

Memorandum No. 10-52

TO: Mayor and City Commissioners
FROM: Doug Russell, City Manager DR
RE: Union Contract
DATE: April 7, 2010

The City of Yankton has been in negotiations regarding a Collective Bargaining Agreement with its employee union, the American Federation of State, County, and Municipal Employees, AFL-CIO. The final offer, attached to this memo, was approved by the local chapter on April 6, 2010.

This agreement contains modifications to the current employee personnel manual that will need to be amended. These include, but are not necessarily limited to:

- 1- Establishment of a 2 hour payment for instances where employees are called in to work during non-working periods. (Article 15)
- 2- Establishment of funeral leave policy for members of immediate family. (Article 9)
- 3- Establishment of holiday pay for employees regularly scheduled to work on a holiday. (Article 3)
- 4- Establishment of a safety committee with union representation. (Article 22)
- 5- Establishment of health insurance committee with union representation. (Article 10)
- 6- Provisions for work schedule change notification. (Article 12)
- 7- Modified the threshold for benefits for part-time personnel from 34 hours to 30 hours. (Article 2)

Additionally, a modification in retiree insurance was negotiated, and will be addressed in a separate memorandum and resolution due to its initial enactment outside of the personnel manual. Due to the nature of these provisions, and other areas of wording throughout the contract, modifications will need to be completed in the employee personnel manual as well. For example, the safety committee and funeral leave section will need to be modified in the personnel manual to apply to all employees. However, some modifications will be union specific, such as in Article 18.3 which requires submission of a seniority list to the union. Due to the complexity and the breadth of the two agreements, it is recommended that the City Manager be authorized to make changes where appropriate in the current personnel manual.

Recommendation: It is recommended that the City Commission approve Resolution #10-13 approving the attached Collective Bargaining Agreement and authorize the City Manager to implement the provisions of the agreement throughout the organization, as applicable, and amend the current personnel manual as appropriate.

RESOLUTION #10-13

WHEREAS, the City has been negotiating on the collective bargaining agreement with its employee labor union, and

WHEREAS, the Labor Union has approved the proposed agreement on April 6, 2010,

NOW, THEREFORE, BE IT RESOLVED by the City Commission of Yankton, South Dakota, that the attached Collective Bargaining Agreement is hereby approved and the City Manager is authorized to implement the provisions of the agreement throughout the organization, as applicable, and amend the current personnel manual as appropriate.

Adopted:

Dan Specht
Mayor

Attest:

Al Viereck
Finance Officer

COLLECTIVE BARGAINING AGREEMENT
BETWEEN
THE CITY OF YANKTON
AND
AMERICAN FEDERATION OF STATE, COUNTY AND MUNICIPAL EMPLOYEES, AFL-CIO

January 1, 2009 through December 31, 2010

All agreements are subject to approval and ratification by the City of Yankton Commission and agreement to any proposal is contingent upon agreement on a complete contract. Additionally, the City of Yankton reserves the right to amend, modify, withdraw or supplement its proposals at any time.

AGREEMENT

This agreement entered into this ___ day of _____, 2010, but effective January 1, 2009, by and between the City of Yankton, a political subdivision of the State of South Dakota, hereinafter referred to as the "City," and Local _____, American Federation of State, County and Municipal Employees, AFL-CIO, hereinafter referred to as the "Union."

ARTICLE 1. RECOGNITION

The City recognizes the Union as the sole and exclusive bargaining agent for all the full time and regular part-time employees of the City of Yankton, excluding elected officials, police officers, managers, confidential employees, exempt employees, seasonal and casual employees and supervisors, as defined by the Act.

ARTICLE 2. STAFF CATEGORY DEFINITIONS

Section 2.0 Full-Time Staff. Full-time staff are those who are regularly scheduled to work at least 40 hours in a work week. Full-time staff are considered permanent full-time employees and eligible for employment benefits.

Section 2.1 Regular Part-Time Staff. Staff members regularly scheduled to work less than 40 hours in a work week are considered part-time. Part-time staff who are regularly scheduled 30 or more hours per week are considered permanent full-time employees and eligible for their vacation, sick leave, health and pension benefits on a prorated basis so that the percentage of these benefits received shall be determined on the basis of the average number of hours worked compared to 40 hours.

Section 2.2 Temporary. Temporary staff are those who are hired for a period not to exceed twelve months unless agreed by the parties.

ARTICLE 3. HOLIDAYS

Section 3.0 Full-time employees shall receive eight (8) hours pay for each of the holidays listed below on which they perform no work.

- | | |
|--|-----------------------------------|
| New Years Day | Memorial Day |
| Independence Day | Labor Day |
| Veterans' Day | Thanksgiving (fourth Thursday and |
| Christmas (25 th of December) | Friday in November) |
| One Personal Day- (Employee's choice of observing either Martin Luther King Day
(third Monday in January), Good Friday, Native Americans Day
(second Monday in October); or the employee' s birthday.) | |

Section 3.1 All regular part-time employees shall receive holiday pay based upon a prorated basis equal to their standard equivalent workday. Whenever any of the holidays listed above shall fall on a Saturday, the preceding Friday shall be observed as the holiday. Whenever any of the holidays listed below shall fall on a Sunday, the succeeding Monday shall be observed as the holiday.

Section 3.2 When an employee is required to work on a holiday, the City will pay regular employees time and one-half for the number of hours actually worked, plus the holiday pay. "Shift workers" will receive time and a half for the number of hours actually worked plus the eight hours holiday pay.

Section 3.3 Employees shall be eligible for pay for the holiday falling within a pay period for which they have received compensation, provided, however, that they have worked the day before and the day after the holiday unless otherwise excused or unless the time is credited to either accrued vacation leave, sick leave or workers compensation leave.

Section 3.4 If the holiday falls within the vacation period selected by the employee, the holiday hours shall not be considered as a part of the vacation period and the employee will not be paid vacation pay for such holiday hours. Instead, the employee will receive only holiday pay calculated at straight time.

Section 3.5 However, no holiday pay will be paid to an employee if such employee has not complied with a direction to work on the holiday in question.

ARTICLE 4. VACATIONS

Section 4.0 Employees shall accrue annual paid vacation leave starting immediately upon employment at the rate specified below.

<u>Tenure</u>	<u>Hours</u>
0 through 6 years	80
7 through 13 years	120
14 years -	160

All regular part-time employees of the City shall accrue vacation based upon prorated basis equal to their standard equivalent workday or work week. No employee shall be entitled to take any vacation until he has completed six (6) full months with the City.

Section 4.1 For the purposes of vacation eligibility in the preceding section, no accumulation will be credited to eligible employees during the first six months of their continuous services. Forty hours of vacation leave will be credited at the end of the first six months of continuous service.

Section 4.2 The rate of vacation pay shall be the employee's regular rate of pay times the number of hours that would have been worked had the employee not been on vacation.

Section 4.3 Vacation hours not used during the calendar year in which they are earned may be carried over into successive years. The maximum allowable accrued vacation shall be two (2) times the amount of vacation earned in a year based upon the employees hire date. Any hours above the maximum accrual allowed will be lost.

Section 4.4 Vacation should be scheduled at least two weeks in advance. The City will attempt to grant vacation at the time requested by the employee unless, in the judgment of management, operational necessity requires staffing. The City reserves the right to limit the number of employees on vacation at the same time and to limit the number of successive days of vacation taken by an employee. If the City determines it necessary to limit the number of employees on vacation at the same time, the first submitted request shall prevail. In the event of any conflict over simultaneous requests for vacation periods, the employee with the greater seniority shall be given his/her choice of vacation period. Vacation may only be used as earned and must be taken in at least fifteen minute increments.

Section 4.5 Any employee who is separated from the service of the City for any reason prior to the taking of his vacation, shall be compensated for the unused vacation he had accumulated at the time of separation. Reimbursement for vacation leave will be at the employee's salary rate per their last day of employment. In the event of the employee's death, the earned, unused vacation is owed to his or her estate.

Section 4.6. Any official holiday which shall occur during an employee's scheduled vacation shall be counted as a holiday, not as a day of vacation.

ARTICLE 5. SICK LEAVE

Section 5.0 Accumulation. Sick leave benefits are granted on the basis of:

- a. Eight (8) working hours per month of service on a forty (40) hour work week.
- b. Sick leave with pay may be accumulated to a maximum of 960 hours.
- c. Employees holding regular appointment with a standard work week of less than forty (40) hours shall earn sick leave credits and have a maximum accrual of sick leave credits based on their budgeted work week compared to a forty (40) hour work week.

Section 5.1 Use of Sick Leave. Sick leave may be authorized on any scheduled work day other than holiday or other authorized absence for the following:

- a. Personal illness or off-the-job injury.
- b. Enforced quarantine of the employee in accordance with community health regulations.
- c. Illness in the immediate family when it can be shown that an employee's presence is required. Immediate family shall mean the employee's spouse, children (a child is defined as a natural child, adopted child, foster child or stepchild), parents, step-parents, brothers, sisters, grandparents, grandchildren and the same relatives of a spouse. Such use must be approved by the Department Head.

Reporting of sick leave may not cause more than the standard equivalent work day to be reported on the time card.

Section 5.2 Payment for Sick Leave Earned Over Maximum Accumulation. When a person accumulates the maximum sick leave allowed, additional sick leave will continue to accrue until the end of the calendar year. However, this additional sick leave may not be used and will not carry over into the next calendar year. Each employee, who accrues this additional leave, shall be paid based on one (1) hour pay for every two (2) hours additional sick leave accrued. A review of all employees' sick leave records shall be made on the last working day in December with payment the first payday in January.

Section 5.3 Maternity Leave. Paid maternity leave will be granted to the extent of the accrued sick leave available to the employee. After the accrued sick leave has been exhausted, any further maternity leave granted shall be compensatory time off, vacation leave or leave without pay. Sick leave will not be granted for child rearing. Maternity leave shall begin upon determination by a medical doctor that the employee should leave work for medical reasons. Maternity leave will be terminated upon a written determination by a medical doctor that the

employee is able to return to work. Maternity leave shall be treated as any other eligible item for sick leave. All benefits and conditions which apply to sick leave would apply to maternity leave as well unless specifically changed by this paragraph.

Section 5.4 Reporting of Sick Leave. A Sick Leave Report (See Appendix A) must be completed for all sick leave used and submitted with the time card reporting sick leave taken. After approval by the Department Head and City Manager, the report will be placed in the employee's personnel medical file.

Section 5.5 Notification. Sick leave with pay is authorized only if the employee notifies their Department Head or supervisor of the necessity for absence. An employee whose work requires a substitute for a particular shift assignment is required to give reasonable notification in advance of the employee's assigned time to start work. If an employee is absent from work and has not notified the Department Head or supervisor of an illness, sick leave will not be granted for the absence and the absence will be recorded as an unauthorized leave. A medical certificate or other substantiating evidence of illness may be required for any sick leave absence. Abuses of sick leave benefits shall be sufficient cause for an employee to be disciplined . A physician's report section of the sick leave report form must be submitted when the leave extends beyond three (3) continuous work days and at the end of each succeeding pay period. For an extended period of sick leave, a doctor's report of expected duration shall be sufficient. Before an employee can be permitted to perform assigned duties after having sustained an injury or having been ill beyond seven (7) continuous work days, said employee must present the Department Head with a physician's report stating that the employee is fit for work. This report must be forwarded to the payroll clerk.

Section 5.6 On the Job Injury. In the event of an injury on the job, the employee with the most seniority at the site shall determine if emergency, non-emergency, or first aid care is required and

take appropriate action. The employee's Department Head should be notified of the injury and action taken as soon as possible.

Employees injured on the job are covered by the South Dakota Worker's Compensation Act. This law provides specific benefits. In order to qualify for these benefits specific procedures shall be followed.

1. Employee: The employee shall immediately report any injury, regardless of extent, to said employee's immediate supervisor. The employee shall be responsible for providing the necessary information to the Human Resources office for the completion of all accident reports within 72 hours of the injury. If the employee is unable to comply due to the injury, the Department Head shall be responsible for this report.
2. Supervisor: The supervisor shall immediately inform the Department Head of the action taken and shall notify the employee of the requirement to complete an accident report within 72 hours of the injury.
3. Department Head: The Department Head will be responsible for orally forwarding any information concerning accidents to the City Manager as soon as possible. The Department Head shall be responsible for providing the necessary information to the Human Resources office for the completion of all accident reports within 72 hours of the injury if the employee is unable to do so. Upon the employee's return to work, the Department Head will inform the City Manager's office by memorandum.

Medical and hospital expenses incurred due to on the job injuries shall be paid for in accordance with City policy and the applicable provisions of the Worker's Compensation Act.

Section 5.7 On the Job Injury Compensation. A regular employee on injury leave shall be compensated, up to a maximum of ninety (90) calendar days at a rate that when added to the employee's worker's compensation benefits shall equal the employee's previous net pay not including any voluntary deductions. The employee shall present evidence to the Finance Officer of the amount of any worker's compensation benefits received prior to any payment being made by the City. After the ninety (90) day period, the employee may elect to use accumulated compensatory time, sick leave and/or vacation credits to continue receiving full pay. Should the employee not elect such action or should the employee exhaust all such accumulated credits, the employee may apply for disability under the provisions of the Worker's Compensation Act or the Retirement Fund.

A temporary or seasonal employee injured on the job shall receive only those benefits provided by the Worker's Compensation Act.

Section 5.8 Leave Accrual. All vacation, sick leave and holiday leave earned while on injury leave shall accrue at the employee's regular rate during the initial ninety (90) day period. Throughout the remainder of the leave, additional vacation, sick and holiday leave accrual shall be prorated relative to the sick, vacation and/or compensatory time being reported.

Section 5.9. The City shall treat disabilities due to pregnancy the same as other temporary disabilities.

ARTICLE 6. MANAGEMENT RIGHTS

Section 6.0 Management Rights. It is understood and agreed by the parties that the Employer possesses the sole right to operate the agency so as to carry out its statutory mandates and all management rights repose in the Employer unless specifically modified by this agreement; likewise, all rights guaranteed to the employee and union by law are retained unless specifically modified by this agreement.

ARTICLE 7. PROBATIONARY PERIOD

See seniority provisions at Article 18.

ARTICLE 8. MISCELLANEOUS SERVICES

Any employee shall be required to perform any labor or render any services in connection with the City's business, provided that the employee's hourly rate of pay is not reduced. Performance of duties in a higher-paid classification shall not entitle employees to higher compensation for such work.

ARTICLE 9. FUNERAL LEAVE

Employees shall be granted up to three (3) working days paid absence to attend or plan for a funeral of a member of their immediate family which shall include: spouse, children (a child is defined as a natural child, adoptive child, foster child, or stepchild), parents, stepparents, brothers, sisters, grandparents, grandchildren and the same relatives of the spouse. In addition, employees may take up to seven (7) additional working days for the death of a spouse and up to two (2) additional working days for the death of other members of immediate family as defined above. Additional days of funeral leave shall be deducted from the employees' accumulated sick leave.

ARTICLE 10. INSURANCE AND PENSION

Section 10.0 There should be established a Health Insurance Committee made up of three persons appointed by the City Manager, and three employees appointed by the Union. A non-voting chairman shall be appointed by the City Manager. The Committee shall review the health insurance plan annually, shall request and review bids for the health insurance when deemed necessary and shall make recommendations regarding such plans.

Section 10.1 The City shall continue to provide each employee with a \$15,000 life insurance policy with the costs shared equally between the City and the Employee.

Section 10.2 The City shall provide dental insurance with benefits that are equal to or greater than those now in effect.

Section 10.3 The City agrees that if an employee desires to participate in the South Dakota Retirement System Supplemental Retirement Fund or ICMA Deferred Compensation Plan, it will continue to make a contribution on the same basis as such contribution is presently made.

Section 10.4 In the event of a significant increase in health care insurance costs, the City reserves the right to re-open negotiations with respect to health care insurance and coverage at any time during the life of this Agreement or upon its expiration.

Section 10.5 The City will not make any change in the Health Insurance Carrier or coverage without negotiations with the Union.

ARTICLE 11. LEAVES OF ABSENCE

Section 11.0 Employees shall be eligible for leave of absence without pay at the discretion of their Department Head. Prior to taking leave of absence without pay, all sick and vacation leave shall be exhausted. No sick or vacation leave shall accrue during a leave of absence without pay.

Section 11.1 Employees while on leave of absence shall accrue seniority and benefits and shall be returned to the position they held at the time the leave of absence was granted when they return from the leave of absence.

Section 11.2 Jury Duty It is the civic obligation of each City employee to serve on a jury if he or she is called. An employee may not be discharged or suspended for serving on a jury. While on jury duty or while appearing as a witness in their official capacity as a representative and employee of the City of Yankton, an employee shall turn over to the City Finance Officer any payments received for such duty during scheduled work days, except payments received for mileage, meals or expenses for out-of-town jury duty and be paid in full for their normal work schedule. Or, the employee may keep the payments received and use vacation or compensatory time for their normal scheduled workdays.

Section 11.3 Military Leave.

A. Any employee who is a duly qualified member of any Reserve Component of the United States Armed Forces shall be entitled to receive a leave of absence from City work for a period not to exceed ten (10) work days, in any one military fiscal year. At the conclusion of such service, the employee shall be entitled to return to city employment without loss of status, pay, or seniority, provided the employee is still able to perform the duties of the duties of the city position. The employee shall give the Department Head at least thirty (30) work days notice of the need for Military Training Leave prior to the time of the leave. The employee must return to the city position immediately upon being relieved from such military service and not later than the time herein limited for such unless prevented from so returning by physical or mental disability or other such cause not due to the employee's own fault, or unless the employee is required by proper authority to continue in such military service beyond the time herein limited for military training leave. An employee may be eligible to receive the difference between their military pay received and their authorized salary, provided that the military pay is less than the authorized City salary. This difference may not be paid to exceed ten (10) regular working days in any one (1) calendar year. The difference of pay between military pay and authorized City salary shall be reduced by one day's pay for each vacation day earned in excess of ten (10) vacation days per year by the employee. In order to receive compensation, the employee must file a statement of earnings from the military with the Finance Department payroll clerk. The period of military service will be counted as full service with the City for the purpose of accruing leave.

B. An employee of the City who is called to active duty with the Armed Forces of the United States will be granted a leave of absence and shall be re-employed in the department in which he was employed at the time of his departure, upon condition he is physically and mentally suited to perform the required duties. Employees whose military service is less than thirty-one (31) days must report for re-employment at the beginning of their first regularly scheduled workday that would fall eight (8) hours after he or she returns home. If the period of service is thirty-one (31) to

one hundred eighty (180) days, the employee must submit an application for re-employment no later than fourteen (14) days following the completion of service. If the period of military service is greater than one hundred eighty (180) days, the employee must submit an application for re-employment not later than ninety (90) days after the completion of service. If the submission of a timely application in any of these situations is impossible or unreasonable through no fault of the employee, the application must be submitted as soon as possible. Failure to report or submit a written application within the specified periods above will be considered to be a voluntary resignation. Vacation and sick leave shall not accrue during the term of absence.

Section 11.4 Union leave without pay for not more than ten (10) working days in a given calendar year will be granted to one of the following union officers: president, secretary or treasurer, provided that such leave is for purposes of participating in union activities relating to the City of Yankton bargaining unit or attendance at a union convention.

ARTICLE 12. HOURS OF WORK

Section 12.0 The standard work week for the purpose of calculating pay and overtime shall begin at 12:01 a.m. Saturday and end at 12:00 p.m. Friday.

Section 12.1 Except for emergency situations, work schedules shall not be changed without two (2) weeks notice unless the changes are mutually agreed upon by the Union and the City.

Section 12.2 Rest Period (Coffee Breaks) Coffee breaks or rest periods shall be arranged so as not to interfere with City business as determined by each department's needs and services. During each eight (8) hour shift, two fifteen (15) minute breaks shall be permitted, and may be taken back to back, or otherwise scheduled with the approval of the department head. Breaks shall be taken during normal scheduled hours. Shift workers shall take their lunch breaks when able during their shift.

ARTICLE 13. WAGES

Section 13.0 A 3% increase shall be effective January 1, 2009, and a 1% increase shall be effective January 1, 2010. The Wage Rates on appendix B shall be effective January 1, 2009; and the Wage Rates on appendix C shall be effective January 1, 2010.

Section 13.1 The City shall reimburse employees for the use of their personal vehicles authorized by City Manager or his designee for City business at the Federal maximum allowable rate.

Section 13.2 Longevity pay will be in accordance with the terms and schedule in effect as of January 1, 2010.

ARTICLE 14. FAMILY MEDICAL LEAVE

Section 14.0 Qualifications Any employee who had been employed by the City for at least twelve (12) months and who has worked at least 1,250 hours during the twelve (12) months before time of request, must be granted up to twelve (12) weeks leave of absence during any twelve (12) month period for the following reasons:

1. The birth of a baby.
2. Receiving a child through adoption or foster care.
3. Caring for a spouse, child or parent with a serious medical condition.
4. An employee's own serious health condition.
5. Because of any qualifying exigency (as the Secretary shall, by regulation, determine) arising out of the fact that the spouse or a son, daughter, or parent of the employee is on active duty (or has been notified of an impending call or order to active duty) in the United States in support of a contingency operation. An eligible

employee shall be entitled to a combined total of twenty-six (26) work weeks of leave under this section.

Nothing in this paragraph shall be construed to limit the availability of leave during any other twelve (12) month period.

Section 14.1 An eligible employee who is the spouse, son, daughter, parent or next-of-kin of a covered servicemember shall be entitled to a total of twenty-six (26) work weeks of leave during a single (one time only) twelve (12) month period to care for the servicemember. The leave described in this section shall only be available during a single twelve (12) month period. A covered servicemember means a member of the armed forces who is undergoing medical treatment, recuperation or therapy, is otherwise in out-patient status or is otherwise on the temporary disabled retired list for a serious injury or illness.

Section 14.2 Definitions

1. Child: A biological, adopted or foster child; or stepchild; a legal ward or child of a person standing in *loco parentis* (in the place of a parent); who is (a) under age 18 (except for military, family and caregiver leave - where no age limit shall apply); or (b) 18 years or older and incapable of self-care because of a mental or physical disability.
2. Spouse: A husband or wife.
3. Parent: The biological parent of an employee or an individual who stood in *loco parentis* to an employee.
4. Serious Health Condition: An illness, injury, impairment, or physical or mental condition that involves (a) inpatient care in a hospital, hospice or residential care facility; or (b) continuing treatment by a health care provider.

5. Health Care Provider: Either (a) a doctor of medicine or osteopathy who is authorized to practice medicine or surgery (as appropriate) by the state in which the doctor practices; or (b) any other person determined by the Secretary of Labor to be capable of providing health care services.
6. Next of Kin: The nearest blood relative other than child, spouse or parent.

Section 14.3 With or Without Pay Family or medical leave may be taken with or without pay, however, all sick, vacation and/or compensatory time accrued must be exhausted within the restrictions of those separate policies before taking more than twenty (20) hours of family or medical leave without pay.

Section 14.4 Accrual of Benefits The City will continue to pay its share of health, dental and life insurance premiums during the family or medical leave whether with or without pay. The employee will need to make payment to the City at the beginning of each pay period for the employee's share of the premiums if the family or medical leave is without pay or if there is a reduced schedule without sufficient income to cover deductions.

The cost of health and life insurance premiums paid on behalf of the employee will be reimbursed to the City if the employee does not return to work at the end of the family or medical leave. However, if the employee did not return due to the continuation, recurrence or onset of a serious health condition, or there were "other circumstances beyond the employee's control," benefits need not be reimbursed.

Section 14.5 During the FMLA leave, the employee shall remain on the seniority list and continue to accrue seniority.

Section 14.6 Reinstatement Employees will be reinstated to their previous (or equivalent) position with no loss of benefits following leave.

ARTICLE 15. CALL-IN PAY

Section 15.0 Any employee called to work outside of their regularly scheduled work shift after having left the premises shall be paid for a minimum of two (2) hours at one and one-half times (1 ½) their regular work pay. In the event that the employee is required to work longer than two hours, such employee shall be paid for all hours worked at the rate of one and one-half times (1 ½) their regular rate of pay which are outside of their regularly scheduled work shift.

Section 15.1 If the call time assignment and the employee's regular shift overlap, the employee shall be entitled to work his regular shift.

ARTICLE 16. ON-CALL PAY

Section 16.0 An employee who is scheduled for call time during other than normal working hours shall receive on-call compensation at straight time in the amount of seven (7) hours for the week in which the employee is on-call.

Section 16.1 To be eligible for on-call pay, an employee must be regularly scheduled to be on-call, must be available when called, and must carry the communications equipment which is supplied to on-call employees.

Section 16.2 Department Heads who have employees on-call shall prepare an on-call list and make it available for all employees concerned. Employees who are on-call shall not trade on-call dates without the approval of the Department Head.

ARTICLE 17. OVERTIME

Section 17.0 Time and one-half the employee's regular rate of pay shall be paid for all work performed in excess of forty (40) hours in any workweek and all hours worked over the scheduled work day. Holidays, vacation and sick leave shall be considered as hours worked when computing overtime.

Section 17.1 If the employee works overtime, the employee may, with the approval of the Department Head, choose to take compensatory time instead of overtime pay. Compensatory time shall be awarded at the rate of one and one-half (1 ½) hours of compensatory time for each hour of overtime worked. The days to be taken off shall be at the option of the employee with the approval of the supervisor/department head. An employee may accumulate no more than forty-five (45) hours of compensatory time off.

Section 17.2 Overtime is to be distributed equally to all employees of a department. If an employee is requested to work overtime and because of other conditions and commitments cannot perform the overtime work assigned, then the Supervisor will direct a qualified employee to work the overtime. The employee scheduled to work the overtime shall immediately notify the Supervisor of any conflict so that the Supervisor shall direct a qualified employee to perform the overtime prior to the conclusion of the workday.

ARTICLE 18. SENIORITY

Section 18.0 Seniority shall mean an employee's length of continuous service with the City since their last date of hire. Seniority shall be a consideration in all conditions of employment.

Section 18.1 In the event that City determines that it is necessary to decrease the workforce, they shall notify the affected employees and the union thirty (30) days prior to the intended action. Seasonal, part-time and probationary employees shall be laid off first. Regular employees shall be laid off in reverse order of their seniority, provided the remaining employees can do the available work. Employees laid off shall be returned to work according to their seniority provided they can perform the available work. No new employees shall be hired in the department until all the employees on layoff status, who have the ability to perform the work and after a trial period of thirty (30) calendar days, have been returned to work.

Section 18.2 When a job opening is posted present city employees who apply and other applicants will be considered.

Section 18.3 The employer shall keep the seniority list up to date at all times and will post an up to date seniority list on the bulletin board. A copy of the seniority list shall be furnished to the Union when it is posted.

Section 18.4 Full seniority rights shall be maintained until one of the following events occurs at which point the person will lose employee status:

- a. Voluntary quit.
- b. Discharge for just cause.
- c. Retirement.
- d. If an employee has been out of active employment of the City, for any reason, except military leave for a period of twelve (12) months.
- e. An employee on lay-off fails to reply to an offer of reinstatement within five (5) business days after receipt of a recall notice by certified mail or by person-to-person request from a management representative subsequent to a lay-off or reduction in force, or to return to work within fifteen (15) business days after receipt of such notice. The City Manager may, but is not required to, extend the period if, in his or her sole judgment, sufficient extenuating circumstances are presented.

Section 18.5 No employee shall be added to the seniority list until they have completed six (6) months of service with the City. All employees hired by the City shall for the first six (6) months be on probationary status but shall be entitled to receive City dental and health insurance plan at the end of the first full calendar month of employment, City retirement plan, sick leave plan, life insurance and paid holidays from the date of hire. During probation, employees may be removed with or without cause, and shall not be allowed to grieve their discipline or termination entitled to

access to the grievance procedure nor any other protections provided in this agreement unless such rights are specifically granted to probationary employees.

ARTICLE 19. GRIEVANCE AND ARBITRATION

Section 19.0 Definitions:

- A. Grievance: A complaint by an employee, or a group of employees, based on an alleged violation, misinterpretation or inequitable application of any existing agreement, contract, ordinance, resolution, policy, rule, regulation or law.
- B. Employee: An employee of the City and may include an individual or group of employees who are similarly affected by a grievance.
- C. Days: All days referred to shall be calendar days.

Section 19.1 Any grievance or dispute which may arise between the parties including the application, meaning or interpretation of this agreement, contract, ordinance, resolution, policy, rules, regulations and laws, may be processed during working hours without loss of pay upon notification and permission from their supervisor and shall be settled as hereinafter set forth.

Section 19.2 Step One: The employee, and/or his Union representative, who feels that he has a dispute or grievance shall discuss the matter with the supervisor within seven (7) days of the event leading to the dispute or grievance, or the employees knowledge of its occurrence. The Supervisor shall attempt to resolve the matter and give the employee an answer within three (3) days.

Section 19.3 Step Two: If the matter is not resolved at Step One, the Union representative, or his designee, with or without the employee, shall present in writing the grievance or dispute to the Department Head within fourteen (14) days of the event leading to the dispute or grievance. The Department Head shall attempt to adjust the matter and shall respond, in writing, to the Union representative and the employee within seven (7) days.

Section 19.4 Step Three: If the matter is not resolved in Step Two, it shall be presented to the City Manager within seven (7) days from the date of the written response of the Department Head. The City Manager shall hold a hearing to investigate and resolve the matter within seven (7) days

of receipt of the grievance. The City manager shall respond in writing, to the Union and the employee within seven (7) days of the hearing.

Section 19.5 Step Four: If the matter is still unsettled, either party may, within thirty (30) days after the reply of the City Manager, submit the matter to the South Dakota Department of Labor, Division of Labor and Management for resolution.

Section 19.6 Either party may appeal the decision of the Department of Labor as prescribed by law.

Section 19.7 An employee who has been dismissed or suspended may submit a grievance starting at Step Three of the grievance procedure.

Section 19.8 A copy of all grievances shall be submitted to the Human Resources Coordinator.

Section 19.9 In the event the employee filing the grievance, or alleging and asserting that a dispute exists, or in the event that the Union files a grievance or alleges a dispute, fails to comply with any time limitation herein such failure shall constitute a withdrawal of the grievance or claimed dispute. The failure of the City to comply with any time limitation shall constitute a settlement of the grievance in accordance with the requested remedy. Time limitations may be extended by mutual agreement of the parties in writing.

Section 19.10 In reducing the grievance to writing, the following must be stated with reasonable clarity:

- The nature of the grievance.
- The approximate date of the alleged grievance.
- The provisions of the Agreement or the rule or regulation that is alleged to have been violated.
- The remedy which is sought.

Section 19.11 No employee or group of employees shall be reprimanded, disciplined, or discriminated against for exercising their rights under this Article.

ARTICLE 20. DISCIPLINARY ACTIONS

Section 20.0 No employee shall be disciplined or discharged without just cause (as outlined in section 14.2 of Uniform Personnel Rules and Regulations Manual). Disciplinary action will normally be progressive although management or the City reserves the right to initiate or accelerate discipline according to the seriousness of the offense. The previous failure of the City to address infractions does not prevent the administration of disciplinary action should just cause exist.

Section 20.1 If just cause is determined, disciplinary action may include any of the following:

- a. Reprimand: The Supervisor may reprimand any employee for just cause. Such reprimand will be in writing and addressed to the employee. A signed copy will be placed in the employee's personnel folder with a copy to the Union.
- b. Probation: Upon finding just cause, the City may place an employee on probation for a period of not more than six (6) months. A written notice of such action will be issued by the City Manager to the employee with a copy to the Union.
- c. Suspension: The City may suspend with or without pay any employee for just cause for a period or periods not to exceed forty (40) work days in a twelve (12) month period; no single suspension will be more than ten (10) working days. The City Manager or his or her designee will notify the employee concerned in writing no later than one (1) day after the suspension is made effective. A copy of the written notification, which will include reasons for and the duration of the suspension will be placed in the employee's file. A copy of the written notification shall be given to the Union.

- d. Dismissal: The City shall not dismiss any employee without just cause. The employee involved will first be suspended with pay for a period of three (3) working days. The employee shall have the right to receive a written statement of the reasons for dismissal which shall be provided to the employee at the time of the dismissal. A copy of the statement will be placed in the employee's personnel file and a copy to the Union.

Section 20.2 Any disciplinary action may be the subject of the grievance procedure as set forth in Article 19 of this contract.

ARTICLE 21. DISCRIMINATION

Section 21.0 No person in the service of the City or seeking appointment thereto shall be appointed, promoted, demoted, removed or advanced in any way, or otherwise affected, on any basis or for any reason other than qualification, merit and fitness. Discrimination against any person employed by the City or seeking employment with the City on the basis of race, sex, religion, age, color, national origin, ancestry, disability or marital status is expressly prohibited, except where specific age or physical requirements constitute demonstrated and bona fide occupational qualifications necessary for effective work performance.

Section 21.1 Neither the City nor the Union will engage in any discriminatory practices contrary to any existing federal law or regulation or any amendment of the same, or any state law or regulation or any amendment to the same, and the City and Union will not discriminate against any employee on account of race, color, national origin, sex, creed, age or disability.

Section 21.2 All references to persons in this Agreement are intended to designate both sexes and wherever either the male or female gender is used, it should be construed to include male and female employees.

ARTICLE 22. SAFETY

Section 22.0 The City shall provide a safe and healthful work place for all employees and correct all hazards. Nothing shall imply that the Union has undertaken or assumed any portion of that responsibility.

Section 22.1 No employee shall be required to operate equipment or do work that any reasonable employee in the exercise of ordinary care would know might cause injury to the employee or anyone else. An employee shall not be subject to disciplinary action by reason of their failure or refusal to operate or handle any unsafe piece of equipment or work in any unsafe work situation.

Section 22.2 The City shall provide employees with all necessary safety equipment. Questions on equipment necessity shall be referred to the Safety Committee.

Section 22.3 a. The City and Union shall establish and maintain a joint Safety Committee composed of three (3) members designated and appointed by the City Manager and (3) members designated and appointed by the Union. The Committee shall agree to a non-voting chair.

b. The Safety Committee shall be charged with: (1) reviewing accidents and providing recommendations for future safety practices (without declaration of fault related to the incident), (2) hearing and reviewing presented health and safety concerns and make recommendations regarding such (3) making recommendations for formal safety training programs, and (4) developing, reviewing and recommending a Risk Management Policy and a Safety Manual.

c. The Committee shall meet on a regular basis as mutually agreed no less than once every month.

Section 22.4 The City shall establish and maintain a program for adequate safety training in each department.

Section 22.5 The Employees and the Union may exercise all legal rights to secure a safe and healthful workplace, in a reasonable manner, without threats, loss of pay, or other reprisals of any kind. The Union agrees, on behalf of the employees it represents, that any safety concern shall first be presented to the Safety Committee for resolution before taking any further action.

ARTICLE 23. ALTERATION OF AGREEMENT

Section 23.0 No agreement, alteration, understanding, variation, waiver or modification of any terms or conditions or covenants contained herein shall be made by any employee or group of employees within the City, and in no case shall be binding upon the parties of this contract unless such agreement is made and executed in writing between the parties of this contract.

ARTICLE 24. SAVINGS CLAUSE

Section 24.0 If any section, paragraph, sentence, clause, phrase or other part of this Agreement is determined or declared to be contrary to, or in violation of, any state or federal law, the remainder of this Agreement shall not thereby be affected or invalidated. Such section declared invalid shall be renegotiated for amendment to this Agreement.

Section 24.1 The terms and conditions of this Agreement shall supersede ordinances and resolutions wherein there is a conflict with the terms of this Agreement.

ARTICLE 25. UNION STEWARDS

Section 25.0 The Union shall furnish the City a list of the stewards' and officers' names and their areas of assignment. The list shall be current at all times.

Section 25.1 The steward shall be paid at his or her regular rate for off time spent on investigation and adjustment of grievances. Union stewards will be limited to no more than two (2) hours a week

of regular time (non cumulative) for investigation. Time over and above this must be requested and justified to the City Manager prior to exceeding this amount and the City Manager shall not unreasonably delay approval.

Section 25.2 The steward shall, before leaving his/her workstation, inform the steward's department supervisor for permission to investigate and/or adjust grievances and the need to leave and shall report back promptly when his/her part in the grievance adjustment has been completed.

ARTICLE 26. DURATION

This Agreement shall be effective as of the 1st day of January, 2009 and shall remain in full force and effect until December 31, 2010. It shall be automatically renewed from year to year thereafter unless either party shall notify the other in writing no later than sixty (60) days prior to its termination that it desires to modify or renegotiate this Agreement.

ARTICLE 27. CHECKOFF

Section 27.0 Upon written request to the City Finance Officer by employees, payroll deductions for monthly Union members' dues shall be made by the City each pay period. This provision shall remain in effect during the term of this agreement and any employee desiring to withdraw his authorization for payroll deductions must do so within twenty (20) days notice in advance of the anniversary date of this agreement, or its termination date, by written notice sent by registered mail, return receipt requested, to the City Finance Officer and the Union.

Section 27.1 A list of those employees signing such authorization, and the amount withheld, will be furnished to the Union at the time of the remittance of such union dues.

Section 27.2 Any changes in the amount of dues to be withheld by the City shall be furnished to the City Finance Officer, in writing, by the Union. This notice shall be submitted to the City at least twenty (20) days in advance of such change.

Section 27.3 Payment by the City of the amount withheld shall be made no later than the fifth day of the month immediately following the month for which such dues were collected.

IN WITNESS WHEREOF, the parties below have set their hands this ____ day of _____, 2010.

AMERICAN FEDERATION OF STATE,
COUNTY AND MUNICIPAL EMPLOYEES,
AFL-CIO

CITY OF YANKTON

