
Chief Negotiator