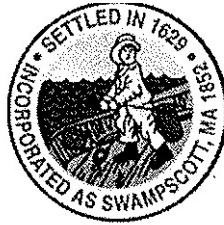


AGREEMENT  
BETWEEN THE  
TOWN OF SWAMPSCOTT



AND THE  
AMERICAN FEDERATION OF STATE, COUNTY  
AND MUNICIPAL EMPLOYEES, AFL-CIO,  
COUNCIL 93, LOCAL 2610

July 1, 2020 through June 30, 2023

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## PREAMBLE

WHEREAS, the AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL, EMPLOYEES, AFL-CIO, COUNCIL 93, LOCAL 2610 (hereinafter called the "Union"), was certified by the Labor Relations Commission of the Commonwealth of Massachusetts as the exclusive representative of certain employees of the Town of Swampscott (hereinafter called the "Town" or the "Employer"); and

WHEREAS, the parties hereto desire to establish and maintain harmonious relations and a state of mutual understanding and cooperation between them,

NOW, THEREFORE, in consideration of their mutual promises and Agreements herein contained, the parties hereto mutually covenant and agree as follows:

## ARTICLE I

### *RECOGNITION*

The Town Administrator recognizes the Union as the exclusive collective bargaining representative for the purpose of determining wages, hours and conditions of employment for:

All non-professional employees, including working foreman, in the Highway, Cemetery, Water, Park, and Sewer Division of the Public Works Department, but excluding the Director of Public Works, part-time employees, seasonal employees and engineers.

But excluding all other employees of the Town of Swampscott.

The parties agree in the event the Town hires a full-time custodian that the position shall be represented by this bargaining unit and covered by the terms and conditions of employment of the parties' collective bargaining agreement.

## ARTICLE II

### *NO DISCRIMINATION*

#### Section 1:

There shall be no discrimination, interference, retaliation, restraint or coercion by the Town Administrator or his/her Designee, Union or their respective agents against any employee because of his membership or non-membership in the Union or activities on behalf of the Union.

## ARTICLE III

### *CHECK OFF*

The Town Administrator or his/her Designee agrees that from and after receipt of written authorization it will deduct from the salary of the employee executing said authorization the sum per week designated as Union dues and initiation fees.

1. Deductions provided for above shall be remitted to the authorized financial officer of the Union not later than the twentieth (20th) day of the month following the month in which the deduction is made. The Town Administrator or his/her Designee shall simultaneously furnish the financial officer of the Union each month with a record of the employees from whose earning deductions have been made and the amount of the deduction.

2. The Union agrees that it will indemnify and save the Town Administrator or his/her Designee harmless from any and all liability, claim, responsibility, damage or suit which may arise out of any action taken by the Town Administrator or his/her Designee in accordance with the terms of this Article or in reliance upon the authorizations described herein, in an amount not to exceed the sum received by the Union on account of the deductions made from the earnings of such employees.

3. During the life of this collective bargaining agreement, it is provided there will be payment of an agency service fee on or after the 30th day of employment to the State Council 93, Local 2610, American Federation of State, County and Municipal Employee, AFL-CIO.

## ARTICLE IV

### *GRIEVANCE PROCEDURE*

Both parties recognize the desirability of exerting an earnest effort to settle grievances at the earliest possible time.

#### Section 1:

A grievance shall be defined as a complaint between the Town Administrator or his/her Designee and the Union and/or the employee involving an alleged specific and direct violation of a specific provision of this Agreement.

#### Section 2:

A grievance must be presented within five (5) working days of the time of the occurrence of the act, decision, or ruling forming the basis of the grievance and must be processed in accordance with steps below:

Step 1:

The employee shall present the grievance, in writing, to his/her immediate supervisor, or his/her designee, who shall confer with the grievant, Union representative, witnesses and others within 5 (five) business days. The supervisor will then issue an answer in writing to the grievance within five working days of the conference.

Step 2:

If the grievance is not satisfactorily settled, it shall be appealed, in writing, to the Human Resources Director or his/her designee within five (5) working days after the employee's receipt of the written answer from Step 1.

The Human Resources Director or its designated representative member, the grievant, and/or the chairperson of the Union or his designee, shall meet to discuss the grievance within fourteen (14) calendar days.

The Human Resources Director will give his/her written answer to the grievance within five (5) working days of the meeting.

Step 3:

If the grievance is not satisfactorily settled, it shall be appealed to the Town Administrator or his/her Designee within five (5) working days after the employee's receipt of the written answer of the Human Resources Director.

The Town Administrator or his/her Designee shall meet to hear the grievance within five (5) calendar days. Town Administrator or his/her Designee and the Union shall have the right to be represented by counsel, to witnesses, give testimony, present evidence, and argue orally in support of their respective positions. The parties shall have the right to file briefs within five (5) days of the hearing.

The Town Administrator or his/her Designee shall render his/her written decision within ten (10) calendar days of the hearing.

Step 4:

If no satisfactory settlement of the grievance is made, it may be appealed to arbitration by written notice served upon the Town Administrator or his/her Designee within thirty (30) workdays after the written Decision under Step 3.

Section 3:

If the Director of Public Works has any grievance, he/she shall initiate the grievance through the Human Resources Director at Step 2 by submitting the grievance, in writing, to the

Chairperson of the Union. The Human Resources Director and Chairperson of the Union and Council 93 Agent shall meet to discuss the grievance.

The Union shall give its written answer to the grievance within ten (10) workdays following the meeting. If no satisfactory settlement of the grievance is made, the Director of Public Works may appeal the grievance to the Town Administrator or his/her Designee and thereafter to Arbitration in accordance with the procedures described above in

Step 5:

Section 4:

Except in cases where an employee reasonable feels that his physical welfare and safety are in danger, employees will perform as told by their supervisor pending final resolution of the grievance.

## ARTICLE V

### *ARBITRATION*

Any grievance which remains unsettled after having been processed through the grievance procedure pursuant to Article V which involves the interpretation or application of a specific provision of the Agreement shall be submitted to Arbitration upon written request of either the Union or the Town Administrator or his/her Designee provided such request is made within thirty (30) days after the final decision of the Town Administrator or his/her Designee has been given in writing to the Union.

A request for Arbitration shall state in reasonable detail the nature of the dispute, the specific provision of the Agreement alleged to have been violated and the remedy requested. The request shall be sent to the American Arbitration Association and a copy shall be furnished to the other party.

Within fifteen (15) days following written request for arbitration of a grievance, the Town Administrator or his/her Designee or the Union may request the American Arbitration Association to submit a panel of names from which an arbitrator may be chosen. In the selection of arbitrator and the conduct of any arbitration, the Voluntary Labor Arbitration Rules of the American Arbitration Association shall control.

The award of an arbitrator so selected upon any grievance subject to arbitration as herein provided shall be final and binding upon all parties to this Agreement, provided that no arbitrator shall have any authority or jurisdiction to add to, detract from, or in any way alter the provisions of this Agreement or determine the arbitrability of any issue.

The cost of the arbitration proceeding will be borne equally by the Town and the Union. Each party shall be responsible for compensating its own representative.

Any matter subject to the provision of the Civil Service Law and Rules and Statutory requirements shall not be subject to arbitration.

If either party disputes the arbitrability of any grievance in any appropriate Court of Law or Equity, it is agreed that said Court shall determine the question of arbitrability de novo without according any weight to any decision on arbitrability that may have been made previously by the Arbitrator and/or any administrative agency in the same case.

If the Union fails to comply with any of the filing deadlines set forth in this article, its grievance shall be waived with prejudice. If the Town fails to comply with any of the response deadlines, it shall be considered a denial of the grievance and the Union may proceed to the next step of the grievance procedure. The filing deadlines may be extended by mutual agreement of the parties.

## ARTICLE VI

### *RIGHTS OF THE TOWN ADMINISTRATOR OR HIS/HER DESIGNEE*

#### Section 1:

The parties agree that except as specifically and directly modified, amended, or abridged by express language in a specific provision of this Agreement, the Town Administrator or his/her Designee retains all rights, powers and prerogatives that it has or may hereafter be granted and may lawfully exercise the same at its discretion without any such lawful exercise being made the subject of a grievance or unfair labor practice charge.

The category of exclusive rights, powers and prerogatives retained and reserved to the Town Administrator or his/her Designee shall expressly include, and nothing herein shall be deemed to limit, impair or qualify, the Town Administrator's or his/her Designee's exclusive right to manage the Town's operations to direct and control those operations, and independently to make, and carry out, and execute, all plans and decisions deemed necessary by the Town Administrator or his/her Designee in its judgment to the welfare, advancement and best interests of the Town departments; and to execute and implement into policy all plans and decisions required of the Town Administrator or his/her Designee by Town Meeting, mandatory directive passed by the Legislature or issued by a superior governmental authority which the parties hereto recognize and agree are no proper subject for either mandatory or permissive collective bargaining.

Said rights, powers and exclusive prerogatives include but are in no way to be constructed as limited to the rights, power and exclusive prerogative to: hire (full, part-time, seasonal, or temporary employees); fire; suspend; or in any other manner discipline; promote;

demote; lay-off or otherwise reduce the work force; transfer (permanently or temporarily) assign or reassign (permanently or temporarily); evaluate the performance of; prescribe hours for the working conditions of; assign any added, lessened or different duties, work and responsibility to; set standards and requirements applicable to and make determinations or eligibility for any in-step wage increases for; promulgate rules and regulations concerning the working conditions and safety of; regulate and restrict the use of Town property (real or personal) by; and prescribe any safety and training program or policies for employees of the Town Departments; and to assign work to whatever personnel, either in or out of the unit, and to determine the amount and kind of work to be subcontracted (provided current employees are not replaced), that the Town Administrator or his/her Designee, or its representatives, in its discretion, deems necessary.

Emergency water and sewer repairs occurring during normal working hours, may at the discretion of the Director of Public Works or his/her designee be performed by an outside contractor.

However, the parties hereby acknowledge their obligation under M.G.L. c. 150E and agree that any future decision(s) to contract out bargaining unit work shall not be implemented without the parties fulfilling their impact bargaining obligations.

Section 2:

The Town reserves the right to install GPS devices in all Town vehicles. This vehicular monitoring will not be used for disciplinary action. Effective July 1, 2022, the Town will make a \$2,500 one-time payment to all current active members as consideration for this change.

## ARTICLE VII

### *NO-STRIKE CLAUSE AND THE CONTINUITY OF EMPLOYMENT*

Section 1:

In recognition of its obligations under the provisions of Section 9A of Chapter 150E of the General Laws, the Union hereby agrees and affirms that during the term of this Agreement, neither it nor any of its agents will engage in, incite, or participate in any strike, sit-down, stay-in, work stoppage, withholding of services, concerted sick call-in or leave taking, or intentional unauthorized absences, or any other unlawful interference with assigned or expected work. .

Section 2:

The Union further agrees that should any strike, sit-down, stay-in, work stoppage, withholding of services, concerted sick call-in or leave taking, or intentional unauthorized absences or any other like or similar interferences occur, it shall put forward every reasonable effort to immediately have the activity terminated.



Section 3:

Individual employees who violate Section 1 and Section 2 hereof shall be subject to disciplinary action.

Section 4:

It is agreed that the Town Administrator or his/her Designee will not seek monetary damages against the Union for violations of this Article as long as, in the judgment of the Town Administrator or his/her Designee, the Union fully complies, and continues to comply with the provisions of Section 2 hereof.

## ARTICLE VIII

### *UNION ACTIVITY AND EMPLOYEE PARTICIPATION*

Section 1:

If the Town Administrator or his/her Designee, or its representatives, schedules negotiations during working hours, the representatives of the Union shall attend such negotiating sessions without loss of pay or benefits.

Section 2:

The Union agrees to promptly notify the Town Administrator or his/her Designee of any changes in the identity of its officers or authorized agents.

Section 3:

Designated Union stewards shall not suffer a loss of pay or benefits for the time reasonably necessary for the investigation and presentation of grievances.

Section 4:

The Town Administrator or his/her Designee agrees to supply one (1) Bulletin Board or part of an existing board for each division in a central location for the exclusive use of the Union.

Section 5:

The Town Administrator or his/her Designee agrees to grant authorized representatives of the Union and the American Federation of State, County and Municipal Employees, AFL-CIO and/or Council No. 93 license to enter upon Town property for the reasonable discussion of Union business with affairs with employees.

Section 6:

Following the execution of a contract for fiscal year 1991, the Union and the Town will each be responsible for reproducing its own contracts and amendments from one original to be furnished by the Town for use of both parties.

## ARTICLE IX

### *EMPLOYEE PROMOTIONS, REASSIGNMENTS, DISCHARGE, SUSPENSION, REPRIMAND OR OTHER DISCIPLINE*

Section 1:

If an employee is to be verbally warned by a supervisor, no notification of such action will be required.

Section 2:

If an employee is to be given a written reprimand, he/she shall be notified by the supervisor or the Town Administrator or his/her designee in writing, of such action at least twenty-four (24) hours in advance. Said notice shall set forth a complete description of the reasons for discipline.

Employees have the right to have an officer of the Union present.

Section 3:

No employee will be disciplined, or reprimanded, or suffer any loss of pay or promotion without just cause.

Section 4:

The Town Administrator or his/her Designee, upon written request, will provide the Union with reasonably relevant material as is necessary to enable the Union to fully protect the rights of its members and to interpret and police this Agreement. The Union will bear any reasonable cost to the Town of providing such information as relates to this Section.

Section 5:

Each employee shall have access to on a one-time basis his/her complete existing personnel file. Each employee shall have the right to initial as having seen any subsequent addition to his personnel file regardless of the nature of the addition and shall have the right to

file a rebuttal. Nothing shall be removed from any personnel file; however, nothing, which is over five years old, shall be used in any evaluation or discipline of any employee.

Section 6:

The Town and the Union agree that there shall be a probationary period of nine (9) months of actual work performance, excluding from consideration, leave with pay and other time not worked. During the probationary period, the Director of Public Works and the Town Administrator may discharge newly hired employees with or without just cause and such discharge shall not be subject to the grievance procedure contained within the contract.

During the probationary period sick leave benefits for new employees shall accrue but will not be available until the probationary period has passed.

Section 7:

Disciplinary actions given by the Town Administrator that are grieved will begin at Step 3 of the grievance procedure.

## ARTICLE X

### *SENIORITY*

Section 1:

Each employee in the bargaining unit shall have and accumulate contractual seniority on the basis of total length of continuous service as an employee of the Town of Swampscott.

Section 2:

Employee shall lose their contractual seniority for the following reasons:

- (1) Resignation or other voluntary termination.
- (2) Discharge for cause.
- (3) Retirement.
- (4) Sustained absence from normal duties for a period of sixty (60) days without filing application for a leave of absence, sick leave, or other request for authorization of absence with the Town Administrator or his/her Designee, or, if granted a leave of absence, the employee accepts employment elsewhere without prior approval.

Section 3:

The principle of seniority shall govern and be applied in case of promotion within the bargaining unit, reassignment, lay off, and choice of vacation period. The Director or the Town Administrator, however, shall have the right to reasonably maintain a balanced work force in considering the relative qualifications and demonstrated abilities of employees within said Director or Town Administrator discretion and judgment; or, in reasonable cases of emergency.

## ARTICLE XI

### *JOB POSTING AND BIDDING*

Section 1:

When a vacancy occurs in a bargaining unit position, the vacancy will be posted on a bulletin board in a conspicuous place in a notice containing the grade, pay rate, a brief description of the duties and qualifications. The notice shall remain posted for a period of five (5) working days. The Union steward and president shall be notified five working days in advance of the posting.

Employees may apply for the vacant position throughout the five (5) day posting period and up to the three (3) most senior applicants for the vacant position will be considered on the basis of seniority, background, training, past record, experience, proven ability, scheduling availability and work force balance, among other things. The Town Administrator or his/her Designee agrees to reasonably weigh and consider seniority as a factor in considering the bids of the three (3) most senior bidding employees and where all the other facts listed herein are relatively equal, seniority shall be the determining factor.

Section 2:

Within five (5) working days after the last day of the posting period, the Supervisor or Departmental Board shall award the position to the successful applicant.

The successful applicant shall be given a thirty (30) day trial period in the new position at the applicable rate of pay. If, at the conclusion of the trial period it is determined in the judgment of the Director or Town Administrator that the employee is not qualified to perform the work required of the new position, the successful applicant shall be returned to his old position at his old rate of pay.

The again vacant position shall be re-posted; the employee who failed to qualify for the position during the trial period shall not be eligible to bid for the job.

## ARTICLE XII

### *JOB CLASSIFICATION AND PAY SCALE*

#### Section 1:

All regular full-time bargaining unit employees of the Town shall not be eligible for consideration for advancement to the next higher step until such time as the employee is receiving the maximum rate for such position after serving one (1) year at the minimum (Step 1) and one (1) year in each intermediate step until reaching a maximum rate after completion of the third (3rd) year (Step 3) as defined in the Classification and Pay Scales listed, except, however, that the Town Administrator or his/her Designee reserves the right, for special reasons and in exceptional circumstances to hire employees at a rate higher than the minimum rate for the position.

#### Section 2:

Promotions from minimum to maximum steps within grade shall be successive steps annually; salary increases of any kind are not automatic but shall not be withheld except for good cause.

#### Section 3:

An employee promoted or reclassified to a higher rated position or grade shall enter it at the minimum rate (or step) for the appropriate compensation, grade; except, however, that if his/her existing rate is the same or higher than the minimum rate for the higher-rated position, he/she shall be moved to the next higher step above his/her present salary.

#### Section 4:

The annual pay scale for all employees covered by this agreement shall be in accordance with Appendix A attached:

#### Section 5:

All regular full-time bargaining unit employees shall be granted a longevity award, computed in the following amounts on July 1 of each contract (fiscal) year:

5 years of completed service	\$300
6 years of completed service	\$350
7 years of completed service	\$400
8 years of completed service	\$450
9 years of completed service	\$500
10 years of completed service	\$550
11 years of completed service	\$600

12 years of completed service	\$650
13 years of completed service	\$700
14 years of completed service	\$750
15 years of completed service	\$800
16 years of completed service	\$850
17 years of completed service	\$900
18 years of completed service	\$950
19 years of completed service	\$1,000
20 years of completed service	\$1,150
21 years of completed service	\$1,250
22 years of completed service	\$1,350
23 years of completed service	\$1,450
24 years of completed service	\$1,550
25 years of completed service	\$1,650
30 years of completed service	\$2,000

Section 6:

License Acquisition: When employees obtain specified licenses required to enter a different classification/grade, the employee will enter the new classification/grade on the July 1st following the license acquisition. Licenses shall not be used for Town benefit or obligation until such time that the license is compensated. Management reserves the right to limit the number of licenses necessary in each classification/grade.

Section 7:

The Town agrees to pay for CEU reimbursements for all licenses and the water license renewals.

Section 8:

The Town agrees to reimburse all employees for required D.O.T. physicals up to \$100 per fiscal year.

Section 9:

Beginning July 1, 2022, the Town will allocate the funds necessary to provide employees with necessary safety training.

**ARTICLE XIII**  
*HOURS OF WORK AND OTHER DUTES*  
*AND CONDITIONS OF EMPLOYMENT*

Section 1:

The regular hours of work for employees with one-half hour (1/2) off for lunch are as follows:

Public Works

7:00 a.m. to 12:00 noon

12:30 p.m. to 3:30 p.m.

Section 2:

The normal workweek shall consist of five (5) eight (8) hour days for Public Works and Engineers.

Section 3:

In the event of emergency conditions, whenever conditions reasonably permit, for approximately every four (4) hours of continuous working time, an employee will be granted up to forty-five (45) minutes to eat without loss of pay.

Section 4:

Normally, the basic work schedules and hours of work of employees will not be substantially modified unless or until the Union is notified of the Town Administrator's or his/her Designee's contemplated change and has been given an opportunity to discuss the Town Administrator's or his/her Designee's decision and its effects upon the employee; provided, however, that the Town Administrator or his/her Designee reserves the right to distribute employees of ability and qualifications so as to maintain a balanced Department; and provided, further, that the Director or Town Administrator shall have the right to adjust and arrange schedules to allow for annual vacation schedules. The provisions of this Section shall not apply to emergency conditions.

Section 5:

At the discretion of the Director of Public Works or his/her designee, morning breaks may be permitted, as not to shut down operations between the hours of 9:00 a.m. – 9:15 a.m. and not to exceed (15) fifteen minutes. Crews with three (3) or more employees will be allowed to send a "runner" from the job site to pick up coffee etc., and return to the job site. The

runner's break will begin upon return to the job site. In the event of inclement weather, members of the union will be allowed to take said morning break at the highway yard.

At the discretion of the Director of Public Works or his/her designee, afternoon breaks may be permitted, as not to shut down operations and not to exceed fifteen (15) minutes.

Section 6:

When the temperature reaches 95 degrees Fahrenheit at the DPW yard, the DPW crew shall remain on duty until the end of the shift. However, work will be restricted to emergency responses and inside work only.

Section 7:

Although not in the contract, the additional fifteen (15) minutes given for lunch break on Fridays to cash paychecks will no longer be allowed.

Section 8:

Effective July 1, 2020, the Town is implementing an automated time and attendance system to accurately capture and report time worked. All DPW workers will be required to clock in and out each day. For any unpaid breaks, the standard unpaid lunch will not require a clock punch. Any adjustments to the time punch for a variance in schedule, such as working through lunch to leave 30 minutes early, will be at management's discretion.

## ARTICLE XIV

### *OVERTIME*

Section 1:

Employees shall be paid overtime at the rate of one and one half (1.5) times their regular rate of pay for work performed in excess of their work schedules set forth in Section 1 of Article XIII. Employees shall be paid at the rate of double (2) times their regular rate of pay for all work performed on Sundays.

Section 2:

Employees who have completed their normal workday hours and assignments and have left the premises and are recalled to work before the next day's normal starting time by the Town Administrator or his/her Designee shall be paid at the rate of time and one-half for all hours worked on such recall. Except in an emergency, and when reasonably possible, the employee shall be informed by 1:00 p.m. on any day he is to be recalled for overtime work.



Employees that are recalled under the provisions of this Section shall be guaranteed a minimum of four (4) hours' pay at time and one-half. After four (4) hours, overtime will be paid for actual time worked in half (1/2) hour increments.

Section 3:

Side Letter dated 2/1/2008

- 1) Overtime shall be distributed in accordance to personnel with the lowest amount of accumulated hours, and in accordance with the overtime policy below.
- 2) A phone call shall be placed to said person. All personnel will be responsible to keep the Field Coordinator informed of current telephone, cell, or pager numbers.
- 3) Answering machines, no answers, or a person not available shall be considered a refusal.
- 4) If personnel are logged on sick leave, said person shall not be eligible for overtime until the start of their next regular shift. Said person will however be charged for a refusal.
- 5) If personnel are logged on vacation, personal leave, or compensatory time said person shall be eligible for overtime. Said person will however be charged for a refusal, per provision #3.

**Overtime Policy  
(Distribution of Overtime)**

- 1) Underground utility work:

Four employees will be called in to handle the majority of the repairs. The first two shall be personnel members with a D2 water license, who have the least amount of accumulated hours. The next two (or three if deemed necessary by the Director of Public Works, the Field Coordinator, or the Assistant Engineer) called shall be personnel with the lowest amount of accumulated hours.

- 2) Cemetery overtime:

As relates to Saturday and holiday burials. Three employees shall be called, with the first being a MEOS, who has the least amount of accumulated hours. The next two called shall be personnel with the lowest amount of accumulated hours.

- 3) Forestry overtime:

Two employees will be called in to handle the majority of the tree work. The first shall be a MEOS, who has the least amount of accumulated hours. The next personnel member (or two if deemed necessary by the Director of Public Works, the Field Coordinator, or the Assistant Engineer) called shall be personnel with the lowest amount of accumulated hours.

4) Highway and Parks overtime:

The number of employees called in will be at the discretion of the Director of Public Works, the Field Coordinator, or the Assistant Engineer. Overtime shall be distributed in accordance to personnel with the lowest amount of accumulated hours.

5) Sanding/salting overtime:

The existing sanding list shall remain. Refusals will be handled in the same manner as all other overtime.

6) Standby overtime:

Overtime accrued while on standby will no longer be charged to the overtime list. While on standby, personnel will not be eligible for any other overtime unless, while attempting to fill detail, the overtime list has been exhausted. Additionally, when dealing with utility breaks, the standby personnel shall isolate/secure the break and then call the Director of Public Works or their designee, who in turn will call in a crew (see provision #1), thus freeing up the standby crew for any subsequent calls.

7) Continuation work:

For the purposes of overtime, continuation work shall be defined as work that begins before 2:00pm, on a given scheduled workday.

Overtime shall be equally and impartially distributed among qualified personnel in each area where such personnel ordinarily perform such related work and duties in the normal course of their workweek.

The Director of Public Works or his/her Designee shall keep and maintain a record of overtime worked by employees. The list of overtime worked shall be forwarded to the Union Chairperson every two (2) months beginning with the first full two (2) month period following the signing of the contract.

Section 4:

Under normal circumstances, overtime work shall be voluntary, except that employees, who refuse to work overtime or are unable to be contacted by the supervisor, shall be credited on the overtime records at a rate of twice the actual hours worked only for the purpose of overtime distribution, as though they had actually worked that amount of overtime.

Section 5:

For purposes of the computation of overtime work on employees' pay records, sick leave shall be considered as time worked.

Section 6:

Two (2) qualified public works bargaining unit employees shall be required on weekends and/or holidays to be on standby status to cover public works emergencies including, but not limited to, water and sewer emergencies. The employees so required to be on standby status shall be paid \$6.50 per hour for each hour, which they may be required by the Town to be on such standby status. The employees so required to be on standby status shall be provided a "cell phone". The employees on standby status shall be required to respond within a reasonable period of time in accordance with past practice under the prior agreement and the intent of the parties under the prior agreement, the employees are not required to stay at home or at any specific location when on standby status but are only required to be able to respond within a reasonable period of time as aforementioned (within 30 minutes).

Employees on regular standby status, who are required to perform emergency work, will be paid at the rate of time and one-half with a minimum rate of one hour.

Employees who call in sick on Friday will not be eligible to work standby on the weekend.

Section 7:

Overtime shall be paid in the pay of the week worked, if possible.

Section 8:

The parties agree that overtime work is necessary, and in many instances, urgently required to properly operate the Public Works Department and, in case of emergency conditions, including but not limited to: hurricanes, water breaks, snow and ice, flood or other forms of disaster, to protect the health, safety and property of the citizens of the Town, the Town may require employees to work a reasonable amount of overtime in emergency conditions described above, where the health, safety, welfare and protection of the citizens of the Town are in jeopardy.

Employees working under emergency conditions (excluding snow and ice) who have worked an excess of ten (10) hours prior to the beginning of their next regularly scheduled shift will be allowed to use vacation leave, sick leave or compensatory leave without the 48-hour notice requirement.

Section 9:

The parties agree to allow the accrual of compensatory time in lieu of overtime. The Department head will be responsible to notify the Human Resources Director of compensatory time accrued. Department heads shall submit such records weekly. In no case will compensatory time be allowed to accumulate to more than forty (40) hours. Compensatory time accumulated in a calendar year must be used prior to December 31st of that year. Requests to carry and use compensatory time owed into the next calendar year must have the prior approval of the Town Administrator. Requests to use compensatory time will require a minimum of 48-hours' notice and must be used in a minimum of four hour increments.

## ARTICLE XV

### VACATIONS

Section 1:

Vacation leave approved by the Director of Public Works or his/her designee will be granted each year, provided the Director of Public Works or his/her designee shall have the discretion to approve vacations so as to maintain and retain a reasonably balanced work force. All vacation will require a minimum of 48-hours' notice.

\*All notice requirements are assumed to be regularly scheduled workdays.

Section 2:

A vacation list for Public Works Department employees shall be posted each year by seniority by April 1 and selections shall be made by May 1 for that year. After initial selection of a vacation period, if an employee then desires to change vacation, he shall be able to give reasonable notice of such changes, and the employee's request shall be honored whenever feasible. Vacation leave may only be taken in a minimum of four (4) hour increments or multiples thereof.

Section 3:

Upon termination of employment the employee shall receive payment equal to the amount of vacation pay the employee has accrued. If termination is caused by death of the employee, such payment will be made to the estate of the employee.

Section 4:

Employees hired after 7/1/2018 shall receive the following vacation:

Employees who have been regularly and continuously employed by the Town shall be granted vacation leave without loss of pay in the following manner:

After one (1) year's service	One (1) weeks' vacation
After two (2) year's service	Two (2) weeks' vacation
After five (5) years' service	Three (3) weeks' vacation
After ten (10) years' service	Four (4) weeks' vacation
After fifteen (15) years' service	Five (5) weeks' vacation

Extra vacation weeks earned for 5, 10 or 15 years' of service shall be available in the anniversary year after the anniversary date, but prior to the next July 1, which begins the new vacation entitlement year.

Section 5:

Vacation leave shall be granted only if the employee has actually worked for one hundred fifty (150) days in the aggregate during the twelve (12) month preceding July 1st in the year that the vacation is due.

Section 6:

Employees who are reinstated or re-employed shall be credited with previously earned and accumulated vacation leave as a result of employment by the Town of Swampscott when such reinstatement or re-employment occurs within three (3) years of their previous employment by the Town of Swampscott.

Section 7:

Employees shall receive credit for time worked within the Town of Swampscott or in State Government Service for the purpose of computing vacation time provided that the employee worked full time for the agency and that the employee requests credit and provides appropriate documentation within thirty (30) days of the date of hire within the town.

Section 8:

Employees with five (5) weeks' vacation leave may buy back their fifth (5th) week at straight time. There shall be a maximum of two (2) weeks buyback in any fiscal year. Vacation carryover is limited to two weeks.

# ARTICLE XVI

## HOLIDAYS

### Section 1:

The following days shall be paid holidays on the date celebrated or on the day designated by the Commonwealth of Massachusetts as the holiday:

New Year's Day  
Martin Luther King Day  
President's Day  
Patriot's Day  
Good Friday – 1/2 (one-half) day  
Memorial Day  
Independence Day  
Labor Day  
Columbus Day  
Veterans' Day  
Thanksgiving Day  
Day after Thanksgiving

### Section 2:

When any of the holidays listed above in Section 1 falls on an employee's normal day off, the nearest scheduled working day shall be considered to be the holiday.

### Section 3:

Holiday leave pay shall be eight (8) hours' pay at straight time, or normal working day.

### Section 4:

Employees who are required to work on one of the holidays listed above in Section 1, except Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, Christmas Day or January 1, shall receive in addition to regular holiday leave pay as provided above in Section 3, an additional days pay for eight (8) hours' work (or normal work day) at time and one half (1-1/2) for each hour worked except, however, in no event will an employee be required to work less than four (4) hours.

### Section 5:

Employees who are required to work on Memorial Day, July 4<sup>th</sup>, Labor Day, Thanksgiving Day, Christmas Day or January 1<sup>st</sup> in addition to their regular holiday leave pay as provided above in Section 3, shall be compensated at the rate of double (2) times their regular

rate of pay for all work performed on the designated holidays above in this section except, however, in no event will an employee be required to work less than four (4) hours.

Section 6:

If any of the holidays listed above in Section 1 falls during an employee's vacation leave, he/she shall receive an additional days paid vacation.

## ARTICLE XVII

### *SICK LEAVE, ADDITIONAL INJURY LEAVE, MILITARY LEAVE AND OTHER AUTHORIZED LEAVE*

Section 1:

Sick Leave

1. Sick Leave shall be credited at the rate of one and one-quarter (1- 1/4) days per month of sustained and continuous employment for the Town of Swampscott and may be taken in a minimum of four (4) hour increments, except that an employee who is released due to sickness with less than (1) hour to go in the work day shall only be charged with one (1) hour of sick leave.
2. Sick Leave shall be accumulated without limit.
3. Sick Leave credit shall commence at once for employees beginning their employment on the first working day of a calendar month; otherwise, sick leave shall commence on the first day of the month following the first day of employment and shall accumulate each calendar month thereafter.
4. Employees who have any leave without pay or any unauthorized leave of absence shall not receive sick leave credit for that month.
5. Sick Leave may be granted at the discretion of the Town Administrator or his/her Designee to employees only under the following condition:
  - a. When they are incapacitated from the performance of their duties by illness or injury.
  - b. When through exposure to a contagious disease the presence of the person at his job would reasonably jeopardize the health of others.

- c. In case of serious illness of the husband, wife, or child of the employee, or in case of serious illness to the parent of either the employee or his spouse, or of a person living in the immediate household of an employee; then in such cases, he may be granted sick leave with pay not to exceed seven (7) working days within any one (1) fiscal year.
6. Sick leave benefits will not be paid the day before or after a scheduled vacation day or holiday unless the employee is able to verify such illness by submitting a doctor's certificate within seven (7) workdays. Sick leave taken the day immediately before or after a paid holiday will result in the loss of pay for that holiday, unless the employee can satisfactorily verify such illness by submitting a doctor's certificate within seven (7) workdays.
7. If a Department Head has reason to believe that sick leave is being abused or used excessively by an employee, the employee will be required to meet with the Department Head or Town Representative to resolve the matter. The employee may choose to have union representation at such meeting. The Town will provide the employee with documentation of abuse/excessive use of sick leave. The Town also retains the right to request a medical certificate from the employee for any use of sick leave and to have an employee examined by a Town designated physician at the Town's expense.
8. As stated above in Paragraph 5, while the granting of sick leave is discretionary with the Town Administrator or his/her Designee, if granted, the qualifying employee must thereafter comply with the rules defined herein:
  - a. Notification of absence must be given to the Town Administrator or his/her designee as early as possible on the first day of absence and each subsequent day thereafter until his/her leave extends into a prolonged, excused absence.
  - b. If such notification is not given within a reasonable time under the circumstances, then the Town Administrator or his/her Designee may, at its discretion, charge such time as absence without pay.
  - c. For any period of absence on account of sickness or for absence due to illness in the immediate family pursuant to Paragraph 5c. hereof, the Town Administrator or his/her Designee may require, at its discretion, and for the purpose of additional evidence only, a physician's certification as to the necessity of such absence. If upon written request, the certificate of the physician is not filed by the employee within seven (7) days, then such absence may thereafter be applied or charged, at the discretion of the Town Administrator or his/her Designee, to absence without pay.



9. By the execution of this Agreement, the Union affirms that it is aware of the Town Administrator's or his/her Designee's responsibilities and obligations under the Town's Bylaw in the area of sick leave and understands and accepts such limitations of authority as appear herein:
  - a. All sick leave with pay must be reported by the Town Administrator and/or Designee to the Human Resources Director of the Town in such form and at such time as the Human Resources Director may require; and
  - b. The Human Resources Director may require of the Town Administrator or his/her Designee and the employees further and different evidence that such leave comes within the provisions of the Sick Leave Policies, Regulations and Bylaws of the Town.
  - c. If, upon examination of the evidence presented by the Town Administrator or his/her Designee and such other evidence under the provisions of paragraph (b) above, the Human Resources Director is of the opinion that said leave is not in accordance with the sick leave provisions of the Policies, Regulations and Bylaws of the Town, the Human Resources Director shall notify the Town Administrator or his/her Designee the first day of absence and each subsequent day thereafter until his/her leave extends into a prolonged, excused absence.
  - d. If such notification is not given within a reasonable time under the circumstances, then the Town Administrator or his/her Designee may, at its discretion charge such time as absence without pay.
  - e. For any period of absence on account of sickness or for absence due to illness in the immediate family pursuant to Paragraph 5c. hereof, the Town Administrator or his/her Designee may require, at its discretion, and for the purpose of additional evidence only, a physician's certification as to the necessity of such absence. If, upon written request, the certificate of the physician is not filed by the employee within seven (7) days, then such absence may thereafter be applied or charged, at the discretion of the Town Administrator or his/her Designee, to absence without pay.
  
10. By the execution of this Agreement, the Union affirms that it is aware of the Town Administrator's or his/her Designee's responsibilities and obligations under the Town's Bylaw in the area of sick leave and understands and accepts such limitations of authority as appear herein:
  - a. All sick leave with pay must be reported by the Town Administrator and/or Designee to the Human Resources Director of the Town in such form and at such time as the Human Resources Director may require; and

- b. The Human Resources Director may require of the Town Administrator or his/her Designee and the employees further and different evidence that such leave comes within the provisions of the Sick Leave Policies, Regulations and Bylaws of the Town.
- c. If, upon examination of the evidence presented by the Town Administrator or his/her Designee and such other evidence under the provisions of paragraph (b) above, the Human Resources Director is of the opinion that said leave is not in accordance with the sick leave provisions of the Policies, Regulations and Bylaws of the Town, the Human Resources Director shall notify the Town Administrator or his/her Designee.

Upon receipt of such notice and after reasonable notification and explanation by the Town Administrator or his/her Designee to the Union and the employee, said leave shall be changed from sick leave and charged to leave without pay, absence without pay or vacation leave.

- d. Sick Leave in excess of the number of days accumulated may be granted at the sole discretion of the Human Resources Director upon the recommendation of the Town Administrator or his/her Designee.
11. Extended Sick Leave: Upon return to work following extended sick leave of five or more (5) consecutive working days, the Town Administrator or his/her Designee, at its own expense may require a physical examination only to verify the illness/injury to determine the employee's fitness for duty if the employee so desires, he may be represented at such Town Examination by a physician of his own selection.
  12. Sick Leave earned by an employee following his/her return to duty after a leave without pay or absence without pay shall not be applied against such leave or absence as specifically provided herein.
  13. Employees whose employment by the Town is uninterrupted shall retain all accrued sick leave credits.
  14. Each employee, upon retirement from Municipal service, shall be entitled to payment of any amount equal to his or her daily rate of pay at a twenty percent (20%) buy-back of up to a cap of 250 days in case of death while in service, the same percentile will be paid to the employee's estate or that person shown to be beneficiary under Group insurance. Employees hired on or after 7/1/14 shall be entitled to payment of an amount equal to his or her daily rate of pay at a ten percent (10%) buyback of up to a cap of 250 days in case of death while in service, the same percentile will be paid to the employee's estate or that person shown to be beneficiary under Group insurance. Current employees will receive a lump sum payment of \$250 on 7/1/15.

15. Employees who are reinstated or who are re-employed shall be credited with the sick leave credits they had accrued at the termination of the previous service; except, however, that no credit for previous service may be allowed where reinstatement or reemployment occurs after an absence of three (3) years or more except upon specific written approval of the Human Resources Director for any of the following reasons:
  - a. Illness of the individual employee seeking reinstatement or reemployment.
  - b. Dismissal or termination through no fault or delinquency attributable solely to the employee seeking reinstatement or re-employment.
  - c. Injury while in the service of the Town in the line of duty and for which such person would be entitled to receive Worker's Compensation Benefits. (This provision does not apply to any employee subject to the General Laws – Worker's Compensation Act).
16. If an employee has no sick leave credits, then any such absence because of illness shall be charged at the discretion of the Town Administrator or his/her Designee to: leave without pay, absence without pay, or vacation leave, but shall be charged off on the same basis as above, except as provided above in Paragraphs 7, 8, hereof.

## Section 2:

### Additional Injury Leave:

1. In addition to the sick leave benefits described in Section 1, persons injured in the service of the Town, in the line of duty, shall be entitled to additional benefits of such provisions of the law as may now or hereinafter be enacted only upon completion of the leave of absence with pay on account of sickness as specifically provided herein; except, however, that such salary and wages may be paid in part until any sick leave allowance which the employee has to his credit has been depleted, any other valid provision of law notwithstanding. An employee who is entitled to any sick leave allowance may take such of his sick leave allowance payment, as (when added to the amount of any disability compensation provided by statute) will result in the payment to him of his full salary or wages (excluding overtime amounts).
2. When an employee has sick leave credits available and is injured in the line of duty and such injury could result in a potential claim under Chapter 152 of the General Laws (Worker's Compensation Act), said employee shall be paid his sick leave up to the extent of his credits only until payments made under the Worker's Compensation Law begin. Any adjustments due him because of the effects of this

paragraph shall be made thereafter.

3. In computing a week's salary for the purpose of refunds or adjustments in the case of Worker's Compensation, the period being compared shall include in both cases the same calendar days used in making such adjustments, irrespective of the number of days in the regularly scheduled workweek. At no time may an employee receive more than his regular salary for any period in question as the result of Worker's Compensation, except in the case of vacation or overtime credits payable under Chapter 152, Section 69 of the General Laws.

### Section 3:

#### Jury Leave:

Employees selected for jury duty shall be granted leave for the duration of such duty. Upon presentation by the employee of an affidavit of jury pay granted, said employee will be paid the difference between the jury pay and the employee's regular salary.

### Section 4:

#### Personal Leave:

A personal leave of absence without loss of pay or benefits may be granted for any of the following reasons provided:

- a. That such leave may be used for any purpose, including the extending of holiday or vacation or any other type of leave of absence.
- b. That the Director or Town Administrator shall not require any proof or reason for such absence.
- c. That the total number of days of such leave does not exceed five (5) normal working days. The employee must notify the Director of Public Works or his/her designee no later than fifteen (15) minutes prior to the start of the day that such leave is requested. Unused days under this Section shall not be cumulative from year to year. Personal leave pro-rated for those who commence employment after July 1st of a given year: work three (3) months, eligible for one (1) personal day; work six (6) months eligible for two (2) personal days; work nine (9) months eligible for three (3) personal days. No pro-ratio to less than full days.
  - a. Personal leave may be requested and granted in minimum of two (2) hour increments, but that any leave which exceeds a two (2) hour block by any amount shall be charged to the next higher two-hour level.
  - b. Employees hired after 7/1/2018 personal leave shall not exceed 4 days in a calendar year.

Section 5:

Death in Family:

In case of death of a father, father-in-law, mother, mother-in-law, grandparent, sister, brother, spouse, child, stepson, stepdaughter, brother-in-law or sister-in-law of an employee, the employee shall be granted a leave of absence not to exceed four (4) days without loss of pay benefits in case of death of a stepson or stepdaughter the employee shall be granted a leave of absence not to exceed two (2) days without loss of benefits. One-day permission to attend the funeral of a stepfather, stepmother, uncle, aunt, nephew or niece will be allowed.

Military Leave:

The Town Administrator or his/her Designee will conform to the provisions of any universal military training law and any valid interpretations thereof affecting employees in the bargaining unit.

Employees are entitled to the provisions of Chapter 33, Section 59 of the General Laws, which provides for remuneration and other benefits during the time of their service in the armed forces of the state during their annual tour of duty as a member of a reserve component of the Armed Forces of the United States.

## ARTICLE XVIII

### *HEALTH AND WELFARE*

Section 1:

The Town of Swampscott agrees to pay their percentage of health insurance according to the current PEC agreement and fifty (50) percent of the cost of a term life insurance policy offered to all other Town employees, the details of which are covered in a supplementary booklet. The Board will deduct the employee's share from the payroll checks of participating employees upon receipt of the proper authorization signed by the employee.

Section 2:

Since the present hospitalization and group insurance program is a master agreement negotiated between the Town and the respective insurance carriers, the Town Administrator or his/her Designee makes no representation or admission as to its obligation or authority to negotiate individual changes in the Master Agreement as it affects the employees in the bargaining unit. The Town Administrator or his/her Designee agrees to notify the Union of any proposed changes, alterations, modifications or amendments which affect the employees of the bargaining unit in sufficient time to allow the Union to study such proposals and present their positions to the proper authorities for consideration.

In the event, and to the extent the Town accepts Chapter 10 of the Acts of 1968 of the General Court, this contract shall be amended so as to conform to the rights granted the employees under said Act and action thereon shall be taken immediately.

## ARTICLE XIX

### *GENERAL PROVISIONS*

#### Section 1:

The Town Administrator or his/her Designee agrees to furnish such material, . equipment, tools and special license fees (other than a driver's license), which, in the opinion of the Director or Town Administrator, is reasonably required to perform duties assigned to the employees.

Employees must wear uniforms supplied by the Town.

Employees will be given a yearly uniform credit in the amount of six hundred twenty-five dollars (\$625) to purchase specified clothing at a specified vendor of the Town's choice.

A "uniform short" specified by the Town will be allowed from June 1st through September 30th only.

#### Section 2:

Employees shall be granted a personal clean up period prior to the end of each work shift to the extent that the Director can reasonably maintain a balanced work force on jobs in progress. No employee will return to his or her assigned station for "clean-up period" prior to 3:15 p.m.

## ARTICLE XX

### *SEPARABILITY AND SAVINGS*

#### Section 1:

If any Article, Section or Paragraph of this Agreement, or any Rider thereto should be held to be invalid by operation of law or by any tribunal of competent jurisdiction, or if the compliance with or enforcement of, any Article, Section, or Paragraph should be restrained by such tribunal pending a final determination as to its validity, the remainder of this Agreement and of any Rider, or the application of such Article, Section or Paragraph to persons or

circumstances other than those to which it has been held invalid or as to which compliance with or enforcement of has been restrained, shall be affected thereby.

In the event that any Article, Section, or Paragraph is held invalid or enforcement of or compliance with, which has been restrained as set forth above, the parties affected thereby shall enter into immediate collective bargaining negotiations upon request of either party for the purpose of arriving at a mutually satisfactory replacement for such Article, Section or Paragraph during the period of invalidity or restraint.

Section 2:

It is specifically understood by the Union that any policy, directive, rule or regulation of the Town Administrator or his/her Designee, written or unwritten, if not modified, abridged, or amended by this Agreement, remains and continues in full force and effect.

Section 3:

All job benefits heretofore enjoyed by bargaining unit employees which are not specifically provided for or abridged in this contract are hereby protected by this contract.

## ARTICLE XXI *SNOW PLOWING*

Section 1:

Outside contractors will not be called in to plow by the Director or Town Administrator until all unit employees have been offered overtime.

Section 2:

After six (6) hours of actual work employees shall be granted a 45-minute paid break. Subsequent four (4) hour blocks will begin after the forty-five (45) minute break has ended.

Section 3:

Employees on operations shall be paid at double time after the first continuous eight (8) hours of their snow and ice work until management terminates such work.

Stipends shall be included on snow and ice overtime.

Section 4:

Employees required for lengthy and continuous snow and ice operations (24 hours or more) are entitled to a four-hour paid rest period (at double time) for each 24 hours. For pay purposes, rest periods may be added to time worked. Management shall consult with union representatives to determine a safe and appropriate time for rest periods. Any employee performing other duties during snow operations shall be paid the highest rate in effect at that time.

Section 5:

The parties agree that while conducting single person sanding operations, the Town shall provide an additional bargaining unit employee for loading the sanding trucks.

Section 6:

When employees are recalled for snow and ice operations, employees will be paid from the time of arrival at the DPW yard. Employees shall be covered by the Town's insurance for the commute from their home to the DPW yard when called back for snow and ice operations.

## ARTICLE XXII

### *OUT OF GRADE PAY*

Any employee covered by this agreement that is temporarily designated at the discretion of the Director of Public Works or his/her designee to assume the duties and responsibilities of a higher rank or position for periods of greater than five (5) working days, shall receive the pay of such higher rank or position.

## ARTICLE XXIII

### *DRUGS AND ALCOHOL TESTING POLICY*

The parties shall adopt and incorporate by reference the Drug and Alcohol Policy enclosed herewith as Appendix B.



# ARTICLE XXIV

## DURATION

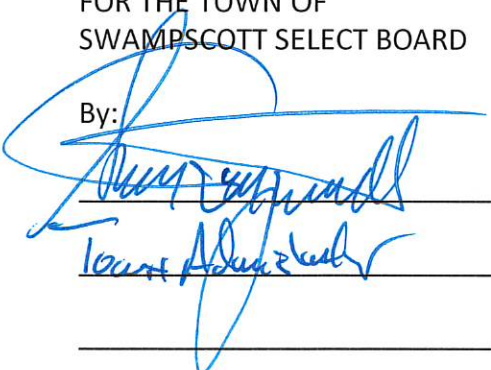
This Agreement shall remain in effect from July 1, 2020 through June 30, 2023. Should both parties agree, any provisions of this Agreement may be reopened for discussion during the term of this Agreement.

The parties agree to reopen this Agreement for the purpose of negotiating a new agreement prior to June 30, 2023.

Executed at Swampscott this day of \_\_\_\_\_, 2022.

FOR THE TOWN OF  
SWAMPSCOTT SELECT BOARD

By:




\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

FOR AFSCME, COUNSEL 93  
LOCAL 2610

By:



\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Appendix A

**Annual Pay Scale**

		<b>7/1/2019</b> <b>2.50%</b>	<b>7/1/2020</b> <b>3.00%</b>	<b>7/1/2021</b> <b>2.00%</b>	<b>7/1/2022</b> <b>2.50%</b>
			All Retro	Partial Retro	
<b>MEO</b>					
	Step 1	\$21.0770	\$21.7094	\$22.1435	\$22.6971
	Step 2	\$21.5777	\$22.2250	\$22.6695	\$23.2362
	Step 3	\$22.3690	\$23.0400	\$23.5008	\$24.0883
	Step 4	\$23.2380	\$23.9352	\$24.4139	\$25.0242
<b>MEO-H (CDL)</b>					
	Step 1	\$23.7196	\$24.4312	\$24.9198	\$25.5428
	Step 2	\$24.5272	\$25.2630	\$25.7682	\$26.4124
	Step 3	\$25.4785	\$26.2429	\$26.7677	\$27.4369
<b>MEO-H&amp;S (CDL &amp; HOISTERS)</b>					
	Step 1	\$24.5362	\$25.2723	\$25.7778	\$26.4222
	Step 2	\$26.7504	\$27.5529	\$28.1039	\$28.8065
	Step 3	\$27.8485	\$28.6840	\$29.2576	\$29.9891
<b>WORKING FOREMAN</b>					
	Step 1	\$26.5519	\$27.3485	\$27.8955	\$28.5928
	Step 2	\$28.7691	\$29.6321	\$30.2248	\$30.9804
	Step 3	\$29.9635	\$30.8624	\$31.4797	\$32.2667

\* The retroactive check for FY2021, FY2022, and the one-time payment will all be issued as separate checks with their calculations for all members.

<b>Licensing Stipends</b>	<b>Per Hour</b>
Class A	\$1.00
D-1	\$0.75
D-2	\$1.50

**Town of Swampscott  
Department of Public Works  
Drug and Alcohol Policy**

The purpose of this Policy ("Policy") is to protect the integrity of the Town of Swampscott ("Town"), Department of Public Works ("DPW"), and to maintain public confidence in the DPW and to maintain public confidence in the DPW personnel. To this end the Town and AFSCME Council 93, Local 1459 ("Union"), agree that the unlawful manufacture, distribution, possession, and/or use of illicit drugs and/or controlled substances, or the use of alcohol at such time as would impair an employee's performance of such employee's performance of such employee's duties is severely detrimental to the integrity of the DPW and to overall public confidence. Personnel impaired by drugs or alcohol create an un reasonable danger to themselves, fellow employees, and to the public, and therefore, shall not be tolerated. Furthermore, this Policy is intended to comply with the Omnibus Transportation Employees Testing Act of 1991 ("Act") and relevant Department of Transportation regulations, including those of the Federal Highway Administration ("FHWA"). The parties further recognize that the abuse of alcohol and controlled substances is a treatable illness and the Town will make reasonable efforts to provide assistance to employees in need of help. An employee assistance program ("EAP"), is available to employees with personal problems, including those associated with alcohol or controlled substances use. The Town and the Union will aid such employees who request assistance with such problems. The Town and the Union will encourage the employee to seek professional assistance where necessary.

**1. DEFINITIONS**

- A. ACCIDENT. An occurrence involving a commercial motor vehicle operating on a public road which results in: a fatality; bodily injury to a person who immediately receives medical treatment away from the accident or one or more vehicles disabled and must be towed from the scene.
- B. ALCOHOL CONCENTRATION. The alcohol in a volume of breath expressed in terms of grams of alcohol per 210 liters of breath.
- C. COMMERCIAL MOTOR VEHICLE (CMV). A motor vehicle or combination of vehicles used in commerce if the motor vehicle: 1) Has a gross combination weight rating of 26,001 or more pounds inclusive of a towed unit with a gross vehicle weight rating of more than 10,000 pounds; or 2) Has a gross vehicle weight rating of more than 26,001 or more pounds; or 3) is designed to transport 16 or more passengers, including the driver; or 4) of any size and is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded.

- D. COVERED EMPLOYEE. An employee who is covered by the federal alcohol and controlled substances regulations.
- E. DRIVER. Any person who operates a commercial motor vehicle, including but not limited to full time, regular employed drivers; casual, intermittent or occasional drivers; leased drivers and independent, owner-operated contractors who are either employed by or under lease to an employer or who operate a commercial motor vehicle at the direction or with the consent of the Employer.
- F. PERFORMING (a safety-sensitive function). A driver is considered to be performing a safety-sensitive function during periods in which he or she is actually performing, ready to perform, or immediately available to perform any of those on-duty functions (1) through (7) listed in the definition of "safety-sensitive function."
- G. SAFETY-SENSITIVE FUNCTION. Means any of those on-duty functions listed below. On-duty time means all time from the time the driver ("Driver"), begins to work or is required to be in readiness to work until the time such Driver is relieved from work and includes:
  - 1. All time at a facility waiting to be dispatched, unless the Driver has been relieved from duty;
  - 2. All time inspecting equipment as required by federal regulations or otherwise inspecting, servicing, or conditioning any commercial motor vehicle at any time;
  - 3. All time driving;
  - 4. All time, other than driving time, in or upon any commercial motor vehicle, except time spent resting in a sleeper berth;
  - 5. All time loading or unloading a vehicle, supervising, or assisting in the loading or unloading, attending a vehicle being loaded or unloaded, remaining in readiness to operate the vehicle, or in giving receipts for shipments loaded or unloaded;
  - 6. All time spent performing the driver requirements related to an accident; and
  - 7. All time repairing, obtaining assistance, or remaining in attendance upon a disabled vehicle.

## **2. PROHIBITED CONDUCT**

- A. The following conduct shall constitute an offense under this Policy.
  - 1. The use, transfer, manufacture, sale or unauthorized possession of any illegal drug during working hours, or while using Town vehicles or facilities.

2. The use or possession of alcohol during working hours, or while using Town vehicles or facilities.
  3. Driving under the influence of alcohol or drugs.
  4. Reporting to or being on duty with the metabolite of an illegal drug in the blood, with a blood alcohol level of 0.04 or above, or impaired by drugs.
  5. Use of alcohol by a Driver while performing safety sensitive functions.
  6. A Driver shall not perform safety sensitive functions within four (4) hours of consuming/using alcohol.
  7. Use of alcohol by a Driver for eight (8) hours after an accident, or until such driver undergoes an alcohol test.
  8. Refusal to submit to a required alcohol test.
- B. An Employee who is arrested for or convicted of a drug-related offense or driving while intoxicated shall notify the Director of DPW ("Director"), within twenty-four (24) hours, or prior to reporting to duty, whichever is shorter, irrespective of whether the conduct occurred during such Employee's working time. If the Director is unavailable, then in such event the Employee will notify the Director's chosen Designee ("Designee"), and if the Designee is unavailable, notice will be provided by the Employee to the Employee's Superior or either of whom will notify the Director as soon thereafter as reasonably possible. In no event shall such Employee report for duty until approved to do so by the Director or the Director's designee. During the period of time that such Employee is absent from duty, the Employee may use any of such Employee's accrued time, provided however, that such Employee shall exhaust all of such Employee's accrued time prior to using the Employee's sick leave.

### **3. PROHIBITED DRUGS**

- a. For the purposes of this Policy, prohibited drugs include all substances set forth in Schedules I through III of the Controlled Substances Act (21 U.S.C. S813). Included among those drugs are marijuana, cocaine, opiates, phencyclidine ("PCP"), amphetamines and methamphetamines. Possession of a controlled substance without a doctor's prescription or other legal authorization violates this Policy, and may be a violation of a criminal statute.
- b. It is the responsibility of an Employee who is taking a controlled substance under a valid prescription to check with such Employee's physician to ensure that the medication will not interfere with the Employee's ability to work safely and efficiently.

#### 4. DRUG AND ALCOHOL TESTING

An Employee is required to submit to drug and/or alcohol testing in the following situations:

1. New Hires:

Each new hire will be required to submit to a drug test prior to such Employee's date of hire.

2. Post Accident:

Following an incident that meets the definition of "accident" as used in this policy, each surviving driver will submit to a post-accident test if the accident involved a loss of human life or a driver receives a moving traffic violation.

3. Random-COL Licenseholders:

- a. Rate of testing: The Town will conduct random alcohol and controlled substances testing of covered employees. The tests will be conducted on a quarterly basis and the number of alcohol tests conducted each year will not exceed 75% of the average number of driving positions each year. The number of controlled substances tests conducted each year will not exceed 50% of the average number of driving positions each year. If the FHWA or other applicable U.S. DOT operating administration lowers or raises the minimum random alcohol and/or controlled substances testing, the Town will adjust its random testing rate accordingly.
- b. Selection method: The selection of a Driver shall be determined by a random number table of a computer-based random number generator that is matched with a Drivers' unique identification number. Each Driver shall have an equal chance of being tested each time the selections are made. The dates for random testing will also be selected on a random basis.
- c. Restrictions on random alcohol testing: A Driver shall only be randomly tested for alcohol while a Driver is performing safety sensitive functions (items 1-7 defined in Section 1.G above), just before the Driver is to perform safety-sensitive functions, or just after the Driver has ceased performing safety-sensitive functions.
- d. Application to a Driver on leave: When a Driver is off work due to long-term layoffs, illnesses, injuries or vacations; the Town will skip that employee and select the next person appearing on the list of individuals selected at random. The Town shall not notify a Driver to submit to a test while a Driver is off work due to these extended leave periods.

4. Reasonable Suspicion:

- a. When the Director, the Director's Designee, or the Employee's Superior has reasonable suspicion that an Employee has reported to work or is working while impaired by drugs or alcohol, or has used illegal drugs, the Director, Directors Designee, or the Employee's Superior shall order the Employee to report immediately for a drug and/or alcohol test. Reasonable suspicion is a belief based on objective facts sufficient to lead a reasonably prudent person to suspect that an Employee is using or under the influence of alcohol and/or drugs so that the Employee's ability to perform such Employee's duties is impaired.
- b. Reasonable suspicion shall include but not be limited to the following:
  - i. Observable phenomena, such as direct observation of illegal use or possession of drugs and/or the physical symptoms of being under the influence of a drug or alcohol.
  - ii. A documentable pattern of abnormal conduct or erratic behavior while on duty, including without limitation, slurred speech, uncoordinated movement, gait stupor, excessive giddiness, unexplained periods of exhilaration and excitement, impaired judgment, deteriorating work performance or frequent accidents not attributable to other factors.
  - iii. Arrest, indictment or conviction for a drug related offense, or the identification of an Employee through an affidavit as the focus of a criminal investigation into illegal drug use or trafficking.
  - iv. Evidence that an Employee has tampered with a previously administered drug and/or alcohol test.
  - v. Repeated or flagrant violations of the DPW's rules, regulations, policies, and/or procedures, which are determined by an employee's supervisor, presented in the form of a confidential, written report, to pose a substantial risk of injury or property damage which are not attributable to other factors, and appear to be related to drug use and/or alcohol abuse.
  - vi. A documented, written report of drug use provided by reliable and credible sources such as law enforcement agencies. Anonymous reports shall not constitute reasonable suspicion.
  - vii. An Employee shall be advised of such Employee's right to dispute the finding of reasonable suspicion at the time a test is ordered. Should an Employee choose to dispute the determination that "reasonable suspicion" exists for requiring such Employee's submission to a drug test as set forth in Section D (a) (ii), of this Policy; the Employee shall so notify the Director by submitting the appropriate form provided to such Employee at the time

a specimen is provided by the Employee. The laboratory shall be simultaneous with delivery of the specimen that the test is subject to dispute. The sample shall be held, and no testing shall be performed until the appeal process is complete and the determination as to reasonable suspicion has been decided.

The dispute shall be submitted to a review panel ("Panel"), composed of three (3) members. One such member shall be selected by the Director, one selected by the Union, and the third shall be an Employee Assistance Program ("EAP") counselor, or some other individual having experience in dealing with reasonable suspicion matters or treating individuals with drug and/or alcohol related problems, as agreed to by the Director and the Union within thirty (30) days of the approval of this Policy by the Director and the Union. The Panel shall convene a hearing as soon as practicable after the submission of the dispute, and hear/receive all evidence submitted by the Director and the Employee in order to make a bench finding with respect to the basis for the reasonable suspicion that the Employee was ordered by the Director to take the test. The hearing shall be completed in one (1) day, and the Panel shall issue its bench finding at the close of the hearing, a majority vote of the Panel controlling. Both the Director and the Employee are entitled to representation at the hearing, which will be closed to the public. The expense of the third member of the Panel shall be borne by the Town, and further providing that each side shall bear the expenses, including without limitation, the salary/compensation and/or the cost of replacing its representatives, witnesses and appointees to the Panel who may be working or on duty.

- a. Should the Panel determine that the Director had reasonable suspicion; the laboratory shall be instructed to immediately conduct the test on the Employee's sample. The results of such test shall be forthwith delivered to the Director. The Director shall notify the Employee in question of the results. Should the Panel determine that the Director was without reasonable suspicion, the Employee's urine sample and all records associated with the incident shall be destroyed forthwith. The determination of the Panel shall be final and binding upon the parties as to whether the Director had reasonable suspicion to require the test.
- b. In the event the Panel determines that the Director did not have reasonable suspicion to order an Employee to provide a sample for testing all records related to the ordering of the test will be destroyed forthwith. If the Employee had to use any accrued time prior to the decision, such time will be re-credited to the Employee, and the time utilized will be considered paid administration leave.

#### Follow-up Testing:

- a. An Employee who has violated this Policy, but has not been discharged, may be required to submit to follow-up testing as a condition of such Employee's continued employment. A program of follow-up testing will be set forth in writing and will generally continue for a period of no longer than one (1) year.



During a follow-up testing period, an Employee will be subject to a reasonable number of unannounced tests for drugs and/or alcohol.

Failure to Submit to Testing:

1. A failure or refusal to submit to testing as outlined above, or refusal to cooperate with the testing laboratory shall be treated as a positive test. This provision shall not apply in situations where the Director determines the failure to submit to testing was through no fault of the Employee.

Alcohol Testing Procedures:

1. The Director will direct the Employee to report to the testing laboratory for a blood or breathalyzer test. In the case of a blood test, blood will be drawn only by a qualified medical professional, in accordance with accepted medical standards. A breathalyzer test will be administered by a qualified operator, including Swampscott police personnel, and may be administered on the premises of the Town, be it by the Swampscott Police Department or other law enforcement agency. The Employee's blood alcohol level shall be reported to the Director as soon as reasonably possible.

Drug Testing Procedures:

1. Collection:
  - i. An Employee subject to drug testing will be directed in writing to report at a specified time to a testing laboratory certified by the U.S. Department of Health and Human Services. Collection of a urine sample will be properly sealed and labeled in the Employee's presence in order to avoid contamination, tampering or confusion of samples. An Employee reporting for a drug test should be prepared to produce picture identification. When a sample is taken it is split in accordance with the testing laboratory's standard procedure. One sample is tested and the other is preserved. The Employee has a right to have the second sample sent to a different certified laboratory for testing.
2. Processing:
  - i. Urine samples will be screened initially by an Immunoassay or industry-standard screening test approved by the U.S. Department of Health and Human Services, with positive results confirmed by Gas Chromatography/Mass Spectrometry or an industry-standard confirmatory test, approved by the U.S. Department of Health & Human Services. Testing will be performed in accordance with federal government standards,

under the supervision of qualified medical and laboratory personnel employed by the testing laboratory. The laboratory will test all samples for, but not limited to the presence of marijuana, cocaine, opiates, phencyclidine ("PCP"), and amphetamines/methamphetamines.

3. Reporting of Results:

- i. The results of a drug or alcohol test will be reported verbally and in writing to the Director or the person the Director designates to receive those results. The testing laboratory will reveal to the designated official only whether the Employee has received a result of negative for drugs or positive for drugs. The results of the drug test will be maintained in the strictest confidence by the Director and/or the Director's designee and will not be disseminated except on a "need to know" basis.
- ii. Positive Results. Before a positive test reported to the Director by the testing laboratory, the doctor who interprets the results ("Medical Review Employee") will consider whether the positive test result was caused by legal drug use pursuant to a validly obtained prescription. The Medical Review Employee shall require that the Employee produce any necessary written proof, and the Employee shall authorize the Medical Review Employee to obtain further information from such Employee's health care providers. If the Medical Review Employee determines that the Employee's explanation is medically corroborated by the test results in that the substance identified in the test is contained in the prescribed drug, then the test will be reported to the Director as "negative". The laboratory will not provide to the Director any information it learns concerning prescription drugs that the Employee is taking pursuant to a validly obtained prescription. If the Medical Review Employee is unable to obtain the Employee's cooperation in order to make this determination, a positive result will be reported to the Director.

4. The Testing Laboratory:

- i. The testing laboratory shall be selected by the Director, and shall be certified by the U. S. Department of Health and Human Services. The Director will notify the Union of the laboratory selected.

5. Chain of Custody:

- i. The testing laboratory will follow procedures designed to maintain the chain of custody of samples and thereby ensure the integrity of the samples.

## 5. SEARCHES

The Town has the right to search for alcohol or drugs of Town owned or controlled premises, including in desks, toolboxes, Town vehicles, lockers, or in other containers on the premise that may conceal substances prohibited by this Policy. During any such search a Union member or Union members may be present. No search of an Employee or an Employee's personal property will be conducted unless normal probable cause combined with exigent circumstances exists, or a search warrant obtained.

## 6 . ENFORCEMENT

- A. Excluding marijuana, an Employee who tests positive for a drug that is manufactured outside of legal pharmaceutical production, "street drugs", will be subject to discipline up to and including discharge.
- B. In the case of the first offense involving the abuse of alcohol, marijuana or prescription drugs, the Town may take disciplinary action exclusive of discharge. Nothing in this Policy will prevent the Town from discharging an Employee based on evidence exclusive of the alcohol, marijuana or prescription drug test, and nothing in this Policy will prevent the Employee from exercising such Employee's appeal options/rights. In order to qualify for this "safe harbor" for the first offense, the Employee shall be required to comply with the following conditions, failing which may result in discharge:
  1. The Employee will be screened and evaluated for substance abuse by a substance abuse professional ("SAP") designated by the Director.
  2. The SAP will provide the results of the above screening and evaluation to the Employee and to the Director, along with the SAP's recommendations for treatment. The Employee shall take any necessary steps to release the SAP to communicate and share information with the Director. .
  3. The recommended treatment plan will be set forth in writing, and shall include a reasonable number of follow-up tests within a set period of time, based upon the recommendation of the SAP. The Employee shall be required to abide by all aspects of the treatment plan, provided that any such requirements do not contradict or conflict with any other aspect of this Policy.
  4. The Town shall bear the responsibility for the cost of the evaluation and any treatment recommended, to the extent it is not covered by health insurance. Any leave required for the purpose of attending treatment, or due to the Employee's incapacity to perform the essential functions of the job, shall be unpaid. However, unpaid leave may be covered by accrued paid leave to the

extent permitted by the Department's Family and Medical Leave Policy and this Policy, except where the leave runs concurrently with a disciplinary suspension.

5. Failure to abide by the conditions herein, or the treatment plan, or any subsequent violations of this Policy, shall subject the Employee to discipline up to and including discharge.

## **7. EMPLOYEE ASSISTANCE PROGRAM**

An Employee may receive assistance with treatment of a drug or alcohol dependency problem through the EAP. An Employee may voluntarily request such help or the Director may require participation in the EAP as a condition of continued employment. If drug or alcohol treatment and/or EAP participation of an Employee is required by the Director, and is a condition of continued employment, then in such event the Town shall utilize an EAP to the extent covered by the Employee's insurance. If the drug or alcohol treatment and/or participation in an EAP is of the Employee's initiative, then in such event the Town shall not bear any of the costs of such treatment or EAP participation. An Employee's participation in the EAP is treated confidentially. Participation in any program or treatment through the EAP will not be disclosed to the Director without the Employee's written permission. In cases where participation in the EAP is required as a condition of employment, the Employee will be required to permit the Director to be informed only as to whether the Employee is participating as required, for instance, keeping scheduled appointments. The foregoing confidentiality provision shall not prevent the Director from receiving the results of any testing specified under Section 4 above of this Policy.